



EMPLOYMENT TRIBUNALS

Claimant:

Mr V Badhan
Mr A Tariq

v

Respondent:

Mr A Singh Sondh

Heard at:

Reading

On: 27 November 2017

Before:

Employment Judge Milner-Moore

Appearances

For the Claimants: In Person

For the Respondent: No attendance or representation

JUDGMENT

1. The claims of unlawful deduction from wages succeed.
2. The respondent is ordered to pay the sum of £775 to Mr Badhan.
3. The respondent is ordered to pay the sum of £1,450 to Mr Tariq.

REASONS

1. On 23 August 2017, the claimants submitted a joint claim form identifying Mr A Singh Sondh as the Respondent and giving the address Unit f13 Cherwell Business Village, Southam Road, Banbury, OX162SP. In the narrative to the form they allege that they had given two weeks' notice to the respondent, there identified as Logistics Expert Limited ("LEL") and had not been paid the money owed to them.
2. The claim form was accepted on 13 September 2017 and the respondent was advised that it had until 11 October 2017 to file a response. A hearing was fixed for 27 November 2017. The respondent has not filed an ET 3 and did not attend today.
3. Before issuing proceedings, Mr Badhan contacted ACAS. The ACAS early conciliation certificate in respect of this claim was issued on 16 August 2017 and shows that ACAS was notified of the dispute on 7 August 2017. The certificate identifies the prospective claimant as Mr Badhan and the

prospective respondent as Logistics Expert Limited (LEL) at the address used in the ET1 for Mr Singh Sondh.

Early conciliation certificate

4. The disparity between the respondent's name as it appears in the early conciliation certificate and as it appears on the Et1 raises an issue about whether the claim should be rejected under rules 12(1)(f) and 12(2)(A) of the ET Procedure Rules 2013. Rule 12(2)(A) provides that a claim shall be rejected where the name of the respondent as it appears on the claim form is not the same as the name of the prospective respondent as it appears on the early conciliation certificate "*unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim*"
5. I heard evidence from the claimants as follows in relation to the identity of the respondent:
 - 5.1. Both claimants worked as delivery drivers. They described LEL as an agency owned by Mr Singh Sondh which provided delivery services to companies such as Amazon.
 - 5.2. Neither claimant had been given a contract and neither had any payslips.
 - 5.3. Mr Tariq produced a pro forma invoice which he was required to submit to LEL which had an LEL header.
 - 5.4. Both claimants showed me their internet banking records which showed their receiving payments where the reference was LEL
 - 5.5. The claimants considered that LEL was the name of the agency and that it was Mr Singh Sondh who had engaged them and who owned the business that employed them and who should be the respondent in the proceedings.
 - 5.6. The address used in the ACAS conciliation certificate and in the ET1 was the management address from which LEL was administered.
6. I have had regard to the EAT decision in **Chard v Trowbridge UKEAT0254/16** in considering whether the claim should be rejected because of the disparity between the early conciliation certificate and the ET1 in relation to the respondent's name. I consider this to be an instance of minor error such that it would not be in the interests of justice to reject the claim on account of such error. In reaching that conclusion I have born in mind that the claimants are unrepresented and that the overriding objective is that cases before the Tribunal should deal with cases fairly and justly including, so far as practicable, avoiding unnecessary formality and seeking flexibility. I have also born in mind that the purpose of the early conciliation process is to enable ACAS to communicate with a respondent to establish whether a dispute can be resolved before proceedings are brought. This is not a case where any error as to the respondent's details appears likely to have prevented ACAS from communicating with the respondent given that Mr Singh Sondh's address appears on the conciliation certificate. I do not therefore consider that it would be in the interests of justice to reject these claim on the basis of this error, particularly given that the respondent has not taken any steps to contest the proceedings.

Claim being brought and factual findings

7. Mr Badhan and Mr Tariq had ticked the relevant boxes in the ET1 to indicate that they wished to bring complaints of unfair dismissal and breach of contract. However, at the start of the hearing, I clarified the position with them and they confirmed that they were not claiming unfair dismissal or breach of contract. The sole complaint was that the Respondent had failed to pay the wages due to them for, in the case of Mr Badhan, 5 days and, in the case of Mr Tariq, 10 days.
8. Mr Badhan gave evidence on oath in support of his claim. I make the following findings in light of that evidence:
 - 8.1. Mr Badhan worked for the respondent as a delivery driver for which he was paid £115 net per day plus mileage at a rate of 18 pence per mile. He ordinarily received around £20 a day in mileage. He also received a £20 bonus per day for Amazon premium work. He was a worker within the meaning of section 230(3)(b) of the Employment Rights Act 1996.
 - 8.2. He gave two weeks' notice to the respondent that he intended to stop working for him on or around 24th June and his last day at work for the respondent was 7th July 2017.
 - 8.3. The respondent usually paid weekly. After he ceased working for the respondent he was owed 5 days' pay.
9. Mr Tariq gave evidence on oath in support of his claim. I make the following findings in light of that evidence:
 - 9.1. Mr Tariq worked for the respondent as a delivery driver for which he was paid £115 net per day plus mileage at a rate of 15 pence per mile. He ordinarily received around £20 a day in mileage. He also received a £20 bonus per day for Amazon premium work which was applicable to 5 of the 10 days. He was a worker within the meaning of section 230(3)(b) of the Employment Rights Act 1996.
 - 9.2. He gave two weeks' notice to the respondent that he intended to stop working for him on or around 24th June and his last day at work for the respondent was 9th July 2017.
 - 9.3. The respondent usually paid weekly. After he ceased working for the respondent he was owed 10 days' pay.

Law

10. Section 13 Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker unless it is authorised by a statutory provision or a provision of the worker's contract or the worker has given prior written agreement to the deduction. A deduction from wages occurs whenever an employer pays less than the wages properly due to the worker.

Conclusions

11. The respondent failed to pay the sums due to the claimants in respect of the work that they performed and so made unauthorised deductions from their wages.
12. I have calculated that the sums due to the claimants are as follows

- 12.1. Mr Badhan: 5 days' pay and bonus and mileage (£115 +£20 +£20 =£155 per day x 5) total £775
- 12.2. Mr Tariq : 10 days' pay and mileage (£115 + 20 = £135 per day x 10) and bonus (for 5 days at £20) total £1450

Employment Judge Milner-Moore

Date: 27 November 2017.....

Judgment and Reasons

Sent to the parties on:

.....
For the Tribunal Office