



EMPLOYMENT TRIBUNALS

Claimant

Mrs M Summerfield

v

Respondent

Atlas Care Services Limited

Heard at: Cambridge
Before: Employment Judge Tynan

On: 1 March 2019

Appearances

For the Claimant: In person
For the Respondent: Mr P Claridge, Director

JUDGMENT

1. The Employment Tribunal declares that the respondent made an unlawful deduction from the claimant's wages in the sum of £361.47 and, subject to credit being given for any payment which may have been made to the claimant by the respondent in respect of thereof, orders the respondent to pay the sum of £361.47 to the claimant in respect of the unlawful deduction.

REASONS

1. By a claim form presented to the Employment Tribunal on 16 August 2018, the claimant claims that she is owed holiday pay, arrears of pay and travel expenses. The claimant was employed by the respondent as a Carer. Her employment commenced on 9 March 2018 and ended on 28 June 2018. There was a dispute between the parties as to whether the claimant was entitled to resign her employment without notice. However, there was no claim by the claimant to notice pay, and accordingly, it is not necessary for me to determine whether or not the claimant had grounds to resign her employment without notice.
2. Neither party was legally represented and I therefore took the opportunity at the outset of the hearing to identify the issues in dispute between them. The respondent had filed a small bundle of documents for the hearing comprising eight documents. The first document was the respondent's calculation of the sums due to the claimant on the termination of her employment. I identified six areas of potential dispute, namely, the number of hours worked by the claimant in the two weeks leading up to her

resignation, what mileage she had undertaken during that period, how much accrued but untaken annual leave she had at the date her employment ended, and whether there were grounds for the respondent to make three deductions from the claimant's wages. Having so identified the issues Mr Claridge conceded that the respondent could not pursue a deduction of £157.00 from the claimant's wages in respect of her failure to work her notice period. The claimant conceded that under clause 26 of her principal statement of terms and condition (a copy of which was included in the respondent's hearing bundle) the respondent was entitled to deduct the sum of £150.00 from her wages in respect of five days' training.

3. Neither party had filed a witness statement. However, I heard evidence on oath from the claimant and from Mr Claridge.
4. The claimant's claim to unpaid wages is based on her own records of the hours she worked between 18 and 27 June 2018. She told me that her claim to mileage was calculated using the odometer in her car and that she had used an on-line calculator to calculate that she had accrued 80 hours of annual leave. Unfortunately, the claimant had not retained more detailed records of the odometer readings or a copy of the holiday calculation to be able to explain to me how the figure of 80 hours had been arrived at.
5. Both the claimant and Mr Claridge gave their evidence in a very straightforward and honest manner. However, ultimately I preferred the evidence of Mr Claridge. He gave the tribunal a very detailed explanation of the respondent's staff rostering system. For approximately six years the respondent has used a GPS-based tracking system to record its staff movements. The respondent provides domiciliary care and other support to people in their homes. Its workforce of approximately 300 staff undertakes approximately 20,000 home visits per week. Under the terms of its contracts with its commissioning local authorities, the respondent is obliged to keep a precise record of the duration of these home visits as this forms the basis upon which the respondent is paid for its services. As part of the respondent's systems, its staff are required to clock in and clock out at the start and end of each visit. There is a unique code at each client's home address which employees scan into the respondent's systems using their mobile phones. Information is updated on the respondent's systems in real time. This means that the respondent can see at any given time where employees are and how long they have spent with a client. The system alerts the respondent in the event an employee fails to either clock in or clock out during a visit. The system generates reports which are then used to determine staff pay. The system also calculates holiday pay entitlement, namely at the rate of 12.7% of all hours worked, regardless of the number of hours worked.
6. Mr Claridge confirmed that occasionally the respondent will receive challenges in respect of mileage and that any discrepancy between the respondent's own records and staff records are usually explicable by reference to the fact the staff are not entitled to be reimbursed their home to work travel or any personal travel they may have undertaken in the course

of a working day. Mr Claridge described a recent situation in which an employee had questioned their mileage in a case where they had done in excess of 300 miles. His evidence, which I accept, is that the respondent's GPS-based tracking system was found to be accurate to within one mile. In the circumstances I accepted Mr Claridge's evidence that the respondent's records accurately document that the claimant had worked a total of 44.9 hours in the two weeks prior to her resignation, 29.2 hours of which were worked during the week and 15.07 hours of which were worked at the weekend. I also accept as accurate the respondent's records that the claimant had undertaken 80 miles in the course of those duties and accordingly that she was owed £17.04 using a mileage rate of 20p per mile.

7. For the same reasons, but also given that the claimant had not produced any calculation to support her claim to 80 hours' holiday pay, I preferred Mr Claridge's evidence that 42.12 hours of annual leave had accrued and was owing to the claimant.
8. The claimant conceded that £150 was lawfully deducted from her wages in respect of five days' training she had undertaken at the outset of her employment. I simply note that the respondent's ability to make this deduction is not as clearly provided for in its principal statement of terms and conditions document as it might be, and that the relevant wording is potentially ambiguous. Nevertheless, the matter was conceded by the claimant.
9. By contrast the respondent's right to make a deduction in respect of the cost of a training care certificate is more clearly provided for at clause 26 of the principal statement of terms and conditions and in the circumstances I accept the respondent's right to make a deduction from the claimant's wages of £187.50, namely 75% of the certificate cost as set out in the statement. The claimant had not raised as part of her claim, and in any event there was insufficient information before me, to be able to determine whether the two deductions might take the claimant's earnings below the level of the national minimum wage. In the circumstances I make no findings in that regard.
10. The total sums provisionally owing to the claimant on the termination of her employment are therefore £361.47. However, Document 2 in the respondent's hearing bundle is a copy of a payslip evidencing payment by the respondent to the claimant on 24 February 2019 of £698.97 in respect of wages and holiday pay subject to deductions totalling £673.65. The claimant stated that she had not received any payment into her bank account. In any event the payslip includes at least £157 by way of deduction that the respondent now accepts it was not entitled to make. In the event the parties cannot agree the matter between them, they are at liberty to refer the matter back to the tribunal. The order I have made simply records that credit is to be given to the respondent for any sums it may have paid to the claimant in respect of the unlawful deductions identified by me.

Employment Judge Tynan

Date: 28 March 2019

Sent to the parties on:

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For the Tribunal Office