



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr KJ Stevens**

**v**

**PNJ Security Limited**

**Heard at:** London Central (by video)

**On:** 13 November 2020

**Before:** Employment Judge P Klimov

## **Representation**

**For the Claimant:** in person

**For the Respondent:** not present

## **JUDGMENT**

The judgment of the Tribunal is that the correct respondent in these proceedings is the First Respondent, **PNJ Security Limited** and the Second Respondent, Paul Johnson (the company's director), is removed as a respondent and is replaced by the First Respondent.

The claimant's complaint that there was an unauthorised deduction from his wages is upheld. The respondent has made an unlawful deduction from the claimant's wages in contravention of section 13 of the Employment Rights Act 1996 and is ordered to pay the claimant the net sum of **£3,266.98** for the wages unlawfully deducted and to account to HMRC for any tax and national insurance due.

## **REASONS**

1. By a claim form presented on 31 July 2020 the claimant brought a complaint for an unauthorised deduction from wages against PNJ Security Limited (**First**

**Respondent**) and Mr. Paul Johnson (**Second Respondent**), who is the owner and the sole director of the First Respondent.

2. The final hearing was listed for 13 November 2020 at 11:00am by video (CVP). At 08:37am on the day of the hearing, Mr. Johnson sent an email to the tribunal asking for the hearing to be postponed by 28 days on the ground that he had only received a notice of the hearing the day before and that he had virus symptoms and was self-isolating.
3. I considered Mr. Johnson's request and decided that he should join the hearing and make his application for a postponement at the hearing. Neither having symptoms nor self-isolating were good reasons not to join a remote hearing, and there was no indication that Mr Johnson was so ill that he could not join. That was communicated to Mr. Johnson at 10:25am. Mr. Johnson was warned that if he did not join the hearing to make his application, the case may be decided in his absence and a default judgment entered against him. He replied at 10:30am saying that he did not have a broadband connection.
4. The hearing started shortly after 11am. The claimant joined the video hearing with no difficulty. I was satisfied that Mr. Johnson had been provided with adequate instructions on how to join the hearing, but he did not join, and it did not appear that he was making any attempts to do so. I would have been able to tell if he was trying to log on and the clerk who was running the hearing would have been able to assist him had he tried. The instructions did not say that he needed a broadband connection to join the hearing and that was not necessary, because he could have joined using a smartphone as a computer device or to connect his computer to the hearing portal through it. I found no other good reasons why Mr. Johnson could not have at least attempted to join the hearing, as directed. Therefore, I decided that the hearing should proceed without the respondents being present or represented.
5. First, I needed to deal with a preliminary issue of whether the claim had been presented within the prescribed time limit.
6. The claimant's claim was in respect of the respondent's failure to pay his wages for the days worked in February and March 2020. I concluded that those failures were a series of deductions within the meaning of section 23(4) of the Employment Rights Act 1996 (ERA), and that the last deduction had been made on 24 March 2020, the date the claimant had stopped working for the respondent and the obligation on the respondent to pay the claimant the last of his outstanding wages had arisen. Therefore, the primary limitation period for presenting the claim expired on 23 June 2020.
7. The claimant had started ACAS early conciliation against the Second Respondent on 16 June 2020 and obtained ACAS Early Conciliation (EC) Certificate on 16 July 2020. Pursuant to sections 207B (3) and (4) of ERA the period for presenting a claim against the Second Respondent was extended until 16 August 2020 and therefore the claim was in time as against the Second Respondent.

8. Before submitting his claim to the tribunal on 31 July 2020 the claimant was advised by ACAS to add the First Respondent on his claim form, and that in order to do that, he needed to obtain a separate ACAS EC Certificate in relation to the First Respondent, which the claimant did on 29 July 2020. The date of the early conciliation notification on that second EC Certificate was recorded as 29 July 2020. As that date falls after the last date of the primary limitation period (23 June 2020), pursuant to section 207B(3) of ERA the early conciliation period did not extend the primary limitation period, and therefore the claimant's claim against the First Respondent was out of time.
9. On hearing the claimant's sworn oral evidence and considering the documents presented by the claimant in evidence I found that the claimant's employer was PNJ Security Limited and not Mr. Paul Johnson personally.
10. I then considered whether I should amend the in-time claim against the Second Respondent and substitute PNJ Security Limited for the Second Respondent. I applied the principles in *Selkent Bus Company Limited v Moore [1996] ICR 836* in deciding whether to make this amendment, taking into account all the circumstances and balancing the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. I considered that the balance of injustice and hardship lay in favour of allowing the amendment because:
  - (i) PNJ Security Limited had received the claim form and was named as the First Respondent, therefore knew that there was a claim made against it.
  - (ii) Mr Johnson as the sole director was synonymous with the company; he knew from the outset what the claim was about and also, presumably, that the correct respondent was the company.
  - (iii) There was no hardship or injustice to the First Respondent in allowing the claim form to be amended so to replace the Second Respondent with the First Respondent whereas, if the amendment was not allowed, the claimant would potentially lose the opportunity to pursue his claims and, if successful, be given a remedy.
11. Accordingly, pursuant to Rule 34 of the Employment Tribunals Rules of Procedure I decided that Paul Johnson shall be removed and replaced by PNJ Security Limited as the respondent in these proceedings. That meant that the claimant's claim was in time and the tribunal had jurisdiction to hear it.
12. Having considered the evidence presented to me by the claimant at the hearing, I made the following findings of fact:
  - (i) The claimant worked for the respondent as a locksmith from January 2017 until 24 March 2020, when he resigned.
  - (ii) His salary was £30,000 per year.

(iii) The respondent failed to pay the claimant his wages for February and March 2020 in the total sum of **£3,266.98** (net).

(iv) The respondent did not present a response to the claim or otherwise indicated that it intended to defend the claim.

13. From the available evidence it did not appear that the respondent disputed that he owed the claimant wages for February and March 2020.

14. I, therefore, decided that the respondent had made an unauthorised deduction from the claimant's wages in the amount **£3,266.98** (net) contrary to section 13 of the Employment Rights Act 1996 and shall pay that sum to the claimant (net) and account to HMRC for any tax and national insurance due.

**Employment Judge P Klimov  
16 November 2020**

Sent to the parties on:

.16<sup>th</sup> Nov 2020

For the Tribunals Office : OLU

## **Notes**

### **Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant (s) and respondent(s) in a case.