



EMPLOYMENT TRIBUNALS

Claimant

Respondent

V

Mr G Qadara

David Lloyd Leisure Limited

Heard at: Watford
Before: Employment Judge Tuck

On: 15 January 2020

Appearances

For the Claimant: In person
For the Respondent: Miss L Hatch, Counsel

JUDGMENT

1. The claimant's claims fail and are dismissed.
2. By an ET1 presented on 2 April 2019, following a period of early conciliation between 2 March 2019 and 2 April 2019, the claimant brought a claim for unlawful deductions from wages. He has produced various schedules and lists of dates, and detailed emails.
3. The claimant says he sustained errors:
 - 3.1 Underpayment monthly compared to his P60 ("P60 issue")
 - 3.2 Non-payment from David Lloyd for June 2017 (June 2017)
 - 3.3 Overtime of 114.83 hours
 - 3.4 Incorrect pay periods/ monthly deductions.
 - 3.5 Sick Pay.
4. The claims are under section 13(3) of the Employment Rights Act 1996, which provides:

"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him, to the worker on that occasion, the amount of deficiency shall be treated for the purposes of this part as a deduction."

Facts

5. I heard evidence from the claimant, and for the Respondent from Ms Emma Johnson, Regional HR Business Partner for David Lloyd Leisure. She produced a written statement and referred to a joint bundle of 155 pages. The claimant produced additional documents during the hearing to which no objection was taken.
6. The claimant commenced working for Virgin Active, Northwood Riverside as a kitchen assistant on 13 August 2016. His contract stated that his hours of work were 30 per week, and he was paid monthly in arrears.
7. From 1 June 2017 his employment transferred under the TUPE regulations to the respondent. He was issued with a further contract which also set out his hours as 30 per week. His hourly rate of pay has increased from £7.72 per hour (gross) in August 2016, to £8.05 per hour on the transfer taking place, and increased to £8.17 per hour from April 2018. This 2018 rate equated to £12,746.40 per annum. A pay rise awarded in April 2019 is expressed solely by reference to the annual salary, which is £13,001.30.

P60

8. The claimant said that in 2017, his P60 showed an income £12,878.60 for the year. He said that his monthly pay was £1046 per month, which equated to £12,552. He told me that he did work overtime from time to time. I find that the £326.60 which the claimant claims is a deduction, is in fact a sum paid to him in excess of his annual salary – which must be in relation to the overtime he worked. I am unable to find that there was any deduction. The claimant in believing that he should get a twelfth of whatever sum is in his P60 each year is wrong. The P60, as he accepted, will include his pay for his contractual hours and additionally any overtime payments.

June 2017

9. June 2017 the Claimant received £858.88 net, set out in a payslip from Virgin Active. Ms Johnson explained that the month of the transfer VA ran the payroll, and David Lloyd paid the wages due to VA. The Claimant in answer to my questions confirmed that he had received monthly pay from VA, and did not expect to be paid by both VA and David Lloyd. He therefore withdrew his complaint about being underpaid for June 2017.

Overtime

10. The claimant raised a grievance about being underpaid for overtime. The Respondent identified an underpayment of 3 hours, which it rectified. The claimant appealed and it was found that he had not been paid to attend a training day on 9 August 2017, and he was paid for a further 9 hours.

11. The claimant in a detailed letter to the ET dated 1/1/20 said that he had compared the hours he had spent on site – by reference to the “fingerprint system”, with his pay, and that he had been underpaid 19 hours for 2017. He then said that in fact he had further deductions of 30 hours in 2016, 30.5 hours in 2018 and 35.33 hours for 2019, amounting to a total of 114.83 hours. The claimant confirmed to me in evidence that that all of these 114.83 hours he had calculated by comparing his rota hours (for which he was paid) to the hours he had been on site. Ms Johnson explained that a person being on site – and signing in via fingerprint, does not necessarily mean they are working – they might be using the site facilities or be on site for purposes other than working.
12. Ms Johnson’s evidence is right as a matter of common sense, and I accept her evidence on this matter.
13. The claimant has not been able to prove that he worked 114.83 hours for which he was not paid.

Pay periods

14. The claimant in evidence told me that he objected to not receiving exactly the same sum of money each and every month. Ms Johnson explained that each monthly pay period might be 4 weeks and others 5 weeks. The claimant could not identify to me any pay deductions whatsoever.

Sick Pay

15. This is not in the claimant’s ET1. The claimant’s August 2018 payslip, sent to him on 31 August 2018 noted one “day absent”; the claimant said that he had worked on 31 August 2018 so it was an unlawful deduction. The weekly reports for July 2018 showed a day of absent on 22 July 2018; his payslip for July 2018 shows that he did not have any deduction for that day’s absence. Ms Johnson said, and I accept that the August deduction relates to the day’s absence in July 2018. The claimant has not shown any sum properly payable that was deducted from his contract.

Claimant’s submissions

16. The claimant appears to believe that his contract has changed from being an hourly paid one to an annual salaried one, and that he therefore loses out in not being entitled to overtime. He said that a food and beverage manager had told him this. He said that he has not received equal amounts of payment each month, or a regular pattern of 4 weeks, 4 weeks then 5 weeks payment. He also read various additional emails concerning overtime agreements; he objected to overtime not being paid in the month it was worked.

Conclusions on claims

- 17. The claimant has not suffered any unlawful deductions from his wages.
 - 17.1 Underpayment monthly compared to his P60 (“P60 issue”) – the claimant appears to have misunderstood that the P60 does not simply show his annual pay for his basic hours, but was higher because it also showed overtime payments. This does not entitle him to one twelfth of this on an ongoing basis.
 - 17.2 Non-payment from David Lloyd for June 2017 (June 2017) – this claim was withdrawn.
 - 17.3 Overtime of 114.83 hour – the claimant has told me that he worked this out by the times he had checked into the building. He has not satisfied me that he worked all these hours such that overtime was properly payable to him.
 - 17.4 Incorrect pay periods/ monthly deductions. This claim is difficult to understand, but appears to a complaint that the claimant should receive a regular pattern of payments through the year for shorter and longer pay periods. He has not shown any sum due which the Respondent failed to pay to him.
 - 17.5 Sick Pay. This is not in the ET1, and the “error” identified – which he thought was a deduction for being absent on 31 August 2018, in fact the payslip issued on that date had a deduction for being absent on 22 July 2018, the claimant having received full payment for the July. There is no underpayment or wrongful deduction.
- 18. The claims are accordingly dismissed.

Employment Judge Tuck
16/01/2020
Date:
03/02/2020
Sent to the parties on:
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For the Tribunal Office

Note
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.