EMPLOYMENT TRIBUNALS

Claimant: **Mr A Outlaw**

Respondent: **B&B Industrial Doors Limited**

Heard at: **Cardiff (by video)** **On: 14 April 2021**

Before: **Employment Judge R Harfield**

Representation:
Claimant: Mr A Outlaw
Respondent: Ms E Holland and Mr G Price

RESERVED JUDGMENT

It is the decision of the Employment Judge sitting alone that:

1. The there was an unauthorised deduction from the claimant's final wages in the sum of £620;

2. The claimant's claim for unpaid holiday pay succeeds in respect of 1.5 days' pay in the gross sum of £153.63;

3. The claimant's claim for notice pay does not succeed and is dismissed;

4. The claimant's claim in respect of deductions from wages for work claimed on his worksheets does not succeed and is dismissed.

5. The total due from the respondent to the claimant is **£773.63.**

REASONS

Introduction

1. The claimant was employed by the respondent as a welder fabricator and fitter from 30 September 2019 until his dismissal on 28 February 2020. ACAS early conciliation took place between 7 March 2020 and 9 of March

2020. The claimant presented a claim form on 10 March 2020 complaining of unfair dismissal, failure to pay notice pay, holiday pay, and other payments. The claimant was sent a strike out warning on 31 March 2020 in respect of his unfair dismissal claim, on the basis that he had been not been employed for 2 years. The respondent presented a response form on 28 of April 2020 defending the claims.

2. The matter came before Employment Judge Jenkins on 5 August 2020 for case management. Employment Judge Jenkins identified the issues in the case were a breach of contract claim in respect of 1 week's notice. The claimant was also claiming he had not been paid holiday pay on the termination of his employment. In addition the claimant was alleging that the respondent had made unauthorised deductions from his wages by not paying him all sums due respect of the hours that he worked. The claimant was also complaining that his final payslip had sums deducted from for damage to a roof rack and ladders. He said he had not authorised the deductions.

3. In advance of this hearing the respondent provided a bundle of documents which extends from BB1 through to BB7. The claimant confirmed today that he did not have the additional documents that he was seeking to rely upon himself. The claimant had, however, provided the document which sets out the sums that he was seeking. This is contained on page 1 of BB1. I took evidence from the claimant under oath by asking him a series of questions. The respondent also had the opportunity to ask questions. I then took oral evidence from Ms Holland and Mr Price for the respondent. Again I did so by asking them a series of questions. The claimant also had the opportunity to ask questions. Both parties also had the opportunity to make closing comments. The hearing faced some technological difficulties as the claimant would, on occasion, lose his audio feed and then his connection. That was not the claimant's fault and we would wait for him to reconnect. It did mean that there was insufficient time for me to deliberate and give an oral decision on the day so I therefore reserved my decision to come out in writing.

4. I take each complaint in turn.

Notice pay

5. The claimant confirmed to me that he was only seeking one week's notice pay (and not the two weeks he had originally set out). He said that he dismissed immediately without the opportunity to work to a week's notice and also was not paid in lieu of working it. Ms Holland and Mr Price disputed this. Mr Price said that the claimant had been given the option to leave immediately or work the week's notice and be paid. He said that the claimant initially chose to work the notice period but that the claimant

worked on the Monday and then went home half way through the Tuesday and did not return. Ms Holland said she therefore paid the claimant for the Monday and Tuesday of what should have been a week's worked notice, but not the remainder of the week, because whilst work was available for the claimant, he did not ultimately work it.

6. There is therefore a central dispute of fact between the parties. On this point I prefer the evidence of the respondent. It is supported by email that Ms Holland sent to the claimant not long after his dismissal on 5 March [BB3(17)]. The email refers to calculating the claimant's final pay to include two days for the week in question. The bundle, particularly BB1(3), (4) and (5), also tends to suggest that there were occasions on which the claimant did not attend work when scheduled to do. In my mind, this supports the evidence from Mr Price that the claimant did not attend work for the remainder of his week's notice period, and this is why he therefore was not paid for it. The claimant at this time would not have appreciated the financial consequences of his decision, bearing in mind he did not know he would face a substantial deduction from his final pay, or the impending difficulties the Covid 19 pandemic would then bring for the opportunity to secure work elsewhere. As the claimant did not attend work he was not entitled to be paid and I therefore do not find that any additional notice pay is due to the claimant.

Deductions from work undertaken

7. The claimant said that he was entitled to paid different sums of money for different types of work undertaken. He said he would return worksheets which set out what he was entitled to be paid for. He says that repeatedly deductions were made from the sums for him and his colleagues. He said that throughout his employment he thought more than 60 hours had been deducted. Mr Price said that part of his role was to review the worksheets completed by the claimant and his colleagues. He said that he would adjust them before payment but that this was because sometimes too much was claimed. He said, for example, if you look at BB2(17), the claimant had claimed for two hours attendance on Wednesday at Moy Road to fit a hood. However, the claimant was entitled to one hour and he therefore adjusted it.

8. I do not have before me a full set of the claimant's worksheets. The claimant has also not identified, even on the worksheets that we do have, the exact sums that he says he was owed and why and what he says is payable to him. On the evidence before me, and applying the balance of probabilities, I am therefore unable to conclude that the claimant has sufficiently established before me on the available evidence that these sums were wages that were properly payable to him in the first instance. I therefore do not uphold this aspect of the claimant's claim.

Holiday pay

9. The claimant's statement of main terms of employment says that the holiday year runs from 1st January to 31st of December each year.

10. At BB2(23) the respondent has run a holiday pay calculation for the period 28th of September 2019 to 31st of December 2019. Holiday pay for that period is shown as 76 hours. The respondent says that the claimant took 1 day's holiday during that time which is shown on BB2(2). The respondent also shut down over the Christmas period and the claimant was paid 40 hours holiday pay in the first week and 24 hours holiday pay in the second week. This is shown at BB2(24) and BB2(25). This left the claimant with an entitlement to 4 hours or half a day's pay. There is nothing before me to say that the respondent did not allow employees to carry over accrued but untaken holiday pay, given they marked it that the claimant was owed 4 hours. The respondent themselves also undertook a holiday pay calculation for the whole period of September 2019 through to the date of dismissal that spanned the two company holiday years BB3(20).

11. In respect of the period 1st of January through to the date of dismissal, the respondent's calculation at BB3(19) says that the claimant would be entitled to 36.2 hours holiday pay. The respondent's final pay analysis at BB3(17) said that he was paid 3.5 days' holiday. Ms Holland agreed with me that 36.2 hours was the equivalent of 4.5 days holiday not 3.5 days paid. She was unable to account for this difference other than saying it had been calculated at the time by a colleague, Mary, in the office. I therefore find that the claimant was entitled to 5 days holiday pay on the termination of his employment (4.5 plus 0.5 carried forward) and that the respondent's calculations at 3.5 days were 1.5 days less than the claimant's entitlement.

Deductions from final pay

12. BB3(11) is an email of 19th of February 2020 sent by Ms Holland to the claimant. It says:

"As discussed we today (19.2.20) you are liable to repay to B&B the following:
Roof rack-£300
Ladders-£280
Parking Fine £100

Total -£680

You have agreed the following repayments:
Week 1: £50
Weeks 2- 8: £80
Week 8 -£70

Should you wish to overpay on these amounts then please send me an email instructing me to deduct more."

13. Following that discussion and email, in the two subsequent pay slips £50 was deducted each time under that agreement. The claimant was then dismissed. After the claimant's dismissal he was sent the email about his final pay [BB3(17)] which said that the respondent owed the claimant £1060 in final pay. It then went on to say "Roof rack, ladders and parking final total £720 of which you have already paid £100. £1060-620= £440. P45 and proof of prices for deductions will be put in the post early next week."

14. Under section 13 of the Employment Rights Act 1996 an employee has the right not to suffer a deduction from wages unless the deduction is authorised in some way. A deduction can be authorised where the employee has previously signified in writing his agreement or consent to the making of the deduction. Alternatively, it can be authorised where it is part of the employee's contract. If so, it has to be in one or more of the written terms of the contract which the employer has given the employee a copy of on an occasion prior to making the deduction. Or it can be in a term of the contract (express, implied, oral or in writing) where the existence and effect of the term has been notified to the employee in writing before the deduction was made.

15. The claimant says that he agreed on the 19 February to the cost of the parking fine, ladders, and roof rack being deducted incrementally from his ongoing pay. He says that there was never a discussion about, and he never authorised, the respondent to deduct it all at once from his final pay slip. He says that he never would have done so because of the financial implications for him and his family. Ms Holland and Mr Price candidly agreed with the claimant. They said there was no such discussion because as at 19 February it was not anticipated the claimant was going to be dismissed.

16. At BB1(8 – 11) there is a document called "Rules for the Use of Company Pool Vehicles." At BB1(12) there is a document called "Deductions from Pay Agreement." Both of these purport to give a power to the respondent to deduct money from wages for fines or for damage to vehicles and company property as a result of things like carelessness and negligence. There is a space on both documents for the employee to sign them. They are unsigned by the claimant. Ms Holland and Mr Price again candidly

conceded that the respondent is unable to advance any evidence that the claimant had ever seen these documents or agreed to their terms. They told me that they had exercised the right to deduct the sums they say the claimant owes the respondent from his final pay because it is standard industry practice to do so.

17. In my judgment the deduction from the claimant's pay of £620 was an unauthorised deduction from wages. The claimant had not signified in writing his agreement or consent to the deduction. The right to make the deduction was not in a written term of the contract which the respondent had given the claimant a copy of prior to making the deduction. The claimant's oral agreement to repaying the sums only extended to making the deduction from his wages on a weekly basis on the jointly held assumption he was going to continue in employment. He had not orally agreed to it being deducted in one big deduction from his final pay. There is not sufficient evidence before me to find that it was an implied term that such sums should be deducted from final pay on the basis of an accepted industry practice. But even if there was such an implied term, it would not be sufficient to authorise the deduction in this case because the respondent had not notified the claimant of the existence and effect of the implied term in writing prior to making the deduction. The claimant had, on the respondent's own admission, not received the policy documents.

Outcome

18. The claimant was owed an additional 1.5 days' holiday pay on termination of employment. In the 12 weeks prior to his dismissal he earned a gross sum of £6145,00 (taken from BB2(14), (16), (18), (20), (22), BB3(2), (4), (6), (8), (10), (13) and (16) and ignoring the two Christmas weeks as they are weeks in which the claimant was on holiday and unable to earn price work). That is an average of £512.08 gross pay a week. The daily rate is £102.42. 1.5 days is therefore the gross sum of £153.63. That is the sum payable to the claimant in respect of holiday pay. Holiday pay is taxable and therefore the claimant is responsible for any tax and employee national insurance contributions due to HMRC.

19. The claimant also suffered an unauthorised deduction from wages in the sum of £620 which the respondent must repay to the claimant.

Employment Judge R Harfield
Dated: 15 April 2021

JUDGMENT SENT TO THE PARTIES ON 20 April 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS