



EMPLOYMENT TRIBUNALS

Claimant: Mr K Khaku

Respondent: Meadowhead Physiotherapy Ltd (in voluntary liquidation)

HELD by CVP

ON: 19 February 2021

BEFORE: Employment Judge Shulman

REPRESENTATION

Claimant: Mr H Percy-Raine, Counsel
(The claimant was also present)

Respondent: Did not appear and was not represented

JUDGMENT

The Tribunal gave Judgment as follows:

1. In respect of the complaint of unauthorised deduction of wages the respondent will pay compensation to the claimant in the sum of £8,768.00 gross.
2. In respect of the complaint of no holiday pay the respondent will pay compensation to the claimant in the sum of £1057.65 gross.
3. In respect of the complaint of no notice pay the respondent will pay compensation to the claimant in the sum of £2083.33 gross.
4. The grand total is £11908.98.
5. The Tribunal having found that the complaints of unauthorised deduction of wages and no holiday pay (treated for this purpose as wages) the Tribunal makes a declaration to that effect in accordance with section 24 Employment Rights Act 1996.

REASONS

1. Claims

- 1.1. Unauthorised deduction of wages.
- 1.2. No holiday.
- 1.3. No notice pay.

2. Issues

The issues in this case related to:

- 2.1. Whether or not the respondent deducted wages from the claimant in an unauthorised manner.
- 2.2. In respect of holiday pay whether the respondent failed to pay holiday pay due to the claimant.
- 2.3. In respect of no notice pay whether the respondent was liable to pay notice pay to the claimant.

3. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 3.1. The claimant commenced employment with the respondent on 9 March 2020 and the Tribunal finds that his employment came to an end on 27 July 2020. The claimant was a physiotherapist. The claimant earned £25,000 per annum.
- 3.2. On 24 March 2020 the claimant was informed that he was to be put on furlough.
- 3.3. On 20 April 2020 the claimant was told that he was not eligible for furlough.
- 3.4. The claimant received no payment between 22 March 2020 and 27 July 2020, but during that time he regarded himself as still employed. This was despite the fact that he started working on a self-employed basis from 3 July 2020 but only for 4 or 5 hours a week feeling that the respondent would re-open its business.
- 3.5. On 27 July 2020 the respondent accused the claimant in writing of being in breach of contract and this as far as the claimant was concerned was the last straw. Effectively the claimant resigned alleging breach of contract by the respondent.
- 3.6. The claimant never heard anymore from the respondent other than an acknowledgement of his latest email.
- 3.7. In regard to the unauthorised deduction of wages the daily gross figure for wages is £68.50 and the period non-payment mentioned above amounts to 128 days.

- 3.8. So far as holidays are concerned between 9 March 2020 and 27 July 2020 the claimant accrued 11 days holiday, having taken no holidays in that period. The daily rate for holiday pay was £96.15 gross.
- 3.9. In relation to the lack of notice pay the Tribunal finds that it was the conduct of the respondent which caused the claimant to resign.

4. Determination of the issues

After listening to the factual and legal submissions made by and on behalf of the claimant and in the absence of a response or any representation by the respondent:

- 4.1. In respect of unauthorised deduction of wages the claim is well founded and a declaration will be given in the Judgment. The period of deduction is 128 days multiplied by the daily rate of £68.50. The total due being £8768.00 gross.
- 4.2. In respect of the lack of holiday pay the Tribunal finds that the claimant was entitled to 11 days holiday at a daily rate of £96.15 and the respondent shall pay to the claimant the sum of £1057.65 gross and a similar declaration to that made in respect of unauthorised deduction of wages will be made. It is worthy of mention that the claim for holiday pay was not particularised on the claim form and technically there should have been an application to amend giving the respondent an opportunity to respond. As the respondent did not enter a response, is in voluntary liquidation and was not represented at the hearing the Tribunal decided that there was little point in adjourning the proceedings to give the respondent such an opportunity and the claim for holiday pay was admitted, the claim being amended accordingly.
- 4.3. In respect of no notice pay it is important to note that the claimant resigned. The Tribunal finds that it did so by reason of the respondent's conduct, that the claimant did nothing to affirm the contract and therefore there being a constructive dismissal it follows that notice pay is due. In accordance with the claimant's contract this notice is one month in the sum of £2083.33 gross.
- 4.4. The grand total of compensation is £11908.98 gross.

Employment Judge Shulman

Date 2 March 2021