



EMPLOYMENT TRIBUNALS

Claimant: Mr M Rashid

Respondent: Superdrug Stores plc, trading as Savers

Heard at: London Central Employment Tribunal (by video)

On: 6 July 2021

Before: Employment Judge Palca (sitting alone)

Appearances

For the claimant: In person
For the respondent: Was not represented and did not appear

JUDGMENT

The name of the respondent is corrected to Superdrug Stores plc, trading as Savers

The Respondent is ordered to pay the claimant the sum of £2,054.55 forthwith, made up as follows:
£ 1,239.43 to compensate him for unlawful deductions from wages
£ £815.12 for failure to provide written particulars of employment.

The particulars of total hours worked and gross wage which should have been included in the claimant's payslips are as follows:

- (1) The claimant's payslip for September 2020 should have recorded that he had worked 30 hours 59 minutes at basic pay, being £274.51
- (2) The claimant's payslip for October 2020 should have recorded that he had worked 105 hours 21 minutes at basic pay, being £933.40
- (3) The claimant's payslip for November 2020 should have recorded that he had worked 99 hours at basic pay, being £877.14 and 16 hours at night shift pay, being £212.64
- (4) The claimant's payslip for December 2020 should have recorded that he had worked 90 hours at basic pay, being £797.40 and 6 hours at night shift pay, being £79.74
- (5) The claimant's payslip for January 2021 should have recorded that he had worked 13 hours 37 minutes at basic pay, being £120.64 and 25 hours 41 minutes at night shift pay, being £341.33

REASONS

Conduct of this hearing

- (6) This has been a remote hearing. The form of remote hearing was V – video, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face to face hearing because of the COVID-19 pandemic.
- (7) In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net No members of the public attended.
- (8) The claimant is a native Bangladeshi speaker. His command of English is good, but not perfect. He was accompanied by his brother in law, Mr Shahid Miah. The claimant was able to contribute to the discussion and to hear all comments made.
- (9) No requests were made by any members of the public to inspect any materials before the tribunal.
- (10) The claimant gave evidence on oath. There was no reason to doubt the truth of any of his evidence. He had two pay slips with him, the relevant details of which he, aided by Mr Miah, read out to the tribunal as it was not possible for me to read the details on the CVP screen.
- (11) The respondent was served with these proceedings at the store where the claimant worked, 500 Harrow Road, London W9 3QA. It has not submitted any response to the claim, nor communicated with the tribunal in any way.
- (12) The claimant brought these proceedings against “Savers”. It is understandable why he did so – this was the name of the shop where he worked, he was never given any particulars of employment, and when he was given a payslip, the identity of his employer was very unclear, did not name any obvious company, and concluded with the name Savers. I therefore ordered that the name of the respondent be amended to Superdrug Stores plc trading as Savers. This judgment will be delivered to the respondent both at the address on the ET1, and on its registered office.
- (13) The participants were told that it is an offence to record the proceedings.

The claim

- (14) The Claimant was employed by the respondent shop from 23 September 2020 until his employment ended on 18 January 2021. By a claim form presented on 1 April 2021, following a period of early conciliation from 3 February 2021 to 2 March 2021 the claimant brought complaints of unpaid wages and breach of the obligation under s8 Employment Rights Act 1996 for an employer to provide itemised payslips. The claim was sent to the respondent at the shop at which the claimant worked. The respondent has not entered a response to the claim, and as a result the matter proceeds to full merits hearing, in accordance with Rule 21 of the Employment Tribunal Rules of Procedure 2013.

The issues

The issues which potentially fall to be determined by the Tribunal are as follows:

(15) *Time limits / limitation issues*

- (i) Were all of the claimant’s complaints presented within the time limits set out in sections 11 and 23(2) to (4) of the Employment Rights Act 1996 (“ERA”)?
 - a. When did the conduct complained of take place/ when did the claimant’s employment cease?
 - b. Where the acts or failures to act part of a series of similar acts or failures?
 - c. Have the claims been brought within time
 - d. If not, was it not reasonably practicable for the claims to have been brought within time?
 - e. If so, were the claims brought within a reasonable time thereafter?

(16) *Payslips (s8 Employment Rights Act 1996)*

- (i) Has the respondent provided the claimant with an appropriately-worded written itemised pay statement at or before the time at which any payment of wages or salary is made to him?
- (ii) If not, what facts should that payment have contained?

(17) *Unauthorised deductions*

- (i) Did the respondent make unauthorised deductions from the claimant’s wages in accordance with ERA section 13 by reducing his pay without his agreement, and by not paying him for additional hours worked, and if so how much was deducted?

(18) Facts

(19) The claimant was employed by the respondent from 24 September 2020 to 18 January 2021. He was never given a contract of employment or written statement of particulars of employment. His manager, Puvée [surname unknown] told him that his basic pay would be £8.86 per hour, and the nightshift pay would be 1.5 times basic pay per hour (£13.29). He generally worked a basic 23 hours per week, and then worked overtime. The overtime was paid at the basic rate, unless it was during a night shift.

(20) The claimant informed the tribunal that he worked the following hours for the respondent:

- | | | | |
|-------|--|----------------------|--|
| (i) | September 2020 | 30 hours 59 minutes | |
| (ii) | October 2020 | 105 hours 21 minutes | |
| (iii) | November 2020 | 115 hours | (99 hours basic pay,
16 hours Night Shift) |
| (iv) | December 2020 | 96 hours | (90 hours basic pay
6 hours Night Shift) |
| (v) | January 2021 | 39 hours 18 mins | (13.37 hours basic pay
25.41 hours Night Shift) |
| (vi) | TOTAL 386 HOURS 38 MINUTES (338.57 at basic rate, 47.41 at Night Shift rate) | | |

- (21) The total pay the claimant should have received is therefore £3,636.80 (being £3,003.10 [338 hours 57 minutes at £8.86] plus £633.70 [47 hours 41 minutes at £13.29])
- (22) The claimant received no pay during September or October. He is from Bangladesh and was new to UK. When he asked the manager when he was going to be paid, the manager told him not to worry. The claimant trusted him. In mid-November the manager, Puvée paid him £500 in cash. A further £500 in cash was paid about a week later. A few days after that, Puvée paid the claimant £250 in cash. When the claimant queried the amount, Puvée told him that £600 had to be paid to HMRC as tax. The claimant has subsequently checked the position with HMRC, who have never received any PAYE tax payments from the respondent on behalf of the claimant. The claimant's tax code was 1250L.
- (23) Initially, the claimant did not have a bank account, and Puvée told him he could not pay any money into the claimant's wife's bank account. The claimant opened a bank account in late 2020. The claimant received payslips for December and January. The name of the employer on the payslip was "AS Watson, Superdrug, Savers", making the actual identity of the employer very unclear.
- (24) Following this, for December 2020 and January 2021 the claimant was paid direct into his bank account, with no deductions for tax, as follows:
- (i) On 31 December 2020, the claimant received the following payments for the hours worked in December:
- | | |
|---------------------|---------|
| a. Basic hours – 24 | £212.64 |
| b. Overtime – 38 | £336.68 |
| c. Night 0.5 – 10 | £44.30 |
| d. Total | £593.62 |
- This equates to 52 hours at basic pay at 10 hours night shift – considerably fewer hours than the hours the claimant actually worked.
- (ii) On 29 January 2021 the claimant received the following for the hours worked in January, as itemised on his payslip (there were other payments made, but they did not relate to hours worked)
- | | |
|---------------------|---------|
| a. Basic hours - 16 | £141.76 |
| b. Overtime - 34.5 | £305.67 |
| c. Night 0.5 – 24 | £106.32 |
| d. Total | £553.75 |
- This equates to 24 hours night shift plus 30.5 hours at basic pay.
- (25) The overpayment in January did not make up in full for the underpayment relating to December.
- (26) Total payments made to the claimant are therefore £2397.37. So far as the tribunal can ascertain, no payments have been made to HMRC on account of the claimant.
- (27) Law**
- (28) In general, claims in relation to unpaid wages and non-payment of holiday pay must be made within 3 months of the date the relevant payments should

have been made. That time is extended by the period during which ACAS was tasked with conducting early conciliation.

(29) S13 Employment Rights Act 1996 (ERA) gives employees the right to recover from their employers unauthorised deductions from wages. This includes reduced pay, as well as complete non-payment of pay.

(30) S 23 ERA states that an employment tribunal shall not consider a one off claim for unlawful deductions from wages "*unless it is presented before the end of the period of three months beginning with ...in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made*" Where a claim relates to a series of deductions or payments it must be presented before the end of the period of three months beginning with the last deduction in the series. S23 (3A) allows that time limit to be extended by time taken for ACAS early conciliation to facilitate conciliation before institution of proceedings. S23(4) gives the tribunal the power to extend the time during which the claim should have been brought as follows:

"Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."

(31) **Payslips.** S8 ERA requires employers to give their workers payslips. The section provides that a worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement. The statement "*shall contain particulars of—*

(a)the gross amount of the wages or salary,

(b)the amounts of any variable, and any fixed, deductions from that gross amount and the purposes for which they are made,

(c)the net amount of wages or salary payable,

(d)where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and

(e)where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—

(i)a single aggregate figure, or

(ii)separate figures for different types of work or different rates of pay."

(32) Where they do not do so, or where it is inadequate, s 11 ERA gives the worker the right to require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned. A question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars. Cases in relation to non-provision of payslips must be brought either while the employment is continuing or,

where it has ended, (a) before the end of the period of three months beginning with the date on which the employment ceased, or(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months. There are similar provisions to those relating to unlawful deductions from wages extending the time for bringing a claim to cover ACAS early conciliation.

- (33) Failure to provide written particulars of employment. S38 Employment Act 2002 states that where a tribunal has found in favour of a claimant in relation to a claim for unauthorised deductions from wages, and when the claim was begun the employer had not provided written particulars of employment, the tribunal must increase the award by a minimum of two weeks' pay and, if it considers it just and equitable, by a maximum of 4 weeks' pay. A week's pay is calculated in accordance, in this case, with s.222 Employment Rights Act 1996 – ie the amount of remuneration for the average number of weekly normal working hours over the previous 12 weeks. It is hard for the tribunal, on the evidence before it, to establish precisely the average number of weekly normal working hours, and therefore the period of 23 hours per week, the basic hours that the claimant was engaged to perform, has been used.

Conclusion

Payslips

- (34) The reference to the tribunal to determine the particulars which should have been included in the payslip has been brought within the appropriate time limit. The claimant received no payslips for September, October and November 2020. The payslips for December 2020 and January 2021 were inaccurate.
- (35) The claimant's payslip for September 2020 should have recorded that he had worked 30 hours 59 minutes at basic pay, being £274.51
- (36) The claimant's payslip for October 2020 should have recorded that he had worked 105 hours 21 minutes at basic pay, being £933.40
- (37) The claimant's payslip for November 2020 should have recorded that he had worked 99 hours at basic pay, being £877.14 and 16 hours at night shift pay, being £212.64
- (38) The claimant's payslip for December 2020 should have recorded that he had worked 90 hours at basic pay, being £797.40 and 6 hours at night shift pay, being £79.74
- (39) The claimant's payslip for January 2021 should have recorded that he had worked 13 hours 37 minutes at basic pay, being £120.64 and 25 hours 41 minutes at night shift pay, being £341.33.

Unlawful deductions

- (40) The unlawful deductions from wages were made in a series of deductions culminating on 31 December 2020. The claim has therefore been brought within time.

- (41) The hours that the claimant worked each month and the relevant rates of pay are set out above. The total amount he should therefore have earned is therefore £3,636.80.
- (42) The claimant was in fact paid £1,250 cash in November 2020. The evidence before the tribunal is that although the claimant was told that £600 had been deducted from the claimant's wages, ostensibly as payment of tax, no such sum was actually paid, as HMRC has no record of this. The tribunal concludes that it was never paid. The following was subsequently paid into the claimant's bank account for hours worked during December 2020 and January 2021: £593.62 on 31 December 2020 and £553.75 on 29 January 2021 for which pay slips were provided. However, the claimant should have received £877.14 for the hours he actually worked in December, and a lesser sum for the hours he actually worked in January.
- (43) The total pay the claimant should have received was £3,636.80. The total amount he was actually paid was £2,397.37. The sum of £1,239.43 has therefore been unlawfully deducted from the claimant's wages, and the respondent is ordered to pay that sum to the claimant forthwith.

Failure to provide particulars of employment

- (44) The respondent failed to give the claimant any written particulars of employment. This is particularly egregious since the respondent is a substantial company, with many shops up and down the country, and must be assumed to know the relevant rules. The tribunal therefore decided that it was just and equitable to award the claimant 4 weeks' pay as a result of the respondent's breach of s 38 Employment Rights Act 2002.
- (45) The claimant's standard hours were 23 hours per week, at the rate of £8.86 per hour. His week's pay, for the purposes of this calculation, is therefore £203.78. The respondent is therefore ordered to pay the claimant the sum of £815.12 forthwith.

Employment Judge Palca

06/07/2021

Sent to the parties on:

06/07/21.

For the Tribunal: