



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Potts

Respondent: Quick Mobile Fix Limited

Heard at: East London Hearing Centre (by telephone)

On: 16 June 2022

Before: Tribunal Judge D Brannan acting as, an Employment Judge

Representation

Claimant: In person
Respondent: Did not attend

RESERVED JUDGMENT

1. By consent the correct respondent is Quick Mobile Fix Limited.
2. The Claimant's claim for unlawful deduction from wages is upheld. The Respondent is ordered to pay the Claimant £5,590.40 gross in respect of this claim. The Claimant will be responsible for payment of tax and national insurance on this sum.
3. The Claimant's claim for wages in lieu of untaken holiday at termination of employment is upheld. The Respondent is ordered to pay the Claimant £2,150.40 gross in respect of this claim. The Claimant will be responsible for payment of tax and national insurance on this sum.

REASONS

1. The Claimant brought her claim on 18 January 2022. As relevant, she said:
 - (b) The respondent was "Quick Mobile Fix"
 - (c) She started employment with the Respondent on 20 October 2019.

- (d) She was not paid by the Respondent from 1 October 2021 to the end of her notice period on 18 January 2022.
 - (e) She claimed lost wages for the 3.5 months during which she was not paid and 28 days of holiday pay.
2. The Respondent responded in time saying the correct respondent was “Quick Mobile Fix Limited”, the Claimant’s employment had come to an end, it intended to defend the claim and, in relation to that defence:
- We have informed Mrs Potts that here [sic] wages will be paid when we open our offices. Our offices and business has been closed for over a year owing to Covid and there has been no income for the business. We are unable to make any payment at this time.
3. The Tribunal gave notice of today’s hearing in a letter dated 23 February 2022. With that letter were orders requiring the Claimant and Respondent to file and serve documents. Neither party complied.
4. On 14 May 2022 the Tribunal wrote to the Claimant and Respondent requesting confirmation that the parties were ready to proceed with the hearing having complied with the directions of 23 February 2022. The Claimant replied saying she was ready to proceed. The Respondent did not reply.

Proceeding without the Respondent

5. Nobody from the Respondent attended the hearing and no explanation was offered for the failure to attend. The Respondent provided no telephone number on its ET3 to allow enquiries to be made about the non-attendance. I decided it was in the interests of justice to proceed with the hearing in the Respondent’s absence in the circumstances.

Law

6. Section 13 of the Employment Rights Act 1996 provides:

13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) 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 the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Issues and findings

7. Reading the ET1 and ET3 it was clear what the basis of the Claimant's claims were and particularly what underlying figures these were founded on. It was also clear that the Respondent accepted it owed money to the Claimant. Its ability to pay is irrelevant to findings on liability and the value of the claim. The issue for me was therefore the actual value of the Claimant's claims.
8. I brought the Claimant's attention to the fact that in the orders of 23 February 2022 she was required to file a document explaining how much she was claiming and how it had been calculated. She apologised for not having done so. She said she had spoken to ACAS and they had said they could not help. I therefore proposed we work from the figures in the ET1, which the Respondent had not disputed, to calculate her claim. I decided the Respondent was not prejudiced by this because no new evidence was being introduced at the hearing and, in any case, the Respondent would have been able to challenge this process had it been represented at the hearing.
9. In relation to the unpaid wages, the Claimant had been unpaid from 1 October 2021 to the expiry of her notice period on 18 January 2022. This equated to

15 weeks and three days, or 78 working days. Her gross weekly pay of £384 equated to a daily rate of £76.80. She was therefore owed £5,590.40.

10. In relation to holiday pay, the Claimant clarified the information in her ET1 explaining that in the year prior to the end of her employment she took no paid holiday because she was first on furlough then the Respondent was not paying her. She claimed 28 days of holiday, being the statutory minimum. Based on the same daily rate stated above, she was owed £2,150.40.

**Tribunal Judge D Brannan acting as, an Employment
Judge**

Dated: 16 June 2022