



EMPLOYMENT TRIBUNALS

Claimant: Mr Craig Chadwick

Respondents: (1) Fine & Country Inns Ltd
(2) FCI Group Ltd

Heard at: Leeds (by video link) **On:** 30 January 2024

Before: Employment Judge R S Drake

Representation:

Claimant: In Person
Respondent: Mr G Hunt (Operations Manager)

JUDGMENT

1. The First Respondent (R1) is dismissed from these proceedings, and leave is granted to the Second Respondent (R2) to serve and file out of time its ET3 Response to this claim as of 25 January 2024.
2. The Claimant has not established that he was entitled to allegedly unlawfully withheld/unpaid wages of £2,067.43.40 and therefore his claim is dismissed.

REASONS

3. The Claimant gave oral evidence and referred to a number of documents in support of his claim. The Respondents contested his claim in their Response and gave oral testimony via Mr G Hunt their Operations Manager. They also relied on a number of documents which I considered. I refer to documents below by reference to their page numbers. I recognised and applauded the candour of the oral evidence given by the parties before me but where there was a conflict of evidence about what was said between the claimant and Mr. Hunt on the day the Claimant's employment ended, which was the 13 September 2023, I preferred the evidence of Mr Hunt in all respects relevant to the issues to be determined and find accordingly for the reasons set out below.

Facts

4 The Claimant's employment as a licensed premises general manager commenced on 18 August 2023 with R2, not R1 as he thought, and this is borne out by the terms of a contract of employment which he was given on the day he started which identified R2 as his employer. He signed to accept the terms of that contract on 11 September 2023 and was thus bound by its terms whilst he was still employed.

5 The contract at section 6 provides as follows (with my emphasis added):-

"The company at its discretion reserves the right to make any deductions from your earnings to recover identified losses... by signing this contract, you authorise the company to make any such deductions from any and all monies owing to you by the company as and when required at the company's sole discretion without further consent from you ..."

Section 17 of the contract required that the Claimant give 6 weeks' notice if he terminated the contract, whereas he was entitled to the statutory minimum if R2 terminated it.

5 The Claimant's agreed rate of pay was £10.42 per hour and he worked 11 hours per day for a total of 21 days. Thus, after taking account of tax and NI his net pay, he could expect for the total period of his employment was £2,417.88. This sum was agreed by both sides. The Claimant accepts he was part paid the sum of £350.45 leaving a balance theoretically due to him of £2,067.43.

6 R2 found that because the Claimant did not work after 13 September 2023, they had to incur the cost of providing cover during any notional notice period using other staff and seeking cover for them at a cost which they calculated as being £3,260.26. This figure was agreed and unchallenged, which left at large the key issue in the case of whether the Claimant resigned or whether he was dismissed on 13 September as it was common ground, he was not paid by R2 thereafter having set off what they incurred in cost of cover.

7 it was common ground between the parties that on 13 September 2023 the claimant absented himself from work in order to attend a relative's funeral he had suffered a motor accident some weeks before, was no doubt overwrought by the occasion and was said by Mr. Hunt to be intoxicated when Mr. Hunt contacted him by phone at the funeral. The claimant says that he can remember little of the conversation but does accept that he was vociferous in his complaints about the respondent organisation and its staff at the premises where he worked on the other hand Mr. Hunt is absolutely clear that following the claimant expressing his deep dissatisfaction with his place of work he was terminating his employment and made clear his intention not to return.

8 Mr. Hunt then arranged for one of his managers (known simply by the name of Charlie) to attend the premises where the claimant worked uncover for

him during his absence and then for another manager at a more senior level to attend the following day. The fact Mr. Hunt laid in such arrangements is collaborative of his view that the claimant had resigned in the telephone conversation on that day on the other hand the claimant says that after the funeral he returned to the premises where he worked and was informed by the manager Charlie that he was to leave and this was confirmed the following day the superior ma he therefore inferred that he had been dismissed summarily and therefore did not need to give notice. I find that on a balance of probabilities it is more likely that Mr Hunt's version of what was said in the conversation by phone 13 September is more likely to be the more reliable version, I therefore find that the Claimant resigned and was not dismissed, but that in any event he resigned without giving notice at a time when his contract provided for a power for R2 to make deductions for identified losses.

9. By letter dated 26 September 2023 Mr. Hunt wrote to the Claimant confirming his impression that the Claimant had walked out on his job and thus had not been dismissed. The letter goes on to set out a detailed calculation of the costs incurred by R2 in providing cover for the Claimant during the period of notice during which he should have worked up until the time they were able to secure permanent cover by employing somebody new. The total cost which Mr. Hunt calculated was the figure referred to in para 6 above and was not challenged by the Claimant.

Law and its Application

- 9 Section 13 ERA provides: -

“(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 workers contract, or
(b) the worker has previously signified in writing his agreement or consent to the making of a deduction ...”
- 10 Section 14 ERA provides that: -

“(1) Section 13 does not apply to a deduction from a workers wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of –
(a) an overpayment of wages ... “
- 11 No provisions in the ERA provide for any requirement on the part of the Respondent to notify an intention to make a deduction so that it can be challenged so as to make the deduction permissible in law under either Section. However, provisions exist in the contract which the Claimant signed which come within Section 13(1)(a) ERA which therefore applies.
- 12 The Respondent has established a valid basis and grounds for making a deduction from the Claimant’s final pay by way of reimbursement of an

identified cost as provided for in the contract of employment which exceeds and thus extinguished the value of the Claimant's basic claim already made. Section 14 ERA applies.

- 14 I find that on the evidence, I have no alternative but to dismiss the Claimant's claim against R2. Therefore, his claim must fail and is therefore dismissed.

Employment Judge R S Drake

Signed 30 January 2024

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.

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