



EMPLOYMENT TRIBUNALS

Claimant: Joaquin Ibañez Ruiz

Respondent: Owston Estate Company Limited t/a Owston Hall Hotel

Heard at: Leeds by telephone **On:** 2 June 2020

Before: Employment Judge Evans (sitting alone)

Representation

Claimant: in person

Respondent: Mr Parker (General Manager)

Interpreter: Mr Marco Foglia

JUDGMENT

- 1) The name of the Respondent is amended by consent to Owston Estate Company Limited t/a Owston Hall Hotel.
- 2) The Claimant's application to amend his claim is refused.
- 3) The Respondent made unlawful deductions from the Claimant's wages and is ordered to pay the Claimant £2583.33 unlawfully deducted from his wages and a further £491.07 in respect of financial losses which the Claimant incurred as a result of the unlawful deductions.

REASONS

Preamble

1. The Claimant was employed by the Respondent from 28 March 2018 until 29 February 2020 as its Head Green Keeper. Following the termination of his employment he presented a claim to the Employment Tribunal on 6 March 2020 for "other payments" ("the Claim"). On 24 April 2020 the Respondent presented its response ("the Response") stating that it defended the Claim.
2. The Claim was listed for hearing on 7 May 2020 but that hearing was postponed on 28 April 2020 as a result of case management orders made by Employment Judge Deeley. Those orders dealt with matters necessary for the Claim to proceed to a final hearing and directed that it be listed for three hours on 2 June 2020. Two notices of hearing were issued on 29 April and 4 May 2020, with the latter making clear that the hearing on 2 June 2020 would be the final hearing and would be conducted by telephone.
3. I reviewed the file on the day before the hearing and it was apparent that the Respondent had not prepared a bundle of documents in accordance with Employment Judge Deeley's

orders. I therefore prepared a bundle from the documents on the Tribunal's file. This ran to 37 pages and a copy of it is on the Tribunal's file. I asked the Tribunal to send it to the parties (who were not professionally represented) under cover of a letter stating as follows:

The Employment Judge who is conducting the hearing tomorrow notes that the Respondent has not emailed an agreed bundle to the Tribunal. The Respondent was required to do this by no later than Tuesday 26 May 2020.

*The attached bundle with page numbers has been prepared for the telephone hearing tomorrow by the Tribunal. You **must** have this available for the hearing tomorrow. If either party wishes to rely on any further documents they **MUST** email them to the Tribunal in **ONE** document with page numbers in pdf format by no later than **9am tomorrow morning**. The Judge hearing the case tomorrow is unlikely to take into account any documents not provided before that deadline*

4. No further documents were sent to the Tribunal to be added to the bundle of documents.

The hearing on 2 June 2020 ("the Hearing")

5. As noted above, the Hearing took place by telephone and with the assistance of an interpreter, Mr Foglia. At the beginning of the Hearing I queried the name of the Respondent and its name was amended by consent as set out above.
6. After a discussion of the issues and an application to amend made by the Claimant – which I deal with below – both the Claimant and Mr Parker gave evidence and were briefly cross-examined by the other. Mr Parker and the Claimant then made very brief oral submissions.
7. At the end of the Hearing I reserved my decision: given that the Claimant was participating in the Hearing by phone from Spain, and given the need to use an interpreter, I concluded it was appropriate for the parties to receive a written judgment rather than an *ex tempore* one. By this point it was clear to me that the Claimant understood English sufficiently well to understand a judgment written in English. I therefore reserved my decision. This is therefore my reserved judgment.
8. I should observe at this point that the Claimant, Respondent, interpreter and Employment Judge all being in different locations, and participating by telephone, resulted in the interpreter's task not being an altogether easy one. However, I was satisfied that there was no difficulty with the interpreting which might have prejudiced either party.

The application to amend

9. The Claim was written in imperfect English. However, read fairly as a whole, it is clear that the Claimant's complaint as set out in the Claim was that the Respondent had failed to pay him the wages that he was due in respect of February 2020 (the final month of his employment) as a result of a dispute about the state in which he had left the accommodation provided to him by the Respondent. The reference at the end of box 8.2 to monthly deductions of £250 in January and February 2020 for food relates to a resolved dispute as, in the same paragraph, the Claimant makes clear that he was refunded the £500 in question. As such the factual ambit of the Claim was very limited.
10. It is also clear from the Claim that what the Claimant was seeking in compensation (see box 9.2) was his salary for February 2020 and damages (because the Respondent's failure to pay him that month's salary had caused him to start work in Spain later than he would otherwise have done).
11. On 19 March 2020, in response to case management orders, the Claimant had sent the Tribunal an email (page 24 of the bundle) with various documents attached which explained, in effect, why deductions should not have been made from his February pay.

At the end of the email the Claimant referred to the Respondent having deducted rent from his wages without written authority to do so.

12. When I asked the Claimant at the beginning of the Hearing how much he was seeking in compensation he said:
 - 12.1. His salary for February 2020 (£2583.33 gross);
 - 12.2. £250 he had paid in respect of each month of his employment as rent;
 - 12.3. Financial losses he had suffered on return to Spain as a result of the failure of the Respondent to pay him his salary for February. He said that these were a lost week of pay in the amount of 550 euros and £1410.32 that he had had to borrow from his mother.
13. I noted that the Claimant had not raised the issue of the rent he had paid in the Claim. The email of 19 March 2020 (which had not been copied to the Respondent) was not expressed as, and had not been treated as, an application to amend. I said that in these circumstances it would be necessary for the Claimant to apply for leave to amend the Claim to include the issue of deductions made in respect of rent throughout his employment and this he did. I asked the Respondent what its position was in relation to the proposed amendment and Mr Parker said that he did not know for how many months the Claimant had paid rent or the precise circumstances – he would have to consult his file which he did not have with him. He further said that the arrangements with the Claimant in respect of accommodation had varied: initially accommodation had been provided as part of the remuneration package, then the Claimant had left to live with his partner, then he had returned to live at the Respondent's premises on the back of an agreement that his pay would be increased but he would pay rent. However, Mr Parker had not attended the Hearing with the necessary documents to deal with this issue and he opposed the Claimant's application to amend.
14. The Employment Tribunal has a general discretion to permit amendments to existing claims under Rule 29 of the Employment Tribunal's Rules of Procedure. In Selkent Bus Co Ltd v Moore [1996] IRLR 661 Mummery LJ, then the President of the Employment Appeal Tribunal, gave general guidance as to how applications for leave to amend should be approached.
15. He observed that the discretion to permit amendments should be exercised 'in a manner which satisfies the requirements of relevance, reason, justice and fairness inherent in all judicial discretions'.
16. He also observed that "whenever the discretion to grant an amendment is invoked, the tribunal should take into account *all* the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it."
17. He did not give an exhaustive list of the relevant circumstances but those which would certainly be relevant include:
 - 17.1. The nature of the amendment;
 - 17.2. The applicability of time limits;
 - 17.3. The timing and manner of the application (although there is no time limit for an application to amend).
18. So far as the nature of the amendment is concerned, the Tribunal should consider whether the amendment applied for is a minor matter of a substantial alteration describing a new complaint.
19. So far as time limits are concerned, if a party seeks to add a new complaint or cause of action by way of amendment, the Tribunal must consider whether that complaint is out of time at the point the application is decided. If the complaint is out of time, that will be a strong factor against permitting the amendment. If the complaint is in time, that will be a factor favouring permission being given. If the issue of time is not decided, the time issue will be a neutral point in the balancing exercise.

20. So far as the timing and the manner of the application are concerned, a party will need to show why the application was not made earlier and why it is being made when it is. The discovery of new facts following disclosure may, for example, justify a late application.
21. I refused the Claimant's application to amend because I concluded that the injustice and hardship to the Respondent of allowing the amendment weighed more heavily than the injustice and hardship to the Claimant of refusing it. This was for the following reasons:
- 21.1. The claim the Claimant sought to add related to a new factual allegation. It would involve a new area of factual enquiry: whether the Respondent had deducted money in respect of rent in the absence of a written agreement to do so. It was not as such a re-labelling claim. There was no causative link between the original Claim and the proposed amendment.
- 21.2. By the date of the application the claim sought to be added by amendment was out of time.
- 21.3. The application was made very late in the day – at the beginning of the final hearing. The Respondent had not attended with the documentation necessary to deal with it. It would have been necessary for me to adjourn the final hearing if I permission were given to enable the Respondent to prepare to deal with it.

The issues

22. On the Claim as the Claimant advanced it, after the failure of his application to amend was, therefore, that the Respondent had:
- 22.1. Unlawfully deducted £2583.33 from his wages;
- 22.2. By making that deduction had caused the Claimant to incur losses of €550 and £1410.32 on his return to Spain.
23. Mr Parker for the Respondent conceded that the deduction of £2583.33 had been made and that such deduction was unlawful. He explained that he had withheld the Claimant's February salary payment because the Claimant had failed to provide him with his address in Spain. Mr Parker had wanted this address so that he could pursue a claim against the Claimant in respect of losses which Mr Parker said the Respondent had suffered as a result of damage which he alleged the Claimant had done to the accommodation provided to him by the Respondent.
24. In light of this concession, the only issue for me to consider was whether I should exercise my power under section 24(2) of the Employment Rights Act 1996 ("the 1996 Act") to order the Respondent to pay the Claimant an amount to compensate him for any financial loss sustained by him which was attributable to the Respondent having failed to pay him his wages for February 2020.

The Law

25. Section 13 of the 1996 Act provides that an employer may not make a deduction from the "wages" of a worker unless the deduction is required or authorised by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing their agreement or consent to the making of the deduction.
26. Where a Tribunal finds a complaint under section 23 well-founded it shall make a declaration to that effect and order the employer to pay the worker the amount of any deductions made in contravention of section 13. It may also in addition order the employer to pay to the worker such amount as the Tribunal considers appropriate in all the circumstances to compensation the worker for any financial loss sustained by them which is attributable to the matter complained of (section 24 of the 1996 Act).

Findings of fact

27. In making these findings of fact I have taken into account all the evidence before me although, of necessity, I do not refer to each part of it.
28. I find that following his return to Spain the Claimant was unable to take up the accommodation which he had arranged prior to his return from the UK. I find that this was as a result of the Respondent's failure to pay the Claimant the final month of his wages: the consequence of this was that the Claimant did not immediately have available to him funds which he needed to pay the deposit on the accommodation which he had arranged in Spain and, consequently, he was unable to occupy that accommodation.
29. I find that as a result of this the Claimant had to spend a week seeking alternative accommodation in Spain and, also, borrow money from his mother. I find that as a result of the Claimant spending a week seeking and, indeed, arranging alternative accommodation he had to put back by one week the start date in his new employment.
30. I accept as true the Claimant's oral evidence that this resulted in a net loss of wages from his new employment of €550. I also accept as true his account that he borrowed a total of £1410.32 from his mother.

Conclusions

31. The Respondent conceded at the Hearing that it had unlawfully deducted the gross amount of £2583.33 from the Claimant's wages (i.e. his wages for February 2020). I therefore conclude that the Respondent has made deductions from the Claimant's wages in that amount and order the Respondent to pay that amount to the Claimant.
32. I also conclude that the Claimant has sustained a financial loss as a result of the unlawful deductions which the Respondent made from his wages. That is because I conclude that the Claimant started work one week later than he would otherwise have done in Spain because it was necessary for him to seek alternative accommodation, being unable to pay the deposit on the accommodation which he had arranged from the UK as a result of the Respondent's failure to pay him his February 2020 wages. I conclude that in all the circumstances it is appropriate for the Respondent to pay the Claimant that week of lost wages. I have found above that the net lost wages were €550. During the Hearing the parties agreed that if I made an award in respect of those wages I should use an exchange rate of £1 pound to €1.12. Accordingly, I order the Respondent to pay the Claimant compensation of £491.07.
33. The Claimant also sought compensation in respect of the amount which he had borrowed from his mother. However, that amount was not a financial loss incurred by the Claimant as a result of the unlawful deductions made. It was a loan received. I therefore make no order in respect of it.

Employment Judge Evans

Date: 19 June 2020

JUDGMENT SENT TO THE PARTIES ON

Date: 23 June 2020