



EMPLOYMENT TRIBUNALS

Claimant: Miss Rhiannon Cole

Respondent: Insight Events

Heard at: Leeds (Virtual Region) by CVP

On: 6 January 2022

Before: Employment Judge Hutchings (sitting alone)

Representation

Claimant: in person, not represented

Respondent: did not attend, nor represented

RESERVED JUDGMENT

1. The respondent made an unauthorised deduction from the claimant's wages. The respondent is ordered to pay to the claimant 11.5 days of salary, being the sum of £868.25 net in respect of the amount unlawfully deducted.
2. In breach of clause 12 of the contract of employment between the claimant and respondent, the respondent failed to pay the claimant for the period of her garden leave. The respondent is ordered to pay the notice sum of £377.73 net.

REASONS

Introduction

1. The claimant, Miss Cole, was employed by the respondent, Insight Events, as an Events Sales Organiser from 12 March 2021 until 5 April 2021.
2. The respondent did not attend nor was it represented at the hearing. The issues were agreed with the claimant at the start of the hearing.

Claims and Issues for the Tribunal to decide

3. The claimant has brought a claim for (i) unlawful deduction from wages; and (ii) breach of contract for non-payment of notice pay during a period of garden leave. The claimant submitted evidence to the Tribunal during the

hearing. The respondent filed an ET3 but did not respond to the notification of hearing or disclose further evidence to be considered at the hearing.

Unauthorised deduction from wages

- 3.1. Has the respondent made a deduction? This was not in dispute; the respondent agreed it had not made any payment to the claimant.
- 3.2. Was the deduction authorised under any relevant written contractual provision?

Breach of contract

- 3.4 What was the notice period under the employment contract?
- 3.5. Was the claimant entitled to payment in lieu of notice under the contract?

Findings of fact

4. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
5. The claimant, Miss Cole, was employed by the respondent, Insight Events, as an Events Sales Organiser. I have seen a copy of the written contract of employment between the claimant and respondent, which was signed by Miss Cole on 3 January 2021 (the 'Contract'). Miss Cole was employed for 35 hours a week on an annual salary of £23,000 plus discretionary commission of £100 per ticket sale. The claimant's salary is paid in 12 equal instalments on the last Friday of each month. The claimant agreed with the respondent that her employment would start on 12 March 2021.
6. On 29 March 2021 Miss Cole gave notice by email to Steve (the documents do not refer to a surname) a director of the respondent, Steve. Under clause 12 of the Contract during the first 6 months of employment termination is one week's notice from either party.
7. The respondent's HR director, Mr Bruce MacKenzie, acknowledged Miss Cole's resignation by email on 31 March 2022. Mr Mackenzie informed Miss Cole that Steve (who was copied into the email), had decided that Miss Cole was not required to work her notice period and that the respondent had decided to place her on garden leave for the entirety of the one week period in line with the clause 12 of the Contract. Mr MacKenzie states: *'We accept your resignation and as you discussed with Steve have decided that we will not require you to work through the duration of your notice period and will place you on garden leave. Therefore, your last day with Insight Events will be March 30, 2021 and your notice period to April 5, 2021. All payments owed to you will be paid in due course'*. The claimant has not received any payment for the period of her employment.
8. On 25 March 2021 Miss Cole sent an email to Mr MacKenzie and Steve requesting a half day holiday on the afternoon of 29 March 2021 to attend the dentist. This holiday was approved by Mr MacKenzie in email dated 25 March 2021. Under clause 8 of the Contract the respondent's holiday period runs from 1 January to 31 December each year. Miss Cole is entitled to 28 days holiday

each year, to include statutory holiday at normal basic rate of pay. By 5 April 2020 Miss Cole had accrued 1 day of holiday. The half day holiday on 29 March is paid leave.

9. I have not seen any evidence that Miss Cole was absent for the dentist on 25 March 2021. By her own admission Miss Cole was absent from sickness for half a day on the morning of 29 March 2021. Under clause 10 of the Contract an employee accumulates a half day of sickness pay for each month worked. As Miss Cole had not worked for the company for one month she is not entitled to sickness pay for the half day on 29 March.
10. The claimant was an employee of the respondent for 17 days; of these half a day was sickness (29 March am), half a day was holiday leave (29 March pm) and 5 days were garden leave (30 March to 5 April inclusive). Miss Cole did not receive outstanding payments on the salary payment date of 25 April 2021, or at all.
11. By email dated 29 May 2021 Miss Cole queried the non-payment of salary and notice pay for the period of the garden leave. I have a copy of an email dated 9 June 2021 from Mr MacKenzie (copied to Steve) setting out the basis on which the respondent had decided not to make the payment to Miss Cole. The respondent had changed its position from the 31 March email. *'As per section 5 of your contract, we are entitled to deduct from your wages any losses suffered by the Organisation because of your negligence or conduct.'* I have not seen any evidence to support a deduction by the respondent under clause 5 of the Contract.
12. In its Form ET3 the respondent states amounts were deducted for training. The email of 9 June 2021 refers to a deduction of £975 for training, along with other amounts for system costs, legal advice and management time. I have not seen any evidence of the training provided. I find that the respondent has no basis for deducting any amount for training. I find no basis on which the respondent can deduct other costs.
13. Miss Cole is entitled to wages for 12 March to 29 March and notice pay for the period of garden leave (30 March to 5 April inclusive). Any holiday accrued prior to termination of employment is deemed to be taken during the period of garden leave. The claimant has a half day of holiday to be taken in the notice period.
14. Miss Cole did not start her new job during her notice period. I have seen an email from Miss Cole's new employer confirming the start date as 12 April 2021.
15. I have not seen any evidence that the respondent is a limited company, nor that it has been dissolved.
16. The respondent provided the claimant with net figures (excluding tax and national insurance contributions) for 2 weeks wages (£755.46) and one week's net notice pay (377.73). The claimant agrees with these calculations.

Relevant law and conclusions – unauthorised deduction from wages

17. Section 13(1) of the Employment Rights Act 1996 confers on employees the right not to suffer an unauthorised deduction except in certain circumstances.

In not paying the claimant for the period of her employment the respondent the respondent made a deduction of 11.5 days wages. I find that the deduction was not authorised under the contract.

18. The claimant agrees with the respondent's calculation of £755.46 for 10 days wages net (after deduction of tax and national insurance contributions). I find that 11.5 days net wages amounts to £868.25 net.

Relevant law and conclusions – breach of contract

19. Under clause 12 of the Contract the relevant notice period is one week. The claimant gave correct notice and is entitled to payment in lieu of notice under the Contract. The claimant was not paid notice for the period of her garden leave. She brings a breach of contract claim for 5 days notice.
20. I find that, following receipt of the claimant's notice of one week, the respondent decided to place the claimant on garden leave rather than requiring her to work her notice. This was the respondent's decision.
21. Under clause 12 of the Contract the claimant is entitled to receive payment for any garden leave, to include unused holiday. At the point of notice the claimant had a half day of holiday outstanding. I find that the respondent must pay 5 days of notice. 5 days net pay, and national insurance contributions agreed between the claimant and respondent is: £377.73.

Employment Judge **Hutchings**
11 January 2022

Reserved Judgment & Reasons Sent to The Parties On
13 January 2021