



EMPLOYMENT TRIBUNALS

Claimant: Mr P Turner

Respondent: Short Stay Developments Limited
(now Fenton Dunme Limited)

Heard at: Reading by CVP **On:** 6 December 2022

Before: EJ Milner-Moore

Representation

Claimant: In person

Respondent: Did not attend

JUDGMENT

1. The claim of unauthorised deduction from wages (section 23 of the Employment Rights Act 1996) is dismissed.
2. The claim of failure to provide an itemised pay statement (section 11 of the Employment Rights Act 1996) is dismissed

REASONS

1. The claimant was employed by the respondent between 13 March 2020 and 27 August 2021. In an ET1 dated 24 August 2021, the claimant brought a claim alleging that the respondent had:
 - a. Made deductions from his salary in relation to income tax and national insurance contributions but had failed to pass the sums deducted to HMRC;
 - b. Failed to enrol the claimant into the NEST pension scheme or to make payment of employer/employee pension contributions;
 - c. Failed to provide the claimant with a P60 or P45; and
 - d. Failed to take action in response to concerns raised by the claimant about these matters so that, in consequence, the claimant had resigned.
2. The Tribunal file shows that on 24 November 2021, the Tribunal wrote to the claimant to notify him that his claim had been accepted only in part. A separate letter was sent at the same time explaining that the parts of his claim relating to unfair dismissal and whistleblowing had been rejected (under rule 12 of the Tribunal's procedure rules) on the grounds that these claims were an abuse of the Tribunal's process. This was on the basis that the claimant had insufficient length

of service to bring a complaint of unfair dismissal (two years' service is required to bring an "ordinary" unfair dismissal complaint under section 94 of the Employment Rights Act 1996) and that the ET1 did not set out any substantive grounds for a whistleblowing complaint. The sole claim that was accepted was that of failure to provide a written pay statement. The letter attached notes explaining that this decision could be challenged on an application for reconsideration or by way of appeal. Under the Tribunal's procedure rules any application for reconsideration would need to be made in writing within 14 days of the date that any notice of rejection was sent. No application for reconsideration or appeal was made. However, the claimant explained that he did not receive the part rejection letter.

3. I explained to the claimant that, in light of the part rejection, I could not deal with claims of unfair dismissal or whistleblowing (automatically unfair dismissal or detriment). I have asked the Tribunal's administration to send the claimant a further copy of the part rejection letter.
4. I received a bundle of documents from the claimant including his pay slips and contract of employment and a schedule of loss. The claimant provided further oral evidence in support of his schedule.
5. I reviewed the other elements of the complaint, namely the complaint of failure to provide an itemised pay statement. I also considered that his ET1 contain an unauthorised deduction from wages claim which had not been rejected and which I could therefore consider.
6. I considered the relevant statutory provisions: sections 8-12 of the Employment Rights Act 1996 (in relation to the right to an itemised statement) and sections 13 to 27 of the Employment Rights Act 1996 (in relation to unauthorised deduction from wages).
 - a. I did not consider that the claimant could succeed with a claim of unauthorised deduction from wages in relation to the making of deductions in relation to income tax and national insurance contributions on the basis that the respondent had failed to pay these sums to HMRC. Deductions for tax and national insurance are deductions which are authorised by virtue of a statutory provision (section 13(1)(1) Employment Rights Act 1996). The real issue is not that deductions were made but that the money deducted was not passed to HMRC and that is a matter that the claimant will need to pursue with HMRC, providing his wage slips to evidence that deductions were made, so that HMRC can, in turn, pursue the respondent for the unpaid tax and national insurance and arrange for any corrective action required in relation to the claimant's tax and national insurance position.
 - b. The claimant's contract stated that he would be enrolled in the NEST pension scheme. The contract was silent as to the level of contributions that would be paid by employer and employee. The claimant believed that there was an agreement that his employer would pay 5% and he would contribute 5%. However, the respondent failed subsequently to enrol the claimant in the NEST scheme and there is no evidence that the respondent paid any employer pension contributions. Nor, is there evidence that any deductions were made in relation to the employee contributions. The pay slips produced by the claimant do not show any deductions/contributions being made in respect of employee or employer pension contributions. It is established that *employer* pension contributions are not treated as wages under section 27(1) of the Employment Rights Act 1996 which states that "" wages" means....any sums payable to the worker in connection with his employment". Employer pension contributions are not sums paid to the worker but rather to the pension fund, (see **Somerset County Council v**

Chambers UAEAT/0417/12). An unauthorised deduction from wages claim in relation to the *employer's* pension contributions cannot therefore succeed. It was possible, in principle, that a claim of unauthorised deduction from wages could be brought in relation to the deduction of *employee* pension contributions. However, there was no evidence that any sums had in fact been deducted in relation to employee pension contributions, the pay slips contained no reference to such deductions. I considered, for that reason, that a complaint of unauthorised deductions in relation to employee pension contributions could not succeed. Any complaint that the claimant has in relation to the failure to enrol him in a pension scheme or to pay employer contributions would need to be raised with the Pensions Regulator.

- c. The claimant accepts that he did receive payslips. The sole issue raised with the payslips is that that the monies shown as being deducted for income tax and national insurance were not being paid to HMRC. However, the statutory provisions in relation to issuing itemised pay statements are concerned with the issue of statements which contain the required particulars. Section 11(3) makes clear that this does not include an issue "solely as to the accuracy of any amount stated" in the pay slips. I did not therefore consider that a complaint under section 11 of the Employment Rights Act 1996 could succeed as the claimant's complaint was essentially that the amounts stated on the payslips as deducted for tax and national insurance contributions were "" because the respondent had failed to pay these sums over to HMRC. Whilst the claimant also complains that he did not receive a P45 or P60, these documents do not fall within the statutory regime in relation to itemised pay statements.

7. On that basis, I concluded that the sole remaining complaints (of failure to provide an itemised pay statement and unauthorised deduction from wages) must fail.

Employment Judge **Milner-Moore**

6 December 2022

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

11 December 2022

GDJ
FOR THE TRIBUNAL OFFICE