



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss. N. Robinson

v

**Mariana Njie Limited trading
as M & N Healthcare**

Heard at: Birmingham via CVP On: 17 March 2022

Before: Employment Judge Wedderspoon

Representation:

Claimant: In Person

Respondents: Miss. Nije

JUDGMENT

1. The claimant is awarded the sum of £1,620 gross for arrears of pay.

REASONS

1. By claim form dated 24 August 2022 the claimant brought complaints of arrears of pay. ACAS conciliation was commenced on 4 July 2022 and ended on 4 August 2022. The Tribunal did not record that an ET3 was submitted by the respondent. It was submitted on 2 March 2023. No bundle was produced for the hearing. The Tribunal has copied the whole of the file for the purposes of today's hearing which is not in accordance with the directions and not satisfactory.

The claimant's case

2. The claimant was employed by the respondent from 25 April 2022 until 3 June 2022 as an office care co-Ordinator. The claimant disputed that she ever signed a contract of employment. She originally claimed in her ET1 she was owed the sum of £2245 gross. It is agreed between the parties that the hourly rate was £12 per hour. Before me today the claimant has broken down her working hours in the office as 19 hours for the first two weeks of her employment; this amounts to £228. For the next two weeks commencing 9 May and 16 May 2022 the claimant gave evidence she saw 2 clients in the morning and one in the evening for 7 days per week; over the 14 day period she worked 3 hours per day; this amounts to £504. For the week commencing 23 May the claimant said she saw 2 clients per day and worked 4 hours in the office per day which amounts to 6 hours per day for 5 days; a total of 30 hours at a rate of £12 equates to £360.

3. On 30 May to 3 June the claimant says she worked 5 days at 2 hours per day; this equates to 10 hours; at £12 per hour this equates to £120. The total sum claimed was £1212 gross.
4. On 13 May 2022 the claimant took a loan from the respondent for £1,700 with the respondent for a purchase of a vehicle for her care work. She said she has not been paid at all by the respondent. She was not in a position to pay anything towards the loan.

The respondent's case

5. The respondent argues it had a contractual right to set off against wages any sums owed to the respondent by way of loan. The respondent submitted it sent an ET3 to the Tribunal in October and then again on 2 March 2023. The Tribunal has accepted the respondent's explanation and accepted the ET3.
6. The respondent disputes the hours worked by the claimant and instead she says the claimant worked more hours namely worked 16 hours in the office the first week; £192. She worked 24 hours from 2 May £288. For weeks 9 May and 16 May the claimant worked 24 hours; a total of 48 at £12 amounts to £576.m From 23 May to 24 May the claimant worked 16 hours; a total of £192. She said for 33 days the claimant provided care (period 25 April to 27 May everyday save two days 20 and 21 May) for 1 hour; this amounted to £372. The respondent calculates this at £372. The total wages owed are £1620.
7. The respondent says the loan of £1800 is owing. The claimant was not paid any wages because the company is paid on 5th of the month and the claimant did not work on 5 June 2022. In any event she says that the claimant owes the respondent the loan of £1800, iphone, 11 Pro Max, office keys, glove, apron and face mask.

Conclusions

8. Pursuant to section 13 of the Employment Rights Act 1996 an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by virtue of a statutory provision of the employee's contract or the worker has previously signified in writing his agreement or consent to making a deduction.
9. The claimant disputes that she ever saw or signed a contract of employment. The Tribunal has been provided with a contract of employment but it is unsigned. The Tribunal determined that there was no signed contract of employment between the claimant and the respondent. Further the Tribunal has not been provided with a signed agreement or consent for the repayment of the car loan to be set off against the claimant's wages or a signed provision of the contract permitting this. The ET3 did not include a counterclaim.
10. The Tribunal accepts the respondent's evidence that the claimant is owed £1620 gross for unpaid wages.
11. In the absence of a relevant provision of the contract or a signed agreement by the claimant to consent to the deduction, the respondent is not entitled to withhold the payment of wages. The amount properly payable is £1620.
12. In the alternative, the Tribunal is not seized of any counterclaim. The respondent did not seek to claim as a counterclaim the sum of the loan. The Tribunal can only determine the pleaded case before it.
13. The Tribunal accepts the respondent's evidence that the claimant is owed £1620 for hours worked which have not been paid.

Employment Judge Wedderspoon
17.3.2023

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.