



EMPLOYMENT TRIBUNALS

Claimant: Mr P Chubb

Respondent: Refreshingly Retro Ltd (In Liquidation)

Heard at: Newcastle Civil & Family Courts & Tribunal, Barras Bridge, Newcastle upon Tyne via CVP

On: 3rd February 2023

Before: Employment Judge AEPitt

Representation

Claimant: In Person

Respondent: DNA

JUDGMENT

1. The name of the Respondent is amended to include the words 'In Liquidation'.
2. The claimants case for unlawful deductions from wages is made out.
3. The claimant is entitled to recover £2644 gross for unpaid wages.
4. The claimant is entitled to recover £264 gross for holiday pay not paid when his employment ceased.
5. The claimant is also entitled to the sum of £421.75 for losses sustained as a result of the failure to pay his wages.
6. The respondent shall pay to the claimant the sum of £ 3329.75.

REASONS

1. On 2nd February 2023 a director of the respondent contacted the Tribunal to notify it that the respondent was in voluntary liquidation. Having checked the company went into liquidation on 29th November 2022. This is one month after the ET3 was presented on 26th October 2023. It is unclear when the respondent decided to go into liquidation but I have concluded that it was aware of its perilous state at the time of submitting the ET3.

2. This judgment and reason shall be served on the respondent at its correspondence address and the liquidator at 4th Floor Cathedral buildings Dean Street Newcastle Upon Tyne, NE1 1PG.
3. The respondent had no further contact with the Tribunal until the email on 2nd February 2023 which was in response to the notice sending out the CVP link. This morning a Kate Walton purporting to be from the respondent logged in to attend the hearing. For some reason she was disconnected. Enquires were made with her and she indicated that she had been connected but had been 'kicked out' having trying tired to connect again she failed. She was not going to log in again, she said she was only doing so to ensure that the claimant did not get more money than he was due.
4. It is unclear if the respondent has notified the liquidator of this claim but I concluded that the respondent must have told them during the course of the Insolvency being prepared. I decided it was in accordance with the overriding objective to proceed to hear the claim today.
5. Mr Chubb makes a claim for unlawful deductions from wages comprising of two parts; first for wages he never received during his employment; secondly for holiday which had accrued and not paid at the termination of his employment.
6. Mr Chubb answered an advertisement for a welder/fabricator at the respondent. He attended an interview. He was told he would work a 40 hr week and be paid £13.22 per hour. There was no reference to any other terms and conditions. He commenced work on 8th August 2022.
7. Some weeks later the claimant was approached and handed a contract by his boss Mr Walton and told to sign it. The claimant was reluctant because it contained at clause 13 a requirement stating that if he left without giving notice the respondent could deduct from his final wages the wages for the period of his notice. His notice period was 4 weeks. The claimant refused. Mr Walton told him that if he didn't sign he would not get paid. The claimant asked if he could take it home and speak to his wife. Mr Walton agreed. Having spoken to his wife the claimant decided he had no option but to sign the contract. He already has money worries and needed to be paid. He signed the contract on 16th August 2022. I concluded that the claimant would not have taken up the offer of employment if he had been aware of this term.
8. In early September 2022, the claimant spoke to Mr Walton in relation to work he was carrying out. Mr Walton told him to 'stop being a pain in my backside' and to 'get out the door'. The claimant was unhappy about this and started to consider his position. He discovered the company was in trouble.
9. On Monday 10th September the claimant went to work to collect his tools. The respondent had hidden them and laughed at the claimant when he asked about them. The claimant had to seek assistance from the police to have them returned. On 13th September 2022 the claimant went back to work and wanted to get his tools. Mr Walton told him 'I've had 6 people leave, you are not going to do it. I will have the last laugh' the claimant decided he could no longer work for the respondent and left.
10. As a result of not being paid his wages the claimant had to withdraw cash

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from his credit card to pay his mortgage and other expenses. He has withdrawn about £2,000. As a result, he has incurred interest of £421.75.

11. I have considered section 13 Employment Rights Act 1996 which gives a worker the right not to have sums deducted from their wages unless it is in accordance with a term of their contract or which they have agreed in writing prior to the deduction being made.
12. Section 23 gives a worker to make a claim for the unpaid sum. Section 24 allows a Tribunal to make to make an order for the employer to pay any such amount the Tribunal considers appropriate to compensate the worker for any financial loss sustained attributable to the matter complained off.

Conclusions

13. I concluded that the claimant having signified he didn't want to sign the contract because of cause 13, that he only went on to sign it because of duress by the respondent. The clause therefore has no effect.
14. I further concluded that in any event the respondent was in breach of the fundamental implied term of trust and confidence which entitled the claimant to leave his employment.
15. The claimant is therefore entitled to recover his wages for 200 hours at £13.22 per hour. Further he is entitled to payment for his holiday pay of 20 hours at £13.22 per hour. In addition, todate The claimant has incurred £421 as a result of making cash withdrawals on his credit card.
16. The claimant is entitled to recover all those sums from the respondent.

Employment Judge AE Pitt

Date 3rd February 2023