



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss E Mbanje

v

Mach Consultancy Limited

Heard at: Cambridge Employment Tribunal (via CVP)

On: 11th November 2022

Before: Employment Judge King

Appearances

For the Claimant: In person

For the Respondent: Mr Mahmood (consultant)

RESERVED JUDGMENT

1. The respondent has made an unlawful deduction from the claimant's wages. The respondent do pay the claimant the sum of £73.50.

REASONS

The issues

1. The claimant brought a claim bought a claim for arrears of pay and bullying and intimidation. At the outset it was explained that the Tribunal had no jurisdiction to hear claims about bullying and intimidation and so the only claim which the Tribunal had jurisdiction to hear was the arrears of pay claim brought as an unlawful deductions from wages claim.
2. There were a number of jurisdictional issues in this case that the Tribunal would need to determine in the first instance. The hearing was listed for a final hearing with a time estimate of two hours. We had sufficient time (sitting beyond the listing time) to hear the evidence and submissions but this case should have been listed for one day to determine all the issues

and the judgment was reserved accordingly. The respondent was the only party professionally represented but there was nothing to suggest the inadequacy of the time limit had been raised. Given the limited value of the claim and the disproportionate costs to the public purse to relist aside from any costs or lost working time being incurred by the parties, I decided to proceed.

3. I heard evidence from the claimant and Mr Chapman a Director of the respondent. There was clearly a lot of animosity between them.
4. If the Tribunal took each jurisdictional issue in turn then the case would have gone part heard so evidence was heard on all issues given the time constraints.
5. At the outset of the hearing the issues were identified as follows:
 - 5.1 The name on the claim differs from the ACAS EC certificate so should the Tribunal have rejected the claim?
 - 5.2 If not, what is the employment status of the claimant as she would need to be a worker under s230 ERA 1996?
 - 5.3 If she was a worker was the claim brought within the primary time limit, the date the payment should have been made would need to be determined as it is in dispute?
 - 5.4 If not was it reasonably practicable for the claimant to bring her claim within the relevant time limits?
 - 5.5 The claimant seeks two days wages at £140 has one day been paid to her?
 - 5.6 Did the claimant work both 17th and 19th November 2021?
 - 5.7 If so what was the hourly rate that was agreed?
 - 5.8 Has there been a deduction from the claimant's wages?

The law

6. The claimant's arrears of pay claim was considered as an unlawful deduction from wages claim contrary to s13 Employment Rights Act 1996 which states as follows:

S13 Right not to suffer unauthorised deductions.

- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
- (2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—
- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
 - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.
7. The right to bring a claim in respect of an unlawful deduction from wages is set out in s23 of the Employment Rights Act 1996 as follows:

s23 Complaints to employment tribunals.

- (1) A worker may present a complaint to an employment tribunal—
- (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
 - (b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),
 - (c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
 - (d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

- (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
 - (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
 - (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
- (3) Where a complaint is brought under this section in respect of—
 - (a) a series of deductions or payments, or
 - (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.
- (3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).
- (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
- (4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.
- (4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).

8. The claimant must be an employee or a worker under s230 Employment Rights Act 1996 which states:

s230 Employees, workers etc.

- (1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
- (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly.

(4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act “employment”—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and “employed” shall be construed accordingly.

.....

9. In *Windle and anor v Secretary of State for Justice [2016] ICR 721 CA*, Lord Justice Underhill, held that although the ultimate issue for the purposes of s.83(2) of the Equality Act 2010 (EqA) is the nature of the relationship during the period when the work is being done, it does not follow that the absence of mutuality of obligation outside that period may not influence, or shed light on, the character of the relationship within it. In that case, the Court of Appeal restored the tribunal’s decision that the individuals were not employees. Although that case was to do with the extended definition of employment under section 83(2) Equality Act, the reasoning is as applicable to section 230(3)(b) ERA. In *Windle* the individuals were interpreters who provided services to the Courts and Tribunals Service (HMCTS) on a case-by-case basis. They also worked for other institutions. HMCTS was under no obligation to offer them work, and they were under no obligation to accept it when offered. There are clearly parallels to be drawn with the present case and as in *Windle*.

10. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 are relevant to the ACAS Early Conciliation certificate name point raised by the respondent in its response:

Rejection: substantive defects

12. (1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—
- (a) one which the Tribunal has no jurisdiction to consider;...
 - (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;
 - (c) one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;
 - (d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;
 - (da) one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;
 - (e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates;
or
 - (f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates.
- (2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a), (b), (c) or (d) of paragraph (1).
- (2ZA) The claim shall be rejected if the Judge considers that the claim is of a kind described in sub-paragraph (da) of paragraph (1) unless the Judge considers that the claimant made an error in relation to an early conciliation number and it would not be in the interests of justice to reject the claim.
- (2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the

Judge considers that the claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim.

- (3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

11. Where the claim is erroneously accepted by the tribunal in breach of rule 10 or 12, it remains incumbent on an employment judge considering the claim at a later stage to reject the claim under rule 12 as it was not validly presented in accordance with *E.ON Control Solutions Ltd v Caspall UKEAT/003/19*

The facts

12. In July 2021 the claimant was contacted by Mr Chapman following a connection through a mutual contact and Mr Chapman said “she has said that you are seeking employment” and requested her CV which the claimant duly supplied.
13. The claimant was asked to complete an application form and it is presumed that she did so although this was not provided by the respondent for the Tribunal. In October 2021, the claimant was put through a DBS check and it is not clear who paid for this as it was addressed to the claimant at the respondent. The claimant was then asked to complete some online training provided to her by the respondent. Mr Chapman chased for this and the DBS certificate on 25th October 2021.
14. The claimant started working for the respondent properly in November 2021. Mr Chapman sent the claimant a text offering shifts next week. Another employee of the respondent sent a text on 14th November 2021 saying the available shifts were Monday (15th) 7.30am -10pm, Wednesday (17th) 3pm-10pm, Thursday (18th) 7.30am – 10pm, Friday (19th) 3pm-10pm and Saturday (20th) 3pm to 10pm.
15. The claimant replied to confirm that she could not work long days because of her kids and the area she lived in did not have many childminders. She said would take Wednesday, Friday and Saturday. These are 17th, 19th and 20th November 2021. She expressed a preference for nights. She also confirmed she had not had a contract yet confirming hourly rate and terms and conditions.

16. The respondent's employee confirmed that the hourly rate varied depending on where you work so this would not be in the contract and the claimant confirmed that she would be "working self-employed".
17. The respondent's evidence was that self-employed contractors receive terms of engagement unique to each assignment and that it sets out hours and providing for a substitute. The respondent said that it could not locate the copy sent to the claimant for this assignment. It failed to provide evidence this was the claimant's terms having initially offered her employment and got her to complete the payroll forms.
18. She later confirmed she could not work the following day (15th) and that finishing at 10pm would be too late for the bus and the taxi would be too expensive.
19. The next text to the employee of the respondent was to ask how she cancelled a shift on the 20th November 2021 and she was told she did not. It is agreed that she did not work on the 20th November 2021.
20. The claimant asserts that she worked on 17th and 19th November 2021 and had to cancel her shift for childcare reasons on the 18th November and likewise on 20th November as she was sick. The respondent asserted she only worked on 17th November and if she was found to have worked on 19th November she was not authorised to do so.
21. The respondent provided confirmation from its booking system that the claimant was booked onto shifts that started at 2pm on 17th, 19th and 20th and a shift that started at 8.00am on 18th November 2021. A calendar shot was provided which said the claimant worked 2pm-9pm on the 17th November 2021 with no other shifts being entered. The shifts has been adjusted from 3-10pm to 2-9pm following her concern about finishing late.
22. On 22nd November 2021 the claimant signed a new starter payroll form to consent to salary deductions.
23. The claimant's uncontested evidence was that she was under direct supervision when working at the care home and worked alongside other workers. She could not decide what tasks to do and not do. Once the assignment was accepted she was expected to work. Her evidence was that she could not send a substitute.
24. The claimant provided her mobile phone records which showed calls to Mr Chapman in the relevant period as calls on 16th November 2021 at 9.08am and 14.44 for 3.minutes and almost 5 minutes respectively. There was a call just before the first shift started on 17th November 2021 at 1.50pm lasting just over 2 minutes. There were 3 calls on 19th November 2021,

one at 9.17am lasting 11 seconds, one at 9.18am lasting 13 minutes and another at 9.33am lasting almost 5 minutes. There is a further call on 20th November 2021 lasting less than 10 seconds at 8.35am.

25. The telephone records do not assist with what expressly was discussed and when. The respondent submits that another employee TP covered the claimant's shift and the respondent invoiced the care home for 7 hours for the claimant and 7 hours for the employee TP. The invoice was dated 24th November 2021 but this is of little assistance to the Tribunal as it provides no information as to the shift that was covered for the care home. It could be for the same day or a different unrelated day.
26. The claimant's shift was cancelled by the system for 18th November 2021 and I was told by the respondent that shifts can only be cancelled off the system before they have started and this is why there is no cancellation for 19th November. I am told the respondent cannot delete a shift once it has taken place. It can only be removed or reallocated prior to the shift taking place.
27. Mr Chapman's evidence was that the claimant cancelled her shift for 19th November 2021 for childcare reasons after 17th November 2022. The respondent said that she confirmed that she would not be in attendance on 19th November and the shift was reallocated to TP prior to the shift starting.
28. The claimant's evidence was that she called Mr Chapman on 17th November 2021 informing him that she could not work on the 18th November 2021 due to childcare issues. The parties agree on the reasons but not the date.
29. I do not accept the respondent's evidence as if this was true, a cancellation request for 19th November would have been sent via sling just like the 18th and it would have provided evidence of it then being cancelled and offered to TP. The parties agree a shift was cancelled for childcare reasons and this was on balance in accordance with the claimant's evidence on 18th November (not the 19th November shift).
30. The claimant's evidence was that on 18 November 2021 she called Mr Chapman feeling disappointed for sending her to do a shift at a care home as in her previous phone conversation she had mentioned that she would prefer working with service users that are independent and no personal care involved. The claimant's evidence was that the reason for the call was to check if it was possible to cancel all the booked shifts as this was a care home for elderly people, and the home was short staffed hence double the job hoisting clients, supporting with personal care, toileting etc.

The claimant's evidence was that the respondent told her she may be able to work what she really wanted nights in due course and she was reassured by this. The date must be 19th November 2021 from the call log.

31. I considered whether this evidence was evidence the claimant had cancelled all her shifts. She was upfront about this conversation in her witness statement but the respondent did not cover this conversation at all. If she had cancelled all her shifts the respondent would not have been so abusive to her on the 20th when she was then unwell as it would have known then that she was not doing shifts. This reflected well on the claimant that she was giving an honest account as this section of her witness evidence was at first glance not helpful to her case but she included it anyway and on deeper inspection it must be right that she had not cancelled all future shifts. The respondent would also have sent the Sling cancellations like it did for the 18th for the 19th and 20th but it did not.
32. The respondent said in its witness evidence that the claimant failed to turn up to work later on 20th November 2021 as she was unwell. They say that she cancelled too late for a replacement to be found and the shift was deleted from Sling immediately. If this was true then this directly contradicts the respondent's evidence at paragraph 26 and what the system can delete. If the claimant failed to turn up the respondent must have been able to delete a shift after it had started contrary to their oral evidence and Mr Chapman makes no reference to the call and texts on this day which tell a different story and paint him in a less favourable light. I did not find Mr Chapman to be a credible witness on these matters.
33. There is a text exchange on 20th November following an altercation and the respondent's Mr Chapman told the claimant that she should have told him yesterday and she made reference to forwarding her timesheet for the two days worked and Mr Chapman did not dispute this at the time. She makes reference to the manual labour and overworking. All of this supports the claimant's case about working on 19th November 2021. Mr Chapman did not reply and say that she had only worked one day as she cancelled the second or anything at that time.
34. The claimant provided a signed timesheet showing both dates and that she worked 2-9pm. The respondent produced TP's timesheet showing her working that shift. It is of course possible for both TP and the claimant to be on duty at the care home. The claimant also provided an email from the care home with the invoice for her shifts showing as 17th and 19th November 2021. The claimant submitted her timesheet on 22nd November 2021.

35. The respondents' evidence was that there is a three step validation process, allocation via Sling (evidenced in the bundle), timesheets (evidenced by the claimant) and then checking with the care home. The respondent has not provided any evidence from the care home to confirm the claimant did not work on that day contrary to her assertion.
36. The claimant called Mr Chapman on 25th November 2021 to chase payment as she recalled that he had told her wages would be paid on 25th of the month. She says that she was then told that wages are paid on the 12th of each month. I accept the claimant's evidence on this point. There was a call on this date as was evidenced by the claimant's itemised telephone bill. The respondent did not deal with this call in its evidence.
37. The respondent produced the vague invoice to the care home on 24th November which they had until 24th December 2021 to pay. As such to pay on the 25th November would be before the respondent's client had paid them. Likewise on the 12th December but there was more chance the respondent's client would have paid or at least if there was to be an invoice challenge there was time for this to be raised. If it was the 25th of the month it was more likely to be 25th December that the payment was due once the client was paid and I prefer the claimant's evidence on this point.
38. The claimant then emailed Mr Chapman on 13th December 2021 to say she had still not been paid. When she tried to call him he ended the call. Again this is supported by her telephone records. Her email also made reference to having worked for other agencies for 2 days and then decided to leave the job and still got paid. This again supports her contention that she worked two days. The timing of the email supports the oral explanation given to the claimant by Mr Chapman.
39. In December 2021, the claimant applied to the Tribunal but her claim was rejected as he had not complied with the ACAS early conciliation requirements. The claimant was notified by the Tribunal of this in February 2022.
40. On 15th March 2022 the claimant registered a limited company Victory Crown Limited and raised an invoice for both shifts with this date but payment being made to her personal bank account. The respondent relies on this as evidence of self-employment but in reality the claimant was seeking to get paid sums she was owed and attempting to get that payment. In the circumstances where the respondent had not even paid for the undisputed shift, it is disingenuous for the respondent to criticise the claimant for doing this. The respondent even went so far as to make a

police complaint that the claimant was harassing her for money they had not paid.

41. The claimant commenced ACAS Early conciliation on 5th March 2022 and her certificate was issued on 18th March 2022. The prospective respondent was named as Mr Chapman the director rather than Mach Consultancy Ltd.
42. The claimant issued a claim (the current claim before the Tribunal) on 22nd March 2022. Despite the respondent not disputing the fact that the claimant had worked the shift on the 17th November 2021, it failed to pay her for the work done until 9th November 2022 for £66.50. There was a dispute over status of the claimant but it was not in dispute she was owed money for that shift. This was money she was lawfully owed irrespective of employment status and it was disingenuous for the respondent not to have paid it sooner. When the claimant presented her claim, it was correct that the two days had not been paid.
43. The claimant completed the HMRC check for employment status for tax in July 2022 that confirmed she was employed for tax purposes. This is of course a different test to employment status for this claim. It carries no weight for employment law status.
44. There is a dispute as to whether the claimant's correct hourly rate was £10 or £9.50. The respondent paid her eventually for her 17th November 2021 shift at the £9.50 rate. We know that the respondent charged her to the care home at £13.00 per hour so both rates would allow a profit. The respondent has not provided a single piece of evidence to support the contention it should be £9.50 and not £10.00. I concur with the claimant's submission that she was told £10.00 and not £9.50. The respondent could have confirmed this in writing before the shift started but chose not to.
45. During the course of the hearing the claimant wanted to introduce some additional data from her phone to show where she was. This was disregarded as the Tribunal was not satisfied it did show what the claimant asserted it did and that the phone data could be used in this way as some sort of tracker. It was unreliable without some form of expert evidence on the point which would be disproportionate given the sums owed in this case.

Conclusions

The name on the claim differs from the ACAS EC certificate so should the Tribunal have rejected the claim?

46. The facts on this matter are not in dispute. The certificate is in the name of Mr Chapman. The correct respondent is Mach Consultancy Ltd.
47. The claimant at all times dealt with Mr Chapman and he was a director of the Company. The first claim was rejected in accordance with Rule 12 (c)/(d) and which the Tribunal had to reject as it had no discretion to accept it. The incorrect name of the respondent under Rule 12(f) Employment Tribunal Rules should be rejected unless the Judge considers that the claimant made an error and it is in the interests of justice to accept it. The Tribunal did accept it.
48. In so far as it is suggested that the Tribunal did not exercise its discretion correctly, I would have considered that the claimant made an error as she named the person who is both a director and with whom she was dealing for the contractual arrangements and termination. The respondent could have issued a contract showing the correct respondent but it did not do so and as such it was as the claimant accepts an error and it would not have been in the interests of justice to reject the claim. This jurisdictional point does not bar the claim from continuing.

If not, what is the employment status of the claimant as she would need to be a worker under s230 ERA 1996?

49. The claimant undertook to perform the work personally for the respondent. The respondent gave evidence that the claimant could substitute under its written contract but could not provide any evidence this had been sent to the claimant. The claimant understood that she could not substitute. As per *Windle* the claimant could work elsewhere and was under no obligation to accept any work offered. Indeed, we saw the claimant accept only limited shifts offered. The respondent was under no obligation to accept shifts to the claimant and it did not do so until many months after the initial application process.
50. The respondent provided training and the DBS check. The claimant took no risk financially. If she agreed to work on any shift, she was under the direct control of the respondent as to where she went and what she did when she was there. She had no control over which aspects of the job to accept and which to reject. She had to complete all tasks assigned to her.

51. Once she has accepted an assignment she was expected to work it. The text from the respondent on 20th November 2021 confirmed she could not cancel and when the claimant told the respondent she could not work on the Saturday despite this being almost 6 hours before the shift started the respondent asserted it lost the job as it was too late to get someone else to do and was abusive to the claimant. Again, the claimant was not told to find someone to send as a substitute the respondent said it could not find someone at short notice and that it lost that shift.
52. The claimant worked elsewhere but was not carrying out her own business at the time. The claimant established a limited company much later in the chronology.
53. The claimant in accordance with s230 (3)(b) was engaged in an oral contract whereby she undertook to do or perform personally any work or services for the respondent. She was not an individual of any profession or business where the respondent was her client.
54. I note that the respondent indicates that it engages other staff on a self-employed basis and this is common. This is irrelevant for the purposes of my determination and this would be to accept that legally in employment terms that is correct and for tax purposes that HMRC is aware of the arrangement. The respondent is akin to an agency that supplies staff to an end user. The claimant clearly in my view falls within the definition of a worker on the facts of the case.

If she was a worker was the claim brought within the primary time limit, the date the payment should have been made would need to be determined as it is in dispute?

55. There is no written contract. I have accepted the claimant's evidence that she was told originally that this was the 25th of the month but that was then told on 25th November 2021 that this was in fact the 12th of the month. This is why she waited until 13th December before chasing again. She did not submit her timesheet until 22nd November and this would need on the respondent's own case needed to be checked so payment would not be made in time for the 25th pay run. The response says the payment date is 19th November but this is not correct. This must instead be a reference to the day that was worked. It is not the payment date and not the date when the primary limitation date starts to run from.
56. I have found as a fact that the day the payments were due was 12th December 2021. If I am wrong about that and it is the 25th of the month then for these shifts, then it must be 25th December 2021 when the end client paid the respondent and the timesheet could be checked and

processed in time for the 25th of the month. As such the claimant should have commenced ACAS early conciliation by 11th March 2022 to avail herself of the s207B extension of time limits rules.

57. The claimant started ACAS early conciliation on 5th March 2022 which was within the primary time limits. The stop the clock provisions would then apply and the time would not start to run until the certificate was issued on 18th March 2022. The claimant presented her second claim on 22nd March 2022 so the claim is within time. The claim was brought within the primary time limit.

If not was it reasonably practicable for the claimant to bring her claim within the relevant time limits?

58. This issue is not relevant as I have concluded that the claim was presented in time.

The claimant seeks two days wages at £140 has one day been paid to her?

59. The respondent did finally pay the claimant £66.50 on 9th November 2022. There was no justification for this taking almost 11 months; whether the claimant brought the claim in the Tribunal or the County Court, the respondent knew it was due, it was simply evading its liabilities. The claimant had to issue a claim to get that sum even paid. This was at all times owed to her. The claimant has not claimed additional losses flowing from the unlawful deduction of wages but had she done so I would have awarded these.

Did the claimant work both 17th and 19th November 2021?

60. I have found as a fact that the claimant has met the burden on her to prove that she did work the two days of 17th and 19th November 2021. I preferred her evidence on these points and this is supported by the respondent getting confused over the reason for the shift cancelling being childcare when this was the 18th November 2021. The respondent did not cancel her shift on Sling like it did on the 18th November 2021. The claimant provided a signed timesheet and an email from the care home to support her assertion.
61. The respondent did provide an invoice showing time for TP had been invoiced and TP's timesheet. This simply showed TP was working; it did not establish that she was not working alongside the claimant. The respondent did not provide any evidence from TP to confirm the claimant was not working with her, from the care home to show the emails were as

the respondent asserted fabricated. Neither witness was a strong witness but there are elements of the respondent's evidence which have been shown to be discredited and the claimant has additional supporting documents to support her assertion.

62. On balance I prefer the evidence of the claimant and find she did work both days.

If so what was the hourly rate that was agreed?

63. I find that the claimant did work 14 hours at £10 per hour as again I prefer her evidence on the hourly rate. The respondent could have set this out in writing in advance but chose not to.

Has there been a deduction from the claimant's wages?

64. The claimant was at the time she presented her complaint owed £140.00. She was paid £66.50 in November 2022.
65. The claimant is still owed £73.50 for unpaid wages. The respondent shall forthwith pay the claimant what she is owed. It is unfortunate for the claimant that she has suffered additional delay in bringing this claim for her unpaid wages given the backlogs in the Tribunal system.

Employment Judge King

Date:08.02.23.....

Sent to the parties on: 11.02.2023

GDJ
For the Tribunal Office