



EMPLOYMENT TRIBUNALS

Claimant: Mr A Dousa
Respondent: Convedo Digital Experts Ltd
Heard at: East London Hearing Centre (by CVP)
On: 13 February 2024
Before: Employment Judge T Perry

Representation

For the Claimant: In person
For the Respondent: Did not attend

JUDGMENT

- 1. The Claimant's claim for deduction from wages in respect of salary in the period 1 June 2023 until 18 July 2023 is well-founded and succeeds. The Respondent is ordered to pay the Claimant the gross sum of £4,206.65. The Claimant may be liable to tax on this sum.**
- 2. The Claimant's claim for damages for failure to pay notice pay is well-founded and succeeds. The Respondent is ordered to pay the Claimant the gross sum of £8,824.98. The Claimant may be liable to tax on this sum.**
- 3. The Claimant's claim in respect of accrued untaken holiday pay fails and is dismissed.**
- 4. The Claimant's claim in respect of deductions in relation to loan payments fails and is dismissed.**
- 5. The Claimant's claim in respect of deductions in relation to pension contributions fails and is dismissed.**
- 6. The Claimant's claim in respect of a redundancy payment is dismissed on withdrawal.**

REASONS

Attendance of the Respondent

7. The Respondent failed to present an ET3 or attend the hearing. The hearing proceeded in the Respondent's absence under Rule 21(3).
8. I had before me a witness statement from the Claimant together with 11 attachments. The Claimant also provided a schedule of loss together with his contract of employment and payslips for June to September 2023).

The issues

9. The Claimant brought a claim under section 13 Employment Rights Act 1996 in respect of not having received his full salary between 1 June 2023 until 18 July 2023. The Claimant also complained of the Respondent deducting amounts for repayment of student loans and pension contributions but then failing to pay these deductions to the relevant recipients.
10. The Claimant brought a claim for breach of contract in respect of failure to pay notice.
11. The Claimant initially brought a claim for a redundancy payment under section 163 Employment Rights Act 1996. However, the Claimant not having two years' service, he confirmed today that this claim could be dismissed on withdrawal.
12. The Claimant claimed not to have been paid his accrued untaken holiday in respect of 2023 and claimed this as an unlawful deduction from wages under section 13 Employment Rights Act 1996 or alternatively under the Working Time Regulations 1998.

Findings of fact

13. The Claimant's employment started on 1 February 2022. He was engaged as an Intelligent Automation Consultant. His salary was (after his first year of employment) £35,000.
14. Under his contract of employment, the Claimant was entitled to a minimum of three months' notice.
15. The contract of employment also set out that the Respondent's holiday year was the calendar year and that the Claimant's entitlement to holiday was 25 days plus eight bank holidays.
16. The Respondent started to struggle financially in February 2023, apparently after its main customer ceased paying invoices. From around this time the Respondent ceased paying pension contributions to Nest and student loan deductions to the Student Loans Company, despite continuing to make these deductions from the Claimant's payslips.

17. In the Respondent's absence, I accepted the Claimant's evidence that the Respondent then failed to pay his full salary from 1 June 2023 until 18 July 2023 and that he was owed a gross sum of £4,206.65. The last payment the Claimant received from the Respondent was £500 in June 2023.
18. On 3 July 2023 a restructuring process was announced to address the challenges the Respondent was facing.
19. On 18 July 2023 the Claimant was dismissed by letter. The Claimant was given three months' notice with his effective date of termination being 18 October 2023.
20. On 27 September 2023 Melissa Fletcher from the Respondent emailed the Claimant stating that the Claimant would come off garden leave on 11 October 2023 and would be on annual leave between 12 and 18 October 2023 (being five working days). The Claimant had no other evidence of the annual leave he had taken and appeared to accept that as at 27 September 2023 he had 5 days' accrued but untaken.
21. The Claimant raised repeated issues around the failure to pay all sums owing and issued a grievance on 28 September 2023.

The Law

22. Section 13 Employment Rights Act 1996 contains the protection against unlawful deduction from wages.
23. Section 14 Employment Rights Act 1996 contains a list of excepted deductions including at section 14(3):

“Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.”
24. Wages is defined at Section 27 Employment Rights Act 1996 as sums payable to the worker.
25. Pension contributions do not fall within the definition of wages. This was confirmed by the EAT in **Somerset County Council v Chambers** EAT 0417/12, where it held that a tribunal did not have jurisdiction to hear the Claimant's claim that the Council was obliged to make contributions into a superannuation scheme on his behalf. The EAT thought it clear from the wording of S.27(1)(a) that it covers sums payable to the worker in connection with the worker's employment, not contributions paid to a pension provider on the worker's behalf. It would appear that this rationale would extend to deduction of employee contributions by the employer as well as the employer's contributions as both are contributions paid to a pension provider on the worker's behalf.

26. The right to payment in lieu of accrued untaken annual leave on termination of employment is set out in Regulation 14 Working Time Regulations 1998.
27. The employer may under Regulation 15 Working Time Regulations 1998 require an employee to take leave on certain dates provided they provide two days' notice for every one day of holiday to be taken.

Conclusions

28. The Respondent made unlawful deductions of £4,206.65 from the Claimant's wages from 1 June 2023 until 18 July 2023.
29. The Claimant's salary during his notice period should have been £8,824.98. Dismissal without payment of that notice was in breach of contract and damages are £8,824.98.
30. The Respondent by the email of 27 September 2023 gave 14 days' notice to the Claimant to take 5 days' annual leave. This was a valid instruction under Regulation 15 Working Time Regulations 1998. Accordingly, it extinguished the Claimant's entitlement to annual leave. This claim fails and is dismissed.
31. Following **Chambers**, the Claimant's claim in respect of deductions in relation to pension contributions does not relate to wages as defined under section 27 Employment Rights Act 1996 and so it fails and is dismissed.
32. The Claimant's claim in respect of deductions in relation to loan payments between 1 February 2023 and 18 October 2023 relates to an exempted deduction under section 14(3) Employment Rights Act 1996. Accordingly, it fails and is dismissed.

Employment Judge T Perry

13 February 2024

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>