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EMPLOYMENT TRIBUNALS

Claimant: Mr P Gibbons
Respondent: South Eastern Electrical Plc
Heard at: East London Hearing Centre
On: 29 October 2018
Before: Employment Judge Brown

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent made an unlawful deduction from the Claimant's wages when it failed to pay him two weeks wages which he was owed in June 2018.
2. The Respondent failed to pay the Claimant one week's notice pay to which he was entitled.
3. The Respondent shall pay the Claimant £630 gross notice pay (one week's gross wages).
4. The Respondent shall pay to the Claimant £500 pursuant to s24(2) *Employment Rights Act 1996* to compensate the Claimant for financial loss sustained by him which was attributable to the Respondent's unlawful deduction from wages in June 2018.
5. The Respondent paid the Claimant two weeks wages, late, in August 2018, so the Respondent does not owe the Claimant any further money in unpaid wages.

6. **The Claimant had taken 13 days holiday in 2018 and had accrued 13 days holiday by the date of his dismissal, so the Respondent did not owe the Claimant holiday pay on termination of his employment.**
7. **The Claimant's claim for unfair dismissal is struck out.**

REASONS

1 By a claim form presented on 25 July 2018 the Claimant brought complaints of unfair dismissal, failure to pay notice pay, unlawful deduction from wages, failure to pay holiday pay and a claim under s24(2) *Employment Rights Act 1996* for compensation for financial loss sustained by him on account of the Respondent's unlawful deductions from wages.

2 The Claimant was employed by the Respondent from 18 September 2017 until 10 June 2018. He therefore did not have the two years' service required under s108 *Employment Rights Act 1996* in order to bring a claim of unfair dismissal.

3 On 2 August 2018 the Employment Tribunal sent the Claimant a strike out warning in relation to his unfair dismissal claim, giving him until 10 August 2018 to give reasons why his complaint of unfair dismissal should not be struck out on the basis that he did not have two years service under s108 *Employment Rights Act 1996*. The Claimant did not reply to that letter. When he attended the Tribunal today he confirmed that he was employed for less than two years. The Claimant's claim for unfair dismissal therefore is struck out.

4 On 2 August 2018 the Tribunal sent the parties a Notice of Hearing and Notice of Claim, listing the Hearing for **29 October 2018** at 10.00am. In the same letter, the Tribunal told the Respondent that, if the Respondent wished to defend the claim, their response must be received at the Tribunal office by 30 August 2018. The Respondent did not present a response to the claim. The Claimant was therefore entitled to have a Rule 21 judgment entered in his favour.

5 The Claimant attended the hearing today. The Respondent did not attend.

6 The Claimant told me that he was dismissed on 10 June 2018 without notice. The Claimant showed me his contract of employment. It said that holiday year each year ran from 1 January to 31 December. The Claimant told me that he had taken 13 days holiday between 1 January and 10 June 2018 – he had taken 10 days holiday in February 2018 and had not worked on 1 January 2018 (New Year's day), nor on Good Friday nor on Easter Monday. He had worked the other bank holidays.

7 I calculated that the Claimant had accrued 12.35 days holiday in the holiday year before his dismissal. Given that he had taken 13 days' holiday before his dismissal, the Respondent did not owe him any holiday pay at the termination of his employment.

8 The Claimant told me, and I accepted, that his gross weekly pay before tax was £630 and his net weekly pay was £480.

9 The Claimant told me that, after the Notice of Claim and Notice of Hearing had been sent to the parties, the Respondent did pay the Claimant £1,200 into his bank account of unpaid wages. I decided that that sum could not have included notice pay, even calculating the wages and notice pay owed to the Claimant, net, rather than gross.

10 He told me and I accepted, however, that the Respondent had not paid him notice pay. The Claimant told me, and I accepted, that, as a result of the Respondent's late payment of wages, the Claimant was unable to make an agreed repayment to a creditor, Travis Perkins, in June 2018. As a result, Travis Perkins took enforcement against him, instructing enforcement agents called Marsdens. He Claimant told me that the cost of the enforcement agents added an extra £1,000 to the amount that he owed Travis Perkins.

11 I accepted that the Claimant had incurred extra financial loss as a result of the late payment of wages to him. While the Respondent eventually paid the two weeks wages, the total amount of wages paid to the Claimant in June 2018 was less than the total amount of the wages properly payable to him and therefore amounted to a deduction from wages under *s13 Employment Rights Act 1996*. Accordingly, under *s24(2) Employment Rights Act 1996*, where a Tribunal makes a declaration that a Respondent has made an unlawful deduction from wages under *s24(1) ERA*, it may order the employer to pay to the worker such amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

12 I therefore had power to order the employer to pay such amount as I considered appropriate, in all the circumstances, to compensate the Claimant for financial loss sustained by him attributable to the unlawful deductions from wages in June 2018. I assessed the amount as £500 because the Claimant was unable to provide documentation relevant to his assertion that he incurred £1,000 additional costs on account of the unlawful deductions from wages. Nevertheless, I considered it likely that the instruction of enforcement agents would have added several hundred pounds to the bill the Claimant already faced.

13 I therefore made a declaration that the Respondent had made an unlawful deduction from the Claimant's wages in June 2018. I did not order the Respondent to pay the amount of deduction because the Respondent did pay it, later, in August 2018. I ordered the Respondent to pay £500 under *s24(2) Employment Rights Act 1996*. I also ordered the Respondent to pay the Claimant one week's notice pay at £630 gross. I did not order the Respondent to pay the Claimant any holiday pay because the Claimant had taken all the holiday to which he was entitled in the holiday year 2018.

Employment Judge Brown

2 November 2018