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THE EMPLOYMENT TRIBUNALS

Claimant: Mr Mark Emblem
Respondent: Logikor (CH) Limited
Heard at: East London Hearing Centre **On: 25 March 2018**
Before: Employment Judge Burgher

Representation

Claimant: In person
Respondent: Mr D Bowen

JUDGMENT

The Judgment of the Tribunal is that: -

1. **The Claimant's claim for notice pay fails and is dismissed.**
2. **The Claimant's claim for unlawful deduction of wages succeeds. The Respondent is ordered to pay the Claimant the sum of £153.84 in respect of this claim.**

REASONS

1 The hearing resumed following the adjournment of 21 January 2018. The Respondent had produced a bundle of documents and continued to cross examine the Claimant on them.

2 The Claimant claimed unpaid salary for 14 days in June 2018, accrued holiday pay and notice pay.

3 Following the evidence, I find as follows.

4 The Claimant earned gross pay of £76.56 per day working for the Respondent. He was not paid for 14 days in June 2018. This equates to £1076.00.

5 The Claimant was entitled to accrued holiday pay of £153.84.

6 The Claimant was dismissed for gross misconduct on 21 June 2018. The reasons for the Claimant's dismissal were justified. It was clear that the Claimant was not undertaking the work he was employed to do and he had an irresponsible approach to his work. His claim for one month's notice pay is therefore dismissed.

7 On the face of it, the Claimant is therefore entitled to be paid the sum of £1229.84 by the Respondent.

8 However, the Respondent contends that deductions should be made from this sum as follows:

- 8.1 £20 for the car valet.
- 8.2 £120 for damage to car windscreen
- 8.3 £84.25 for uniform
- 8.4 £732.22 for leads
- 8.5 £1076.00 for 14 days absence (gross)

9 Therefore, a total sum of £2032.47 is asserted in respect of the deductions made.

10 In respect of the Claimant's contract I was referred to clause 25 by the Respondent. This states as follows:

"If, on the termination of your employment, you owe the company money as a result of any loan, overpayment, default on your part or any other reason whatsoever, the company shall be entitled as a result of your agreement to the terms of this contract to deduct the amount of your indebtedness to it any final payment of salary which it may be due to make to you."

11 Clause 25 does not give the Respondent carte blanche to deduct previous un notified and unquantified deductions from the Claimant's salary.

12 I also considered contract clause 5 regarding uniform, and clause 7 regarding company car.

13 In view of the contract terms, which make no reference to deductions for damage to or cleaning of company car or the cost of uniform after 3 months probation, I conclude that the Respondent is not entitled to deduct these sums amounting to £224.25. These deductions are therefore disallowed.

14 In respect of the leads, it is clear that the Respondent purchased leads from a third party for the Claimant, and other sales executives, to seek to exploit. There were a number of leads that the Claimant was given that I find that he did not contact at all. The Respondent has audited this and concludes that the cost to them of these unexploited leads is £732.22. However, there is nothing in the contract specifying that the Claimant

would be required to purchase the leads or compensate the Respondent for failing to exploit them. I therefore conclude that the Respondent is not entitled to deduct this sum.

15 The evidence demonstrated that there were in fact 14 days when the Claimant should have been working from 21 March 2018 to 13 June 2018 where the Claimant made no calls, sent no emails and made no entries on the Respondent's CRM system. This was evidenced by Appendix P and the Claimant's answers. The Claimant admitted that on one occasion when he should have been working he took his girlfriend to the airport. I find that the Claimant was not working on the 14 days when he should have been. I therefore conclude that the Respondent is entitled to recover these 14 days pay from the Claimant as unauthorised absence. The sum of £1076.00 is therefore a lawful deduction following overpayment by the Respondent of these days to the Claimant.

16 The Claimant's claim for unlawful deduction of wages is therefore succeeds to the limited extent of £153.84. The Respondent is therefore ordered to pay the Claimant this sum.

Employment Judge Burgher

26 March 2019