



EMPLOYMENT TRIBUNALS

Claimant: Mr S Klinshov

Respondent: Gamma VSL Limited

Heard at: London Central (via CVP) **On:** 25 November 2021

Before: Employment Judge S Connolly

Representation

Claimant: Ms Cairns (Free Representation Unit)

Respondent: Mr Lane (Solicitor)

JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The Respondent has made an unauthorised deduction from the Claimant's wages in respect of the period from 1 June 2021 to 12 July 2021 and is ordered to pay the gross sum of £3,000 in respect of the amount unlawfully deducted and to account to HMRC for the tax and national insurance due.
2. The Respondent unlawfully failed to pay holiday pay to the Claimant and the Respondent is ordered to pay the gross sum of £475 to the Claimant in respect of unpaid holiday pay and to account to HMRC for the tax and national insurance due.

REASONS

Claims and Issues

1. The Claimant was employed by the Respondent as a stylist between 11 December 2018 and 12 July 2021 when he resigned with immediate effect. The Claimant was suspended by letter dated 1 June 2021 until 12 July 2021 in relation to an allegation that he falsified evidence of a COVID-19 vaccination appointment.
2. The Claimant alleges that he did not receive any wages during the suspension period and that he was not paid for holiday that had been accrued but untaken at the date of termination of his employment.
3. The Claimant claims Unauthorised Deduction from Wages pursuant to Section 13 of the Employment Rights Act 1996 and failure to pay holiday pay under Regulation 13 of the Working Time Regulations 1998.

4. In determining the claim for Unauthorised Deduction From Wages I have considered the following issues:
 - a. Was the claim presented in time?
 - b. The Claimant was an employee so he is entitled to bring a claim under this section.
 - c. Is the claim in respect of wages?
 - d. Has the employer made a deduction?
 - e. If the wages were deducted, was the deduction authorised or exempt?
 - f. What payment, if any, is owed?

5. In determining the claim for Holiday Pay I have considered the following issues:
 - a. Was the claim presented in time?
 - b. Was the Claimant a worker?
 - c. What holiday had the Claimant accrued in the final year of employment?
 - d. The right to payment in lieu of holiday on termination.
 - e. What payment, if any, is owed?

Procedure, documents and evidence heard

6. The hearing was conducted via video. There were no technical issues during the hearing. I explained to the parties the ground rules for the hearing including that the making of any recordings of the hearing was prohibited.
7. Ms Cairns of the Free Representation Unit represented the Claimant. The Respondent was represented by Mr Lane (Solicitor).
8. The Claimant is a Russian speaker. I had the benefit of a Russian interpreter (Ms Sharman) throughout the hearing. Ms Sharman took an affirmation at the beginning of the hearing to interpret to the best of her knowledge and skill. No issues arose in this regard.
9. I had the benefit of a small Bundle of documents and a witness statement provided by the Claimant. The Respondent had denied the claims in the ET3 and Mr Lane confirmed at the outset that he was instructed not to concede the claim but had no further evidence or argument to present. He also confirmed that it was not his intention to cross-examine the Claimant.
10. I heard evidence from the Claimant in person and no witness evidence was adduced on behalf of the Respondent.

Fact Findings

11. The Claimant was employed by the Respondent as a stylist between 11 December 2018 and 12 July 2021 when he resigned with immediate effect. The Claimant's annual gross salary upon termination was £26,000.
12. The Claimant had a contract of employment with the Respondent dated 11 December 2018 (page 31 of the Bundle). I was also provided with a copy of the Respondent's Staff Handbook (page 40 of the Bundle).
13. The relevant clauses from these documents are highlighted below :
 - a. Clause 6.1 of the contract provided that the Claimant was entitled to 28 days annual leave during the holiday year including public holidays.

- b. Clause 9.3 of the contract states “We reserve the right to suspend you with pay for no longer than is necessary for the purposes of investigating any allegation of misconduct against you or so long as is otherwise reasonable while any disciplinary procedure against you is outstanding.”
 - c. Section 6.1 of the Staff Handbook provided that the Respondent’s holiday year runs from January to December. Section 6.10 of the Staff Handbook states: “Upon termination of your employment you will be entitled to pay in lieu of any unused holiday entitlement for that holiday year. If, at the end of your employment, you have already taken holiday in excess of your annual entitlement, you must repay any pay received for that holiday, and you agree that the Organisation may deduct such sums from any money owing to you.”
14. The Claimant was suspended from 1 June 2021 until 12 July 2021 (a 6 week period) in relation to an allegation that he falsified evidence of a COVID-19 vaccination appointment.
15. The suspension was confirmed by email dated 1 June 2021 sent by Svetlana Fedorenko (HR Administrator) – page 115 of the Bundle. The initial paragraph of this email states:

“Dear Sergey

Further to your conversation with Ivanna on 1st of June 2021 I write to confirm that you have been suspended on contractual pay to allow an investigation in order for us to clarify the details of the vaccination date that you have provided to us.”
16. I therefore find that the Claimant was entitled to be paid in full during his suspension. I find that despite his entitlement, the Claimant was not paid during his suspension because:
 - a. This was his evidence on oath;
 - b. The documentary evidence he produced in the form of pay slips and a bank statement corroborated this;
 - c. Although there is a pay slip for June 2021 in the bundle, the Respondent provided no evidence that a payment had been made.
17. The Claimant’s monthly gross salary was £2,167. The Claimant’s representative directed me to a screenshot from the Respondent’s payroll system (Xero) that could be accessed via an app (page 126 of the Bundle). The screenshot shows an entry of £1,742.79 for June 2021. It was the Claimant’s position that this was the net sum that should have been received for June 2021 but that no payment was received. The Respondent provided no evidence in relation to this matter and I find that this sum does reflect the net payment that would have been due for June 2021.
18. The Claimant was entitled to 28 days’ statutory holiday per annum (i.e. 5.6 weeks) and the holiday year ran from January to December. The Claimant was employed for 27.4 weeks of the holiday year. He therefore accrued 2.95 weeks’ annual leave at the termination date (5.6 divided by 52 x 27.4). It was the Claimant’s evidence that he had taken 10 days holiday (i.e. 2 weeks) in the current holiday year. This evidence was not challenged by the Respondent and I find that the Claimant had taken 10 days of leave in the current holiday year. The Claimant therefore had 0.95 weeks of accrued but untaken annual leave on termination

19. It was the Claimant's evidence that he was owed holiday pay of approximately £371.61 on termination of employment. His bank statements support that he did not receive any payment in relation to holiday pay from the Respondent on termination. The Respondent has presented no evidence on this point I therefore find that the Claimant received no payment in relation to holiday pay on termination of employment.
20. The Claimant 's effective date of termination was 12 July 2021. The Claimant notified ACAS under the Early Conciliation Procedure on 26 July 2021 and the Early Conciliation Certificate was issued on 6 September 2021. The Claimant's claim was presented on 20 September 2021.

The Law

Unauthorised Deduction from Wages

21. Section 13(1) provides the right for a worker not to suffer an unauthorised deduction from wages:

13Right 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.

22. Section 23 of the Employment Rights Act 1996 provides a worker with the right to bring a complaint to the Employment Tribunal:

23Complaints to employment tribunal.

(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).

23. Section 27 of the Employment Rights Act 1996 includes a definition of wages for the purposes of the act.

Holiday Pay

24. Regulation 13 and 13A of the Working Time Regulations 1998 set out the entitlement to annual leave.
25. Regulation 14 and 16 sets out provisions in relation to compensation for the entitlement to leave. This provides that upon termination where the proportion of leave taken by a worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of untaken leave.
26. Regulation 30(1)(b) gives the right for a worker to make a complaint to a Tribunal for a breach of Regulation 14(2) and 16(1).

Conclusions

General

27. Some of the issues were common to both the unlawful deduction from wages claim and the holiday pay claim so I have grouped these together where appropriate.
 - a. Was the claim presented in time?
28. I found that the Claimant worked for the Respondent up to and including 12 July 2021. The last payment of wages were payable to the Claimant at the end of July 2021. The payment of the holiday pay became payable on the 12 of July 2021. The Claimant notified ACAS under the Early Conciliation Procedure on 26 July 2021 and the Early Conciliation Certificate was issued on 6 September 2021. The Claimant's claim was presented on 20 September 2021. The claims of unlawful deduction from wages and holiday pay were presented in time.
 - b. The Claimant had a contract of employment. He was an employee so he is entitled to bring a these claims.

Unauthorised Deduction From Wages

29. My conclusions are as follows:
 - a. Is the claim in respect of wages?
30. The Claimant's claim relates to basic salary for the 6 week period between 1 June 2021 and 12 July 2021. I therefore conclude that the claim is in respect of wages for the purposes section 27 of the Employment Rights Act 1996.
 - b. Has the employer made a deduction?
31. It was the Claimant's unchallenged evidence that he did not receive his salary for the suspension period. I have also reviewed the Claimant's bank statements provided at pages 127 – 137 which support this. I find that the Respondent did make a deduction in respect of this period.
 - c. Was the deduction authorised or exempt?
32. The Respondent did not produce any evidence which suggested that the deduction was authorised or exempt so I find that it was not.
 - e. What payment, if any, is owed?

33. The Claimant did not receive any pay for the 6 week period between 1 June 2021 and 12 July 2021. Based on his gross annual salary of £26,000, a week's pay is £500. The Claimant is owed $6 \times £500 = £3,000$ for this period.

Holiday Pay

34. My conclusions are as follows:

a. What holiday had the Claimant accrued in the final year of employment?

35. The Claimant was entitled to 28 days' statutory holiday per annum (i.e. 5.6 weeks) and the holiday year ran from January to December. The Claimant was employed for 27.4 weeks of the holiday year. He therefore accrued 2.95 weeks' annual leave at the termination date (5.6 divided by 52 x 27.4). The Claimant had taken 2 weeks' annual leave so had 0.95 weeks of accrued but untaken annual leave on termination.

b. The right to payment in lieu of holiday on termination.

36. Regulation 14(2) of the Working Time Regulations 1998 provides for the right to payment in these circumstances. I have also noted that Section 6.10 of the Staff Handbook states provides a right for the Claimant to be paid for any accrued but untaken annual leave on termination.

c. What payment, if any, is owed?

37. The Claimant had 0.95 weeks accrued but untaken annual leave on termination. Based on his gross annual salary of £26,000, a week's pay is £500. $0.95 \times £500$ gives a gross payment for accrued but untaken annual leave of £475.

Employment Judge S Connolly

10 December 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

10/12/2021

FOR THE TRIBUNAL OFFICE