



EMPLOYMENT TRIBUNALS

Claimant: Mr. B Plewa

Respondent: Tecforce Limited

Heard at: Nottingham via CVP

On: 19 August 2022

Before: Employment Judge Omambala

Representation

Claimant: In person

Respondent: Mr. C Plume, HR Consultant

JUDGMENT BY CONSENT

1. The Respondent has paid all sums properly payable under the Claimant's contract of employment.
2. The Claimant's claim of unlawful deductions from wages pursuant to section 13(1) of the Employment Rights Act 1996 is dismissed.

REASONS

1. By a claim form dated 29 April 2022 the Claimant brought a claim of unlawful deduction from wages pursuant to section 13(1) of the Employment Rights Act 1996.
2. The Claimant was employed by the Respondent as a welder. His claim related to sums alleged to be due to him upon the termination of his employment on 4 March 2022.

3. The Tribunal received a written witness statement from the Claimant dated 8 June 2022 and a schedule of loss with supporting documentation. The Tribunal received a written witness statement dated 17 August 2022 from Ms. N Bingley, Finance Director of the Respondent. There was an agreed bundle of documents extending to 118 pages.
4. The Tribunal heard oral evidence from the Claimant and from Ms. Bingley.
5. In his claim form and by his schedule of loss the Claimant contended that his final payment from the Respondent upon termination of his employment by resignation should have included sums in respect of work done between 3 February 2022 and 4 March 2022 and accrued holiday pay. In addition, the Claimant alleged that sums had wrongly been deducted from his final salary.
6. The Claimant told the Tribunal that he was paid at an hourly rate and that his hours and details of overtime worked and any time deducted from his pay were recorded on a document which both parties described as a “banking hours spreadsheet.” He claimed that Bingley had told him that he was paid in accordance with the information in the spreadsheet.
7. In her evidence to the Tribunal Ms. Bingley explained that apart from a temporary period when the Claimant was fulfilling a different role, he had not participated in the Respondent’s banked hours system which had been introduced to reduce costs and to provide greater flexibility to the Respondent in meeting its customers’ needs. She told the Tribunal that when the Claimant had returned to his role as a welder he had been offered and declined the opportunity to participate in the banked hours system.
8. Ms. Bingley fairly accepted that conversations the Claimant had with the Respondent about the banked hours system may have contributed to his confusion about when and how his wages would have been calculated and paid. Ms. Bingley explained that the Claimant received 1/12 of his salary every month on or around the first of the month. Deductions and additional payments were reconciled by the Respondent with reference to the banking hours spreadsheet and any sums due were included in the following months payment.
9. The documents produced by the Respondent were consistent with its explanation of how the Claimant’s wages were calculated and paid.
10. Having heard the Respondent’s witness evidence and

examined the documents before the Tribunal the Claimant stated that he accepted that he had been paid all sums due to him under his contract of employment. In particular he confirmed with reference to the relevant wage slip for April 2022 that he had been paid all of the sums identified in his schedule of loss.

11. Accordingly, the parties agreed that the Claimant's claim should be dismissed on withdrawal by him.
12. On behalf of the Respondent Mr. Plume made an application for a preparation time order pursuant to rule 76(1)(b) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, Schedule 1. He submitted that the Respondent had been put to unnecessary expense in defending a claim which had no reasonable prospect of success. He noted that the Respondent had offered the Claimant the opportunity to raise and discuss any queries he had about his final payment on 19 May 2022 but the Claimant had not taken Ms. Bingley up on her offer. Mr. Plume sought an order in respect of 16 hours preparation time.
13. The Claimant opposed the making of a preparation time order.
14. The Tribunal is not satisfied that based on the information available to the Claimant at the time his claim was issued, it had no reasonable prospects of success.
15. In reaching that conclusion the Tribunal has had regard to what the Claimant knew and what could or should have been apparent from the outset of these proceedings. The Tribunal has also taken into consideration the fact that the Claimant is a litigant in person who was not familiar with the systems operated by the Respondent and that he had a genuine belief in the merits of his claim.
16. The Tribunal also took into account the Respondent's fair concession in evidence that the Claimant's confusion might be attributable at least in part to explanations provided to him by its employees.
17. If contrary to the Tribunal's conclusion the Claimant's claim had no reasonable prospect of success, the Tribunal would not have exercised its discretion to make a preparation time order for the reasons set out at paragraphs 15 and 16 above.
18. Further, the Claimant was candid in accepting that he had not understood the basis upon which his pay was calculated and paid before he heard Ms. Bingley's explanation and was able to work through the documents in the hearing. The Claimant has acted reasonably and conducted his case in a proportionate way. In these circumstances and having regard

to the fact that the Tribunal is ordinarily a 'no costs' jurisdiction the Tribunal does not consider it appropriate to make a preparation time order.

Employment Judge Omambala QC

Date: 19 August 2022