



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Mariam Sorour

v

Ms Obi Odogwu

Heard at: Watford

On: 17 February 2022

Before: Employment Judge Bedeau

JUDGMENT

1. There has been an unauthorised deduction from the claimant's wages and the respondent is ordered to pay the claimant the sum of £369 gross.
2. The claimant to account for any income tax and national insurance deductions on the said sum.

REASONS

1. In her claim form presented to the tribunal on 14 May 2021, the claimant brings the claim of an unauthorised deduction from her wages.
2. In the response presented on 14 July 2021, the claim is denied. The respondent avers that the claimant was not an employee but worked on a commission only basis to sell her property for which she would get a percentage from the sale.

The issue

3. I had to consider, upon the evidence, whether the respondent had engaged the claimant as an employee?
4. If so, had the claimant been paid her wages?
5. If not, how much was owed?

The evidence

6. I heard evidence from the claimant who called her husband, Mr Carlos Anael Conceicao, as her witness.

7. The respondent gave evidence and did not call any witnesses.
8. I did not have a bundle of documents as they were prepared and sent by the claimant to the respondent, not to the tribunal. I invited the claimant to read the relevant documents in her possession. The respondent did not refer me to any documents in her possession.

Findings of fact

9. The claimant's husband, Mr Conceicao, knew the respondent as she is a customer of the bank where he works. She discussed with him the possibility of him working for her as an Administrator at her office or whether he might know of anyone who would be interested in such a role. He did not want to leave the security of his job at the bank and declined the offer. The respondent then gave him her contact number.
10. As the claimant had recently graduated in law and was looking for work, Mr Conceicao passed the respondent's details to her.
11. The claimant called and spoke to the respondent the following day, on 27 April 2021, for between 10-15 minutes, during which I was satisfied that they discussed her hourly rate of pay. Initially the respondent suggested £8 but the claimant could not agree. They settled on £9 an hour. They also discussed her working hours, which were from 10.00am-5.00pm, Monday to Friday. The role was to be engaged in administrative duties from the claimant's office which was at her home. She had inherited her father's house upon his death and was anxious to sell some of the contents. She also had tenants.
12. I pause at this stage to reflect on two matters: firstly, what was discussed between the respondent and Mr Conceicao, was the same role as discussed with the claimant, namely that of an Administrator. Secondly, it is inconceivable that Mr Conceicao, would agree to move from secure employment with a bank to that of a self-employed independent contractor, with all the uncertainties that entails in relation to income. He and the claimant were renting at the time. The post of Administrator was discussed with him first and shortly thereafter with the claimant and was on the basis that they would be employed by the respondent. I am, therefore, satisfied that the respondent discussed the possibility of employing Mr Conceicao and continued in the same way with the claimant after he had declined.
13. What happened in practice was that the claimant would arrive at the respondent's home to start work at 10.00am and would finish at 5.00pm. She shared her lunchtime with her husband who did not work that far away. She followed the instructions of the respondent in selling her property online and in engaging in other tasks, including checking the meters of the respondent's tenants.
14. It was understood by the respondent that the claimant was looking for better paid and more secure employment elsewhere.
15. She worked 10.00-5.00 on 28, 29, 30 April 2021, and on 3 May 2021. On 4 May she worked from home from 10.00-4.00. On Thursday 6

May, she again worked from 10.00-5.00pm. This was her last day as she secured employment elsewhere.

16. On Friday 7 May, she spoke to the respondent, thanking her for employing her, and later sent her bank details for the payment of her wages.
17. On Monday 10 May, the respondent called the claimant upset that the claimant had left without giving her notice. She told her that she would not be paid until she, the respondent, found a replacement.
18. The claimant read out a message sent by the respondent on 10 May 2021, in which the respondent wrote that as there was no notice given, she would not be paid until she had someone to replace her.
19. There was no written contract between the claimant and the respondent, and the respondent was unable to tell me the percentage she agreed to pay the claimant by way of commission on the sale of her property.
20. The claimant worked 41 hours at the rate of £9 per hour.

The law

21. I considered section 13 Employment Rights Act 1996 on unauthorised deductions from wages, section 86(2) requiring an employee after one month's service, to give one week's notice.

Conclusion

22. There was a contract of employment between the claimant and the respondent. The claimant worked regular hours and at the instructions of the respondent. They agreed the rate of pay, being £9 an hour. The respondent needed an Administrator as she had a lot of work to do and wanted to keep her affairs in order as she was not competent in her use of IT.
23. She sent a message to the claimant on 10 May 2021, acknowledging that the claimant had not given her notice which could only be on the basis that she accepted that the claimant was her employee. In addition, the message acknowledged that the claimant was entitled to be paid but only after the respondent secured replacement.
24. I did not accept the respondent's evidence that the claimant agreed to work on a commission only basis. She, the respondent, was unsure how much she was going to pay the claimant by way of a commission. She was unable to tell me the percentage they allegedly agreed on.
25. I have come to the conclusion that there was an unauthorised deduction from the claimant's wages and the respondent is ordered to pay her the sum of £369 gross.

Employment Judge Bedeau

17 February 2022

Sent to the parties on:

4/3/2022

N Gotecha

For the Secretary to the Tribunals