



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mr J Kanna Naido

v

Aaqua Limited

Heard at: London Central (by CVP videolink)

On: 22 March 2023

Before: Employment Judge Brown

Representation

For the Claimant: Mr D Flood, Counsel

For the Respondent: Did not attend and was not represented

JUDGMENT

The judgment of the Employment Tribunal is that:-

- 1 The Respondent made unlawful deductions from the Claimant's wages in the sum of £16,615.36 gross. The Respondent shall pay the Claimant £16,615.36 gross for unlawful deductions from wages.
- 2 The Respondent wrongfully dismissed the Claimant and failed to pay the Claimant his week's notice pay. The Respondent shall pay the Claimant the net equivalent of £2,596.15 gross, in damages for failure to pay notice pay.
- 3 The Respondent breached the Claimant's contract by failing to pay him £75 in respect of the Home Working Allowance and £50 in respect of the monthly Mobile Line Subscription.
- 4 The Respondent shall pay the Claimant a further £125 for breach of contract.
- 5 The Respondent failed to pay the Claimant his holiday pay accrued on termination of his contract. The Respondent shall pay the Claimant £1,272.11 gross for accrued holiday pay.

- 6 The total sum which the Respondent shall pay to the Claimant is £20,608.20 gross.

REASONS

Preliminary

1. By a claim presented on 1 February 2023 the Claimant brought complaints of unlawful deductions from wages, failure to pay holiday pay and breach of contract against the Respondent, his former employer.
2. The Respondent did not present a Response to the claim and did not attend the hearing today.
3. The Respondent was still shown as Active at Companies House.
4. I was satisfied that, on 20 February 2023, the Tribunal had sent the Notice of Hearing, giving notice of the hearing today, to the Respondent at its address registered at Companies House.
5. The Claimant had also provided the Tribunal with 3 email addresses for the Respondent. On 16 March 2023 the Tribunal had sent additional copies of the Et1, particulars of claim and notice of hearing to the Respondent at all those addresses and had asked it to confirm whether it defended the claim.
6. I was satisfied that the Respondent had had notice of the hearing and that it was appropriate to proceed in its absence.
7. The Claimant gave evidence at today's hearing and produced his statement of employment particulars. I accepted the Claimant's evidence.

Findings of Fact

8. The Respondent employed the Claimant as Senior Privacy Lead & Group DPO under a contract of employment dated 22 June 2022. The Claimant's employment commenced on 1 August 2022.
9. Pursuant to his statement of employment particulars, clause 1, the Claimant's gross annual pay was £135,000. That equated to £11,250 gross monthly pay and £2,596.15 gross weekly pay.
10. Pursuant to clauses 6.4 and 6.5 of his employment particulars, the Claimant was entitled to, amongst other benefits, a monthly payment of £75 per month as a Home Working Allowance and £50 per month for a Mobile Line Subscription Reimbursement.
11. On 13 September 2022 the Respondent informed the Claimant that his role was being made redundant and that this would take effect from 31 August 2022.

12. The Claimant was still within his probationary period on 13 September 2022. The Claimant's contract was terminable on one weeks' notice by the Respondent during his probationary period, clause 1 of his statement of employment particulars.

13. The Claimant was not paid any wages for the period from 1 August 2022 and 13 September 2022, during which time he was working for the Respondent. The Respondent also failed to pay the Claimant the contractual Home Working Allowance and the Monthly Line Subscription Reimbursement.

14. The Respondent did not give the Claimant notice of the termination of his employment. It did not pay him in lieu of his notice period.

15. The Respondent did not pay the Claimant for accrued but untaken holiday pay on the termination of his employment.

Relevant Law

16. *Under Regs 13 & 13A Working Time Regulations 1998* workers are entitled to take paid holidays and to be paid holiday pay. The right under *Reg 13* is 4 weeks; the right under *Reg 13A* is 1.6 weeks, meaning that a worker has a right to 5.6 weeks paid holiday. Under *Regulation 14 WTR 1998*, an employee is to be entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired but which has not been taken by the employee during that time.

17. By *reg 13(3) ERA 1996* a worker's leave year begins on the date provided for in his contract of employment, or if there is no relevant agreement, on the date when the employment begins and each anniversary of that date.

18. *Regulation 14(3)* provides for calculation of the amount of holiday pay due in these circumstances as follows: $(A \times B)$ less C, where A is the period of leave to which the worker is entitled, B is the proportion of the leave year expired and C is the period of leave taken.

19. Holiday pay is paid gross. By *Reg 30 WTR* a worker can bring a claim in Employment Tribunal in respect of unpaid holiday pay under *Regulation 14*.

20. *s13 Employment Rights Act 1996* a worker has the right not to suffer unauthorized deductions from wages. By *s27 ERA 1996* "wages" is defined. By *s27(1)*, "In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including: a) any fee, bonus, commission, holiday pay or other emolument referable to his employment whether payable under his contract or otherwise. ...".

21. Employment tribunals are entitled to make any award for unlawful deductions from wages gross, leaving it to the employer to work out exactly how much of the gross sum should be paid to the worker and how much to HMRC:

see *Walters t/a Rosewood v Barik* UKEAT/0053/16 (13 February 2017, unreported).

22. By *Employment Tribunals (Extension of Jurisdiction) England & Wales Order 1994* the Employment Tribunal has jurisdiction with regard to contractual claims arising or outstanding at the termination of the employment of an employee.

23. In awarding damages for wrongful dismissal, in order to put the employee in the position they would have been in had the contract been performed, account must be taken of the tax and National Insurance contributions that would have been paid. Tribunal awards are tax free up to £30,000. Damages for wrongful dismissal in awards made below this amount are therefore calculated on the basis of net pay.

Discussion and Decision

Breach of Contract

24. Under the Claimant's contract of employment he was entitled to 1 week's notice during his probationary Period. The Respondent breached his contract of employment when it dismissed him without notice and failed to pay him for his notice period.

25. The Claimant is entitled to 1 week's pay in compensation for wrongful dismissal.

26. I ordered the Respondent to pay the Claimant one weeks' notice, in the net amount equivalent to £2,596.15 gross. It was not possible for me to calculate the net amount because I did not know what tax codes would be applied, given that the Claimant was employed for a short time, recently, and the Claimant never received a pay slip from the Respondent.

27. The Respondent also failed to pay the sum of £75 in respect of the Home Working Allowance and £50 in respect of the monthly Mobile Line Subscription, in breach of contract.

28. I ordered the Respondent to pay the Claimant an additional £125 for these further breaches of contract.

Deductions from Wages

29. The Claimant worked under his contract of employment from 1 August 2022 to 13 September 2022, a period of 6 weeks and two days. He was entitled to be paid £16,615.36 for this period ($6.4 \times 2,596.15 = £16,615.36$). The Respondent failed to pay him at all and made an unlawful deduction from his wages of £16,615.36 under s13 Employment Rights Act 1996.

Holiday Pay

30. The Respondent failed to pay the Claimant his accrued but untaken holiday pay.

31. $5.6 \times 6.4/52 = 0.69$ weeks. The Claimant confirmed that he took the late August Bank Holiday day's holiday. One day, or 0.2 weeks, needs to be deducted from his accrued holiday entitlement. The Claimant was therefore entitled to 0.49 weeks' accrued holiday pay on termination.

32. $0.49 \times \text{£}2596.15 = \text{£}1,272.11$.

33. I ordered the Respondent to pay the Claimant £1,272.11 holiday pay accrued on termination of his employment.

Employment Judge Brown

Dated: ...22 March 2023.....

Judgment and Reasons sent to the parties on:

22/03/2023

For the Tribunal Office