



EMPLOYMENT TRIBUNALS

Claimant: Mr J Goodhead

Respondent: Laird Assessors Limited

HELD AT: Liverpool (Via CVP) **ON:** 24th January 2023

BEFORE: Employment Judge Anderson
(sitting alone)

REPRESENTATION:

Claimant: In Person

Respondent: Ms Rudzinski

JUDGMENT

The claims of unlawful deduction from wages are not well founded and are dismissed.

Employment Judge Anderson
24th January 2023

JUDGMENT SENT TO THE PARTIES ON
26 January 2023

FOR THE TRIBUNAL OFFICE

REASONS

Introduction

1. The Claimant Mr J Godheads claims in respect of alleged unlawful deduction from wages from his former employer Laird Assessors Limited.

Procedural Matters

2. At the outset, I took some time to clarify the documents that were before me and the issues in the case. There was no single paginated bundle, but both sides had sent in documents and both sides confirmed that each had the other sides documents. The documents were manageable in terms of volume and I was able to read them in a short space of time.
3. The Claimants email of the 14th January 2023 was treated as his witness statement. He took the affirmation and was cross examined. Mr Ellis of the Respondent treated the document of the 22nd August 2022 as his witness statement. He too took the affirmation and was cross-examined.
4. No other witness gave live evidence. There were witness documents supplied on behalf of other individuals, but as they were not present, I did not place much weight on these documents.
5. The Claimant claimed in respect of two deductions. The issues were therefore as follows:
 - a. In his payment on the 10th December, 2021, The Claimant claims that he was underpaid five days in respect of the 1st to the 7th December. What was the correct pay reference period for the 10th December pay and was the Claimant underpaid?
 - b. In his payment on the 10th December 2021, the Claimant was given two payslips. The first payslip contained a deduction, the second payslip did not. Were any sums deducted from the Claimant's final pay and if so, was that deduction unlawful?

Findings of Fact

6. The starting point is the most recent contract of employment as disclosed by the Claimant. Clause 5.2 states:

“We will pay your monthly salary into your bank or building society account (you must ensure we have the correct details) on or around the 10th of each month. Each payment will cover your previous month's work.”

7. Clause 5.3 provides:

“If we need to base any calculations on ‘one day's pay’, ‘one day's pay’ will be 1/260th of your annual salary.”

8. The Claimant commenced employment around the 4th January 2010. I have the Claimant's bank statements from that period. No pay was received by the Claimant on the 10th January 2010. His first pay was received on the 10th February 2010. This was a higher sum than normal to reflect the few days work prior to the 10th January 2010 in addition to the period 10th Jan to 9th February.
9. The Claimant says that it is his understanding that the pay on the 10th of the month is in respect of the previous calendar month.
10. The Respondent's position is that the pay on the 10th of the month is in respect of the period 10th (previous month) through to the 9th of the month. Any discrepancies due to matters arising close to the pay date are rectified in the following pay period.
11. The Claimant's last day of employment with the Respondent was the 7th December 2021. The parties are agreed on this fact.
12. The Claimant received a payslip in relation to the 10th December pay date which contained a deduction of £248.36. The reference was 'leave' His total net pay was £2128.67. The Claimant then received a further payslip in which the deduction was not referenced. However, the total net pay was £2168.43.
13. The Claimant checked during the hearing and the sum received by him into his account was £2168.43.
14. The Respondent's position is that the first payslip in referencing the phrase 'leave' was in error. The Claimant was correctly paid and the second payslip is the correct representation of that. He finished on a Tuesday and the pay day was the Friday. He simply was not paid for the Wednesday and the Thursday as he was not an employee on these dates. Payroll effectively paid the month's pay through to the 9th and then took off two days for when the Claimant was no longer an employee. This is consistent with clause 5.3 noted above.
15. The Claimant's position is that a deduction has been made from his pay. I asked him to elaborate in terms of why the Respondent's position regarding this second claim was not correct and he did not have anything further to add.

The Law

16. The burden of proof is on the Claimant to prove the fact of the deduction.
17. The right not to have sums unlawfully deducted from wages is contained within section 13 of the Employment Rights Act 1996.
13 Right 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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Conclusions

18. In relation to the first claim, I find that the Claimant was paid in accordance with the express term of his contract of employment and that no deduction was made.

19. The height of the Claimant's case on this point was the use of the phrase 'my understanding was that we were paid for the previous month'. That is potentially possible on the wording of the contract but does not sit with the wider evidence in this case, particularly the evidence from the start of the Claimants employment and his first pay packet in February 2010.
20. It is clear that pay received on the 10th is in respect of the 10th of the previous month to the 9th of that month. This too is possible on the wording of the contract, but unlike the Claimant's case, is consistent with the wider evidence. The only exception to this is that in the Claimant's first month of employment, he commenced employment too close to the pay date to be paid on that date and was paid additional sums in his February pay packet.
21. The Claimant's case is inconsistent with the documents from January and February 2010, whereas the Respondent's explanation fits with the documents and also follows as a matter of logic and practice.
22. If the Claimant was correct, his February 2010 pay would be for a lower sum, taking into account his relevant pay at the time. Rather it is for a higher sum and consistent with him being paid in February the extra few days from January due to the proximity of his start date to the pay date.
23. In relation to the second claim, I find that the sum that the Claimant was not paid for was in respect of the 8th and the 9th of December, when he was no longer employed. These were weekdays. The Claimant's effective date of termination was the 7th December. However it was expressed on the payslip, this was a correct method of measuring pay to the pay day (the 10th) having regard to the effective date of termination (the 7th). Therefore, no deduction was actually made. The Claimant wasn't able to add anything more to contradict this analysis and I am satisfied that he has been paid correctly and that no deduction has occurred.
24. In both cases, the Claimant has been paid in accordance with his contract of employment.
25. The Claimant's claim of unlawful deduction from wages is not well founded and is dismissed.

Employment Judge Anderson

Date 24th January 2023

REASONS SENT TO THE PARTIES ON

26 January 2023

FOR THE TRIBUNAL OFFICE