



EMPLOYMENT TRIBUNALS

Claimant: Morgan Keeling
Respondent: Executive Event Solutions Limited
Heard at: Newcastle Employment Tribunal Remotely by Cloud Video Platform ('CVP')
On: 02 February 2023
Before: Employment Judge Sweeney
Representation:
Claimant: In person
Respondent: No attendance

JUDGMENT

1. The complaint of unlawful deduction of wages under section 23 Employment Rights Act 1996 is well founded and succeeds.
2. The Respondent is ordered to pay to the Claimant the gross sum of **£204.67**.

REASONS

3. On **27 September 2022**, the Claimant presented a Claim Form to the Tribunal in which he brought a complaint, under section 23 Employment Rights Act 1996, for failure to pay wages for hours worked in **May and June 2022**. On **07 October 2022**, the proceedings were served on a PO Box address provided by the Claimant. A response was to be served by the Respondent by **04 November 2022**. However, none was returned. On **10 November 2022**, Judge Martin directed that the Claim Form be re-served on the Respondent's registered office, which it duly was. The date for service of a Response was given as **08 December 2022**. However, no response was served. Under rule 21 of the Tribunal Rules of Procedure 2013, where on the expiry of the time limit in rule 16 a response has been rejected and no application for a reconsideration is outstanding, an

employment Judge shall decide whether on the available material, a determination can properly be made of the claim or part of it. If there is, the judge shall issue a judgment, otherwise a hearing must be fixed before a judge alone.

4. Employment Judge Loy considered that he had insufficient information to issue a judgment. On **12 December 2022**, the Claimant was directed to provide some further information by **19 December 2022**. The Claimant did not do that but forwarded supporting documents and evidence in an email dated **23 January 2022**.
5. The Claimant attended today's hearing. There was no appearance by the Respondent and it has not participated at any stage of these proceedings. The Claimant gave sworn evidence and confirmed the information as set out in his Claim Form and in his correspondence to the tribunal of **23 January 2022** which consisted of what was, in effect, a witness statement. I found him to be a credible and honest witness.

Findings of fact

6. The Claimant was employed by the Respondent from **18 May 2022** to **15 June 2022** as a Stage Crew Member. The holiday year commenced on the first day of his employment, namely **24 February 2022**. As a Stage Crew Member, he would travel to the stage, unload the equipment from the truck, set up the equipment and then, after the concert, disassemble the equipment and load it back onto trucks. This is referred to as 'loading in' and 'loading out' respectively.
7. Under his contract of employment, the Claimant was entitled to be paid at the rate of £9.60 per each hour worked. Payment was to be on the last Sunday of the month. He received payment on **28 May 2022** in respect of work before that date and he makes no complaint about any deduction from wages on that occasion. He worked 30.5 hours and was paid at the rate of £9.60 making a total of £292.80.
8. After that, the Claimant worked the following dates and hours:
 - 8.1 **31 May 2022**: 9 hours loading in for a concert by the Killers in Middlesbrough
 - 8.2 **01 June 2022**: 9.5 hours loading out in respect of the same concert.
 - 8.3 **13 June 2022**: 14 hours loading in and loading out in respect of a Kings of Leon concert in Birmingham.
 - 8.4 **15 June 2022**: 15 ½ hours loading in and loading out in respect of a Billie Eilish concert in Birmingham.
9. That amounts to a total of 48 hours. At the agreed hourly rate of £9.60, the Claimant's total pay due for all the hours worked was £460.80. That is the amount he was expecting on his next pay date. That was, after all, what had been agreed.
10. On Sunday **26 June 2022**, the Respondent paid the Claimant a total amount of **£256.13** for 37.5 hours work at the rate of £6.83. That payment was deficient in two

respects: firstly, the number of hours for which payment was due and secondly the rate of pay. Although he was nineteen years old, the NMW rate of £6.83 was not what had been agreed. The evidence provided by the Claimant clearly shows an agreement to pay £9.60 an hour, irrespective of the NMW rate for people of his age. The Respondent simply decided, of its own volition and without any contractual authority to reduce the hourly rate.

Conclusion

11. Having considered and accepted the oral and documentary evidence of the Claimant I was satisfied that:
 - 11.1 The amount of **£460.80** was properly payable to the Claimant on **26 June 2022**.
 - 11.2 The amount that was paid to the Claimant was, in fact, **£256.13**.
 - 11.3 The deficiency of **£204.67** is to be treated as a deduction from wages.
 - 11.4 The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of the Claimant's contract.
 - 11.5 Accordingly, the deduction was unauthorised and made in contravention of section 13 Employment Rights Act 1996.
12. The Claimant is entitled to a declaration that his complaint under section 23 is well founded. Further, the Tribunal must order the Respondent to pay to the Claimant the amount of the deduction made in contravention of section 13.
13. Where a tribunal makes such a declaration, it may order the employer to pay to the worker, in addition to any amount ordered to be paid under section 23(1)(a), such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of. Had the Claimant suffered any consequential loss, such as bank interest or overdraft fees, I would have ordered the Respondent to pay compensation to reflect that loss. However, the Claimant candidly said that he had not sustained any consequential loss. Therefore, the order is limited to the amount unlawfully deducted.

Employment Judge **Sweeney**

Date: 2 February 2023