



EMPLOYMENT TRIBUNALS

Claimant

D Dinu

v

Respondent

(1) SS Osbourne
(2) EAC Mechanical Limited

Heard at: London Central by CVP
Before: Employment Judge Anderson

On: 17 January 2024

Appearances

For the claimant: V Dinu (lay representative)

For the respondent: SS Osbourne (first respondent/director of second respondent)

JUDGMENT

1. The claimant's claim of unpaid wages under s13 Employment Rights Act 1996 is upheld.
2. The second respondent is ordered to pay to the claimant the sum of £454.00 within 14 days from the date that this judgment is sent to the parties.
3. The claimant's claim that the respondents have failed to provide an itemised pay statement as required by s8 Employment Rights Act 1996 is upheld against the second respondent. In accordance with s12(3) Employment Rights Act 1996 the tribunal declares that the second respondent has failed to provide an itemised pay statement for work carried out by the claimant during the period 7 July 2023 to 4 August 2023.

REASONS

1. The claimant was employed by the second respondent from 7 July 2023 to 4 August 2023. His claim is that the respondents failed to provide payslips for that period of employment and that he has not been paid for the last two weeks of employment. At the time of filing the ET1 the claimant claimed £1462.16 net unpaid wages. In an update sent to the tribunal on 7 January 2023 the figure claimed was revised down to £1012.16, further payments having been received from the second respondent.
2. The respondents did not file an ET3 within time. An ET3 was filed on 12 January 2024, over two months after the deadline, and prompted by an email

from the tribunal asking why it had not been filed. No reasons were given, and no application was made to extend time.

3. The claimant and Mr Osborne attended the hearing, and both gave evidence on oath.
4. Mr Osborne, first respondent and sole director of the second respondent, said that he had posted an ET3 before the deadline in October 2023. He had only become aware that there was a problem when he received the tribunal email on 9 January 2024. He followed the link provided and filled out the ET3 again. He had not filed an application to extend time as he had not understood what was being asked of him.
5. Having considered the first respondent's evidence I decided that on an application of the overriding objective (Schedule 1, Rule 2, Employment Tribunal Regulations 2013) having regard to the need to deal with cases fairly and justly which involves dealing with matters proportionate to their complexity and avoiding unnecessary formality, that time for filing the response should be extended to 12 January 2024.
6. The claimant said that further payments had been made since his last update and he believed that he was now owed £704.00.
7. Mr Osborne said that he agreed that the claimant was owed wages but not in the sum claimed. He said payments towards the last two weeks of employment had been made as follows: £200 in December 2023, £250 in November 2023, £308.16 on 8 January 2024 and £250 on 15 January 2024. This meant that the amount outstanding was £454. Mr Osborne said that he agreed that payslips had not been provided and that he intended to provide them.
8. After a short adjournment in which the claimant checked his figures, he agreed that amount outstanding was £454. He had not been aware of the most recent payment made two days ago.

Decision

9. Employment Rights Act 1996

8 Itemised pay statement.

A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

S13 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)...

(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

10. The parties are in agreement that the second respondent has failed to pay wages to the claimant for the week commencing 31 July 2023 in the sum of £454 net. The tribunal finds that the second respondent has failed to pay wages in this sum in breach of s13 Employment Rights Act 1996.
11. The parties are in agreement that pay slips have not been provided for the period 7 July 2023 to 4 August 2023 and in accordance with s12 Employment Rights Act 1996 the tribunal makes a declaration that the second respondent has failed to provide pay slips.
12. The claimant's application for a preparation time order for his attendance at the hearing today is refused. Under Schedule 1, Rule 75(2) Employment Tribunal Regulations 2013 preparation time cannot be claimed for attendance at a final hearing.

Employment Judge Anderson

Date: 17 January 2024

Sent to the parties on: 17/01/2024

For the Tribunal Office