



EMPLOYMENT TRIBUNALS

Claimant: Miss R. Roberts

Respondent: Caretech Community Services Limited

Heard at: London South Employment Tribunal by CVP **On:** 22 March 2024

Before: Employment Judge Chudleigh (sitting alone)

Appearances

For the claimant: did not attend and was not represented

For the respondent: Ms. J. Smeaton, counsel

JUDGMENT

The claimant's claim regarding an unlawful deduction from her wages is not well-founded and is dismissed.

REASONS

1. The claimant is employed by the respondent as a Senior Support Worker. She presented a claim in respect of alleged unlawful deductions from her wages on 1 November 2023. The respondent defended the claim on the basis that the deductions were lawful.

The claimant's non-attendance

2. A notice of hearing on 22 March 2023 was issued on 15 December 2023. That Notice attached an Order requiring the claimant to send the respondent a schedule of loss within 4 weeks. The claimant did not comply with that order at

the time and had not complied with it by the date of the hearing despite chasing by the respondent's solicitor.

3. The order also required both parties to submit to the tribunal electronic copies of all their supporting documents and evidence no later than two working days prior to the hearing. The claimant did not send in any documents.
4. The day before the hearing the Judge had not received any papers from either party so both were sent email requesting copies of various documents. In response the respondent's solicitors forwarded the bundle and various other documents. Nothing was heard from the claimant.
5. On the morning of the hearing another email was sent by the tribunal to the parties raising a question about an issue in the case. No response was received from the claimant.
6. The claimant did not attend the hearing so in the period between 10am and 10.15am the clerk tried to telephone the claimant twice. She did not answer the phone a message was left.
7. The hearing then started at 10 am. The respondent's counsel was present together with the respondent's witness Denise Mountney.
8. Counsel indicated that from the communications she had seen between her instructing solicitor and the claimant she was satisfied that the claimant knew of the date of the hearing. Furthermore, she said (and I accepted) that ACAS had been in touch with the respondent's solicitor on 14 March 2024 having had communication with the claimant. It seemed likely to me that ACAS would have discussed the hearing date with the claimant.
9. In all these circumstances, I was satisfied that the claimant knew the hearing had been scheduled for 22 March 2024 and concluded she had chosen not to attend. I therefore decided to go ahead with the hearing in her absence. She had not attended the hearing despite knowing when it was to be held (not least from the Notice of Hearing) and had not engaged with the claim since its inception e.g. she had breached the orders for the production of a schedule of loss and documents and had not engaged with the respondent's solicitors over hearing preparation.
10. At around 10.35 am the clerk received a telephone call from the claimant who said her email had been hacked and she had not been able to get into them. By that time the hearing had concluded and an oral judgment issued.

Outcome of the hearing

11. The issues to be determined were:

- (1) Whether the respondent was authorised by a statutory provision to make deductions from the claimant's wages in respect of a Direct Earnings

Attachment in favour of the Department for Work and Pensions from 4 April 2023 to the date of presentation of the claim?

- (2) If not, the amount of unlawful deductions made by the respondent? Whilst it was not entirely clear given the claimant had not supplied a Schedule of Loss as ordered, but it appeared that the amount claimed was £240.
 - (3) Whether the respondent made unlawful deduction from the claimant's wages by making more deductions than it should have done in respect of a Deduction from Earnings Order issued by the Child Support Agency for recovery of child maintenance payments?
 - (4) If so, the amount of unlawful deductions made by the respondent? The amount claimed was entirely unclear,
12. The respondent's position was that ss.13(1)(a) and/or 14(3) of the Employment Rights Act 1996 permitted deductions as they were required or authorised to be made by virtue of a statutory provision namely Regulation 20 of the Social Security (Overpayments and Recovery) Regulations 2013 which were made pursuant to the Welfare Reform Act 2012. The Act gives bodies like the Department for Work and Pensions and the Child Support Agency power to ask an employer to make deductions and the Regulations give employers authority to make deductions requested.
 13. The respondent contended that it had been legally required to make deductions from the claimant's pay pursuant to a Deductions of Earnings Order in place in respect of child maintenance payments and a Direct Earnings Attachment in respect of the Department for Work and Pensions and that it had received no order to stop the deductions.
 14. There was a letter in the bundle from the Department for Work and Pensions to the claimant that indicated that deductions had ceased and the money owed had been paid back in full. However, the respondent did not receive an order to stop the deductions until November 2023 when it did so. It contended that the claimant should seek any overpayment from the Department for Work and Pensions.
 15. The burden was on the claimant to show that there had been deductions from her wages and that they were unlawful. It was clear on the evidence I had seen that there had been deductions from the claimant's wages. However, the claimant was not present to establish that those deductions were unlawful and I was not satisfied that they had been.
 16. In the circumstances, the claim was dismissed.

**Employment Judge Chudleigh
22 March 2024**

Sent to the parties on:
27 March 2024

For the Tribunal: