



EMPLOYMENT TRIBUNALS

Claimant: Miss H Orme

Respondent: CGMD Limited t/a Community Care Services

Heard at: Cardiff by video

On: 13th May 2022

Before: Employment Judge Butcher

Representation

Claimant: In person

Respondent: Mr Durbin, director

JUDGMENT

The Respondent made an unauthorised deduction from wages by failing to pay the Claimant the full amount of wages due in relation to her employment.

The Respondent shall pay the Claimant the sum of £175.75 from which the Claimant must pay NI and tax.

REASONS

Background

1. The ET1 was presented on 6th August 2021 in which the Claimant was claiming the Respondent had made an unauthorised deduction from her wages.

2. The Claimant states that she was employed as a care assistant between 12-18 July 2021 for which she was to receive £367.50 to include training and travel costs. This is calculated as follows:

25 hours @ £9.50 = £237.50

5 hours @ £10.50 = £52.50

60 house calls @ £0.50 per house = £30

Training = £47.

Total = £367.50

The Claimant received payment of £191.75. Her claim is therefore for non-payment of wages amounting to £175.75.

3. The Respondent defends the claim. In a response, the Respondent accepts the job title and earnings stated by the Claimant but does not accept that there are any monies outstanding to her. The Respondent agrees that the Claimant received £191.75 but claims to have incurred training costs amounting to £354.38. The balance of £178.63 is claimed by the Respondent for training costs incurred and for costs incurred to cover the Claimant's work after she resigned. The Respondent claims repayment of training costs is a specific contract term to which the Claimant agreed. The Respondent seeks payment of £178.63 from the Claimant.

4. A Case Management Hearing was held on 1st March 2022 when a timetable for the parties to file all documents upon which they intend to rely was given. The Respondent was also referred to paragraph 25.2 of the Presidential Guidance in relation to the submission of the electronic bundle.

The Proceedings

5. I received a bundle of papers and heard evidence under oath from Miss Orme and Mr Durbin.

6. The issues before the Tribunal were:

- (i) What was the contractual agreement between the parties as to entitlement to pay and was there any agreement to vary the contract?
- (ii) Whether the Respondent made an unauthorised deduction from the Claimant's pay and if so, by what amount?
- (iii) Whether the Respondent is entitled to receive payment from the Claimant for training costs and other costs.

The Law

7. An unauthorised deduction of wages is defined at s13(1) Employment Rights Act (ERA) which states that an employer shall not make a deduction from the wages of a worker employed by him unless:

- (a) a 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.

8. Wages are defined in s27 of ERA to include "any sums payable...in connection with their employment".

9. S14 of ERA sets out the deductions an employer can lawfully make from the amount properly payable and which are therefore authorised. It is for the employer to show that one of the exemptions set out in s14 applies. If the Respondent establishes such an exemption applies, the Tribunal does not have

jurisdiction to decide the legality of the deduction or the amount deducted and the Claimant must look to the civil courts for a remedy (Sunderland Polytechnic -v Evans [1993] IRIR 196.

10. S23 ERA gives a worker the right to bring a claim to the Employment Tribunal for an unauthorised deduction of wages.

Findings of fact

11. The Respondent is a company providing care services within the community with 125 employees. The Claimant applied for a position with Community Care Services on 9th May 2021 and following an interview on 11/5/2021, accepted the offer of employment on the same day.

12. On 13/5/21, the Claimant emailed all relevant documents to the Respondent to enable them to apply for a DBS (on her behalf). On 18/5/21, the Claimant received an email on behalf of the Respondent enclosing their policies and procedures and informing her that she had been enrolled on an online training course to be completed as soon as she could. The Claimant completed the online course within a few days. On 20/5/21, the Claimant attended a manual handling course but was unable to complete this due to others failing to attend. The course was subsequently completed on 8/6/21.

13. On 9/7/21, when the Claimant asked Laura Durbin, an employee who dealt with staff induction about the reference to paying back training fees contained in the policies and procedures documents, the Claimant evidence was that she was told that this did not apply to the training she had completed as she had not yet signed her contract. The Respondent disputed that this conversation took place as this was not part of her role. In his evidence, the Respondent described Mrs Durbin's role as arranging training courses so I find that Mrs Durbin would have had knowledge of costs sufficient to have discussed this with the Claimant. In the absence of any evidence from Mrs Durbin, I accept the evidence of the Claimant that she received this confirmation.

14. Following a period of shadowing colleagues between 13-15 July 2021, the Claimant was deemed competent to work without supervision on 16/7/21.

15. It was accepted that the Claimant was required to complete 27 calls in 7 hours on 17/7 21. Whilst I acknowledge that difficulties arising from the COVID pandemic placed significant strain on care services, I accept the evidence of the Claimant that she contacted the Oncall service to request assistance, that she found the last housecall particularly distressing and that this led to her informing the Respondent that she would not be in work the following day and that she would be tendering her resignation with immediate effect. The Claimant's evidence today was that she had been frightened and was unable to return to work her notice.

16. I find no evidence that the Claimant received any formal complaints about her work. This is borne out by the Respondent's subsequent invitation for the Claimant to return to work. I find that the Claimant's shift of 17/7/21 was sufficiently distressing to the Claimant that she was unable to return to work and that she resigned as a result.

17. On 4/8/21, the Respondent emailed the Claimant to inform her that the costs of training and DBS would be deducted from her wages. The Claimant had not agreed to this in advance of undertaking this training

18. Both parties approached ACAS independently to seek a resolution to the issue. The Respondent commenced a HMRC money claim against the Claimant for monies owed.

19. I find that the Claimant was provided with documentation described as their policies and procedures via email on 18 May 2021 but that this was separate from the Contract of Employment, which was not signed until 12 July 2021. In evidence, it was accepted by the Respondent that the Claimant completed her initial training before this date. There was no evidence before the Tribunal that the Claimant was provided with a breakdown of training costs until after the event and I find that there was no consent sought or obtained for the Claimant to repay training costs before the signing of her contract of employment which she had been advised was a necessary part of her employment.

20. In relation to the Respondent seeking costs of an agency worker, the Respondent confirmed that this was the subject of civil proceedings. There was no evidence put before the Tribunal as to the costs incurred by the Respondent and I rely upon the oral evidence given by the Respondent that in the event of sickness or unavailability of an employee, their rota would be shared amongst other employees.

21. I accept that the Claimant had a reasonable expectation that she would receive payment for all work undertaken in relation to her employment and that she was entitled to rely upon assurances that she would not incur the costs of training before contract signing her contract of employment. I do not find that this was an authorised deduction and I therefore find that the Respondent made an unauthorised deduction of wages in the sum of £175.75 from which the Claimant must pay tax and NI.

C Butcher
Employment Judge

Date 17 May 2022

JUDGMENT SENT TO THE PARTIES ON 18 May 2022

FOR THE TRIBUNAL OFFICE Mr N Roche