



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Zewdie

Respondent: Atlantic Corporation (UK) Limited

Heard at: London Central Employment Tribunal

On: 28 January 2025

Before: Employment Judge Keogh

Representation

Claimant: In person (assisted by Amharic interpreter)

Respondent: Did not attend

JUDGMENT

1. The claimant's claim for unlawful deductions from wages succeeds in part.
2. The respondent is ordered to pay the sum of £666.88 gross, subject to statutory deductions, within 14 days of this decision being sent to the parties.
3. The respondent's counterclaim fails and is dismissed.

REASONS

1. The claimant's claim is for unlawful deductions from wages and/or breach of contract in the sum of £741.90, said to comprise of 64 hours x £10.42 per hour of unpaid work in September 2023 and two sums of £35.71 which the claimant says was deducted from her pay in July and August 2023 on the basis that this would be paid to the DWP, but was not paid to the DWP. The total of these sums is in fact £738.30. The claim was presented on 10 January 2024. ACAS early conciliation took place from 12 December 2023 to 27 December 2023.
2. The respondent counterclaims in respect of losses said to have been incurred as a result of the claimant leaving without giving proper notice and the claimant taking leave without notice.

The Hearing

3. The final hearing in this matter was due to take place in October 2024 but was postponed as neither party had provided any documentation to the Tribunal in support of their claims, and an interpreter had not been provided to assist the claimant. Case management orders were made requiring the respondent to provide further information about the counterclaim, for the claimant to then provide a response to the counterclaim, and a bundle and witness statements to be prepared for this hearing. The claimant duly sent her documents to the respondent as ordered, however the respondent failed to comply with any of the directions and did not attend the hearing.

4. The Tribunal clerk was able to contact the respondent prior to the hearing commencing. Mr Otter (who had appeared on the last occasion) indicated that he could not attend as there had been burglaries in the shop. He was asked to send an email explaining his absence. He sent an email at 10.23am as follows:

“Further to burglaries at our shops and having to deal with various issues such as damage and security I will not be able to attend the tribunal hearing today. I have also had an ongoing health issue with a family member. I would be grateful if the hearing could be rescheduled.

I am hoping that the claimant will be informing the tribunal of her not showing up to work when she was on holiday in Los Angeles. Shifts were not covered and customers could not obtain change for machines thus financial losses were incurred.

Ms. Zewdie also intentionally gave me the wrong information about owing tax to the Department for Works And Pensions.

Apologies for the late correspondence.”

5. The email was forwarded for the Judge’s attention after the hearing had commenced and was only considered after the claimant had given her evidence. It was decided that the hearing should not be postponed. This matter had already been postponed once due to lack of preparation of both parties and clear directions had been given with an agreed date for the hearing. The respondent had failed to contact the Tribunal in advance of the hearing to explain any difficulties or to apply for a postponement in good time. There was also no explanation whatsoever for the respondent’s disregard of the directions set down at the last hearing, which Mr Otter attended. The claimant would have been prejudiced by the further delay, and it would also have required a further day of Tribunal resources, including an interpreter. In the circumstances it was not in the interests of justice for a postponement to be granted.

6. The claimant provided a witness statement which she confirmed to be true. I heard oral evidence from the claimant about her claim with the assistance of an Amharic interpreter, and read a number of documents provided by her. Having answered the Tribunal's questions about the claim she had nothing further to add by way of submissions.
7. At the end of the hearing the claimant requested written reasons for the decision.

The Law and the Issues

8. Section 13 Employment Rights Act 1996 provides:
 - (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.*
 - ...
 - (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....*
9. Section 14(3) provides:
 - (3) *Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.*
10. Section 27 provides:
 - (1) *A worker may present a complaint to an employment tribunal —*
 - (a) *that his employer has made a deduction from his wages in contravention of section 13 ...*
 - (2) *Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

...

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, ..., the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

11. A Direct Earnings Attachment (DEA) Notice may be sent to an employer by the Department of Work and Pensions to require the employer to deduct money from the employee's net pay and send it to the DWP. The amount of deductions is on a percentage basis which depends on the level of the employee's weekly net earnings.
12. The issues to be determined are therefore as follows:
 - (i) Did the respondent fail to pay the claimant for hours worked in September 2023, and if so in what amount?
 - (ii) Was the complaint for deductions in July and August 2023 brought in time?
 - (iii) If so, was the respondent entitled to deduct sums in accordance with section 14(3)?
 - (iv) In respect of the counterclaim, what is the respondent claiming and is there any evidence in support of such a claim?

Findings of fact and conclusions

13. The claimant explained that she worked 8 hours per day, 2 days per week. She worked 4 weeks in September 2023, which is 64 hours. She was paid minimum wage and had no written contract of employment. At £10.42 per hour, this amounts to £666.88 gross. The respondent has provided no evidence to suggest that the claimant is wrong about this and I accept her evidence. I therefore find that the respondent has unlawfully deducted the sum of £666.88 gross from the claimant's salary.

14. In relation to the sums deducted for DWP payments, the claimant provided a copy of the DEA Notice sent to the respondent, requiring the respondent to deduct £1,391.05 from her earnings. The sums actually deducted amounted to £35.71 per month for two months. Based on a monthly salary of approximately £666.88 this was around 5% of the claimant's salary.
15. On the face of it, the complaint in respect of the two deductions taken to be paid to the DWP has been brought out of time. There is a series of deductions until August 2023. This is not the same type of deduction as the deduction made for salary. If the claimant was paid at the latest 31 August 2023, she should have contacted ACAS by 30 November 2023. The claimant was asked why she did not contact ACAS until 12 December 2023. She explained that she had eye surgery around this time. She had also spent some time texting the respondent about payment and had been given false hope. She confirmed that she did have access to the internet and knew her rights.
16. I find that given the claimant knew her rights and was able at least to communicate with the respondent during this period, including raising a grievance on 13 November 2023 which she provided a copy of, it was reasonably practicable for her to bring her complaints in respect of the July and August 2023 deductions in time. The Tribunal therefore does not have jurisdiction to hear this complaint. The same time limits apply in respect of a claim for breach of contract.
17. If I am wrong about that, then in any event the respondent was required to deduct sums from the claimant's net pay under the DEA notice. The amounts deducted were around 5% of the claimant's salary, which is the minimum level of deduction. In the circumstances the complaints are in any event excluded under section 14(3) and the Tribunal does not have jurisdiction to hear them for that reason also. The Tribunal is not entitled to enquire further as to why sums were not paid on to the DWP, if that is correct.
18. The claim would also not succeed as a breach of contract claim because under statute the respondent was required to make the deductions.
19. The counterclaim must fail. The respondent is in breach of the Tribunal's order requiring an explanation of the counterclaim and in particular what terms are said to have been breached and what sums are claimed. In the circumstances the claimant was unable to enter a response to the counterclaim. The respondent has failed to provide any evidence whatsoever in support and has not attended today to either explain the counterclaim or to provide evidence or submissions in support of it. I also accept the claimant's sworn evidence as to notice given by her to attend eye surgery in October 2023, and as to periods of absence which were covered by colleagues, save for one day when

a flight from abroad was cancelled, during which time she says the business (which was a laundromat) would have operated automatically.

20. In conclusion, the claim succeeds in part and the respondent will be ordered to pay the sum of £666.88 subject to statutory deductions. The counterclaim fails.

Employment Judge Keogh

Date 28 January 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 February 2025

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FOR THE TRIBUNAL OFFICE