



EMPLOYMENT TRIBUNALS

Claimant: Mr A Anderson

Respondent: Elite Security Personnel Limited

Heard at: Nottingham **On:** Friday 3 August 2018

Before: Employment Judge Brewer (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr R Kalwa, Representative

JUDGMENT

The Claimant has suffered unlawful deductions in the sum of £62.50 (gross).

REASONS

Introduction

1. This case was listed for a one hour hearing before me although in the event the case took rather longer. The Claimant appeared in person and was assisted by Ms R Lowe. The Respondent was in effect represented by Mr R Kalwa and Mr S Butler. There were a number of documents although no paginated bundle. There were no witness statements. However on the face of it the issues were not complex and I decided that the case could be effectively determined on the information we had. I heard evidence from the Claimant and also from Mr Butler on behalf of the Respondent. I heard argument from both parties and I am very grateful to them for the way that they handled the hearing and the assistance they gave to me and indeed to each other.

Issues

2. The issue in this case is essentially straightforward. Did the Claimant suffer unlawful deductions during the period of his employment. Essentially he argues that he worked hours for which he was not paid.

Law

3. The law is set out in Section 13 of the Employment Rights Act 1996. Essentially an employer shall not make a deduction from wages of a worker employed by him unless that deduction is required to be made or is authorised or in the alternative that the worker has given his consent. Given the simplicity of the issues in this case I do not propose to set out any more detailed law.

Facts

4. The Respondent runs a business involving security at various venues. Mr Anderson was one of the personnel assigned to work at various locations as a member of door security.

5. The Claimant is required to complete time sheets for the hours worked and he is paid against those time sheets.

6. I found the Claimant to be a credible witness. I also found Mr Butler on behalf of the Respondent to be a credible witness. Mr Butler says that the Respondent pays its staff on a 4 weekly basis. However the payment in respect of the prior 4 week working period is not paid immediately after the end of the 4 week period. This, says the Respondent, accounts for the miscalculation which the Claimant has done.

7. The Claimant says that if he takes a particular payslip and looks at the time sheets for the immediately preceding 4 week period he has on occasion worked more hours than he has been paid for according to the payslip. The Respondent for its part says that if you look at the correct time sheets referable to each payslip, whilst there are some discrepancies, in that in some cases there is an overpayment and in some cases an underpayment, looked at as a whole the pay is correct.

Discussion

8. After a short while I asked the parties to see whether they could in fact reach agreement given what the Respondent has said about the method of pay, over whether there was in fact underpayment in this case. We adjourned for 30 minutes or so. At the end of that period although there was much discussion, the parties could not reach agreement.

9. We resolved the matter by essentially taking all of the relevant payslips, that is all of the payslips for the period in which the Claimant says he was underpaid and considering those against all of the relevant time sheets, that is the time sheets against which he was paid. According to that calculation in the relevant period broadly from 14 July to the date he left in October 2017, the Claimant worked 348 hours. Since he was paid £10.00 an hour (gross) that means he should have been paid £3,480.00 over the period. Calculating the pay from the payslips, he in fact was paid £3,417.50. That is a shortfall of £62.50.

10. There was some reference to the Claimant having worked at a venue for which there were no time sheets available at the hearing but Mr Butler said, and I accept his evidence, that as far as he is aware having investigated the matter, the Claimant was paid for those hours. In any event the Claimant had no evidence that he was not paid for those hours.

11. The Claimant raised another matter with me which although not in the claim form itself is set out in a letter which accompanies at various documents and sent to the Tribunal. That is that for the whole of his period of employment the Respondent had deducted £16.00 per month for "insurance". The Claimant says he never agreed to that. Notwithstanding that that claim was not set out in the claim form, I nevertheless find that by his actions he did in fact consent to those deductions. He has known about the deductions since they appear on every payslip, and even though he says he raised the matter, he never suggested he was working under protest and he has not sought to bring a specific claim for recovery of those sums. Even if he was to claim breach of contract I would find that by his conduct he affirmed any breach and that therefore the £16.00 per month is irrecoverable.

12. I therefore give judgment in favour of the Claimant in the sum of £62.50.

Employment Judge Brewer

Date 11 September 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE