



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE (sitting alone)

BETWEEN:

Claimant

MR E ROTH

AND

Respondent

MEARS GROUP LEGAL DEPARTMENT

ON: 17 January 2020

APPEARANCES:

For the Claimant: Did not attend and was not represented –
No written representations received

For the Respondent: Mrs J Fry, Solicitor

JUDGMENT

The Judgment of the Employment Tribunal is that:-

The complaints of unlawful deduction of wages; and failure to pay holiday pay, also by way of unlawful deductions, are not well founded and are therefore dismissed.

REASONS

1. Written reasons are provided as the Claimant did not attend the hearing. They are set out only to the extent that the Tribunal considers it necessary to do so in order for the parties to understand the Judgment. They are further, set out only to the extent that it is proportionate to do so.
2. All facts were found on the balance of probabilities.
3. By a claim form that was presented on 23 July 2019, Mr Roth complained that the Respondent had failed to pay him in respect of annual leave that he was entitled to (20 days). He also complained that the Respondent had made an unlawful deduction from his wages in respect of a deposit in relation to his van.
4. It was not in dispute that he had been employed from 3 April 2018 to 22 March 2019 by the Respondent as a plasterer. He gave his salary as £680.00 per week gross.
5. The response which was dated 6 September 2019 disputed the Claimant's entitlement to the sums claimed. In relation to the deposit, the Respondent contended that it had never taken a deposit from the Claimant, and relied on the contractual and policy documents in relation to the Claimant's use of his van which simply gave the employer the right, in certain defined circumstances, to make a deduction of up to £250.00 from the Claimant's wages.
6. There was no evidence before the Tribunal, the burden lying on the Claimant to establish this, that such a deduction had been made.
7. In those circumstances, the Tribunal found that this claim was not well founded.
8. The Respondent also disputed the Claimant's entitlement in respect of the holiday pay claim. The Respondent indicated that there had been a request for a month's leave but this was declined. It relied on the holiday year running from January of each year and the annual leave entitlement of the Claimant being twenty days.
9. The Claimant had started working in 2018. His case appeared to have been that he was entitled to carry forward holiday to 2019. The Respondent indicated that there was no right to do this and relied on the relevant clause in the contract. In addition, the Respondent indicated that it had paid to the Claimant the entitlement that he had accrued in 2019 when his employment ended by way of a payment made to him on 5 April 2019 of £474.60.

10. In relation to a claim of unlawful deduction of wages, the burden is on the Claimant to establish that the deduction has been made. He did not identify in his claim form how he argued that he was entitled to twenty days holiday especially given the information about the duration of the holiday year.
11. In all the circumstances, I was not satisfied that the Claimant had established his entitlement to the holiday pay and therefore that claim was not well founded and was also dismissed.

Employment Judge Hyde
Dated: 12 February 2020

Judgment sent to the parties and entered in the Register on:
8 April 2020

Mr A Byndloss-De'Allie
For the Tribunal Office

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