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EMPLOYMENT TRIBUNALS

Claimant: Ms M Siddique

Respondents: (1) Paul Fisher
(2) Aftab Khan
(3) Lawrence Madebuko

Heard at: East London Hearing Centre

On: 7 September 2017

Before: Employment Judge Brown

Representation

Claimant: In person

Respondent: Ms BK Janjua

JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent made unlawful deductions from the Claimant's wages in the sum of £852.84 net in January 2017 and £432.90 net in February 2017.
2. The Respondent shall pay the sums of £852.84 net and £432.90 net to the Claimant in compensation for unlawful deductions of wages.

REASONS

1 The Claimant brought complaints of unlawful deduction from wages against the Respondent, her former employer. The parties agreed that the amount of the alleged deductions, which the Respondent would have to pay to the Claimant, if she succeeded in her claims, were £852.34 net for January 2017 and £432.90 net for February 2017.

2 The proceedings last came before the Employment Tribunal on 28 July 2017. On that date, Employment Judge Reid heard the case. In the Case Management Discussion

Summary, Employment Judge Reid said that the Respondent relied on two documents as authorising non payment of the Claimant's January and February 2017 wages. First, a Deductions from Pay document signed by the Claimant on 8 February 2017 and, second, a To Do List, signed by the Claimant on 8 February 2017.

3 The relevant law is set out in *s13 Employment Rights Act 1996*. By *s13 ERA*:

“(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.”

4 I was not shown any contract of employment, or any provision of one, which would have allowed the making of deductions from the Claimant's wages.

5 I was shown two documents, both which appeared to be signed on 8 February 2017. It was quite plain that the Claimant had not “previously” signified, in writing, her agreement or consent to the making of any deductions before 8 February 2017. Accordingly the Respondent could not make deduction from her January 2017 wages relying on the documents it showed me. The Respondent's representative, Ms Janjua, appeared to agree this. Accordingly, it was clear that the Respondent should pay the Claimant the £852.84 net that she was owed by way of wages for January 2017.

6 With regard to February, the Claimant signed an agreement which entitled the Respondent to make deductions from her pay in certain circumstances, on 8 February 2017. It included the following provisions, which Ms Janjua relied on, on behalf of the Respondent:

- 6.1 If you terminate your employment without giving or working the required period of notice as indicated in your individual statement of main terms of employment, you will have an amount equal to any additional costs of covering your duties during the notice period not worked deducted from any termination pay due to you. You will also forfeit any contractual accrued holiday pay due to you over and above your statutory holiday pay, if you fail to give or work the required period of notice.
- 6.2 On the termination of your employment you must return all property which is in your possession or for which you have responsibility. Failure to return such items will result in the cost of the items being deducted from any monies outstanding to you.
- 6.3 Any damage to stock or property (including non statutory safety equipment) that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of care or replacement. Any loss to us that is as a result of your failure to observe rules, procedures

or instruction, or is as a result of your negligent behaviour or your unsatisfactory standards of work will render you liable to reimburse us to the full or part of cost of the loss. In the event of failure to pay, such costs will be deducted from your pay.

7 The Respondent said that the Claimant had failed to hand over a locker key when she left the Respondent's employment and that she also failed to complete a number of reports on children. The Respondent produced a written statement of a deputy manager, Jessica Kandola, who said that the Claimant had not properly completed written observations on children under her care, had not tracked their progress and had not filled in parts of relevant documents.

8 The Respondent did not disclose the reports on the relevant children to show to the Tribunal what was, or was not, done by the Claimant.

9 In evidence, the Claimant was adamant, both, that she had returned the key and that she had completed the work. It appeared, from the evidence I heard, that the Claimant certainly did hand over reports on children to the Respondent, although it was not clear what those documents contained. Given that the Respondent has the relevant documents, it seemed to me that, if the Respondent wanted to prove that the Claimant had not done the work in completing observations, it could produce the documents to show that. The Respondent did not produce the relevant documents.

10 In a witness statement given to the Tribunal, the Respondent it had set out the costs it had deducted against the Claimant's wages. However, when I asked Ms Janjua whether the Respondent had actually paid, or incurred any costs, in completing the allegedly unsatisfactory documents, she was not able to show me that anybody had been paid any additional overtime pay, resulting in those costs. Then she said, more vaguely, that the Respondent's OFSTED Report was damaged by the Claimant's actions and that this would have resulted in losses to the Respondent.

11 It seemed to me that there was no satisfactory evidence that the Claimant failed to complete and hand over relevant work; and that there was no satisfactory evidence that the Respondent did incur any costs as a result, even if the Claimant did not hand over the work required of her. As a result, I did not consider that the Respondent was entitled to deduct £192 plus £256, which, it said, represented the costs of the Claimant failing to complete relevant reports.

12 Furthermore, the Claimant told me that she had handed over her locker key. The Respondent accepted that the Claimant handed over at least some keys. The Claimant handed the keys to the Deputy Manager, who has not attended to give evidence. I preferred the evidence of the Claimant, who had attended to give evidence, rather than the written evidence of a witness who did not attend.

13 Accordingly, I found that the Claimant did hand over the keys and did complete the work. The Respondent, in any event, had not suffered any loss or costs as a result of any work that the Claimant did or did not do.

14 As a result, I found that the Respondent was not entitled to make deductions from

the Claimant's wages and that she was entitled to be paid the full amount of her £852.84 net claim for January and £432.90 net claim for February.

Employment Judge Brown

11 September 2017