



Case Number: 2302830.2016

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss J Shergold

and

Respondent

Frewen Educational Trust Ltd

Held at Ashford on 14 February 2017

Representation

Claimant:

In Person

Respondent:

Mr G S Gore, Company
Secretary

Employment Judge Kurrein

JUDGMENT

- 1 The proper identity of the respondent is the Frewen Educational Trust Ltd and the title to these proceedings is amended accordingly.
- 2 The claimant's claim is not well-founded and is dismissed.

REASONS

- 1 On 24 November 2016, having completed early conciliation, the claimant presented a claim to the tribunal alleging breach of contract and unauthorised deductions from wages. By a response presented on 6 January 2017 the respondent denied those claims.
- 2 The claim has come before me for the full merits hearing. At the start of the hearing I introduced myself and explained the overriding objective and the procedure that would be followed.
- 3 I heard the evidence of the claimant and the evidence of Mr Gore, the respondent's company secretary, on behalf the respondent. I was not referred to any documents other than those on the file, which I considered. I heard the submissions made on behalf of the parties and make the following findings of fact
- 4 The claimant was engaged by the respondent as its data and examinations manager at a salary of £19,333 pa.
- 5 The following were the terms of her contract.

- 5.1 The contract, although expressed to be "term time only", was in fact for 38 weeks work per year consisting of 34 weeks of term time, four weeks work during school holidays plus four weeks paid holiday.
- 5.2 Salary was paid to her in twelve equal monthly instalments of £1611.08.
- 5.3 The claimant was to start work on 1 September 2016, two days before the term started, as part of the working holiday that her contract provided for.
- 6 The respondent was not happy with the manner in which the claimant performed her duties and on 30 September 2016, Mr Gore told her that it was the respondent's intention to terminate her employment. Although she was only entitled, at best, to one week's notice he indicated to her that it was his intention to give her four weeks' notice to expire on 28 October 2016.
- 7 It was not in dispute that the claimant was paid £1611.08 gross for her work in September, and £1795.21 gross at the end of her contract, being a total of £3406.29.
- 8 The claimant has sought to argue before me: –
- 8.1 She was only paid for three weeks of the last four weeks she worked;
- 8.2 She had worked 7 weeks and 2 days (7.4 weeks) in total;
- 8.3 She was not paid for accrued but untaken holiday at the end of her employment
- and was owed in excess of £1,000 as a consequence.
- 9 It was the respondent's case that it had in fact paid her more than she was entitled to at the termination of her employment but, having sought professional advice, it believed she may be entitled to £381.98 gross as holiday pay.
- 10 I have reached the following conclusions: –
- 10.1 The claimant was paid the full months wages to which she was entitled for September 2016.
- 10.2 The claimant was paid £184.13 more than she was entitled to as gross pay at the end of October 2016.
- 10.3 The claimant had accrued 4.3 days of holiday pay in the course of her employment, including the period of notice.
- 10.4 The last week of October was a school holiday during which the claimant was not required to work.
- 10.5 That week was a period of holiday for which the claimant was paid in full, in excess of the holiday to which she was entitled by way of accrual at that time.
- 10.6 The provisions of Sections 88 and 89 Employment Rights Act 1996 have no application to this case because S.87(4) applies as the Claimant was given far more notice than that she was entitled to by statute.

- 10.7 Even if that were not the case the Claimant has been paid for the period of holiday in October 2016 in accordance with Section 88(1)(d).
- 11 I conclude with a final calculation. Assuming in the Claimant's favour that she should have been paid at termination on the basis of her salary being calculated *pro rata* for 42 weeks, that would equal £460.31 per week. Multiplying that figure by the weeks the Claimant worked (7.4) gives a figure of precisely £3,406.29, which is what she was in fact paid.
- 12 In light of my above findings the Claimant's claim is ill-conceived. She is owed nothing by the Respondent and her claim is dismissed.

Employment Judge Kurrein

14 February 2017