



EMPLOYMENT TRIBUNALS

Claimant: Miss L Brown

Respondent: Mr M Pirmahomed t/a M&A Stationers

Heard at: Leicester **On:** Friday 24 February 2017

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: Ms E Larder, Lay Representative

Respondent: Mr M Pirmahomed, Director

JUDGMENT

1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the net sum of £3,806.55.
2. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant £748.80.
3. The respondent has failed to provide to the claimant a statement of terms and conditions of employment and is ordered to pay to the claimant the sum of £576.
4. The respondent is ordered to pay costs of the claimant under Rule 75(1) (b) in the sum of £480 in respect of the issue and hearing fees paid by the claimant in the proceedings.

REASONS

Background and Issues

1. The claimant presented her claim to the Employment Tribunal on 14 September 2016. Very little detail was provided in that Claim Form. It was clear though that the claimant had ticked the box for sex discrimination and that the claim was mainly about the non payment of wages i.e. that the respondent had not paid the claimant the National Minimum Wage now known as the "Living Wage".

2. The respondent did not present a response and even today when he appeared before me he had still not filed any ET3. Under Rule 21 of the Employment Tribunal Rules of Procedure 2013,

“The respondent shall be entitled to notice of any hearings and decisions of the Tribunal, but unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the judge.”

Notwithstanding the failure to provide an ET3, I decided that I would hear from the respondent and allow him to give his evidence.

3. I allowed the claimant to amend her claim to add a claim for holiday pay. The claimant also complained that she had not received a written statement of terms and conditions of employment.

4. It was not in dispute between the parties that the claimant had been employed on 14 March 2016, and that her employment had ended when she was sent her P45 on 7 September 2016. It was the respondent's contention that the claimant had been engaged under an apprenticeship and that she was only entitled to £3.30 per hour. The claimant who is 25 year's old said that she had not been engaged as an apprentice and she was therefore entitled to £7.20 per hour. She also was off sick for the last 9 weeks of her employment from 1 July 2016 and she was not paid statutory sick pay. She also claimed a sum in respect of that.

Evidence

5. I heard evidence from the claimant and respondent. Where there was a conflict in the evidence I preferred the evidence of the claimant. Her evidence was consistent with the documents that I was provided. On the other hand, the respondent's evidence was not reliable. Whilst he said that the claimant had been employed as an apprentice he had no evidence to support such a contention. He relied on a letter that he had sent to me which set out his case. He accepted in that letter that he had no evidence to support his contention that she was an apprentice. I was provided with a bundle of documents by the claimant and where I refer to documents it is from that bundle.

The Facts

6. In February 2016, the claimant responded to an e mail from a job recruitment agency and provided them with a copy of her CV. Contact was made with the respondents and the claimant attended an interview at their premises at 45 to 49 Bell Street, Wigston, Leicester, LE18 1AD.

7. The respondent offered the claimant a position with a starting date of 14 March 2016. It was stated that she would be an apprentice with a salary of £3.30 per hour.

8. On 14 March, the claimant commenced her employment. She worked as a shop assistant. Her normal working hours were 9.30am until 5.30pm working 6 days per week. The claimant was not provided with any documents relating to any apprenticeship or indeed terms and conditions with her employment. She was not provided with any training at all. She did not attend college. The respondent told me that the claimant was disabled and she was not worth paying more than £3.30 per hour.

9. For the first 2 weeks of her employment she was paid cash. Thereafter, she was placed on the payroll, and document 2 in the bundle comprised of the payslips that she received. These show that she was paid at the rate of £3.30 per hour.

10. I am satisfied having heard evidence from the claimant that she actually worked extra hours and immediately after the payslips in the document is a schedule of hours that she actually worked.

11. I am satisfied that she worked the following hours each month;

March- 116 hours

April- 187 hours

May -215 hours

June- 159 hours

12. The total hours that she worked was 634, although she was only paid for 471 hours at £3.30 and paid a gross sum of £1,554.30.

13. I am satisfied that she is therefore owed the sum of £3,010.50 in unpaid wages for that period.

14. On 1 July she went off sick suffering with abdominal pain and I have seen the sick notes that she presented to the respondent in document number 3. She presented these sick notes until her employment was brought to an end when she received her P45 dated 7 September 2016 i.e. document 8. Although the P45 states that her employment ended on 30 June 2016, it clearly did not. The claimant never received any letter or other communication terminating her employment until she received the P45 and so her employment did not end to that date.

15. During her employment the claimant did not take any holiday and at the conclusion of her employment she did not receive pay in lieu of that untaken holiday.

MY CONCLUSIONS

Unpaid Wages

16. As can be seen from the above, I have determined that the claimant was not paid the national minimum wage. There is no evidence to support the respondent's contention that she was an apprentice. She was not. It is the respondent's case that the claimant was disabled and was not worth anything more than £3.30 per hour. I have to say that I find that position offensive and it certainly does not comply with the legal requirement to pay all employees the national minimum wage. As I have determined the claimant actually worked a total of 634 hours and should have been paid at the rate of £7.20 per hour. The total amount of her pay should therefore have amounted to £4,564.80. As she was only paid for 471 hours at £3.30 per hour, namely the sum of £1,554.30, there has been an unauthorised deduction of her wages in the sum of £3,010.50.

17. The claimant was also due to be paid statutory sick pay. This was for the 9 week period between 1 July and 7 September. She should have been paid the sum of £35.38 for the first week, £88.45 for the following 8 weeks and £53.07 for the last week. The total amount of statutory sick pay not paid therefore totals £796.05. This is also an unauthorised deduction of the claimant's wages.

18. In respect of holiday pay the claimant had been employed for a period of 25 weeks and therefore accrued 13 days' holiday during that period. She should have been paid at the rate of £57.60 per day and therefore is entitled to the sum of £748.80.

19. The respondent failed to provide the claimant a statement of terms and conditions of her employment. Bearing in mind the length of her employment and the size of the employer, I am satisfied that a 2 week Order is appropriate and I therefore order the respondent to pay the sum of £576 in respect of this.

20. The claimant has paid tribunal fees of £480 and I order the respondent to reimburse the claimant in respect of those fees.

21. The claimant's representative was a lay representative and made an application for £575 in respect of administration. I explained to the representative that costs are not normally awarded in employment tribunals cases and noted that there have been no particularisation of those costs. In the circumstances, I decline to make an Order in respect of her application for costs.

Employment Judge Hutchinson

Date 6 April 2017

JUDGMENT SENT TO THE PARTIES ON

11 April 2017

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FOR THE TRIBUNAL OFFICE