



EMPLOYMENT TRIBUNALS

Claimant: Miss S Willerton
Respondent: Cfans United Ltd
Heard at: Lincoln **On:** 5th March 2018
Before: Employment Judge Heap (sitting alone)

Representation

Claimant: In Person
Respondent: No attendance or representations

JUDGMENT having been sent to the parties on 12th March 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("The Regulations"), the following reasons are provided:

REASONS

Background and the issues

1. This claim was the subject of an earlier Default Judgment by Employment Judge Camp which Ordered the Respondent to pay to the Claimant a sum which had been unlawfully deducted from her wages. The same Default Judgment also provided that the Claimant succeeded in a complaint in respect of a claim for profit share but there was insufficient information within the Claim Form to allow for any remedy for that complained to be dealt with.
2. The purpose of this hearing, therefore, was to deal with the remedy which should be Ordered in respect of the profit share claim.

The hearing

3. I have heard from the Claimant today. The Respondent has not attended the hearing, and, in all events, would have been only entitled to play a limited, if any, part in these proceedings given that they had not entered a valid ET3 Response in the manner or the time prescribed under the Regulations to do so.

The profit share claim and terms of employment

4. The basis of the profit share claim arose from the initial terms of engagement made between the Claimant and the Respondent. This was set out in a letter dated 25th July 2016 confirming a basic salary of £20,000.00 per annum and, at paragraph two, a net profit share of 10% payable upon each year end accounts delivery. Those terms of engagement were said to be in the name of Diamond Kutz Hairdressing on their letterhead paper but it was said that the offer of employment on those terms was made on behalf of Cfans United Ltd. It is not therefore entirely clear whether the profit share related to profits of Cfans United or to the profits of Diamond Kutz Hairdressing (i.e. to the salon only or to the wider corporate entity).

5. The Claimant accepted the proposal on 15th August 2016 setting out in her communications to this effect as follows:

“I am writing to formally accept your proposal an offer regarding the management and development of the above salon”.

6. The reference to the salon was in respect of Diamond Kutz Hairdressing but there was not at any point any further clarification forthcoming on the profit share point.

7. The Claimant commenced employment on 5th September 2016 and continued in post until 4th August 2017 when her employment ended by reason of her resignation. The Claimant did not receive any sums in respect of profit shares during the course of her employment.

8. The Claimant received a further letter from the Respondent after the termination of her employment referring to the terms of her contract. This said as follows:

“..a written contract establishing your terms and conditions were sent to you and accepted these via email” (sic).

9. I am told by the Claimant, and I have no reason to doubt that, that the reference to the written contract sent via email was the offer of 25th July 2016, which is the only written documentation purporting to be a contract of employment or similar. That is woefully insufficient for the purposes of Section 1 Employment Rights Act 1996 as it does not set out all of the elements required by Section 1(3) and (4) of that Act.

The Law

10. Section 1 Employment Rights Act 1996 provides for the right to be provided with a statement of employment particulars and provides as follows:

Statement of initial employment particulars.

(1)Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

- (2) *The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.*
- (3) *The statement shall contain particulars of—*
- (a) *the names of the employer and employee,*
 - (b) *the date when the employment began, and*
 - (c) *the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).*
- (4) *The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment containing them) is given, of—*
- (a) *the scale or rate of remuneration or the method of calculating remuneration,*
 - (b) *the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),*
 - (c) *any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),*
 - (d) *any terms and conditions relating to any of the following—*
 - (i) *entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),*
 - (ii) *incapacity for work due to sickness or injury, including any provision for sick pay, and*
 - (iii) *pensions and pension schemes,*
 - (e) *the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,*
 - (f) *the title of the job which the employee is employed to do or a brief description of the work for which he is employed,*
 - (g) *where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,*
 - (h) *either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,*

- (j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and*
 - (k) where the employee is required to work outside the United Kingdom for a period of more than one month—*
 - (i) the period for which he is to work outside the United Kingdom,*
 - (ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom,*
 - (iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and*
 - (iv) any terms and conditions relating to his return to the United Kingdom.*
 - (5) Subsection (4)(d)(iii) does not apply to an employee of a body or authority if—*
 - (a) the employee's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act, and*
 - (b) any such provision requires the body or authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.*
11. Section 38 Employment Act 2002 relates to a failure to give statement of employment particulars under Section 1 Employment Rights Act 1996 where a Claimant has succeeded in a claim before the Tribunal. The relevant part of that section provides as follows.
- (1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 5¹.*
 - (2) If in the case of proceedings to which this section applies—*
 - (a) the employment tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and*
 - (b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18) (duty to give a written statement of initial employment particulars or of particulars of change [or under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday)],*

¹ This includes a claim of unauthorised deductions from wages contrary to Section 13 Employment Rights Act 1996.

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 [or under section 41B or 41C of that Act],

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6) The amount of a week's pay of an employee shall—

(a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and

(b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

Conclusions

12. I deal firstly with the issue of any monies to be Ordered to be paid in respect of further unauthorised deductions from wages and/or breach of contract in regards to the profit share matter.
13. Ultimately, I cannot make any Order for monies to be paid in respect of the matter of the profit share as I have no documentation or any other evidence before me to show that there was in fact any profit generated either in respect of Diamond Kutz Hairdressing or in relation to Cfans United Ltd. Indeed, I understand from the Claimant that the latter had posted losses to Companies House of circa £37,000.00 in this particular period. As such, if there was no profit generated, then no share of the net profits was due under the terms of the letter of engagement of 25th July 2016.

14. However, as I have already set out above, I am satisfied that when these proceedings begun the Respondent was in breach of the duty to provide a statement of initial employment particulars under Section 1 Employment Rights Act 1996. I have accepted that the only document purporting to be such particulars was the letter of 25th July 2016 and that did not comply with what was required by Section 1(3) & (4) Employment Rights Act 1996.
15. Given that Employment Judge Camp made an award to the Claimant under the terms of the Default Judgment in respect of her claim of unauthorised deductions from wages, that means that I must under Section 38(2)(b) make an award of at least two weeks pay to the Claimant to take account of that failure. That is unless there are exceptional circumstances which would render that inequitable. I have nothing before me to suggest that there were such exceptional circumstances.
16. The minimum amount that I must Order to be paid is two weeks pay but, I may increase Employment Judge Camp's award by a higher amount of four weeks pay if I consider it just and equitable in the circumstances to do so. The Claimant has made representations that I should award the higher amount.
17. Having considered that position carefully, I have decided that I shall do so. In taking that decision I have taken into account the fact that the Claimant was employed between 5th September 2016 and 4th August 2017. It was therefore a relatively lengthy period of employment of just shy of one year during which time the Respondent had neglected to comply with the provisions of Section 1(3) and (4) Employment Rights Act 1996. It is clear that the only communication in that regard was the woefully inadequate offer letter of 25th July 2016. This was therefore a significant breach over a protracted period and I consider accordingly it is just and equitable having regard to all the circumstances to award the higher amount of four weeks pay.
18. Taking into account the provisions of Section 227 Employment Rights Act 1996 the sum of four weeks pay equates to £1,956.00 and the Respondent is Ordered to pay that sum to the Claimant.

Employment Judge Heap

Date: 25th May 2018
REASONS SENT TO THE PARTIES ON

31 May 2018

FOR THE TRIBUNAL OFFICE