



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Miss K Needs

AND

**Respondent**

Collett Leisure Limited  
(In Creditors' Voluntary Liquidation)

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter

ON

10 July 2019

EMPLOYMENT JUDGE N J Roper

### Representation:

For the Claimant: Did not attend

For the Respondent: Mr Anthony Collett

## JUDGMENT

The judgment of the tribunal is that the claimant's claims for unlawful deduction from wages, for breach of contract and for accrued holiday pay are all dismissed.

## REASONS

1. In this case the claimant Miss Krystina-Marie Needs brings monetary claims for breach of contract in respect of her notice pay, for unlawful deduction from wages, and for accrued but unpaid holiday pay against her ex-employer Collett Leisure Limited, which company has since entered Creditors' Voluntary Liquidation on 17 May 2019.
2. The claimant did not attend today's hearing. I have heard from Mr Anthony Collett on behalf of the respondent. Mr Collett's father is the sole shareholder of the respondent company, and Mr Anthony Collett has attended with the knowledge and approval of his father and the Liquidator. I therefore considered that he had a legitimate interest in these proceedings, and I allowed him to participate under Rule 35.
3. I have heard Mr Anthony Collett give his evidence which I found to be credible. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
4. The claimant was employed as a supervisor at the respondent's nursery from 11 September 2017 until her dismissal for gross misconduct on 4 December 2018. The claimant was issued with and accepted a contract of employment which

- provides, in a paragraph entitled “Deductions” that: “The Company reserves the right to deduct any outstanding monies you owe to the Company from your pay on termination of employment from your final pay. This includes any previous error or overpayment, holiday or time off in lieu taken but not yet accrued, the costs of damages or losses attributable to your negligence or dishonesty...”
5. The claimant’s CCTV footage makes it clear on the balance of probabilities that the claimant had stolen money from the respondent. The respondent assesses the amount of money stolen at about £4,100.00. The respondent referred the matter to the Police, who investigated the matter, but then declined to prosecute.
  6. The claimant has issued these proceedings claiming unlawful deduction from wages in respect of her November 2018 salary; for breach of contract in respect of one week’s contractual notice pay; and for accrued but unpaid holiday pay. The respondent has entered a notice of appearance accepting that £1,386.35 was due to the claimant, but that this sum had been withheld because the claimant had stolen the sum of £4,100.00. The matter was referred to the Police who have declined to prosecute.
  7. I accept Mr Collett’s evidence that in the relevant holiday year the claimant had already taken holiday in excess of her pro rata entitlement as at the time of her dismissal.
  8. The respondent accepts that the claimant would ordinarily have been paid £1,100.00 net for the month of November 2018, and that one week’s notice pay would have been £286.35 net. This explains the sum of £1,386.35 which the respondent concedes would have been due and paid to the claimant, but for the claimant’s dishonesty.
  9. Having established the above facts, I now apply the law.
  10. The claimant’s claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
  11. The claimant also claims in respect of deductions from wages which she alleges were not authorised and were therefore unlawful deductions from her wages contrary to section 13 of the Employment Rights Act 1996.
  12. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 (“the Regulations”). Regulation 14 explains the entitlement to leave where a worker’s employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year.
  13. I deal first with the accrued holiday pay claim. Having accepted Mr Collett’s evidence that in the relevant holiday year the claimant had already taken holiday in excess of her pro rata entitlement as at the time of her dismissal, the claimant did not have any accrued holiday entitlement. I therefore dismiss the claimant’s claim for accrued but unpaid holiday pay for this reason.
  14. Having accepted Mr Collett’s evidence that the claimant had, on the balance of probabilities, stolen some £4,100.00 from the respondent, the respondent is entitled to rely upon the provisions of its contract of employment and to deduct sums which would otherwise have been due to the claimant to offset any losses caused by her dishonesty. For this reason I also dismiss the claimant’s claims for unlawful deduction from wages and for breach of contract in respect of her notice pay.

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Employment Judge N J Roper

Date: 10 July 2019