



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Ms C A Roche

AND

Respondent

01 Hotels and Hostels Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin

ON

3 January 2020

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: Mr Lower, Director

JUDGMENT

The Judgment of the Tribunal is that the Claimant's claim for accrued but unpaid holiday pay is dismissed.

RESERVED REASONS

1. In this case the claimant Ms Carol Anne Roche brings a monetary claim for unlawful deduction of accrued but unpaid holiday pay against her former employer. The respondent denies the claims.
2. I have heard from the claimant. I have heard from Mr Lower, a director of the respondent, who gave evidence for the respondent.
3. There was a degree of conflict on the evidence. I have heard the various witnesses give their evidence and observed their demeanour in the witness box. 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 the factual and legal submissions made by and on behalf of the respective parties.
4. The claimant was employed as a General Manager in the hotel industry. In simple terms she commenced employment at the Bendene Townhouse in Exeter, Devon, on 15 January 2018. In June 2018 she moved to another of the employer's hotels, namely Housel Bay Hotel and Restaurant in the Lizard, in Cornwall. She resigned her employment with effect from 20 March 2019. She asserts that she had accrued holiday from her time at Bendene, during which she took no holiday, and that she was promised by the respondent that this

- would be honoured at Housel Bay. No such payment was made when she subsequently resigned.
5. Regrettably, the identification of the correct respondent is by no means as simple, and the renaming of certain limited companies around the same time has caused considerable confusion. Three limited companies are relevant to this confusing background.
 6. The first company number 08266648 was incorporated on 24 October 2012 as 01 Hostels Ltd. Its registered office is at 221 Brunswick Square, Hove. On 22 September 2017 it changed its name to 01 Hotels & Hostels Ltd. On 5 April 2018 it changed its name again to Stay Brighton Ltd.
 7. The second company number 1120 2576 was incorporated on 13 February 2018 as Housel Ltd. Its registered office is at 30/31 Devonshire Place in Brighton. On 5 April 2018 it changed its name to 01 Hotels & Hostels Ltd.
 8. The third company number 11207997 was incorporated on 15 February 2018 as Housel Bay Ltd. Its registered office is also at 30/31 Devonshire Place in Brighton.
 9. The claimant's employment commenced when she successfully responded to an advertisement for a General Manager in December 2017. The advertisement was placed by 01 Hotels & Hostels Ltd. She was initially sent a written statement of terms of employment in the name of 01 Hostels Ltd, which was incorrect, and a subsequent written statement was issued which named 01 Hotels & Hostels Ltd as her employer. She signed that employment contract on 17 January 2018 (although it was mistakenly dated 2018). She also received a letter from the respondent's accountants confirming that 01 Hotels & Hostels Ltd had chosen NEST as the workplace pension scheme and would make contributions to that scheme. Her payslips for January and February 2018 clearly named 01 Hotels & Hostels Ltd as her employer. She clearly understood (with very good reason) that her employer was 01 Hotels & Hostels Ltd.
 10. During the spring of 2018 the claimant also understood from Mr Lower and his co-director that they were changing the ownership of the Bendene Townhouse for business reasons. She was not told that her employment was to be transferred to any other employer. With effect from 30 April 2018 she received a payslip naming Stay Brighton Ltd as her employer. The claimant only received payslips in twos and threes, and not automatically every month, and doubts that she received this payslip at that time. Her net pay was £1,442.23. Her bank statements at that time show that this sum was paid into her account on 27 April 2018 by BACS from "01 Hotels & Hostel 01 Hotels Salary".
 11. In any event the circumstances were superseded by the claimant being offered the role of General Manager in Housel Bay, and accepting that position. The claimant confirmed today that she understood that Housel Bay was a new business venture for the respondent and that he had established a separate and distinct limited company for that purpose, namely Housel Bay Ltd. The claimant also clearly understood and agreed that she was resigning her employment in order to commence new employment with Housel Bay Ltd in June 2018. She says that she agreed to do so on the clear understanding and agreement with the respondent that all accrued holiday pay for her time at Bendene Townhouse would not be lost when she commenced her new employment.
 12. I have seen a form P45 adduced by the respondent which records that the claimant's employment terminated on 31 May 2018. The claimant says that she has never seen this document. In addition, it names Stay Brighton Ltd as the claimant's previous employer, which is wholly inconsistent with the understanding and documents noted above.
 13. The claimant separately resigned her employment from Housel Bay Ltd with effect from 20 March 2019. She has no dispute with that company in respect of any payments made to her as at the date of the termination of employment, save for the accrued holiday pay from her time at Bendene Townhouse.
 14. The respondent denies the claim, and asserts that the claimant was originally employed by company number 08266648, namely 01 Hotels & Hostels Ltd, which changed its name on 5 April 2018 to Stay Brighton Ltd. That is why the claimant received a payslip from Stay Brighton Ltd, and the form P45 from that company. The respondent asserts that the company now called 01 Hotels & Hostels Ltd changed its name to that name only on 5

- April 2018 and is company number 11202576 and not the correct respondent to these proceedings.
15. Having established the above facts, I now apply the law.
 16. The claimant 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. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3).
 17. Regulation 30(2) of the Working Time Regulations 1998 provides that an employment tribunal shall not consider a complaint in respect of accrued holiday pay unless it is presented before the end of the period of three months beginning with the date of non-payment, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
 18. In the first place I do not accept the respondent’s attempt to evade liability for this potential claim by suggesting that her employment with 01 Hotels & Hostels Ltd became employment with Stay Brighton Ltd merely because there was a change of name that company (company number 08266648 on 5 April 2018). This was in the context of a business reorganisation during which company number 11202576 became the owner and manager of Bendene Townhouse and also changed its name on 5 April 2018 (from Housel Ltd to 01 Hotels & Hostels Ltd). The claimant was wholly unaware of any prospective change in her employment. All of the documents were in the name of 01 Hotels & Hostels Ltd, except for the end April 2018 payslip, which was in the name of Stay Brighton Ltd, but was not consistent with the payment made to her bank account which was still in the name of 01 Hotels & Hostels. To the extent that it is necessary, I find that there was a transfer of the claimant’s employment from company number 08266648 to company number 11202576, and the claimant’s claim is not dismissed because she failed to sue Stay Brighton Ltd number 08266648, which had effectively passed on its business interests under the Bendene Townhouse in the name of 01 Hotels & Hostels Ltd.
 19. However, there is still a significant difficulty for the claimant, which is this. The claimant accepts that she resigned her employment in order to commence new employment with Housel Bay Ltd with effect from June 2018. She accepts that this was a new venture and was not linked to the Bendene Townhouse. Her employment commenced with that new employer from that date. Any claim against 01 Hotels & Hostels Ltd in respect of accrued but unpaid holiday pay should have been brought within three months of the date of non-payment. Her last salary from that original employment was paid at the end of June 2018. The claimant commenced the Early Conciliation process with ACAS on 17 June 2019, and the certificate was issued the same day. These proceedings were then issued on 19 June 2019. They were effectively nine months out of time.
 20. I have not heard any evidence to the effect that it was not reasonably practicable for the claimant to have issued these proceedings within three months. These proceedings were presented out of time and are hereby dismissed.

Employment Judge N J Roper
Dated 3 January 2020