



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)  
LONDON CENTRAL

BETWEEN

Mrs L Woods

Claimant

-AND-

Andrea Hawkes Ltd

Respondent

Employment Judge:

Mr J S Burns

Representation:

Claimant in person N Woods (assisted by Mr Woods)

Respondent:

Mr D Ayres (general manager)

Judgment

The claims are dismissed

Reasons

1. The judgment was given during a CVP hearing held on 29/9/2020.
2. I heard evidence on oath from the Claimant and from Mr Ayres and have read various emails and documents I was sent by the parties.
3. The claims were for notice pay, holiday pay and arrears of pay.
4. The Claimant was employed from 1/11/2019 as a Marketing Manager.
5. She worked until 17/3/2020 when the Respondent's business was closed because of the pandemic. Mr Ayres spoke to the Claimant on the phone and proposed that she take a period of unpaid leave while the Respondent company considered how to proceed and whether it could furlough its employees. The Claimant readily agreed to this on the telephone and later sent a message to Mr Ayres in which she had written –*“It's the best decision you could have made....”*
6. There followed a confused period during the second half of March. At first the Respondent thought that it would be able to furlough the Claimant and an email was sent to her about this on 27 March. However, the Respondent decided by the end of March that it did not have the cash-flow or work to justify furloughing the Claimant and on 1<sup>st</sup> April Andrea Hayes informed the Claimant that she was being made redundant and an email terminating the Claimant's employment was sent later that day summarily dismissing her with immediate effect.
7. The Claimant's salary was £32000 gross per year for working 5 days a week. That works out at £2666.67 gross and £2107.99 net per month and £97.29 per day net.

8. She was due salary for 1-17 March 2020 ie 12 days pay = £1167.48 net
9. I find that although the contract did not make express provision for unpaid leave the contract was varied orally on 17/3/2020 so the Claimant was not entitled to be paid while she remained on leave after that date. Alternatively, she is estopped from reneging on her oral assurance given on that day to Mr Ayres that she was willing to remain on unpaid leave, which assurance the Respondent relied on to its detriment (for example by not terminating her employment immediately).
10. The Claimant was not furloughed. Furlough is a voluntary scheme depending on the consent of both employer and employee and the Claimant had no contractual right against the Respondent to insist on being furloughed.
11. Hence the Claimant is not entitled to be paid salary after 17/3/2020.
12. She was entitled to one weeks' notice or the pay she would have received had she been employed during that week. Arguably that would have been nil (given the agreement about unpaid leave which was in force). However, that point was not taken by the Respondent which agrees that the Claimant should have been paid one weeks' notice when she was dismissed on 1/4/2020. That amounts to 5 x £97.29 per day = £486.45 net
13. This had not been claimed or referred to in the ET1 but in final submissions the Claimant raised the issue of statutory guarantee payments which should have been made. I have calculated that at best this claim – under section 29 and 34 of the ERA 1996 - would have been worth 5 x £29 = £145 and would not have affected the outcome of this hearing, given the other findings.
14. The Claimant was entitled to be paid for holidays accrued but not taken during her employment which was 7 days at the rate of £97.29 per day net = £681.03
15. The total amounts due to the Claimant were £1167.48 + £486.45 + £681.03 = £2334.96
16. It is agreed that that the Respondent made payments to the Claimant in respect of her salary in March and termination payments net of tax of £1882.54 at end of March and £682.64 paid during April 2020 = £2565.18. This overpayment appears to have arisen from the Respondent calculating the holiday pay entitlement incorrectly. During the hearing Mr Ayres confirmed that he was content with the situation and would not be seeking a refund.
17. As the Claimant has received all she was due, her claims fail and are dismissed.

#### NOTE

The hearing took place over CVP. The tribunal considered it as just and equitable to conduct the hearing in this way. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. One member of the public attended. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties. No requests were made by any members of the public to inspect any witness statements or for any other written materials before the tribunal. The participants were told that it was an offence to record the proceedings. The tribunal ensured that the witness/es, who were all in different locations, had access to the relevant written materials. I was satisfied that the witness/es were not coached or assisted by any unseen third party while giving evidence.

J S Burns Employment Judge  
London Central  
29/9/2020  
For Secretary of the Tribunals

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date sent to the Parties – 29/09/2020