EMPLOYMENT TRIBUNALS

Claimant: **Miss Farah Barhoun Enouali**

Respondent: **Adams Leisure Limited**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **5 March 2021**

Before: **Employment Judge Gardiner**

Representation

Claimant: In person
Respondent: Mr A Afzalnia, Director

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

The judgment of the Tribunal is that:-

The Respondent has made an unauthorised deduction from the Claimant's pay in relation to June 2020 in the sum of **£333.20 gross**.

REASONS

1. This is a claim for one month's pay brought by Ms Farah Barhoun Enouali. She says she has not been paid for the month of June and was expected to be paid £333.20 gross during this month.

2. The Claimant had been employed since 8 November 2019 as a bartender, working 12 hours per week. During the first national lockdown she was furloughed, and in receipt of furlough pay, being 80% of the pay she would ordinarily receive if she was working 12 hours per week.

3. On 28 June 2020, she was told that her furlough was ending and she was required to attend work on 1 July 2020. Attendance on 1 July 2020 was for two hours of training in the Covid safety measures that the Respondent intended to implement for staff and customers. The Claimant did not attend this training. Nor did she make herself available for work thereafter. She says that she told one of the Respondent's employees that she was unable to work because she was on a month long French course.

4. No action was taken by the Respondent to discipline the Claimant for failing to attend the training or failing to make herself available for work. The next communication from the Respondent was a letter sent on 10 August 2020. This made two points. Firstly, it told her that because she had failed to return to work, her contract of employment was deemed as terminated. Secondly, it claimed that the Claimant had failed to provide the Respondent with sufficient notice and claimed damages. It relied on Clause 12.5 of her employment contract.

5. The first question that the Tribunal has to address is when the contract ended. There are three possibilities. The first date is the date given on the P45 issued to the Claimant, namely 30 June 2020. I can understand why this date has been chosen. The Claimant did not make herself available for work after this date. The Respondent was understandably cautious about giving a later date if this might have suggested she was entitled to furlough pay after that date. But there was no event and no communication from one party to the other which was effective to terminate the contract on 30 June 2020. Clause 12.2 is clear that notice by the employee to end the contract must be in writing and must be sent to the Respondent's Colchester address.

6. The second possibility is – as suggested by the Respondent in the course of the hearing – that the Claimant is deemed to have resigned with immediate effect at the end of July 2020 in failing to attend work for a whole month. That may have been the Respondent's general approach, but it is not consistent with the wording of Claimant's contract, which had been drafted by or on behalf of the Respondent. This requires written resignation before a resignation is effective. Therefore, I reject the contention that the contract ended on 31 July 2020.

7. The third possibility is the correct analysis. The contract ended with immediate effect on 10 August when the Claimant received the communication from Mr Andros that her employment is deemed to have terminated.

8. The result is that the Claimant was on furlough during June 2020 and had not been asked to return to work during that month. Ordinarily she would be entitled to be paid furlough pay during that period.

9. In these proceedings, the Respondent argues that the effect of Clause 12.5 is that the Claimant is not entitled to recover furlough pay for June 2020.

10. Clause 12.5 is worded as follows:

> **You acknowledge and agree that in the event that you fail to give full and proper notice of termination pursuant to clause 12.2 above, the employer will be entitled to claim damages for each day's notice not received equivalent to a day's pay. You also agree that the employer shall be entitled to deduct damages you're final salary payment resulting from this failure.**

11. I do not agree with the Respondent that the effect of this clause is to deny the Claimant her pay for June 2020.

12. At no point did the Claimant give notice to the Respondent to terminate her employment. Under Clause 12.2 to be effective, any notice must be in writing and addressed to the Respondent's Colchester address. That was never done. Therefore, the contract of employment continued until 10 August 2020. At no point before that date had the Claimant failed to give full and proper notice of termination. Clause 12.5 only applies in the situation where the Claimant gives notice, but it is not the full months' notice that the Claimant was required to give. That is not this situation because here the Claimant has never give notice at all. Therefore, the contract did not entitle the Respondent to deduct any actual or deemed damages from the sums that would otherwise be payable.

13. In its Response, the Respondent does not make an employer's contract claim. The box in paragraph 7.2 is not ticked and no details of such a claim are provided in box 7.3. Therefore, the only issue that the Tribunal has to decide is whether the Claimant is entitled to her wages for June 2020. On the evidence before the Tribunal, she was available for work during this month and therefore is entitled to be paid the furlough pay that the Respondent had agreed to pay.

14. The claim therefore succeeds in the sum of £333.20.

Employment Judge Gardiner
Date: 5 March 2021