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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104618/2020

Held by Cloud Based Video Platform (CVP) on 6 December 2021

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Employment Judge Neilson

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Dimitra Karliampa

**Claimant
Represented by
Ms Mohammed –
Solicitor**

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Rumel Limited

**Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the respondent shall pay to the claimant the following sums:-

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(a) a monetary award of £8,612 in respect of the claim for unfair dismissal, the prescribed element of which is £6,120 and relates to the period of 3 July 2020 to 31 October 2020 (the monetary awards exceeds the prescribed element by £2,492);

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(b) £720 less appropriate tax and National Insurance in respect of the claim for breach of contract for the notice period;

(c) £468 less appropriate tax and national insurance in respect of the claim for accrued holiday pay;

- (d) £1,750.71 less appropriate tax and national insurance in respect of the claim for unlawful deductions from pay; and
- (e) £1,080 as a statutory redundancy payment.

REASONS

- 5 1. This was a hearing on remedy only. The claimant attended on CVP and was represented by Ms Mohammed. The claimant is now resident in Greece and was calling in from there. The internet connection was poor and it was agreed that the hearing should proceed with the claimant on sound only and camera off.
- 10 2. The Respondent was not in attendance and was not represented. The respondent had not lodged an ET3. By Judgment dated 23 November 2021 the Employment Tribunal had, under Rule 21 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 determined that the claimants claims of (a) unfair dismissal; (b) Breach of Contract; (c) Holiday Pay; (d) Wages and (e) Redundancy succeed. The purpose of this hearing
15 was to determine remedy only.
3. Case Management Orders dated 19 March 2021 were issued in the case to the claimant's representative on 24 March 2024. The claimant's representative had been reminded by the Employment Tribunal by
20 correspondence on 2 December 2021 to "ensure that Case Management Order dated 19 March 2021 is complied with, to ensure that all documents which will be relied on are intimated to the Tribunal."
4. At the commencement of the hearing Ms Mohamed confirmed that the claimant had not complied fully with the Case Management Order. She
25 explained that the structure of the Order was focussed on a defended claim where both claimant and respondent were required to exchange witness statements and lodge documents and for that reason she had not complied. She had however lodged a Schedule of Loss which had been intimated to the Employment Tribunal along with some supporting documents. The
30 Employment Tribunal accepted that the Case Management Orders were not

ideally framed but would have expected the claimant's representative to have sought to comply as best she could in the circumstances – particularly with regard to the details of financial loss under Case Management Order 4. However in the circumstances the Employment Tribunal was willing to waive the requirement for compliance with the Case Management Orders but did point out that the lack of supporting documentation may hinder the ability of the Employment Tribunal to properly assess loss.

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5. With regard to the Schedule of Loss the Employment Tribunal did raise with the claimant the issue of the statutory basis for the claim of £1,080 in respect of failure to provide Wage slips. The claimant was not able to provide any statutory basis for that claim.

6. The claimant gave evidence and referred to the Schedule of Loss submitted and an earlier schedule re unpaid wages submitted to the Employment Tribunal on 7 January 2021. The claimant also produced a screen shot of her bank account for June 2020.

Findings in Fact

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7. The Employment Tribunal made the following findings in fact.

8. The claimants date of birth is 13 February 1979.

9. The claimant commenced employment with the respondent on 1 January 2017.

10. The claimant was employed as a Hotel manager by the respondent.

11. The claimant worked 40 hours per week and was paid £9 per hour. Her gross weekly wage was £360.

12. In the week 13 March to 20 March 2020 the claimant worked 46 hours.

13. On or about 20 March 2020 the claimant was placed on furlough leave by the respondent.

14. In the period from 13 March through to 19 June 2020 the claimant received two net payments from the respondent into her bank account. She received a payment of £1,508 on 15 June 2020 and a payment of £911.12 on 30 July 2020.
- 5 15. The claimant did not receive any wage slips from the respondent in respect of the period from 13 March 2020 through to 19 June 2020.
16. The claimant did not receive from the respondent any written particulars of the terms of her employment as required under section 1 of the Employment Rights Act 1996 ("ERA").
- 10 17. The claimant was on furlough leave from on or about 20 March 2020 through to the termination of her employment on 19 June 2020.
18. The claimant was expecting a payment of 80% of her weekly wage whilst on furlough leave. That would be £288.91.
- 15 19. The claimant was given written notice on 11 June 2020 that her employment would terminate on 19 June 2020 by reason of redundancy.
20. The claimant did not receive a statutory redundancy payment or any payment in lieu of notice (other than the sums referred to in paragraph 14).
21. The respondent did not follow any procedure regarding the termination of the claimant's employment other than issuing the letter of 11 June 2020.
- 20 22. The claimant had 6.5 days accrued annual leave due to her on the termination of her employment.
23. Following the termination of her employment the claimant was in receipt of universal credit.
- 25 24. Following the termination of her employment the claimant made a couple of job applications before going to Greece for 20 days in August 2020. On returning from Greece she made four or five job applications before leaving Scotland for Greece on 24 October 2020.

25. The claimant obtained a job in Greece commencing on 21 January 2021 earning 1,060 euros per month with a TV channel. The claimant has since changed jobs to a new job with a different TV channel in September 2021 earning 800 euros per month.

5 26. Prior to working with the respondent the claimant had worked as a journalist for websites and TV channels.

Submissions

27. The claimant was seeking her holiday pay in the sum of £780; unlawful deductions from pay being the difference between the sums she received and what she should have been paid in the period from 13 March to 19 June (although Ms Mohammed acknowledged the potential difficulty the Employment Tribunal had dealing with net and gross figures); unfair dismissal compensation for the period from dismissal to 21 January 2021 (to include an uplift of 10% for failure to comply with the ACAS Code and £500 for loss of statutory rights); compensation in respect of the failure to provide written particulars of the terms of employment and compensation in respect of the failure to provide wage slips and a statutory redundancy payment.

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The Law

28. An employee who is unfairly dismissed is entitled to compensation in accordance with Sections 118 ERA. This will consist of a basic award and a compensatory award. The basic award is reduced by the amount of any redundancy payment – Section 122(4) ERA. The compensatory award shall be “such amount as the tribunal considers is just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.” The claimant is under an obligation to seek to mitigate any loss they suffer – Section 123(4) ERA.

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29. With regard to breach of contract the claimant is entitled to compensation for breach of the notice period in her contract.

30. With regard to holiday pay an employee is entitled to a payment for accrued holiday pay on termination of employment. The amount should be calculated in accordance with Regulation 14 of the Working Time Regulations 1998.
31. With regard to unlawful deductions from pay the tribunal shall (under Section 24 of the ERA) order the employer to pay to the worker the amount of any deduction made in contravention of Section 13 ERA.
32. With regard to redundancy pay the correct calculation for statutory redundancy pay is as set out in Section 162 ERA.
33. Under the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020 ("the Week's Pay Regulations 2020") a week's pay for the purposes of calculating notice pay; statutory redundancy pay and unfair dismissal compensation is their pre-furlough rate of pay. This came into effect on 31 July 2020. In any event for employees with normal working hours the calculation of a week's pay would be based on their weeks' pay pre-furlough.

15 **Discussion & Decision**

34. With regard to the compensation for unfair dismissal the Employment Tribunal may award such amount as is just and equitable under Section 123 of the ERA. No basic award is due in accordance with Section 122(4) ERA as there is a separate claim for a statutory redundancy payment.
35. In determining what is just and equitable the Employment Tribunal must have regard to the steps the claimant took to mitigate her loss. In light of the previous background of the claimant in journalism and media, and in light of the jobs she ultimately obtained in Greece the Employment Tribunal would have expected the claimant to try and find alternative roles outside of the hospitality industry. The Employment Tribunal would have expected the claimant to make more than a couple of job applications before going to Greece and four or five between August and 24 October. In all the circumstances the Employment Tribunal considers that the claimant might have looked to obtain other employment in the UK by the end of October 2020. The period of loss should be restricted to the period from 3 July 2020 (end of

what would have been the notice period) through to 31 October 2020. A total period of 17 weeks. 17 weeks at £360 per week is £6,120.

36. The Employment Tribunal makes an award of £400 in respect of loss of statutory rights.
- 5 37. The Employment Tribunal accepts the claimant's submission for a 10% uplift in light of the failure to comply with the ACAS Code. This gives a total sum of £7,172.
38. In respect of the failure to provide written particulars of the terms of employment the Employment Tribunal finds that in accordance with Section
10 38(3) of the Employment Act 2002 it is just and equitable to award the higher amount of four weeks' pay in circumstances where the claimant was employed for over three years and no written particulars were provided. A total sum of £1,440 is appropriate.
39. The total compensatory award is £8,612. The Employment Tribunal finds this
15 sum is due and payable by the respondent.
40. The monetary award is £8,612. The prescribed element in accordance with the Employment Protection (Recoupment of Benefits) Regulations 1996 is £6,120. The prescribed element is attributable the period from 3 July 2020 to 31 October 2020.
- 20 41. With regard to the failure to provide the wage slips the Employment Tribunal declines to make any award. Section 38 of the Employment Act 2002 does not apply to wage slips. The remedies available as regards wage slips are set out in Section 8 and 11 ERA.
42. Breach of contract. The claimant did receive 1 weeks' notice of the termination
25 of her employment. She was entitled to three weeks' notice under Section 86 ERA. She is due compensation for the balance. This should be at the rate of her normal weeks' pay. The amount is £720. The Employment Tribunal finds this sum is due and payable by the respondent

43. The accrued holiday pay is 6.5 days at 8 hours at £9. A total of £468 (not £780 as stated in the Schedule of Loss). The Employment Tribunal finds this sum is due and payable by the respondent.

5 44. In respect of unlawful deductions the Employment Tribunal had some difficulty in the inconsistencies between the information provided by the claimant in her e mail of 7 January 2021; the Schedule of Loss submitted on 6 December 2021 and the oral testimony given under oath during the hearing. However the Employment Tribunal was satisfied that the claimant did only receive the total sum of £2,419.12 in respect of the period from 13 March 2020 to 19 June 10 2020. She should have received a gross sum of £4,169.83 for that period. The respondent failed to provide any wage slips and it is not known whether or not the respondent deducted any tax when making the payments to the claimant. In these circumstances the Employment Tribunal has no option but to treat the payments received as gross payments and deduct them from the gross 15 sums due and find the claimant entitled to the gross sum of £1,750.71. This sum will be subject the deduction of appropriate tax and National Insurance. The Employment Tribunal finds this sum is due and payable by the respondent.

20 45. The statutory redundancy payment is calculated in accordance with section 162 of the ERA. Based on a gross weekly wage of £360 the amount is £1,080. The Employment Tribunal finds this sum is due and payable by the respondent.

46. The total sums due are as follows:-

- 25 (a) Unfair Dismissal = £8,612
(b) Breach of Contract = £720 (subject to tax and NI)
(c) Accrued Holiday Pay = £468 (subject to tax and NI)
(d) Unlawful Deductions = £1,750.71 (subject to tax and NI)
(e) Statutory Redundancy Pay = £1,080

Employment Judge: S Neilson
Date of Judgment: 9 December 2021
Entered in register: 13 December 2021
and copied to parties