



EMPLOYMENT TRIBUNALS

Claimant: Miss Z Shareef

Respondent: Almnors (Childcare) Limited

Heard at: London South via CVP

On: 29 November 2022

Before: Employment Judge D Wright (Sitting Alone)

Representation

Claimant: In person

Respondent: Did not attend

JUDGMENT

1. The Respondent's name be amended to Almnors (Childcare) Limited
2. The Respondent owes the Claimant £350 in respect of unlawful deduction from wages.
3. The Respondent is to pay the Claimant the above sum within 14 days of the date of service of this order

REASONS

Respondent's non-attendance

4. At the beginning of this hearing, I made a decision to proceed in the respondent's absence. The respondent was sent an email with the notice of hearing on the 22nd of August this year. That email was copied to both the respondent and the claimant. I am satisfied that the email was correctly sent and therefore served.
5. Furthermore, yesterday the respondent and the claimant were both emailed a link to join this hearing by way of cloud video platform. Again, the claimant received hers and the respondent claims not to have received it. I am satisfied that was correctly sent and that the respondent therefore should have been aware of this matter. I therefore find that the respondent was or should have been aware of the hearing.
6. Additionally, my clerk telephoned Mr. Watson, the respondent's director, this afternoon before the hearing, to remind him of the hearing. He said that he was not aware and that he could not join because he had builders

present. He was asked to email into the tribunal an explanation for his non-attendance, but he has not done so, instead telling my clerk that "he'll have to do it later."

7. With the greatest respect to Mr. Watson, that is not satisfactory. The Tribunal is run at a significant cost to the public purse. The taxpayer foots the bill for this tribunal, it is not self-funding as other jurisdictions are where court fees are charged to cover the costs of the administrative and judicial staff.
8. The respondent was or should have been aware of this hearing. He was aware of proceedings being issued against him and yet he has taken no steps to find out what is happening with the case. He was given the opportunity to attend today when my clerk called him and he chose not to join us. He also chose not to send in an email with a valid explanation as to why he could not attend and requesting an adjournment. Therefore, I find that in keeping with the overriding objective and in the interest of justice that we should proceed today.
9. It has been open at all times for Mr. Watson to join the call late whilst proceedings are still ongoing, and he has not done so.

Time Limit

10. This is a claim brought by Miss Shareef against her former employer. The claim was brought by way of ET1 dated 5th March 2021. There is a response form dated 10th May 2021. ACAS were contacted on the 18th of February 2021 by the claimant to begin the early conciliation process.
11. The claimant brings a claim for unlawful deduction from wages, essentially claiming that she referred an employee to the respondent and that as a result she is entitled to a bonus referral fee. The claimant is of the opinion that the probationary period ended on the 17th of October 2020. And at that point, she became entitled to that money and that it should have been paid at the end of October with her final paycheque.
12. Her employment ended on the 29th of October 2020 and that is the date that payment should have been made. The limitation period in the employment tribunal for bringing a claim for unlawful deduction of wages is three months which means that the limitation period in this case expired on the 29th of January 2021, some 20 days before the claimant contacted ACAS.
13. The claimant seeks an extension of time on the basis that it would be just an equitable to do so. Having spoken to her today and having reviewed the ET1 I find that there are some extenuating circumstances here. I note from the ET1 that at the time she left the company she suspected that her friend had completed the probationary period but did not know for sure. That on its own, I find, is not sufficient to cause me to extend the time limits here.

14. It is perfectly possible to bring a claim or to engage ACAS at the point where you suspect you have a case. And in fact, you should do it at that point rather than waiting until you have all the evidence together.
15. However, I also note that at that time, the claimant was going through some difficult personal matters. I do not intend to go into too much detail but simply say that police were involved and that as a single mother she was in a state of fear for the safety of her and her daughter. When the topic came up in the hearing, she became tearful, and I find this period was genuinely distressing for her.
16. She began liaising with the respondent in January 2021, well within the timeframe. The respondent was aware of this potential claim, but the claimant was trying to resolve this without involving ACAS and the tribunal.
17. There is a high burden to convince the tribunal that the time limits should be extended, and I find that this is a borderline case. As I have said the fact that the claimant did not have all the evidence that she needed at the time is not sufficient to extend the time limit. However, I also note her personal circumstances at that point and that she was trying to resolve the matter amicably with the respondent. She was not sitting on her hands and doing nothing. She was engaging with the respondent during this time.
18. She did then engage ACAS some 20 days late, which is not an absurdly long time. The ACAS certificate was issued on 4th March and the claimant entered her ET1 on 5th March. There was little delay there at all. In normal circumstances, if you engage ACAS within time, you are given at least a month after the issuing of the certificate to bring a claim. Had she engaged ACAS on the 29th of January, the last day to do so, and spent the same amount of time in early conciliation then 5th March would have been within that month grace period. Therefore, weighing everything in the balance, I find that it would be just and equitable in the circumstances to extend the time limit. I therefore allow the claim to proceed.

Findings and reasons

19. I have heard evidence from the claimant, and I have seen the ET1 and the ET3 along with various communication between the parties. This matter revolves around whether there has been an unlawful deduction from the claimant's wages in relation to a referral bonus for a new member of staff. The claimant referred a new member of staff to the respondent and that is not in dispute.
20. It is further common ground between the parties, from reading the correspondence, that in principle a referral scheme is in existence. The respondent's position though is that, because the claimant was not in employment at the time the referred member of staff completed her probation, she was not entitled to the referral fee.

21. I have not seen the exact terms of the referral scheme. I have seen a later document prepared after the claimant left which talks about the bonuses payable for referring new staff member. This says that the bonus is payable to the introducer only if both introducer and recruiter are employed by rainbow at the time that the bonus would be payable and that neither is working their notice at that time. The Claimant denies that the scheme in existence at the time included this second condition that the introducer is not working their notice period.
22. It is standard practice for referral bonus schemes to require that the parties are working at the time the probationary period is completed in order to receive that bonus. What varies, in my experience, between employers is whether people working their notice period are still entitled to receive a bonus.
23. I do not have the terms that existed at the time, only the “reintroduced scheme.” It is possible that the terms have changed when the scheme was re-introduced. The respondent has had the opportunity to provide the terms in force at the time and they have chosen not to do so.
24. I also note that in correspondence the respondent’s objection has not been that the claimant was in her notice period, rather the objection was that she had left employment at the time the probationary period had come to an end. This, coupled with the claimant’s denial, suggests that this condition was not in force at the relevant time and that the respondent added it as a result of this litigation. Therefore, I find, on the balance of probabilities, that at all material times the only requirement was that the introducer was in employment at the time the probation was completed.
25. Next, I consider whether Miss Azam completed her probationary period whilst the claimant was still employed. I do not have a witness statement from Miss Azam. I have no documentary evidence from any party confirming the completion of the probationary period. What I do have is a letter dated the 22nd of September 2020, which says “as you started working for rainbow on 17th January your probationary period has been interrupted by the shutdown due to COVID 19. I am writing to tell you that it will be extended to 17th of October 2020”.
26. It appears to be common ground that Miss Azam was still working for the respondent after the 17th of October 2020. In the absence of any further evidence from the respondents to rebut the presumption created by that letter and show that it had been further extended, I find on the balance of probabilities that she had completed her probationary period on the 17th of October and that therefore when the claimants employment ceased at the end of October she was entitled to this referral bonus.
27. I then have to decide on what the appropriate referral bonus is. I have no evidence as to what was payable at the time. The claimant says from her recollection that other people who brought in an unqualified staff member

received £500. I do not have any documentary evidence or witness statements from those individuals on which I can base my assessment.

28. What I do have is the reintroduction of the staff bonus introduction bonus scheme and on that there is a table which says the amount of the bonus payable is related to the recruit's qualifications and role. Miss Azam was, at all material times, an unqualified member of staff. Looking at the table there is a bonus to the introducer of £350 pounds and a bonus to the recruit of £150. I make no finding in relation to any bonus which may or may not be due to Ms Azam as that is beyond the scope of these proceedings. However, I find that the correct bonus for the claimant, on the balance probabilities, is £350 and that this was payable to the claimant. As the respondent did not make this payment in their final paycheque, they have unlawfully deducted the claimant's wages.

Employment Judge D Wright
Date: 29 November 2022

Sent to the parties on
Date: 9 December 2022

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