



Case Number: 2302893.2016

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss S de Vivo

and

Respondent

Miss Sarah Newsum

Held at Ashford on 3 March 2017

Representation

Claimant:
Respondent:

In Person
In Person

Employment Judge Kurrein

JUDGMENT

- 1 The correct identity of the Respondent is Miss Sarah Newsum and the title to the proceedings is amended accordingly.
- 2 The Respondent has made unauthorised deductions from the Claimant's pay and is ordered to pay her the sum of £2,428.63 made up as follows:-
 - 2.1 The sum of £1,824.75 in respect of payment below the national minimum wage; and
 - 2.2 The sum of £182.48, being a 10% uplift in the above sum pursuant to S.207A Trade Union and Labour Relations (Consolidation) Act 1992; and
 - 2.3 The sum of £421.40, being a lower award of two weeks pay pursuant to S.38 Employment Act 2002, for failure to provide a statement of terms and conditions of employment.
- 3 The Respondent has failed to pay the Claimant for accrued but untaken holiday and is ordered to pay her the sum of £646.71 made up as follows:-
 - 3.1 The sum of £587.92 in respect of holiday pay; and
 - 3.2 The sum of £58.79, being a 10% uplift in the above sum pursuant to S.207A Trade Union and Labour Relations (Consolidation) Act 1992; and

REASONS

- 1 On 15 December 2016 the Claimant presented a claim alleging she had been subjected to unauthorised deductions from wages and had not been paid for accrued but untaken holiday pay.
- 2 On 25 January 2017 the Respondent presented a response in which it denied those claims.
- 3 I have heard the evidence of the Claimant on her own behalf and the evidence of the Respondent on her own behalf. I have considered the documents to which I have been referred and the submissions of the parties. I make the following findings of fact.

- 4 Based on my findings of fact, I have concluded that I should prefer the evidence of the Claimant to that of the Respondent. My primary reasons for doing so are as follows: –
- 4.1 Had the Claimant wished to lie concerning her claim she could have made claims for arrears of pay dating back to the start of her full-time employment. She did not do so, she simply claimed for the difference between what she was paid and due to her, if she had been paid the national minimum wage.
- 4.2 Immediately after the parties came into dispute the Claimant wrote lengthy, detailed letters to the Respondent setting out her claim in respect of under payment of wages etc. The Respondent accepted that she received those letters but did not respond to them. I thought it wholly implausible that an employer who was alleged to have been paying her employee the the sum of £70 per week in cash, and as a consequence had underpaid that employee, would not respond in writing at that time, and denied any such cash payment.
- 5 The Claimant was born on 20 June 1993 and started her employment with the Respondent as a yard groom on 20 April 2015. The contract between the Claimant and Respondent came into being as a consequence of an exchange of telephone text messages and oral conversations. There was no suggestion that anyone but the Respondent was the employer at that time.
- 6 The Claimant was originally employed part-time working 21 hours per week. She was paid the national minimum wage, which was £6.70 per hour which worked out at £140.70 per week for 21 hours. This was paid by BACS by the Respondent's personal account.
- 7 I accepted the Claimant's evidence that in October 2015 she started to work full-time, 37.5 hours per week. She continued to receive a BACS payment of £140.70 per week (although this did vary from time to time for time off and overtime) and additionally received a payment of £70 per week in cash.
- 8 The Respondent has denied that the Claimant worked more than 21 hours, or was paid in cash at all, in her response. I did not accept that evidence.
- 9 On 2 September 2016 the Claimant raised a written grievance with the Respondent because she was being paid £5.62 per hour, which was less than the national minimum wage of £6.70 per hour. The Claimant and the Respondent discussed this issue, and the Respondent decided to make the Claimant redundant. On Monday 5 September 2016 the Respondent gave the Claimant a letter to that effect which also informed her that her final day would be Friday 9 September 2016.
- 10 The Claimant had taken holiday for the week before she was made redundant and complains, in addition to underpayment of the national minimum wage, that she was not paid the £70 in cash that she expected for the last two weeks of her employment. That evidence was not challenged by the Respondent.
- 11 The Claimant raised a second grievance 13 September 2016 in which she set out, in considerable detail, the precise calculation of what she said was due to her. Not only did the Respondent not invite her to a meeting to discuss those issues: she ignored them.
- 12 The Claimant prepared details schedule of loss for the purposes of this hearing. I determined that they were properly calculated, and they were not challenged at all, and the awards I have made are based on the calculations set out in those schedules of loss.
- 13 I have given careful consideration to the Respondent's failure to comply with the ACAS Code of Practice on disciplinary and grievance matters. I have concluded that the Respondent did fail to comply with those requirements, most seriously by not realising that the Claimant had

raised a grievance and should be invited to a meeting. Against that, however, I take the view that the Respondent was a micro-employer, and that in those circumstances it is only just and equitable increase the award to the Claimant by a factor of 10%.

- 14 It was common ground that the Claimant had never been provided with a statement of terms and conditions of employment. Had the Respondent complied with its obligation, something that has been in force for in excess of 50 years, nearly all the issues I have had to consider in this hearing would have been answered by such terms and conditions.
- 15 Once again, however, I have accepted that the Respondent was a micro-employer and the employment was not of long duration. I consider a two week award appropriate.
- 16 The final issue I have to decide is the proper identity of the Claimant's employer. I accept that the Claimant was provided with payslips in the name of S D Equine Ltd. However, that was the only evidence of that company's involvement in this employment at all.
- 17 Against that was the clear evidence that the Respondent in fact entered into the contract orally, and gave all day today directions to the Claimant concerning her duties. In addition, the BACS payments were made to the Claimant from the Respondent's personal bank account, and she also paid the Claimant the cash sums. In the course of closing submissions the Respondent indicated the she was paying the Claimant from her personal bank account on behalf of the company, and that there was a director's loan account in place for that arrangement. However, there was no evidence of that before me, and there is nothing in that company's statutory accounts to indicate the existence of such an account.
- 18 On balance, and in all the circumstances of the case, I consider it more likely that the Claimant was employed by the above named Respondent than the company.
- 19 In all the circumstances of the case I make the above awards in favour of the Claimant.

Employment Judge Kurrein

6 March 2017