



EMPLOYMENT TRIBUNALS

Claimant: Miss LA Viant

Respondent: Annette Watson T/A Annettes Care

Heard at: Exeter **On:** 25 August 2017

Before: Employment Judge Goraj

Representation

Claimant: in person

Respondent: Not in Attendance

JUDGMENT having been sent to the parties on 8 September 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claims which the tribunal is required to determine relate to complaints relating to alleged (a) outstanding holiday pay and (b) the balance of notice pay. The tribunal has considered such claims in accordance with the contractual and statutory provisions referred to below.
2. This is a case in which the respondent has not entered a response. The respondent made an application by her solicitors dated 10 February 2017 for an extension of time to present a proposed response. The tribunal directed that the respondent's application would be dealt with as a preliminary issue at the commencement of the hearing and that if the application was unsuccessful the tribunal would go on to determine the claimant's claims. The respondent has not attended the hearing and has not notified the tribunal of any reason for her non attendance. The tribunal has therefore proceeded on the basis that there is no valid response in this case.
3. The tribunal has heard oral evidence from the claimant who has provided the tribunal with a copy of a number of payslips from which the tribunal has taken the relevant salary figures as referred to below.

4. The claimant was employed by the respondent from 30 October 2015 until the termination of her employment by dismissal on 3 October 2016. The tribunal clarified with the claimant at the commencement of the hearing the identity of her employer. The claimant confirmed that she was employed by Annette Watson trading as Annette's Care including that she was paid throughout her employment by Annette Watson personally from her bank account. The tribunal has also taken into account that, insofar as the respondent has submitted any correspondence in this case, this has not been challenged by the respondent.
5. The claimant was employed as a Care Worker normally working six or more days per week. The claimant did not take any entitlement to holiday as she was not advised of her right to do so by the respondent. The claimant signed at the request of the respondent a document which was allegedly a zero hour's contract but she was not provided with a copy of any such document.
6. The claimant has provided the tribunal with a copy of a number of payslips to which the tribunal has had regard when calculating any entitlement to monies. None of the payslips, save for the final payslip, make any reference to any payments of holiday pay. The tribunal is satisfied having heard the claimant's evidence that although the final payslip is dated 12 October 2016 the last payment that she received was in respect of the period up to and including 3 October 2016.
7. In summary, the claimant gave four weeks' notice to the respondent on or around 26 September 2016 to terminate her employment in order to take up other employment. This notice was accepted by the respondent. The claimant's employment with the respondent was however subsequently terminated by the respondent and the last day of employment was 3 October 2016.
8. The claimant unfortunately lost her new job because of the respondent's failure to provide a reference. The claimant did not obtain any alternative employment during the remaining period of notice. The tribunal is however satisfied that the claimant took reasonable steps to mitigate her loss as she obtained alternative employment as soon as possible thereafter.
9. Having considered all of the above facts and also having had regard to relevant provisions of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order") in respect of the claimant's contractual claim for notice and also of the Working Time Regulations 1998 ("the Regulations") in respect of the claimant's claim for holiday pay the tribunal is satisfied that the claimant is entitled to the monies referred to below.

Holiday pay

10. The tribunal has considered first the claimant's claim for holiday pay. The tribunal is satisfied having had regard to the provisions of the Regulations that the claimant was entitled to 28 days' leave pro rata over a period of 11 months during the period of her employment with the respondent namely, 25.6 working days. In order to calculate the relevant monies the tribunal has taken the last three payslips prior to October 2016 (the tribunal has left

aside the last one dated 12 October because it is for a part of a period). The tribunal has taken into account the payslips dated 20 July 2016, 17 August 2016 and 14 September 2016 which record gross monthly payments of £1,799.28, £2,249.10 and £2,099.16 which the tribunal calculates gives a gross average weekly pay of £512.30 per week. The claimant worked a 6 day week which gives a daily rate of pay of £85.40 gross. This therefore gives a total figure of £2,186.24 (25.6 days x £85.40 per day) in respect of the claimant's accrued holiday entitlement.

11. The tribunal has deducted from the above figure the sum of £149.40 which was paid to the claimant by the respondent in her final payment which gives a balance owing to the claimant in respect of outstanding holiday pay of £2,036.84 gross.

Notice pay

12. For the purposes of the outstanding notice pay the tribunal is required to place the claimant in the position which she would have been in if the contract had been performed which means that the tribunal has to have regard to the claimant's net pay. The tribunal has taken the net monthly figures from the three payslips referred to above which record net monthly sums of £1,467.37, £1,773.21 and £1,671.26 respectively which give a total net figure of £4,911.84 and an average net weekly figure of £409.32. There was 3 weeks' notice outstanding at the date of the termination of the claimant's employment on 3 October 2016 which gives a net damages figure payable by the respondent in respect of the respondent's breach of contract in the sum of £1,227.96 net.
13. The tribunal has made a further award under Section 38 of the Employment Act 2002 as the tribunal is not satisfied on the evidence that the respondent issued the claimant with a valid statement of terms and conditions of employment for the purposes of section 1 of the Employment Rights Act 1996. The tribunal is satisfied in all the circumstances that it is appropriate to award the claimant a further 2 weeks' gross pay (2 x £512.30) which gives a figure of £1,024.60.
14. The total sum which the claimant is awarded, and which the respondent is ordered to pay to the claimant is therefore £4,289.40.

Employment Judge Goraj

Date 8 November 2017

REASONS SENT TO THE PARTIES ON
FOR THE TRIBUNAL OFFICE