



EMPLOYMENT TRIBUNALS

Claimants

Miss H Grebcheva

AND

Respondent

Mr Michael Smith

Heard at: London Central

On: 3 January 2018

Before: Employment Judge Norris

Representation

For the Claimant: In person

For the Respondent: Did not appear and was not represented

JUDGMENT

1. The Claimant's claims are well-founded and succeed.
2. Mr Michael Smith is substituted for Mrs Florist as the Respondent.
3. The Respondent is ordered to the Claimant the following sums:
 - £1,095.61 (net) in respect of outstanding wages for five weeks; and
 - £876.49 for a breach of section 1 Employment Rights Act 1996,being a total of **£1,972.10**.

REASONS

Background

- 1 The Claimant worked for the Respondent as a (trainee) florist between February and July 2017 in his shop in Hammersmith. She worked 40.5 hours a week, earning £5.50 an hour. She was never issued with a statement of terms and conditions pursuant to section 1 Employment Rights Act 1996.
- 2 The Claimant's last working day was 27 July 2017. On 29 July 2017, she received a payslip in the sum of £1,095.61 net. She was never paid this amount.

3 The Claimant lodged her claim on 24 September 2017. She named the Respondent as Mrs Florist, with the address of 2, Dower House Crescent, Tunbridge Wells, Kent TN4 0TS. This was the address shown on her P60. She had always dealt with a Mr Mike Smith as the owner and proprietor of the business. The Claimant via ACAS received a call from someone purporting to be Mr Smith's ex-wife, saying that he was not at that address. However, on 22 November, the Tribunal received an email from Mr Smith with a completed response form attached.

4 In the response form, the factual background and amounts claimed by the Claimant were not disputed. This evidently reflected the fact that the Respondent had agreed to pay the Claimant when she spoke to him on the phone before lodging her claim. In answer to the question on the form, "Do you defend the claim?", both "yes" and "no" were ticked. The "facts" relied on in support of that answer, handwritten on the form, were brief. They said, "I am sorry to say that the business has now ceased trading and I will be facing bankruptcy. I have no assets to seek and therefore cannot pay this claim." It then appears to be signed "Michael Smith".

5 **The Hearing**

The Claimant attended the hearing with her mother as her companion. There was no attendance or representation by the Respondent, nor any written communication to explain this non-attendance or to make submissions.

6 **The Issues/law**

The Claimant claims:

6.1 Her outstanding wages in the net sum of £1,095.61, unpaid contrary to section 13 Employment Rights Act 1996. This sum comprises the Claimant's basic salary plus her accrued holiday pay entitlement.

6.2 A sum pursuant to s.38 Employment Act 2002 in respect of the failure to provide her with a written statement of terms and conditions of employment in accordance with her statutory rights under s.1 Employment Rights Act 1996.

Findings of fact and conclusions

7.1 On conducting an internet search I was unable to find any company registered with Companies House as "Mrs Florist" at the address where the Claimant worked. There is a company called Mrs Florist Limited on the Companies House register, and that is registered to an address in Tunbridge Wells, but it is not the same address as I have seen on the Claimant's P60, which I had on the file, and Mr Smith is not and never has been a director or person with significant control of Mrs Florist Limited.

7.2 Accordingly, I concluded that there is not, and never has been such a company and that the Claimant was employed by Mr Smith personally. This conclusion is supported by his comments in the response form that he is "facing" bankruptcy (as opposed to a company having gone into

liquidation) and the postal and email addresses given under "Respondent's details" appear to be personal to him.

- 7.3 Further, the response says that the organisation does not employ anyone else or have any other sites in Great Britain. This cannot refer to the florist business in which the Claimant worked, since she gave evidence, which I accept, that there are two florists shops continuing to trade under Mr Smith in London, where her former colleagues still work. The Claimant's evidence was that Mr Smith used to own six or seven shops around London and has closed most, but there are these two remaining.
- 7.4 Since Mr Smith accepts that he owes the money and has not submitted a substantive defence to the claim, I therefore conclude that he should be substituted as a Respondent and accordingly make that order under Rule 34 of Schedule One to the Employment Tribunals Rules of Procedure 2013.
- 7.5 Further, since he has not attended before the Tribunal today to defend the matter, and has not shown on the balance of probabilities that he has been made bankrupt and is therefore unable to pay the Claimant the money owed, I conclude that judgment should be entered against him.
- 7.6 As to the amounts to be paid, the undisputed amount of wages owing, including holiday pay, is £1,095.61. In relation to the amount payable for the failure to provide a section 1 statement of terms and conditions, under section 38(2) Employment Act 2002, I must make an award of the minimum amount (i.e. an amount equal to two weeks' pay) and I may award the higher amount instead. The higher amount is equal to four weeks' pay. In light of the wholesale failure by the Respondent to comply with his statutory obligations, I consider it just and equitable to award the higher amount, i.e. four weeks' pay, which is £876.49.
- 7.7 Accordingly, the total amount payable is £1,972.10 net of tax and deductions.

Employment Judge Norris on 3 January 2018