



EMPLOYMENT TRIBUNALS

Claimant: Ms A Notice-Grant

Respondent: Change Recruitment Ltd

Heard at: London South **On: Wednesday, 11 April 2018**

Before: Regional Employment Judge Hildebrand

Representation

Claimant: Ms A Roffey, Counsel

Respondent: Response not entered and did not attend

JUDGMENT AS TO REMEDY

The Judgment of the Tribunal on this remedy hearing is as follows:-

1. The Respondent is to pay to the Claimant the following sums:-
 - a) In respect of unlawful deduction of wages the sum of £258.91.
 - b) In respect of accrued holiday remuneration due at termination of employment £601.20.
 - c) In respect of witness expenses pursuant to rule 75(1)(c) of the Rules of Procedure the sum of £97.93.
 - d) In relation to an award under section 38 of the Employment Act 2002 the higher amount of 4 weeks pay. I award gross the sum of £1,442.16 making a total of **£2,400.20**.
2. In relation to the Claimant's application for cost the Respondent is to show cause within 14 days of this order being sent to the Respondent why an award in costs in the sum of £500 + VAT should not be made in respect of the Claimant's costs in this case.

REASONS

1. The procedure of history of this case is relatively unusual. The Claimant brought a claim in respect of unlawful deduction of wages and for accrued

holiday remuneration due on termination of employment.

2. The Respondent failed to enter a Response and on 27 March 2018, given the relatively unusual circumstances, Employment Judge Baron signed a judgment in the accordance with rule 21 of the rules of procedure finding that the Claimant succeeded in her claims of unlawful deduction of wages and under Working Time Regulations. The case was listed for the remedy to which the Claimant was entitled to be determined.
3. I heard evidence from the Claimant. Her evidence was that she was employed by the Respondent to work for the London Borough of Hounslow in the environmental control centre as a customer service advisor for 36 hours per week starting and finishing at the same time each day and working in accordance with the instructions of the local authority management staff running the centre. She was informed orally that her rate of pay was £10.18 per hour. She found when she began work that those working alongside her were employed by another agency Adecco and were paid £10.61 per hour. Adecco has confirmed in writing to her that £10.61 per hour was the “onboarding rate” for all agency staff to be employed in this engagement.
4. Consequently, on the basis of the information received I concluded that the Claimant was entitled to the payment she seeks in relation to unlawful deduction of wages. It is clear that she was underpaid to the tune of some £0.43 per hour throughout her engagement.
5. The Claimant’s representative has calculated that during the period of the Claimant’s employment from commencement of the assignment on 5 June 2017 to the effective date of termination 22 September 2017 the Claimant’s average wage was £260.54 and a shortfall she experienced in comparison with her colleagues who were paid the £10.61 rate was £15.23 per week gross making a total over 17 weeks of £258.99.
6. The Claimant left the engagement having accrued 9 days holiday entitlement at the daily rate of £75.15. This is based on an average calculation on 35.41 hours per week derived from the Claimant’s payslips which were eventually produced by the Respondent after a significant delay in respect of the period from July. The daily rate was therefore £75.15. The Claimant had taken one day’s holiday during her assignment and the claim is therefore for a 8 day’s at £75.15 making a total of £601.20.
7. I accept the Claimant’s evidence that it was custom for those engaged in her role to be paid at the rate of £10.61 per hour and not £10.18 per hour which the Respondent paid her and which the Respondent indicated in the course of her engagement it would take steps to rectify.
8. I therefore find that the Claimant was entitled to payments which she has claimed.

9. Employment Judge Baron in addition to the rule 21 Judgment referred to above made an order on 27 March for the Respondent to produce the Claimant's holiday records, time sheets, wage slips and other documents. The Respondent has failed to comply with that order and accordingly it has been necessary for the Claimant to attend and give evidence on this hearing which had the Respondent supplied the documentation in accordance with the order or indeed in accordance with its statutory obligations to the Claimant would not have been required. I therefore consider that the Claimant is entitled to be paid her expenses as a witness for the evidence which she has given at this hearing which amount to £83.93 loss of earnings for her day off employment and £14 for her train fares making total of £97.93.
10. It is clear on the basis of the regularity of the Claimant's employment, the commitment to her to give 36 hours per week, integration of her work into to the London Borough and the degree of control exercised over her that the Claimant worked as an employee and was therefore entitled at the commencement of her engagement to a statement of initial particulars of employment as provided in section 1 of the Employment Rights Act 1996.
11. Since the Claimant has succeeded in her claim and the Respondent is default in respect of that important obligation, such default which has to large extent given rise to the need for these proceedings I consider that I am under an obligation to make an award under the provisions of section 38 of the Employment Act 2002. The claims in which the Claimant has succeeded are among the claims identified in the schedule to that act and section 38 states that the Tribunal must, subject to subsection 5, increase the award by the minimum amount or may if it considers it just and equitable in all the circumstances increase the award by the higher amount. The minimum amount is 2 weeks' pay and the higher amount is 4 weeks' pay.
12. Subsection 5 indicates that the duty does not apply if there are exceptional circumstances which would make an award or increase unjust or inequitable. I do not consider that any such circumstances apply in the case and an award is therefore something which I am obliged to make.
13. In considering whether I am obliged to award the higher amount I take into account the fact that the employment was for a relatively short period of time. I also take into account the fact that the Claimant clearly from an early stage found herself to be abnormally in the place in which she was working paid at lower rate than those alongside her and took steps to attempt to resolve this. I also note that the Respondent failed to supply her with any documentation in commencement of the engagement and further failed to supply her with payslips until 11 August 2017 when she had been working for a little over 2 months. In the circumstances I consider that it is just and equitable to award the higher amount of 4 weeks' wages. The Claimant's gross wage was £260.54 per week and the award is therefore 4 times that

sum in the total of £1,442.16.

14. The sums to be paid by the Respondent to the Claimant are therefore as follows:-

a) Unlawful deduction of wages	£258.91
b) Holiday pay	£601.20
c) Witness expenses	£97.93
d) Section 38 award	£1442.16
Total	£2,400.20

Regional Employment Judge Hildebrand

Date 23 April 2018