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EMPLOYMENT TRIBUNALS

Claimant: **Miss K McGregor**

Respondent: **London Corporate Apartments Limited**

Heard at: **East London Hearing Centre**

On: **12 February 2018**

Before: **Employment Judge Foxwell**

Representation

Claimant: In person

Respondent: Mr K Abedalrazek (Director)

JUDGMENT having been sent to the parties on 20 February 2018 and reasons having been requested not in accordance with Rule 62(3) of the Rules of Procedure 2013 but out of time, the Judge has nevertheless provided them as, due to an administrative error, the copy of the judgment sent to the parties may not have included the note drawing attention to the 14 day time-limit contained in the original.

REASONS

1 The Claimant, Miss Kemone McGregor, presented a complaint of unlawful deduction from wages to the Tribunal on 29 November 2017. It related to a period she spent working as a Lettings Negotiator for the Respondent, London Corporate Apartments Ltd. The claim was presented after the parties had gone through early conciliation unsuccessfully. I note that Ms McGregor was aged 18 when the arrangement began turning 19 towards the end of her time working as a Lettings Negotiator.

2 The basis of the Claimant's claim is that she says she was offered a starting salary of £12,000 per annum plus commission in an interview she attended on 29 September 2017 when she applied for a job as a Business Administrator. The advertisement for that job referred to a trial monthly salary of £1,000. She did not in fact take the job as a Business Administrator rather she was offered a "position" or "opportunity", depending on how you look at it, as a Sales Negotiator. This involved advertising properties for rent, showing them to potential tenants or licensees and

securing an agreement on which, no doubt, the Respondent would earn some fee or commission from the landlord.

3 It is the Claimant's case that she should be paid as an employee for the time that she spent working for the Respondent. She started on 22 October 2017 and finished on 10 November 2017 and those dates are agreed. She has provided a schedule of hours which she says that she worked; broadly speaking 9:30 in the morning till 6 in the evening with an hour off for lunch. Rather than receiving pay for those hours she says that all she got was £20 as her share of commission on one successful placement.

4 The Respondent acknowledges that £20 is what the Claimant received for the work she did but says that this is entirely consistent with the nature of the agreement she entered into. The Respondent says that this was a commission-only self-employed arrangement of a type under which it says that successful negotiators can earn substantial sums of money. To do so, however, they must arrange a number of successful placements.

5 The parties both base their cases on the written contract with the Respondent which the Claimant signed. This appears as KM2 in the exhibits to the Claimant's witness statement. I also heard evidence from the Claimant and from a director of the Respondent, Mr Khalid Abedalrazek.

6 The written contract describes the Claimant as a "service provider" or a "freelancer". It has been drafted in such a way that it is clear that the author hoped to exclude the possibility of employment. There are, nevertheless, elements of the contract which are inconsistent with genuine self-employed status. For example, paragraph 2 sets out 14 requirements under the heading "The nature of the work"; these included a requirement to dress formally at all times, to be well groomed and, perhaps most importantly, a requirement to work in the office from 9:30 until 6 during which time the contractor was to perform tasks related to work only. This last clause is consistent with the obligation of an employee to an employer. At paragraph 7 there is a requirement in respect of sickness absence for the contracting party, in this case the Claimant, to notify the Respondent of the fact of any absence with full reasons at least 30 minutes before normal start time.

7 These requirements have the hallmark of control. In my judgment they are consistent with this being a contract of employment but I do not need to go as far as making that finding to deal with this claim. What is clear on both parties' accounts is that the contract required the Claimant to do work personally for the Respondent. I am satisfied on the evidence, particularly given her background and age, that this was her first job after leaving school and that she was not pursuing it as part of a business, profession or calling of her own. It follows that I am satisfied that she was a "worker" within the definition contained in section 230 of the Employment Rights Act 1996. A worker is entitled to be paid at least the National Minimum Wage for every hour worked (unless salaried which is neither parties' case).

8 Against that background I find that the questions in this case are what hours did she work and what is the appropriate rate of the National Minimum Wage? The second question can be answered easily as it is a matter of statute: at the relevant time it was £5.60 per hour for a worker of the Claimant's age.

9 I turn then to the number of hours that were worked. The Claimant has provided a schedule of hours at KM11. Mr Abedalrazek sought to challenge this by suggesting to the Claimant and in his evidence to me that she was either not at work because she was often absent or that when she was at work she was not concentrating on the job but doing other things. I prefer the Claimant's evidence that she turned up for work at 9:30 and worked as best she could until 6 o'clock. That is what the requirement in the contract said. Furthermore, I found the Claimant to be clear, cogent and plausible when giving evidence. I am satisfied that her schedule is accurate. She has at least taken the time to put together a schedule. In contrast the Respondent came to this hearing today with no evidence other than the contents of its Response and a short witness statement from Mr Abedalrazek which is full of contentions but limited factual evidence.

10 I am satisfied, therefore, that the Claimant worked a a total of 198 hours in the period of her contractual engagement by the Respondent. The relevant rate, as I have mentioned, is £5.60 an hour, of which only £20 has been paid. The total before credit for that £20 is £1,108.80. I therefore give judgment for the Claimant for £1,088.80 which takes account of the £20 that she has already received. So, there will be judgment for the Claimant against the Respondent for that amount.

Employment Judge Foxwell

3 May 2018