



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Ms M-C Turner v Jacqueline Webb & Co Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Southampton

ON

18 May 2018

EMPLOYMENT JUDGE PSL Housego

Representation

For the Claimant: In person

For the Respondent: Did not appear and was not represented

JUDGMENT

The judgment of the tribunal is that:

1. The respondent is to pay to the claimant 1 week's pay in lieu of notice of **£230.76**.
2. The respondent is to pay to the claimant holiday pay due at the date the employment of the claimant ended of **£153.84**.
3. The respondent is to pay to the claimant unlawful deductions from wages (in respect of overtime worked but not paid) of **£307.68**.
4. The respondent is to pay to the claimant in respect of statutory sick pay not paid **£89.35**.
5. For the avoidance of doubt the total the respondent is ordered to pay to the claimant is **£781.63**.
6. The claimant was not in breach of contract at the date she was dismissed.

REASONS

1. The claimant worked for the respondent in their accounts department, 6 hours a day, 3 days a week at an hourly rate of £12.82.
2. The claimant started work on 20 March 2017. She was summarily dismissed by email on 29 September 2017. The claimant says it was unfair. The respondent stated in correspondence to the claimant that the claimant's cv contained untruths, and that they were minded to take Court action against her as a result. The claimant denies doing anything wrong. For the purposes of this decision that issue must be determined, as the right to notice pay would be lost if there was a fair dismissal for gross misconduct.
3. In coming to my findings I note that the respondent stated only that they had no timesheet for the last month of employment, but did not dispute the principle of payment for time worked and not paid. They also indicated that they were not able accurately to calculate SSP due. They said also that they were not clear what else was claimed, although the claim form was clear about the other claims.
4. The response did not engage with the notice pay claim at all. Accordingly I find that respondent has failed to prove the assertions of misconduct made by it in correspondence with the claimant. Accordingly because the claimant was not in breach of contract when dismissed that dismissal was in breach of contract. Therefore the claimant is entitled to pay in lieu of notice.
5. The contract of the claimant provided for 1 week's notice to be given during the probationary period. The claimant accepts that her employment ended in the probationary period. Therefore she is entitled to 1 week's pay in lieu of notice.
6. A week's pay for the claimant is 6 hours a day for 3 days at £12.82, which is £230.76.
7. The claimant had taken most of her holiday entitlement. She had kept a record and computed that 2 days remained due to her when she was dismissed. As her duties included payroll and I found the claimant a truthful witness I accept her calculation. 2 days at 6 hours at £12.82 is £153.84.
8. The respondent's response accepted that there might be overtime and SSP due to her, but said they could not calculate the amount due to her. This I have done, and on the basis of the evidence of the appellant, which I accept.
9. The claimant was asked to work overtime. She was hourly paid. She does not assert any enhanced rate for overtime. The claimant's evidence on oath was

that she worked 14, 15, 21 and 22 September 2017 as extra days. Her evidence was notable for its even handedness and it was plain to me that she was a truthful witness. For example in her holiday pay claim she said that she had taken most of her accrued entitlement. She is not able to provide documentary evidence of such work, as that will be within the control of the respondent. I accept the oral evidence of the claimant and find that the claimant is due pay for those 4 days. 6 hours a day for 4 days at £12.82 is £307.68.

10. The claimant was entitled only to statutory sick pay. She had quite a few days off sick, but the first 3 days of each absence will be waiting days. By reason of the accumulation provisions, looking at the 3 absences of 3 days and 2 isolated days, application of the Government's SSP calculator showed a payment due for one 3 day week of SSP, which the website shows for the claimant to be £89.35.
11. I direct the sums be paid gross, so that the claimant will have to account to HMRC for any tax or NI due. I so order having read the correspondence from the respondent to the claimant which is indicative of an unwillingness to pay, and I judge it unlikely that the respondent will process a payment through its payroll system.

Employment Judge PSL Housego
Dated 23 May 2018

Sent to the parties on: May 2018