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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss H Young

and

Respondent

OB Equine Limited t/a
Old Bexley Stables

Held at Ashford on 14 June 2018

Representation

Claimant:

Miss K Young, Mother

Respondent:

Mr S Swaisland, Director

Employment Judge Kurrein

JUDGMENT

- 1 The Claimant's claim alleging unfair dismissal is not well founded and is dismissed.
- 2 The Respondent has made unauthorised deductions from the Claimant's wages in respect of:-
 - 2.1 Holiday Pay from August 2015 to July 2017, and is ordered to pay her the sum of £1,470.00 without deduction;
 - 2.2 Wages for 30, 31 May, 1 and 2 June 2017, and is ordered to pay her £120.00 without deduction;
 - 2.3 SSP, as calculated by HMRC, in the sum of £102.12.
- 3 I make a lower award pursuant to S.38 Employment Act 2002 in favour of the Claimant in the sum of £300.00.

REASONS

- 1 This was a short hearing and these reasons are commensurate with that.
- 2 The claimant presented a claim for unfair dismissal and holiday pay on 21 August 2017. The respondent's response presented on 18 October 2017 denied those claims.
- 3 As a preliminary hearing on 11 January 2018 Employment Judge Prichard defined the issues and gave directions for the further conduct of the case.
- 4 I have heard the evidence of the claimant and her mother on her behalf. I have heard the evidence of Mr Swaisland, Miss Tucker, Miss Fenwick and Mr Treveil on behalf of the respondent. I have considered the documents to which I was referred and took account of the submissions of the parties. I make the following findings of fact.

- 5 The claimant was born on 22 November 1998 and started her employment with the respondent on 4 February 2015 as an apprentice. In the course of her evidence the respondent conceded that the claimant's employment was continuous from that date until June 2017.
- 6 The respondent has accepted that it kept no records in respect of the payment of holiday pay, although it sought to suggest that the claimant had agreed to "rolled up" holiday pay.
- 7 The claimant enjoyed working for the respondent, for the most part, and was successful in her studies. At the time of the events in issue she was close to completing her level 3 NVQ which she has subsequently gained.
- 8 On 13 May 2017 the claimant's GP signed her off for two weeks with anxiety and depression. The claimant was well aware that this would not find favour with Miss Tucker so continued to work until urged to stop by her mother. She sent a text to that effect late on 1 May 2017, but returned to work the next day to confirm that she would be taking the remaining period off.
- 9 Miss Tucker was not happy. She said as much in a Facebook post on the respondent's website. She sent a text to the claimant in what she now accepts were unfortunate terms. She told the claimant that as she was not well enough to care for the respondent's horses she should not attend the respondent's premises to care for her own. She also reminded the claimant that the cost of livery for her horses, and her accommodation (which was owned by the respondent) was dependent on her job. She concluded by expressing the expectation that the claimant would return to work at the conclusion of her period of sick leave.
- 10 The Claimant was not paid any sick pay or SSP.
- 11 On 5 June 2017, in line with advice given to her by her GP, the claimant gave the respondent four weeks notice by text to end the livery agreement for her horses. Ms Tucker tried to telephone the claimant concerning this on more than one occasion. The claimant accepted that she ignored those calls: she was not in the mood to talk to anyone. Ms Tucker then sent the claimant the livery accounts indicating that livery was only paid up to 9 June 2017 by when the claimant should remove her horses. She should not rely on the respondent for hay or straw in the interim.
- 12 At the same time, the respondent was placing adverts on Facebook and elsewhere for an apprentice, to fill a vacancy, and to let a room in the house in which the claimant had a room with her boyfriend. The claimant accepted that there was a room vacant at this time and, although she disputed that the respondent regularly advertised for apprentices, I accepted the respondent's advertisements were genuine and not placed with a view to replace the claimant.
- 13 I accepted the claimant's evidence that the cumulative effect of these messages and postings, including a message that the rent would be increased, led her to think that the respondent did not want her to return to work. However, the claimant took no action in response to her employers conduct. She did not resign or otherwise communicate with the Respondent save to remove her

horses early on 10 June 2017 and attend an inconsequential meeting with Mr Swaisland on 19 June 2017.

- 14 I have come to the conclusion that the claimant has failed to establish, on the balance of probabilities, that she was in fact dismissed.
- 15 I could not accept that the text sent by Ms Tucker to the claimant on 2 June 2017 was an express dismissal: it specifically stated that Ms Tucker expected the claimant to return to work once her sickness absence was over.
- 16 I have considered the position as analysed in Western Excavating (ECC) Ltd v Sharp [1978] QB 761. In my view there was no evidence the claimant resigned from her employment. When I asked her about this she replied, "I wouldn't say I resigned. I just didn't go back." I have concluded that is fatal to her claim alleging unfair constructive dismissal.
- 17 I accepted her evidence that she had not been paid any holiday pay, and neither had she been told that it was included in the pay she did receive. She sought payment of the holiday pay to which she was entitled from the start of her employment in February 2015. That claim extends for more than two years from the date when she presented her claim, something that is not permitted. I calculate the claimant is entitled to a total of 49 days holiday pay from the 22 August 2015 to the date she presented her claim. I accepted her case, which was not challenged, that she was paid £30 per day net. I therefore award her the sum of £1,470.00 in respect of holiday pay, to be paid without deduction.
- 18 It was not in dispute that the claimant was not paid for the four days she worked when she was in fact signed off. I award her the sum of £120.00 in respect of unauthorised deductions from wages, to be paid without deduction.
- 19 The respondent did not pay the claimant any sick pay. They disputed the claimant's entitlement to it. Later, in error, HMRC upheld the respondent's position. Since then, on 23 January 2018, HMRC conceded that they had "conveyed an incorrect assessment" and made a declaration that the claimant was entitled to the sum of £102.12. I make an award of that sum in her favour.
- 20 The claimant was not provided with a statement of terms and conditions of employment at any time. I accepted the respondent was a micro-employer with limited resources. In all the circumstances of the case. I thought it just and equitable to make a lower award in favour of the claimant in the sum of £300.00

Employment Judge Kurrein

14 July 2018