



EMPLOYMENT TRIBUNALS

Claimant: Miss E Oikonomidou

Respondent: PC Soho Centre Administration Ltd

Heard at: London Central

On: 11 October 2018

Before Judge: Employment Judge A Isaacson

Representation

Claimant: In person, accompanied by PSU

Respondent: Not in attendance

JUDGMENT

The Judgment of the Tribunal is as follows:

1. The claimant's claim for notice pay succeeds. The respondent is ordered to pay to the claimant the gross sum of £720.00.
2. The claimant's claim for her outstanding wages set out in her January 2018 payslip succeeds. The respondent is ordered to pay the net sum of £938.36.
3. The claimant's claim for 69.5 hours arrears of pay succeeds. The respondent is ordered to pay the gross sum of £625.50.
4. The claimant's claim for arrears of pay from card tips succeeds. The respondent is ordered to pay to the claimant the gross sum of £400.00.
5. The claimant's claim for arrears of service charges for the period November to March 2018 succeeds. The respondent is ordered to pay the gross sum of £1150.
6. The total amount the respondent is ordered to pay to the claimant is £3833.86.

- 7. The claimant is liable for any tax payable on the gross sums. Calculations for these sums are set out in the reasons below.**

REASONS

1. The claimant attended the Tribunal and gave evidence supported by a number of documents. Mr A Raduly also gave evidence on her behalf. Both came across as honest and reliable witnesses with documentary evidence to support their evidence.
2. The claimant was employed by the respondent on the 21 September 2017. A copy of her statement of terms of employment were presented to the Tribunal together with a deduction from pay agreement.
3. Clause 7 of the deductions agreement stated "*Any cash shortages at the end of the shift will be the responsibility of the individual on duty and must be made good by that individual. Any such shortages will be deducted from wages/salary.*"
4. The claimant was paid an hourly rate of £9. The hours she worked varied and increased during the seasonal Christmas and New Year period. However, looking at the average hours worked over the period of employment the Tribunal finds that on average the claimant worked 80 hours over a two weeks period.
5. She was also paid cash tips which included all cash tips she received less 20% given to Barbacks. She also received credit card tips. She took photos of each credit card receipt and wrote her name on it so the respondent would know who to pay. Generally the claimant would be paid the full amount of the credit card tips apart from when there was a substantially large tip and then 20% would be deducted and given to the Barbacks. The claimant produced evidence of her credit card receipts for the period she did not receive her credit card tips from January to April 2018 and these amounted to £400.00. The Tribunal finds that credit card tips were an integral part of the claimant's wages and £400 is owing to the claimant by the respondent.
6. In addition, the claimant received a service charge. This was where customers opened a tab at the bar or sat at a table they would pay a service charge for the service. The amount of service charge did vary and evidence of discussion with the respondent about the service charge is set out in an agenda for a meeting on 12 February 2018. This confirms it is payable and is based on the hours worked. The claimant received a service charge of £115 for two weeks worked in September/October 2017. She received £290.47 for service charges for the next month. She was meant to receive £100 for service charges in her January 2018 pay for two weeks work. The Tribunal finds that on average the claimant received £250 gross pay for service charges per month. The Tribunal finds that service charges were part of the claimant's wages.
7. The claimant was not paid service charges for the months of November 2017 to April 2018. She is therefore owed £1150 in service charges (250 x 5 £1250 - £100 claimed in January payslip) payable by the respondent.
8. The claimant was dismissed on the 13 April 2018. She was told that she would receive two weeks' pay in lieu of notice as confirmed in an email from the respondent dated 14 April 2018. Although the claimant's contract provided for

one week's notice the Tribunal finds that the contract was varied by agreement to pay her two weeks' pay in lieu of notice. Having calculated that the claimant on average worked 40 hours per week the claimant is owed £720 for two weeks' notice pay (£9 x 80).

9. The claimant kept a record of the hours she worked and showed a schedule of those hours to the Tribunal. In total she worked 69.5 hours in March/April 2018 and was not paid for those hours. The respondent owes the claimant £625.50 for these hours worked (£9 x 69.5).
10. The respondent sent a payslip to the claimant for her January pay but failed to pay the sum into her bank account. The net amount set out on the pay slip is £938.36 and includes £100 service charge and holiday pay. The respondent argued that the claimant should not be paid this sum because they had lost £35,000 on a night due to fraudulent credit card transactions but did say they would pay her once they had recovered the sum.
11. The Tribunal finds that the claimant is owed the full amount. The clause in the deduction agreement does not cover a situation where there has been credit card fraud. In any event it is apparent that the respondent did recover the sums lost on the night.
12. Section 25(4) & (5) of the Employment Rights Act 1996 provides that where a Tribunal has ordered an employer to pay or repay a worker any amount, the amount which the employer is entitled to recover by whatever means in respect of the matter which gave rise to the deduction or payment (including cash shortages) is reduced by the relevant amount. Therefore, if a sum has been wrongfully deducted, an employer cannot later recover that amount at all, even if it was properly owing to the employer.
13. In conclusion the respondent is ordered to pay to the claimant the sum of £3833.86 for outstanding wages, including service charges, tips and holiday pay, and for notice pay.

Employment Judge Isaacson

Date 11 October 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

15 Oct. 18

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FOR THE TRIBUNAL OFFICE