



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4117252/2018

Hearing Held at Dundee on 16 November 2018

Employment Judge: I McFatridge (sitting alone)

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Ms D Rose

**Claimant
In person**

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Paula Deans

**Respondent
Not present or
represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The Judgment of the Tribunal is that

- (1) The respondent unlawfully withheld wages from the claimant in the sum of Two Hundred and Sixty Eight Pounds and Seventeen Pence (£268.17). The respondent shall pay the sum of Two Hundred and Sixty Eight Pounds and Seventeen Pence (£268.17) to the claimant in terms of Section 24(1)(a) of the Employment Rights Act 1996.
- (2) The respondent shall pay to the claimant the sum of Thirty Three Pounds and Twenty Six Pence (£33.26) in terms of Section 24(2) of the Employment Rights Act 1996.

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(3) A Preparation Time Order is made that the respondent shall pay to the claimant two hours' preparation time amounting to Sixty Six Pounds (£66).

(4) The total sum payable by the respondent to the claimant amounts to
5 Three Hundred and Sixty Seven Pounds and Forty Three Pence (£367.43).

REASONS

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1. The claimant submitted a claim to the Tribunal in which she claimed that she was due arrears of wages following the termination of her employment with the respondent. The respondent submitted a response in which she denied the claim. An Employment Judge ordered the claimant to provide specification as
15 to the sum she considered due to her and how this was arrived at. The claimant provided this information on 15 October 2018. A hearing was fixed and in advance of this the respondent wrote to the Tribunal on 14 November indicating that whilst she was denying the claim she did not intend to attend the Tribunal. The Tribunal responded to advise that if the respondent did not
20 attend, the hearing would proceed in her absence. At the hearing the claimant was in attendance with her productions and ready to proceed. There was no appearance by the respondent. The start of the Tribunal was delayed 15 minutes in case she had decided to attend. The claimant was then put on oath and gave evidence on her own behalf. She referred to a bundle of
25 productions and to the statement which she had produced in response to the previous Tribunal orders which had been copied to the respondent. On the basis of her evidence and the productions I found the following essential factual matters to be proved or agreed.

30 Findings in Fact

2. The claimant commenced employment with the respondent on or about 16 April 2018. The respondent operated the Arbroath Artisan Golf Club

Restaurant. There was an initial discussion between the claimant and the respondent as to how the claimant would be paid. It was agreed she would be paid an hourly rate at the rate of the National Minimum Wage. The respondent indicated that the precise hours of work of the restaurant were to some extent weather dependent. She considered that the claimant would be working around 30 hours per week in the summer six months and around 16 hours per week in the winter months. Following discussions, it was agreed that the claimant would work flexible hours as required. She would be paid on the basis of working 23 hours per week. If she worked more hours than this then the hours would be banked and she would be entitled to be paid the banked hours if she left. Otherwise she would receive payment of the banked hours during the weeks when she worked less than 23 hours. This would have the effect of balancing her pay out over the course of the year. Subsequently it was agreed that the claimant would be paid in cash monthly.

3. The claimant kept a diary in which she noted the hours she worked. Pages from the diary were lodged (C1-C14). I accepted that these accurately stated the hours the claimant worked. The claimant produced a summary for each week she worked. The claimant's employment terminated on or about 21 August. As at that date she had worked a total of 361 $\frac{3}{4}$ hours whilst she had only been paid for 230 hours. She was therefore due a total of 131 $\frac{3}{4}$ hours. In addition to this she was due holiday pay in respect of annual leave accrued but untaken amounting to 32.2 hours. The claimant thereafter received various payments from the respondent leaving a balance of 34.25 hours due to be paid. The total sum outstanding amounted to £268.17 (34.25 x £7.83).

4. Following the termination of her employment the claimant wrote to the respondent and sent a substantial number of text messages. She required to send two recorded delivery letters. Each recorded delivery letter cost her £2.11 in postage.

5. The claimant also required to obtain a print out of photographs of the rota which she had taken with her mobile phone. The claimant does not have access to a computer herself and required to use a commercial firm to do this. The total cost of this and associated photocopying of the documents came to £31.15.

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6. In her texts in response the respondent simply said that she disputed the claims and denied the rotas were correct.

7. The claimant spent two hours' time preparing for the hearing on 16 November. This included putting together her bundle of productions.

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Observations on the Evidence

8. The claimant gave evidence on oath and I accepted her as a credible and reliable witness. The claimant had clearly spent considerable time and effort putting together a bundle of documents, setting out her claim and providing vouching in terms of her diary and photographs of the rota which she had previously sent in to the Tribunal. The claimant indicated that she had suffered a considerable amount of stress as a result of the matter and provided a letter from her GP to this effect. She sought compensation for this but I indicated that this was not something which was within my jurisdiction. She also indicated that she had had to give up a day's work in order to attend the Tribunal and that she had incurred a number of other expenses over and above those which were vouched by the receipts which she handed in.

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9. Although the respondent did not attend I considered the claimant's evidence as against the explanations set out by the respondent in her ET3. The claimant was able to answer the points made and I accepted her evidence.

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Discussion and Decision

10. Given that I accepted the claimant's evidence as to the hours she had worked and I accepted her calculations of arrears of pay and arrears of holiday pay it

was clear to me that the claimant had suffered an unlawful deduction of wages in the sum of £268.17 and that an order should be made in this sum. With regard to expenses the claimant's position was that she had been put to a considerable amount of expense as a result of the respondent's failure to pay her the amount which she was due and also her failure to engage with the claimant when she tried to ask her for payment subsequent to the termination of her employment. The claimant indicated that the respondent had ceased to operate the restaurant around five weeks after the claimant left. The claimant indicated that other staff had been left in the same position as her. I indicated to the claimant that the amount I could award by way of compensation for expenses incurred was limited by the terms of the statute and in particular section 24(2) of the Act. I was not in a position to award the claimant any expenses of the Tribunal action under this head and in particular could not recompense her for her wage loss in attending the Tribunal. The issue of costs/preparation time orders for the Tribunal is dealt with by Rules 74-84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 and I am required to consider the issue of expenses under this head which I have done below. That having been said it was clear to me that the claimant had incurred costs as a result of the respondent's failure to pay her wages timeously in respect of the cost of sending two recorded delivery letters to the respondent. I also considered it appropriate that she recovered the costs of transcribing the photographs of the rota from her phone and copying the documents. These documents were provided to the respondent in advance of the hearing and were part of the steps reasonably taken by the claimant to have the respondent deal with the matter without the necessity of Tribunal proceedings. I was satisfied on the basis of the receipts that this expenditure had been incurred and I was also satisfied that it was a financial loss by the claimant attributable to the matter complained of. I considered it appropriate that the claimant be reimbursed in the sum of £33.26.

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11. As noted above the claimant sought a sum by way of recovery of expenses to which she had been put as a result of requiring to prepare for and attend the Tribunal hearing. The claimant suffered wage loss but this is not something I

could compensate for. The matter is dealt with in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1. In terms of Section 75(2) I can make a Preparation Time Order in respect of the receiving parties' preparation time while not legally represented. Preparation time means time spent by the receiving party (including by any employment advisers) in working on the case except for time spent at any Final Hearing. I could only make such an Order if the terms of Rule 76 are met. Rule 76(1) states that a Tribunal may make a Costs Order or a Preparation Time Order where it considers that "(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted". In this case it was the claimant's position that the way the respondent had dealt with the proceedings had been unreasonable. I acknowledge it is always difficult to come to a conclusion in such a matter without hearing the evidence of both parties. I note that in her e-mail the respondent indicated that she had no funds to come to Dundee. Looking at matters in the round, however, it appeared to me that the way the respondent had dealt with the matter was unreasonable. The claimant's evidence was that she had contacted the respondent while the respondent was still trading seeking payment of the sum due. She did not receive any satisfactory response and required to put together a fair amount of documentation herself to show to the respondent. Despite this the respondent failed to engage with her and to provide any counter calculation what she alleged the position to be. The claimant then required to raise proceedings. During the course of this she was asked to provide detail of her claim which she did. The letter from the Tribunal to both parties dated 9 October 2018 stated

"The Claimants reply has to be copied to the Respondent. The Respondents thereafter have 10 days to reply clarifying whether they dispute liability for any or all of the sum claimed and the basis of any such dispute."

The respondent did not respond to this until her letter of 15 November where she indicated she would not be going to the Tribunal. All the respondent says about the matter is

5 “I’m denying all her claims, and she also didn’t send you the correct rotas either.”

10 It appeared to me that the respondent entirely refused to engage with the Tribunal process. If she disputed the rotas then it would have been reasonable for her to provide additional detail as to what she believed the correct position to be. Even if she was not in the position to attend the Tribunal herself she could have provided this information by way of a written representation. She did not do this. In all of the circumstances it appeared to me that the respondent’s behaviour had been unreasonable and that the threshold set out
15 in Rule 76 had been met. I required to consider whether to exercise my discretion to grant a Preparation Order and in all the circumstances I considered this to be appropriate. The only information I had regarding the respondent’s means was her statement and her letter to the effect that she was starting a new job on Friday having been out of work since August.

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12. Whilst it was clear to me that the claimant had spent quite a bit of time in preparing the documents for her case I considered that it would be appropriate in all of the circumstances to limit the Preparation Time Order to a total of two hours. The current rate is £33 per hour therefore the claimant is entitled to a
25 Preparation Order in the sum of £66. The total sum due by the respondent to the claimant is therefore $(268.17 + 33.26 + 66 = £367.43)$.

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35 **Employment Judge: Ian McFatridge**
Date of Judgment: 21 November 2018
Entered in register: 21 November 2018
and copied to parties