



EMPLOYMENT TRIBUNALS

Claimant

Pamela Bryce

v

Respondent

Robert Alexander
t/a Smell the Coffee

Heard at: Cambridge

On: 12 November 2018

Before: Employment Judge Foxwell

Appearances

For the Claimant: In person

For the Respondent: No appearance

JUDGMENT

1. The Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay her the gross sum of £2,723.
2. The Respondent is ordered to pay the Claimant the further sum of £750 pursuant to section 38 of the Employment Act 2002 for his failure to provide her with a written contract of employment.

REASONS

1. The Respondent, Mr Robert Alexander, opened a coffee shop in St Ives in 2016. The Claimant, Ms Pamela Bryce, began working there when, or soon after it opened. In October 2017 Mr Alexander opened a second coffee shop in Cranbrook. He asked the Claimant to take over as manager of this shop. The Claimant began working there on 5 October 2017. The Claimant told me, and I accept, that Mr Alexander promised her wages of £300 a week on moving to Cranbrook. She also told me that she was not given a written contract of employment and that she did not receive payslips.
2. The Claimant stopped working at the coffee shop on 18 December 2017. On 16 April 2018, having gone through early conciliation between 15 March 2018

and 15 April 2018, the Claimant presented a claim for unpaid wages to the Tribunal relating to her time working at Cranbrook (10 weeks).

3. The Respondent filed a response alleging that the Claimant had been employed by "Smell the Coffee Ltd" and not by Mr Alexander personally. He also suggested that the Claimant had taken £40 cash each day from the shop's takings and that, when this was added to the cost of a car, £550, which he had purchased for the Claimant and the amount she admitted receiving, she had been paid more than the £3000 in wages she was claiming for the 10 weeks she worked at the Cranbrook shop.

4. The parties were notified of the date of this hearing when the claim was accepted by the Tribunal. Mr Alexander has not attended and there has been no explanation for this or further correspondence from him. Accordingly, the only evidence I have received is from the Claimant although I have had regard to the contents of his response.

5. The Claimant told me that she worked six days a week at the shop, having Wednesdays off. She began work at 8am by collecting baked goods for sale in the shop. The shop opened at 10am and closed at 5pm on weekdays and Saturdays and between 11am and 4pm on Sundays. There was no evidence that the Claimant was allocated or took formal breaks during her working day.

6. I accept the Claimant's evidence and calculate, therefore, that she worked 50 hours each week.

7. The Claimant was entitled to be paid the National Minimum Wage and in these circumstances, even though the parties agree that a rate of £300 per week had been agreed between them, I find that the Claimant was entitled to be paid £375 a week, being 50 hours at £7.50 per hour (the then current hourly National Minimum Wage).

8. I accept the Claimant's evidence that she made drawings of £740 from the shop's takings on account of her wages. I also accept that she spent £263 of this on purchasing stock for the shop. Accordingly, she received £477 on account of wages when working at the Cranbrook shop. The Claimant also gives credit of £550 for the cost of the car purchased for her by Mr Alexander.

9. In light of these findings, I conclude that £2723 remains to be paid to the Claimant as wages (£3750 - £477 - £550).

10. The critical question in this case, however, is whether the Claimant's contract was with Mr Alexander personally or with the limited company he established in 2016. Smell the Coffee Ltd is still shown as active on the register of companies but I was told by the Claimant that the coffee shops no longer trade. I pressed her on whether her contract was with Mr Alexander or the limited company and she told me that all her dealings well with Mr Alexander directly and, as far as she was aware, no limited company was involved. She mentioned that the company's name appeared on the shop's till roll but that was as far as it went. In these circumstances, and given the absence of any formal written contract or payslips, I accept the Claimant's evidence that her contract was with

Mr Alexander personally and not with a limited company. The mere fact that Mr Alexander may have had a limited company through which he could trade does not mean that he did so. I am satisfied, therefore, that the Claimant has brought this claim against the correct party and that it is appropriate to enter judgment against Mr Alexander personally.

11. Finally I award two weeks' pay under section 38 of the Employment Act 2002 in the sum of £750 because of Mr Alexander's failure to issue the Claimant with a written contract of employment.

Employment Judge Foxwell

Date: ...13 November 2018.....

Sent to the parties on:

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For the Tribunal Office