

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104825/2017

Held in Glasgow on 13 November 2017

5

Employment Judge: Ian McPherson

Mrs Ramanjeet Dhillon

Claimant

10

**Now Brow (Clydebank) Ltd
T/a HD Brow Bar**

Respondents

15

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20

RULE 21 OF THE EMPLOYMENT TRIBUNAL RULES OF PROCEDURE 2013

The Judgment of the Employment Tribunal is that:-

25

- (1) The claimant's complaints of (a) failure to holiday pay, and (b) unlawful deduction from wages, both succeed, and it is ordered that the respondents shall pay to the claimant the sum of **ONE THOUSAND, SIX HUNDRED AND FORTY THREE POUNDS, FORTY FOUR PENCE** (£1,643.44) in respect of holiday pay due, and **ONE THOUSAND, FIVE HUNDRED AND THIRTEEN POUNDS** (£1,513.00) in respect of shortage of pay, as per the claimant's wages calculations attached to the Schedule of Loss provided by the claimant to the Tribunal on 10 November 2017;

30

- (2) The remaining complaint of unfair dismissal, as also the claimant's claim for a 25% statutory uplift for the respondents' alleged unreasonable failure to comply with the ACAS Code of Practice, and her claim for compensation for harassment, as per her Schedule of

35

Loss, will all be determined by an Employment Judge at a Final Hearing on a date to be hereinafter fixed by the Tribunal (time estimate **3 hours**) for full disposal, including remedy, if appropriate;

5 (3) **Within 10 days of issue of this Judgment**, the claimant shall comply with the undernoted Case Management Orders, as set forth below at paragraphs **5, 8, 17 and 18** of the Reasons, and provide to the Tribunal her Further and Better Particulars of those aspects of her claim against the respondents, and send a copy to the respondents, at the same time as intimating to the Tribunal ;

10 (4) **No later than 14 days before the date to be hereinafter assigned for that Final Hearing**, the claimant shall send to the Tribunal, with a copy sent at the same time to the respondents, an updated Schedule of Loss for the claimant, together with any supporting documents to be relied upon in evidence at that Final Hearing, and provide, at that
15 Hearing, **two copies** of a Bundle of Documents, chronologically arranged, paginated, and indexed, including any relevant and necessary evidence to be relied upon at that Hearing by the claimant; and

20 (5) Instructs the clerk to the Tribunal to send to the respondents, when issuing this Judgment to them, a copy of the Schedule of Loss provided by the claimant to the Tribunal on 10 November 2017.

REASONS

1. A copy of the claim form setting out the claimant's complaints was sent to the respondents on 4 October 2017.
- 25 2. In accordance with the terms of **Rule 16** of the Rules to be found in **Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**, the respondents were required to enter a response within 28 days of the date on which a copy of the claim was sent to them, but they failed to do so by 1 November 2017, or at all.

3. The Employment Judge decided that on the available material a determination could properly be made without a Hearing as to the liability of the respondents for certain parts of the claim, namely the claimant's complaints of (a) failure to holiday pay, and (b) unlawful deduction from wages.
4. As regards the unfair dismissal complaint brought by the claimant, the Tribunal notes that, in the ET1 claim form, the claimant states that she was employed by the respondents from 4 June 2016 to 28 July 2017. Accordingly, she has less than two years' continuous employment with the respondents as at the effective date of termination of her employment. In terms of **Section 108 of the Employment Rights Act 1996**, the claimant does not appear to have sufficient qualifying service to bring a complaint of ordinary unfair dismissal under **Section 94**.
5. As such, the Tribunal indicates that, unless the claimant shows cause, **within 10 days of issue of this Judgment**, it is minded to Strike Out her ordinary unfair dismissal complaint as having no reasonable prospect of success, in terms of **Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013**, as the Tribunal appears to have no jurisdiction to consider that complaint. If the claimant disagrees, she should advise the Tribunal, and indicate whether she wishes that matter to be addressed at a Hearing.
6. However, in her Schedule of Loss intimated to the Tribunal on 10 November 2017, further to a direction by an Employment Judge for the claimant to provide further information, the claimant has sought a basic award, and a compensatory award, for compensation for an "***automatically unfair dismissal***", but it is not detailed in that Schedule of Loss, nor in the ET1 claim form previously submitted, the basis of which it is alleged that her termination of employment by the respondents on 28 July 2017 is an automatically unfair dismissal,
7. In particular, the specific statutory provision being relied upon by the claimant, to found her complaint of automatically unfair dismissal, in terms

of Part X of the Employment Rights Act 1996 (Sections 94 to 134A), is not identified. As a matter of fair notice, and proper specification of her claim, for both the Tribunal, and the respondents, the claimant must clarify the legal basis of her unfair dismissal head of complaint.

5 8. Under my general case management powers, in terms of Rule 29 of the Employment Tribunals Rules of Procedure 2013, the claimant is ordered to provide Further and Better Particulars of her complaint of automatically unfair dismissal, and to provide that additional information to the Tribunal, with copy to the respondents, within 10 days of issue of this Judgment.

10 9. Further, in the claimant's Schedule of Loss, the Tribunal notes that she seeks a total award from the Tribunal of **£78,187.41**. On the basis of the available material, contained in that Schedule of Loss, the Employment Judge decided he could properly determine remedy in respect of the claimant's complaints of (a) failure to pay holiday pay, and (b) unlawful
15 deduction from wages.

10. He has accordingly ordered that the respondents shall pay to the claimant the sums of (a) **£1,643.44** in respect of holiday pay due, and (b) **£1,513.00**, in respect of shortage of pay, all as per the claimant's wages calculations attached to her Schedule of Loss provided to the Tribunal on 10 November
20 2017.

11. As that Schedule of Loss appears not to have been copied to the respondents, in terms of Rule 92, which requires correspondence sent to the Tribunal by one party to be copied to the other party, I have instructed the clerk to the Tribunal to do so, when sending this Judgment to the
25 respondents.

12. As the respondents have not presented an ET3 response defending the claim, they are not entitled to participate in the Final Hearing ordered in this Judgment, except to the extent that the Employment Judge may permit in terms of Rule 20(3), but they are entitled to Notice of any Hearings and
30 decisions of the Tribunal.

13. Further, in that Schedule of Loss, the claimant seeks from the respondents a basic award of **£270.13**, a compensatory award of **£17,123.36** (comprising loss of earnings for 20 weeks, assessed at **£4,617.60**; future loss for 52 weeks, assessed at **£12,005.76**; and loss of statutory rights at **£500**, plus compensation for harassment, assessed at **£42,000.00**.
14. The compensatory award, sought, as per the Schedule of Loss, appears to have been drafted without regard to the limits on a compensatory award, as set forth in **Section 124 (1ZA) of the Employment Rights Act 1996**, and this matter will accordingly be further considered by the Tribunal at the Final Hearing to be held in due course, as ordered in this Judgment..
15. In addition, in her Schedule of Loss, the claimant seeks a 25% statutory uplift on compensation awarded to her for the respondent's alleged unreasonable failure to comply with the ACAS Code of Practice on disciplinary and grievance procedures.
16. Those aspects of the claim, and the claimant's Schedule of Loss, will be determined by an Employment Judge at a Final Hearing on date to be hereinafter fixed by the Tribunal (time estimate **3 hours**).
17. Under **Rule 29 of the Employment Tribunals Rules of Procedure 2013**, the claimant is **ordered** to provide Further and Better Particulars of the basis on which she contends that the respondents unreasonably failed to comply with the ACAS Code of Practice.
18. Further, again under **Rule 29**, the claimant is **ordered** to provide Further and Better Particulars of the basis of her claim for compensation for harassment, when her complaint before the Tribunal proceeds as a complaint of unfair dismissal, contrary to the **Employment Rights Act 1996**, and not as any complaint that she was discriminated against by the respondents on the grounds of any protected characteristic, contrary to the **Equality Act 2010**.

19. The claimant shall provide all that additional information, by way of Further and Better Particulars, **within 10 days of issue of this Judgment.**

20. To ensure the good and orderly conduct of the Final Hearing, on a date to be hereinafter assigned by the Tribunal, I have ordered that, **no later than 14 days before the date of that Final Hearing,** the claimant shall send to the Tribunal, with a copy sent at the same time to the respondents, an updated Schedule of Loss for the claimant, together with any supporting documents to be relied upon in evidence at that Final Hearing, and provide, at that Hearing, two copies of a Bundle of Documents including any relevant and necessary documentary evidence to be relied upon at that Hearing by the claimant.

21. If the claimant considers that my time estimate for that Final Hearing of **3 hours** is not sufficient, then she should advise the Tribunal, **within 10 days of the issue of this Judgment,** and indicate what duration she feels is more appropriate, detailing what witnesses, if any, other than herself, might be led in evidence, the likely duration of her, and if appropriate, their evidence, and what matters it is intended any other witnesses for the claimant will give evidence about to the Tribunal.

Employment Judge: Ian McPherson
Date of Judgment: 17 November 2017
Entered in register: 17 November 2017
and copied to parties

Important Notice

1. Parties' attention is drawn to the Orders made in this Judgment, and the need for full and timeous compliance.

2. If these Orders are not complied with, the Tribunal may make an Order under **Rule 76(2) of the Employment Tribunal Rules of Procedure 2013** for expenses or preparation time against the party in default.

5 3. Further, if these Orders are not complied with, the Tribunal may strike out the whole or part of any claim or response under **Rule 37**.

10

15