



EMPLOYMENT TRIBUNALS

Claimant: Mrs Z Bundy
Respondent: Compass Group Ltd
HELD AT: Liverpool **ON:** 4 July 2018
BEFORE: Regional Employment Judge Parkin
(sitting alone)

REPRESENTATION:

Claimant: In person.
Respondent: Mr J Byrne, HR Advisor.

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of unlawful deduction from her wages is well-founded but the Tribunal makes no award of unpaid wages under Section 24 of the Employment Rights Act 1996, in the circumstances that the respondent has recently made good the underpayment.
2. Pursuant to Section 24(2) of the Employment Rights Act 1996, the Tribunal orders the respondent to pay the claimant compensation in the sum of £50.00 representing the financial loss she has sustained as a result of the respondent's late payment.

REASONS

1. By her claim presented on 30 April 2018 the claimant claimed notice pay and outstanding payments relating to the termination of her employment as a Location Accountant at Aintree Race Course with the respondent. She contended that when off sick she had given notice to terminate her employment, being prepared to give short notice shorter than the one month's contractual notice but that her employer had in fact terminated her employment early such that she was entitled to a month's

notice of pay in lieu. She maintained that there were other outstanding sums due to her in respect of holidays, in lieu days and expenses.

2. The respondent in its response presented on 11 June disputed all the claimant's claims, contending that her employment had terminated by agreement on her resignation with short notice on 31 March 2018 and that no outstanding payments were due in particular contending that it had paid statutory sick pay to her for the final period from 22 March to 31 March 2018.

3. At the hearing both parties provided their Bundles of documents, neither of which had been seen in advance by the other party. The claimant gave evidence on her own behalf and was a frank and careful witness. The Tribunal made the following brief key findings of fact.

(i) The claimant's employment commenced on 29 or 30 October 2017 and she earned £2,500 gross per month and had a contractual notice requirement of one month's notice. By March 2018 she was deeply unhappy and went off sick and on 18 March presented a written notice of resignation making a proposal since she was sick to terminate her employment on 31 March 2018.

(ii) The respondent was prepared to accept that termination date but by massive error its Payroll Department sent out a P45 dated 23 March 2018 stating that the claimant's termination of employment date was 22 March 2018.

(iii) That prompted the claimant to write a most significant letter by email on 23 March 2018 "I received an email yesterday from Compass payroll informing me that that my final day was 22 March, as per my resignation I stated that my final day would be 31 March. If this has been changed without my knowledge or agreement, I would then take that as I have been dismissed therefore I would also be expecting in my final pay, one week's lieu of notice from the 22nd to 29th March. Please can I also remind you that I have two outstanding expense claims that are yet to be authorised".

(iv) The claimant's email in turn received a very prompt reply from Ricky Fullerton HR Business Partner again dated 23 March 2018 "Please accept my apologies that you received an incorrect email yesterday from my Payroll Department. I can confirm your final day with Compass will be 31 March 2018 and a letter has been sent to you from Peter Jardine stating this". That email went on to give details of what the claimant's final payslip should include, including SSP from 19 to 31 March, outstanding holiday pay and lieu days and outstanding expenses claims.

(v) The claimant then received the respondent's further letter dated 26 March from Peter Jardine confirming acceptance of the resignation and that her last day of employment, her termination date, was 31 March 2018.

(vi) Regrettably thereafter although payment of outstanding expenses and holiday pays were made by the respondent, the final accounting and payments to the claimant were not made as had been represented in the ET3 response but were delayed until final payments made by BACS transfer on 22

June 2018 including the missing 3 lieu leave days' pay and one week's statutory sick pay in the sum of £125.09. When the claimant's payment was made at the end of June 2018, she suffered deduction of tax in the sum of £94.00, being then on an emergency tax code with her new employer, at a significantly higher rate of tax deduction than would otherwise have been made.

4. To those findings of fact, the Tribunal applies the law which is substantially at Part II of the Employment Tribunals Rights Act 1996 in particular Sections 23 and 24 based upon the unlawful deduction provisions at Section 13. In respect of the claimant's notice pay claim, that is to be considered under the provisions of Section 3 of the Employment Tribunals Rights Act 1996 read together with the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.

Conclusion

5. Whilst the claimant persisted in her claim for balance of notice pay covering a month, maintaining that the respondent had terminated her employment without her agreement with effect from 22 March 2018, that is far from the position. A P45 may be evidence of the date of termination of employment but no more. The reality here, as recognised by the claimant in her own email of 23 March 2018, was that she had given notice to terminate her employment which was being accepted by the respondent with a reduced period of notice being served, to terminate the employment with effect from 31 March 2018. That was the effective date of termination of her employment and the claimant was accordingly due wages or, in her case, the final payments of statutory sick pay to the end of her employment. Although she only recognised this whilst giving evidence because the full details of final payslip were only provided to her in the bundle of documents prepared by the respondents for the hearing, the claimant had in fact been paid that sum of statutory sick pay together with her outstanding 3 lieu days very late indeed by the respondent only some 10 days or so before this hearing, not having been paid in full as the respondent had represented in its ET3 response form.

6. Ultimately, whilst the claimant's unlawful deduction from wages claim was well-founded when she presented her claim in April 2018, the respondent had belatedly made good the deficit by the date of hearing. The Tribunal can no longer make an award of pay in her favour under Section 24(1). However, that is not the end of the story since the Tribunal was satisfied on Mrs Bundy's evidence that she had indeed sustained financial loss in the sense that extra tax paid. The Tribunal did not accept the respondent's representation that this could simply be put right through the Tax office and considered that this was indeed a suitable case for an order for compensation to be made to her under the statutory provision of Section 24(2) for compensation for financial loss. The best calculation the Tribunal can make having regard to levels of past Tax deductions on full payments of salary to the claimant is in the sum of £50.00, since inevitably the claimant would have been subjected to some deduction for Tax for the final payments of 3 days in lieu in any event. In those circumstances the Tribunal makes an award of £50.00 compensation to the claimant.

Regional Employment Judge Parkin

Date: 6 July 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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