



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Leyland
Respondent: Mr J Harvey
Heard at: Lincoln
On: Wednesday 19 September 2018
Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: In person
Respondent: Mr J Harvey, Owner

JUDGMENT

1. The claim of unfair dismissal succeeds and the Respondent is ordered to pay to the Claimant a basic award of £360.
2. The claim of a failure to pay notice pay also succeeds and the Respondent is ordered to pay the Claimant the sum of £360.
3. In total, therefore, the Respondent is ordered to pay to the Claimant the sum of £720.

REASONS

1. Mrs Leyland brings two claims before me, one of unfair dismissal and the other of a failure to pay notice pay. However, there was a preliminary issue to determine, which in fact took up almost all of the tribunal's time. That is who was Mrs Leyland's employer at the time of her summary dismissal on 1 December 2017.
2. Mrs Leyland's case is that Mr Jan Harvey was her employer. She says that she began to work in Mr Harvey's fruit and vegetable shop (known as Browns) in November 2015. Mr Harvey says it was somewhat earlier, though that has no bearing on the dismissal.
3. The shop is situated at 95 Seaview Street in Cleethorpes and Mrs Leyland worked there for the whole of her period of employment. She initially

worked 3 days per week but that reduced to 2 days per week by the time of her dismissal. Her gross wage at the time of her dismissal was £120.

4. In breach of statutory duty, Mr Leyland was not provided either with a contract of employment or payslips. Mr Harvey says that was at her choice. That, however, I am afraid is no answer to the breach of statutory duty.

5. Mrs Leyland accepts that in about September 2017 she was told by Mr Jahir Uddin, who had been an employee for a few months, that he had taken over the business. Again, if that was so, the new employer should have served notice of the change in employment particulars and that was not done.

6. Mrs Leyland's evidence was that throughout the period of her employment, save at the very beginning when Mr Harvey was ill, he was ever present and carried out the same functions throughout. Indeed, he would pay her wages on some, if not all, weeks.

7. Mrs Leyland also accepted that it was Mr Uddin who dismissed her and I have seen the text which she relies upon to that effect and it clearly came from Mr Uddin.

8. In summary, Mrs Leyland's case is that throughout her employment, the real employer was Mr Harvey.

9. Mr Harvey's case is as follows. In response to Mrs Leyland's Claim Form which named him as the Respondent (ie the employer) he merely said: "*Browns 2012 Ltd incorporated on 02/06/16 or Jan Harvey have to date never employed anyone!*" Mr Harvey says that his reference to Browns 2012 Ltd is because that was the name that was used by ACAS.

10. Mr Harvey goes on to say that throughout her employment until its dissolution on 22 August 2017, Mrs Leyland's employer was a limited company, Browns 20012 Ltd. I have verified that that company was dissolved as Mr Harvey says on 22 August 2017.

11. Mr Harvey then went on to say that from that date, Mrs Leyland was employed by a limited company called Greens and Browns Ltd, a company set up by Mr Uddin. The difficulty with that proposition is that Greens and Browns Ltd was not incorporated until 8 September 2017, which begs the question who was the employer between 22 August and 8 September. Those are the only two documents on which Mr Harvey relies that are verifiable.

12. When I asked how the business was transferred to Greens and Browns Ltd, Mr Harvey said that there was an oral agreement with Mr Uddin whereby Mr Uddin would be paid a salary by Greens and Browns; that he (Mr Harvey) would buy the stock for the shop and offer advice but that he would take no salary. I do not find that credible.

13. Mr Harvey began his evidence by giving his home address as the address of the shop. I asked him whether he lived above the shop and he confirmed that he did. He was challenged by Mrs Leyland on that point. She put

to him a) that he did not live there and b) he could not live there because the premises above was simply a store room. Mr Harvey maintains his answer that that was his home address. Again, I do not believe him.

Conclusions

14. It is for Mrs Leyland to prove who was her employer and her difficulty is that she accepted that Mr Uddin had told her that he had taken over the business in approximately September 2017. Nevertheless, she maintains and I accept that Mr Harvey was ever present after that date and continued to appear to be running the business.

15. It seems to me that Mr Harvey's case is nothing but a subterfuge so as to avoid creditors. I note that he has not called Mr Uddin to give evidence in support of the arrangement that he says has taken place.

16. On balance, therefore, I accept Mrs Leyland's case that Mr Harvey was her employer and is therefore responsible for any compensation award.

17. I turn to the matter of unfair dismissal. The facts are very simple and they are that following a request by Mrs Harvey to take leave in what remained of the leave year in November 2017. She persisted in asking Mr Uddin to agree dates and she simply got in reply the following, which I have seen:

"I got your message your wages will be left at the shop along with all your holiday pay. We no longer need your services so we will call it a day".

18. It is for the employer to prove a potentially fair reason for dismissal. Mr Harvey says that the reason Mr Uddin dismissed Mrs Leyland was that she could not get along with him. That is no basis for a fair dismissal and it is clear on these very limited facts that the dismissal, which effectively took place on 1 December, was unfair.

19. As to remedy, Mrs Leyland was employed for a continuous period of 3 years. She is entitled, therefore, as a basic award to 3 times her week wage, namely £120, giving a sum of £360.

20. I make no compensatory award because it seemed to me from the evidence that she gave that Mrs Leyland was content with the situation whereby she had replaced about a half of the salary she lost from the fruit and vegetable store with extra work at other employment.

21. As to the failure to pay notice pay, it is for the employer to show that Mrs Leyland had committed a repudiatory breach of her contract of employment. There is absolutely no evidence of such a breach and therefore she is entitled to notice pay. There being no contract of employment, then she is entitled to the statutory period of one week for each completed year of service and again that gives a sum of £360.

22. Mrs Leyland is therefore entitled to a total sum of £720.

Employment Judge Blackwell
Date: 1 December 2018

JUDGMENT SENT TO THE PARTIES ON

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