



EMPLOYMENT TRIBUNALS

Claimants Mrs S Jaffry
Miss H Smith

Respondent: The Academy Child Care Centre Limited (in creditors voluntary liquidation)

HELD AT: Leeds **ON:** 5 December 2018

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Mrs S Jaffry in person
Miss H Smith in person

Respondent: Did not appear and was not represented

JUDGMENT

1. In the case of Mrs Jaffry the Respondent is ordered to pay a redundancy payment in the sum of £709.62, for unfair dismissal £2,437.50, for unauthorised deduction of wages £4,492.50 and for breach of contract £482.14, being a grand total £8,121.76.
2. In the case of Miss Smith the respondent is ordered to pay for unauthorised deduction of wages the sum of £3,000 less received from the Redundancy Payment Service £1,329.66 the balance due being £1,670.34.

REASONS

1. In the case of Mrs Jaffry she was 30 years of age on the effective date of termination of her employment as a nursery practitioner, which took place on 3 November 2017. The date of commencement of her employment was 3 November 2014.
2. She did not secure alternative employment until 15 March 2018 and when she did she secured a similar position with the same money. She was not able to work she says between 3 November 2017 and 15 March 2018 because of "family issues". The Tribunal was of the view that she could have sought employment for at least half of that period and has adjusted the future loss in respect of her unfair dismissal claim accordingly.
3. Mrs Jaffry's week's pay gross was £236.54 and week's pay net £225.00.
4. It became apparent in the early part of the hearing that Mrs Jaffry had not made any claims to the Department for Business Energy and Industrial Strategy – Redundancy Payment Service, despite the Respondent being in liquidation. She was advised to make such an application by the liquidator of the Respondent as long ago as 23 February 2018.
5. As to the termination of Mrs Jaffry's employment, she was informed on 29 October 2018 that the business was being shut down with immediate effect, although she did in fact work until 3 November 2018.
6. The calculations for the payments referred to in the Judgment in the case of Mrs Jaffry are as follows:
7. Redundancy payment. Gross weekly wage £236.54 multiplier one, years of service three, redundancy payment £709.62.
8. Unfair dismissal. No basic award because of the award of a redundancy payment. Future loss – between the period 3 November 2017 and 15 March 2018 which is a 19 week period the Tribunal awarded her half future loss – that is 9 and a half weeks - £2,137.50.
9. The Tribunal also awarded her loss of statutory industrial rights £300 and the grand total for unfair dismissal compensation was £2,437.50.
10. The prescribed element was £2,137.50.
11. The period of the prescribed element was between 3 November 2017 and 5 December 2018 and the excess of the grand total over the prescribed element was £300.
12. Unauthorised deduction of wages. September 2017 - 15 days at £225 per week - £482.14 (the weekly rate being £225) (the daily rate being £32.14).
13. For the whole of the month of October 2017 - £1,015.18.
14. For the whole of November 2017 - £1,015.18. The monthly sums were derived by taking the weekly payment, multiplying it by 52 and dividing it by 12.
15. Unpaid overtime. This was not compulsory but Mrs Jaffry had an obligation to work it on request by the Respondent. The Tribunal inspected her contract of employment but it was silent on the matter of overtime. The claim for overtime

- when she was working at Batley was between 4 January 2016 and 19 December 2016 – 187 hours in total, being 6.23 weeks. Total - £1,402.50.
16. She also worked at Wakefield and incurred overtime of 60 hours unpaid between 1 January 2017 and 3 November 2017. This amounts to two weeks - £450.
 17. She also attended various training days on dates when she was not contracted to undertake her normal duties, between 1 January 2015 and 3 November 2017, incurring 17 hours of overtime for training - £127.50.
 18. Total for unauthorised deduction of wages £4,492.50.
 19. For breach of contract Mrs Jaffry worked five days of her three week notice entitlement and was then not paid any further. Therefore she was entitled to two weeks and two days damages for breach of contract. Again the two weekly rate was calculated using the weekly sum of £225 per week and the daily rate of £32.14. Total £482.14.
 20. The grand total for Mrs Jaffrey's claim - £8,121.76.
 21. In the case of Miss Smith she commenced work for the Respondent on 12 May 2015 and finished employment due to her resignation on 13 November 2017. She was also a nursery practitioner and her week's pay net was also £225.
 22. She did apply to the Department for Business Energy and Industrial Strategy – Redundancy Payment Service and has received from them £1,329.66 in respect of her claim for unauthorised deduction of wages.
 23. The reason for her resignation, which was on 30 October 2017 expiring on 13 November 2017, was because she was not being paid regularly and she worked her notice.
 24. Miss Smith received irregular payment from the Respondent and as at the effective date of termination of her employment she was still owed £3,000 and if one deducts from that sum the amount received from the Redundancy Payment Service she is still owed £1,670.34.

Employment Judge Shulman
Date 10/12/18

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