



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss C Zhovnaruk

v

Rullo's London Limited

Heard at: Watford

On: 20 November 2018

Before: Regional Employment Judge Byrne

Appearances

For the Claimant: In person

For the Respondent: No attendance

JUDGMENT ON RECONSIDERATION

The original decision having been reconsidered today the respondent is ordered to pay to the claimant outstanding wages in the sum of £1,113.50. That is a gross sum. If the respondent is able to produce documentation confirming that any tax and national insurance has been deducted and paid as appropriate from the sum to Her Majesty's Revenue and Customs then that documentation will satisfy part-payment of this judgment to the extent of the tax and national insurance paid.

REASONS

1. By judgment sent to the parties on 22 August 2018 the respondent was ordered to pay to the claimant outstanding wages in the sum of £1,113.50.
2. By letter dated 5 September 2018 the respondent made an application for reconsideration. The basis of the application was "the Tribunal decided to change the respondent to Rullo's London Limited. The basis upon which the claimant was not paid has not been properly heard by the Tribunal. The grounds were that the claimant had not worked her notice and the contract of employment clearly stated that breach of notice results in non-payment of all outstanding monies due. The Tribunal needs to hear the facts before it can make an informed decision".

3. I considered that application and by notice dated 23 October 2018 the parties were notified that the judgment issued on 22 August 2018 would be reconsidered on 20 November 2018. The notice of reconsideration stated
“At the reconsideration hearing, the judgment may be confirmed, varied or revoked. If it is revoked, the re-hearing of the case will follow immediately, and both parties should come prepared to call their evidence and present their case. The parties are responsible for ensuring that any witnesses they wish to call can attend the hearing. You may submit written representations for consideration at the hearing. If so, they must be sent to the Tribunal and to all other parties not less than 7 days before the hearing. You will have the chance to put forward oral arguments in any case.”
4. That notice of reconsideration was sent to Ketan Patel of Rusk Business Consultants, 37 Swallow Rise, Knaphill, Woking, Surrey, GU21 2LH. Mr Patel is the finance manager of the respondent and conducted correspondence with the Tribunal following the service of the claim as originally presented against Mr Salvatore Rullo a director of the respondent. The reasons set out by the Tribunal in the order made on 9 August 2018 adding Rullo’s London Limited as a respondent to the proceedings set out fully details of the correspondence conducted by Mr Patel on behalf of Rullo’s London Limited and on behalf of Mr Salvatore Rullo prior to the hearing of 9 August 2018.
5. The notice of reconsideration hearing was accordingly sent to Rullo’s London Limited, the respondent, to Mr Patel who has been the representative of both Mr Salvatore Rullo and Rullo’s London Limited during these proceedings.
6. On 22 October 2018 Mr Patel wrote to the Tribunal referring to the application made for reconsideration on 5 September and stated that “No response to the letter has been received”. That letter from Mr Patel was not linked with the file or referred to a Judge and it was in the administration file when I considered the file on the morning of 20 November 2018 before the hearing. It would appear that Mr Patel’s letter crossed in the post with the Notice of Reconsideration hearing sent to him by the Tribunal on 21 October 2018. I made enquiries on the 20 November 2018 as to whether any attempt had been made to contact Mr Patel the day prior to the hearing and was told that a telephone call was made to the telephone number for Mr Patel held by the Tribunal, but the telephone had not been answered.
7. There was no attendance by Mr Patel at the Tribunal on 20 November 2018 nor was there any attendance by the other person on behalf of the respondent Rullo’s London Limited.
8. In all the circumstances, I decided that the appropriate way to proceed applying the provisions of Rule 72(1) was to reconsider the judgment and hear further evidence from the claimant with reference to the specific point argued on behalf of the respondent namely that “The claimant did not work her notice and the contract of employment clearly stated that breach of notice results in non-payment of all

outstanding monies due”. I heard oral evidence on oath from the claimant as to the circumstances surrounding her giving notice.

- 9. The written record of the claimant’s terms and conditions of employment are set out in an email headed “Employment Offer” sent to her by Mr Patel on 17 December 2017 at 12:14. The final paragraph states “The company will not pay any unpaid wages and any accrued holiday should the notice period not be adhered to and this will be considered compensation for breach of notice. When notice is given by either employee or employer the normal weekly wage payments will continue until the last week worked is paid.” The notice provisions contained in the employment offer letter state; “Termination of employment will require one weeks’ notice from the company and three weeks’ notice from you”.
- 10. I accept that the claimant gave three weeks’ notice verbally to Mr Rullo on 10 January 2018. The 10 January 2018 was according to the claimant’s work rota a rest day but at Mr Rullo’s request she agreed to work that day following a text request made by Mr Rullo at 10.24 am on 10 January. The claimant was unwell on 11 January 2018 and unable to work that day and made it clear in a text sent to Mr Rullo at 12.13 that she was willing and able to work out her notice period.
- 11. The legal issue I must determine is whether the claimant’s inability to work on 11 January 2018 was in breach of the claimant adhering to her notice period. I am entirely satisfied it was not in breach of her notice period. I am satisfied she was unwell and simply unable to work that day. She was willing and able to work the remainder of her notice period but in the event, did not undertake any further work for the respondent because she was called in to carry out any work after 10 January. She was willing to work her notice period, but the respondent refused to let her. There was no breach of the notice provision on her part.
- 12. I am entirely satisfied that she is contractually entitled to the unpaid wages due to her, a total of 131 hours, including 26 December 2017, up to the 10 January 2018, save for the 27 December 2017 when she was unwell and did not work that day.
- 13. Having reconsidered the original decision at the hearing I confirm it.

Regional Employment Judge Byrne

Date: ...8 January 2019

Sent to the parties on:

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For the Tribunal Office