



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4121579/18 Held at Aberdeen on 3 January 2019

Employment Judge: Mr N M Hosie (sitting alone)

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Ms Caren Fong

Claimant
In Person

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Bon Accord Management Services Ltd

Respondent
No Appearance

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that: -

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1. the claim under s.23 of the Employment Rights Act 1996 is well-founded and the respondent shall pay to the claimant the sum of Two Hundred and Sixty-Two Pounds and Forty-Six Pence (£262.46), under deduction of the appropriate amounts of Income Tax and National Insurance, as unlawful deductions from wages;

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2. the claim under Regulation 30(1)(b) of the Working Time Regulations 1998 is well-founded and the respondent shall pay to the claimant the sum of Nine Hundred and Ninety-Seven Pounds and Fifty-Pence (£997.50), under deduction of the appropriate amounts of Income Tax and National Insurance, as a payment in lieu of annual leave; and

E.T. Z4 (WR)

3. the respondent shall pay to the claimant the sum of One Thousand, Three Hundred and Thirty Pounds (£1,330), in respect of the failure to provide the claimant with a written statement of her terms and conditions of employment.

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REASONS

1. The claimant brought financial claims following the termination of her employment with the respondent Company. The claim was denied by the respondent. It maintained that the claimant had been paid in full and that the claim was “entirely false and malicious”.
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2. On 16 October 2018, the Tribunal gave written Notice to the parties that the Final Hearing would take place on 3 January 2019 at 10am in Aberdeen.
- 15 3. Thereafter, the respondent submitted an ET3 Response Form and corresponded with the Tribunal by e-mail and was copied into other e-mail correspondence.
4. The claimant appeared at the Aberdeen Tribunal Office at the appointed time and was ready to proceed with the Hearing.
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5. However, there was no appearance on behalf of the respondent Company and there had been no contact with the Tribunal Office to so advise.
- 25 6. The Tribunal Clerk endeavoured to contact the respondent by telephone without success and she also sent an e-mail to ask if anyone would be appearing on behalf of the respondent. There was no response.
7. I was satisfied that the respondent was aware of the Hearing. I decided in the circumstances to proceed in the respondent’s absence, as the Tribunal Clerk had advised the respondent in her e-mail that I intended to do if I did not hear from them. I started the Hearing at 10.40am.
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The Evidence

8. I heard evidence from the claimant, Ms Fong. She gave her evidence in a measured, consistent and thoroughly convincing manner and presented as
5 entirely credible and reliable. She spoke to a number of documents which she had produced, in support of her claim (“C”). It was abundantly clear to me that this was not a “false and malicious claim” as the respondent maintained.

The Facts

10 9. Having heard the evidence and considered the documentary productions, I was able to make the following material findings in fact. When making these findings I also had regard to the terms of the respondent’s ET3 Response Form, an e-mail dated 5 December 2018 from the respondent’s Office
15 Manager concerning the claim and a recent e-mail exchange between the claimant and the respondent (C5).

10. The claimant commenced her employment with the respondent on 15 January 2018. She was employed as a “Supervisor for Food and Beveridges
20 Service” at the Broadstraik Inn, Elrick, Aberdeenshire. The offer of employment was one of the documentary productions (C7). However, she did not receive a written statement of her terms and conditions of employment.

25 11. The claimant’s employment ended on 10 August 2018 when she resigned. Immediately prior to her resignation she had been signed off work with “work-related stress” since 7 July (C1).

30 12. I deal with each of the complaints in turn. In doing so, I find, in fact, that the claimant was not paid the sum of “£600.12”, as the respondent alleged in the ET3 Response Form.

Wages

13. The claimant kept records of the hours which she worked (C10). I was satisfied that her claim that she was still due payment of wages for 15 hours she had worked was well-founded. Based on her agreed hourly rate of £9.50, this amounts to **£152**.
14. I was also satisfied that she was due one week's statutory sick pay of **£110.46**.
15. Accordingly, the total sum unlawfully deducted from her wages is **£262.46** and this sum requires to be paid to her by the respondent, under deduction of the appropriate amounts of Income Tax and National Insurance.
16. For the sake of completeness, I record that I rejected the respondent's contention that her wages were not paid to her as she had not clocked in and out. I accepted the claimant's evidence that it is impossible to work in the bar or restaurant and use the till, unless an employee is clocked in. She did forget to clock out on one occasion, but she advised her line manager of this, he told her he would sort it, and there was no dispute that she had worked that day.

Accrued Annual Leave

17. The respondent maintained that their holiday year started to run on 1 April 2018. However, there was no evidence to that effect and, as I recorded above, the claimant did not receive written employment particulars, as she should have done.
18. Accordingly, the claimant's annual leave entitlement is calculated from her start date on 15 January 2018. This meant that when her employment ended

on 10 August 2018 she had been employed by the respondent for a total of 30 weeks.

- 5 19. In terms of the Working Time Regulations 1998, the claimant was entitled to 28 days' paid holiday.
20. Accordingly, when her employment ended she had accrued 16 days' (30÷52×28). As she had taken one day's paid holiday, she is entitled, therefore, to 15 days' accrued leave.
- 10 21. Based on daily earnings of £66.50, this amounts to **£997.50** and this sum requires to be paid to her by the respondent, under deduction of the appropriate amounts of Income Tax and National Insurance.

15 **Failure to Provide Written Employment Particulars**

22. The respondent should have provided the claimant with a full written statement of her terms and conditions of employment within two months of her starting work. They failed to do so.
- 20 23. All that the claimant received in writing from the respondent was her offer of employment which did not comprise a comprehensive statement of her terms and conditions of employment. For example, it did not state when the respondent's holiday year started.
- 25 24. S.38 of the Employment Act 2002 states that Tribunals must award compensation to an employee where, upon a successful claim being made under any of the Tribunal jurisdictions listed in Schedule 5, it becomes evident that the employer was in breach of his duty to provide full and accurate written
- 30 particulars. Unlawful deductions from wages and accrued holiday pay are two of the jurisdictions listed.

25. So far as the amount of any award is concerned, the “*minimum amount*” is “*two weeks’ pay*”. However, if the Tribunal considers it “*just and equitable*” in the circumstances it can award the “*higher amount of four weeks’ pay*”.

5 26. The respondent Company was experienced in business, had many employees, and, as I understand it, there are other associated Companies with employees. The claimant took advice and her representative wrote to the respondent to request written particulars. There was no response.

10 27. In the circumstances, I decided that it would be just and equitable to award the “*higher amount of four weeks’ pay*”.

28. Based on average weekly earnings of £332.50, this amounts to **£1,330** and this sum also requires to be paid by the respondent to the claimant.

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30 **Employment Judge: Nicol Hosie**
Date of Judgment: 10 January 2019
Entered in Register: 11 January 2019
And Copied to Parties