



EMPLOYMENT TRIBUNALS

Claimant: Mrs F Brown

Respondent: Zoe Husband t/a Bspoke Social Care

RECORD OF A PRELIMINARY HEARING

Heard at: Nottingham by telephone **On:** 11 February 2019

Before: Employment Judge Ayre (sitting alone)

Appearances

For the claimant: In person

For the respondent: In person

JUDGMENT

The claim for holiday pay is dismissed upon withdrawal.

CASE MANAGEMENT SUMMARY

Final hearing

- (1) All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting alone at **The Magistrates Courts, 358 High Street, Lincoln, LN5 7QA, on Monday 10 June 2019** starting at 10 am or as soon as possible afterwards. The time estimate for the hearing is 3 hours.
- (2) The original hearing that was listed for 6, 8 and 9 January 2020 is cancelled.
- (3) The claimant and the respondent **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

The claim

- (4) The claimant worked for the respondent as a Social Support Worker between February and September 2018. By a claim form presented on 14 September 2018, following a period of early conciliation from 19 July to 19 August 2018, the claimant brought complaints of unlawful deduction from wages (specifically non-payment of the National Minimum Wage), and unpaid holiday pay. The claimant also ticked question 10.1 on the claim form, suggesting that she was also bringing a 'whistleblowing' claim.
- (5) We discussed during the preliminary hearing what claims the claimant wished to pursue. The claimant told the Tribunal that she had received holiday pay from the respondent and did not wish to pursue a claim for holiday pay. That claim is therefore dismissed upon withdrawal.
- (6) The claimant also told the Tribunal that she did not intend to bring a whistleblowing claim.
- (7) The claimant's only claim therefore is for unlawful deduction from wages, in respect of time spent working at client's premises and travelling between clients.

The issues

- (8) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:
 - (i) Did the respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 by failing to pay the claimant for all of the hours that she spent working with clients and / or travelling between clients?
 - (ii) If so, how much was deducted unlawfully and what sums, if any, should the respondent be ordered to pay to the claimant?

Other matters

- (9) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
- (10) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- (11) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.

- (12) The following case management orders were uncontentious and effectively made by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Complaints and issues

- 1.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

2. Further information

- 2.1 The respondent is to send to the claimant by registered post, no later than **18 February 2019**, copies of the following documents:-
- 2.1.1 All of the claimant's payslips;
 - 2.1.2 All of the claimant's timesheets;
 - 2.1.3 The claimant's contract;
 - 2.1.4 The claimant's P60
- 2.2 If, after receiving these documents, the claimant still considers that she needs more information in order to be able to quantify her claim, then she shall write to the respondent to request that information.

3. Statement of remedy / schedule of loss

- 3.1 The claimant must provide to the respondent by **11 March 2019** a document – a "Schedule of Loss" – setting out what remedy is being sought and how much in compensation the tribunal will be asked to award the claimant at the final hearing and how the amount have been calculated.

4. Documents

- 4.1 On or before **8 April 2019** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

5. Final hearing bundle

- 5.1 By **29 April 2019**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the

documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

6. Witness statements

- 6.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing [and must provide copies of their written statements to each other on or before **13 May 2019**. No additional witness evidence will be allowed at the final hearing without the Tribunal’s permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant’s witness statement must include a statement of the amount of compensation she is claiming, together with an explanation of how it has been calculated.

7. Final hearing preparation

- 7.1 The respondent must bring to the Tribunal on the day of the hearing two copies of the bundle for use by the Tribunal.
- 7.2 Both parties should bring two hard copies of their witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question.

8. Other matters

- 8.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 8.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 8.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 8.4 **Public access to employment tribunal decisions**
All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 8.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 8.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Ayre

11 February 2019

Sent to the parties on:

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For the Tribunal:

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