



# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Miss F Velcescu

AND

Lifestyle (Abbey Care) Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Held at:** Teesside Justice Hearing Centre      **On:** Thursday 1 February 2018

**Before:**      **Employment Judge Johnson (sitting alone)**

### *Appearances*

**For the Claimant:**      In person

**For the Respondent:**      No attendance, no appearance

**Interpreter:**      Miss S Panaite

## JUDGMENT

- 1) The Employment Tribunal does not have jurisdiction to hear the claimants complaint of unfair dismissal, as the claimant did not have two years continuous service with the respondent. The complaint of unfair dismissal is dismissed.
- 2) The claimant's complaint of unauthorised deduction from wages is well founded and succeeds. The respondent is ordered to pay to the claimant the sum of £1,320.00 in respect of wages unlawfully deducted. That sum is to be paid gross and the claimant shall be responsible for the payment of any income tax and national insurance contributions thereon.
- 3) The claimant's complaint of unauthorised deductions from wages (failure to pay accrued holiday pay) is well founded and succeeds. The respondent is ordered to pay to the claimant accrued holiday pay in the sum of £247.50. That sum is to

be paid gross and the claimant shall be responsible for the payment of any income tax and national insurance contributions thereon.

- 4) The claimant's complaint of breach of contract (failure to pay notice pay) is well founded and succeeds. The respondent is ordered to pay to the claimant compensation for breach of contract in the sum of £247.50. That sum shall be paid gross and the claimant shall be responsible for the payment of any income tax and national insurance contributions thereon.

## REASONS

- 1) This matter came before me this morning by way of a Final Hearing, for the consideration of the claimant's complaints of unfair dismissal, unauthorised deductions from wages, failure to pay accrued holiday pay and failure to pay notice pay.
- 2) The claim form was presented on 11 October 2017. The respondent presented its response on 24 October 2017. The notice of hearing was sent to both parties on 12 October 2017, informing them that the hearing would take place on Thursday 1 February at 9.45 am at Teesside Justice Centre, Victoria Square, Middlesbrough. Neither party applied for a postponement of that hearing. The notice of hearing was sent to the respondent along with the claimant's claim form ET1 and therefore must have been received by the respondent as they completed and returned the response form ET3 which was also enclosed. I am satisfied that both parties were aware of the time, date and location of the hearing.
- 3) The hearing was due to start at 9.45 am. Shortly after 9.45 am I was informed that the claimant had mistakenly travelled to the Employment Tribunals North Shields hearing centre, but was arranging to travel back down to Middlesbrough to attend the hearing. The claimant finally arrived 12.15 pm. By that time, no one from the respondent had attended, nor had anyone from the respondent contacted the Employment Tribunal to state that they would not be attending. The interpreter, Miss Panaite was present from 10.00 am.
- 4) The claimant gave evidence under oath with the assistance of Miss Panaite. The claimant confirmed that her employment with the respondent had commenced on 9 March 2017 and ended on 22 May 2017. The claimant had carried out for the respondents since December 2016 but that had been through an agency. The claimant readily accepted that she did not have two years continuous service with the respondent and therefore does not have the right to present a complaint of unfair dismissal. That complaint is dismissed as the Employment Tribunal does not have jurisdiction to hear it.
- 5) From the benefit of her local Citizens Advice Bureau, the claimant had prepared a document headed "Remedy of Tribunal". That document shows that the claimant worked 176 hours between 1 May 2017 and 22 May 2017 for which she had not been paid. Her hourly rate was the National Minimum Wage of £7.50 per

hour. The sum of the claim was therefore £1,320.00. The response form ET3 simply states:-

“Her new contract with us was for 30 hours per week. Her claim for 176 hours is wrong.”

- 6) No further explanation is given. The respondent has not provided any timesheets or any other documentary evidence to contradict what is said by the claimant. In the absence of any meaningful evidence from the respondent, I accept the claimant’s evidence under oath that she is owed the sum of £1,320.00 in respect of unpaid wages.
- 7) The document shows a calculation of unpaid holiday pay of 33 hours at £7.50 per hour in sum of £247.50. The response form ET3 does not deal with the claim for unpaid holiday pay. In the absence of any evidence from the respondent, I again accept the evidence of the claimant under oath that she is owed £247.50 for accrued holiday pay.
- 8) The claimant alleges that she was dismissed without notice. The response form ET3 states:-

“We did not have to give her any notice as she as on a probationary period”.
- 9) That of course an inaccurate reflection of the law. The claimant had more than one months service but less than two years service and is therefore entitle to one weeks notice of one weeks in lieu of notice. I accept the claim for one weeks pay in lieu of notice, being 33 hours at £7.50 in the sum of £247.50.
- 10) The total sum ordered to be paid by the respondent to the claimant is £1,815.00. All of that should be paid gross and the claimant shall be responsible for the payment of any income tax and national insurance contributions thereon.

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**EMPLOYMENT JUDGE JOHNSON**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON  
21 February 2018**