



EMPLOYMENT TRIBUNALS

Claimant: Ms C Best

Respondent: Zenith Care Services Limited

Heard at: Ashford

On: 5 February 2019

Before: Employment Judge Pritchard

Representation

Claimant: In person

Respondent: No appearance

JUDGMENT

- 1 The Respondent breached the Claimant's contract of employment by failing to give contractual notice or by compensating the Claimant by payment in lieu of notice. The Respondent is ordered to pay the Claimant the sum of £2,500 gross. This is expressed as a gross figure. Payment by the Respondent net of tax and National Insurance contributions, provided such sums are paid to the relevant authorities, are shall be a discharge of this Judgment.
- 2 The Claimant's claim for unlawful deductions from wages is dismissed.

REASONS

- 1 The claimed unlawful deductions from wages and breach of contract (notice pay). The Respondent resisted the claims.
- 2 The Claimant attended the hearing in person. The Respondent failed to attend. Telephone enquiries as to the Respondent's failure to attend the hearing were fruitless. Notice of Hearing dated 15 October 2018 was correctly addressed and sent to the parties. The Tribunal proceeded with the hearing under Rule 47 of the Employment Tribunals Rules of Procedure Regulations 2013.
- 3 The Claimant's claim for deductions from wages related to her having worked on 6 and 7 August 2018. However, the Claimant was unable to say with any degree of certainty that she had not been paid for these days.

The Tribunal was unable to conclude that the Respondent had made unlawful deductions from the Claimant's wages.

- 4 The Claimant's contract provided, among other things:

Termination: *The Company reserves the right to terminate employment of any employee for a just cause at any time without notice and without payment in lieu of notice. The Company will be entitled to terminate your employment for any reason other than for just cause, upon providing to you such minimum notice as required by law*

Notice: *During the first four weeks of your employment either the organisation or you may give one week's written notice of termination of your employment.*

After 4 weeks' continuous service, you are entitled to receive one month's notice following written notice of termination of employment from the organisation and you will be required to give one month's notice should you resign from the organisation.

If the organisation terminates your employment for reasons other than gross misconduct you will be entitled to a minimum of a month's contractual notice and then one week's notice per year of employment for every year of service after 4 years' service up to a maximum of 12 weeks' notice.

- 5 The Claimant commenced employment on 9 July 2018. Her employment ended when, on 7 August 2018, the Respondent gave her written notice to terminate her employment, purportedly effective on 6 August 2018. In either case, the Claimant had been employed for four weeks.
- 6 The Respondent did not give the Claimant written notice of termination before 7 August 2018. Nor did the Respondent make a payment in lieu of notice to the Claimant. There was no evidence to suggest the Respondent had "just cause" for the dismissing the Claimant.
- 7 The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.
- 8 The contractual terms are ambiguous: it is not clear whether, having worked for four weeks, the Claimant was entitled to minimum notice required by law or one month's notice. The ambiguity is resolved in the Claimant's favour under the *contra proferentum* principle. The Claimant's salary was £30,000 per annum. One month's salary is £2,500. Judgment is entered accordingly.

