EMPLOYMENT TRIBUNALS

Between

Claimant	**and**	**Respondent**
Mr P Podobas		**O'Hagan & Bell**

HEARING

Heard at: Croydon **On: Wednesday 20 February 2019**

Before: Employment Judge Truscott QC

Appearances:

For the Claimant: **in person**
For the Respondent: **Mr Robert Bell director**

JUDGMENT

1. The claimant's complaint of breach of contract in respect of notice entitlement is well founded. No damages are awarded.

2. The claim for unlawful deduction from wages of £75 in relation to wine fails and is dismissed.

3. The claim for unlawful deduction from wages of £400 in relation to training costs fails and is dismissed.

REASONS

Preliminary

1 The claimant gave evidence on his own behalf. Evidence for the respondent was given by Ms Zoe Gibbons, the claimant's manager and Mr Robert Bell the director of the company. There was a small bundle of documents to which reference will be made where necessary.

2 The claimant commenced employment on 23 April 2018 as a restaurant manager. An alteration was made to his working conditions at his request on 26 May 2018 which meant that he would be paid at an hourly rate. His employment terminated on 8 June and the circumstances of that termination are in dispute as are certain deductions made by the respondent.

Findings of fact

3. The claimant was considering terminating his contract and sought to ascertain in advance the period of notice required. Ms Gibbons at the time thought it was one month.

4. The claimant resigned on 8 June 2018 by email to Mrs Jacqueline Bell prior to commencing his shift that day [17]. He states "My last working day will be the 14th June 2018". He attended work to commence his shift. Nuno, the deputy manager, was on duty. There were a number of texts exchanged with Ms Gibbons, who was not on duty on 8 June [42]. The claimant asked for confirmation that he would be paid but never received confirmation. Nuno contacted Mrs Bell and said that the claimant was resigning with one week's notice. Nuno was told to discuss with the claimant whether he wanted to work his notice or leave. Mrs Bell phoned Ms Gibbons to say that the claimant had resigned and that she would need to cover his shifts. Ms Gibbons said that as he was supernumerary, the shifts were already covered. She texted the claimant at 12.29 "We have got your shifts covered for the rest of the week so you don't have to work". Nuno phoned Mrs Bell later to say the claimant was leaving then.

5. The claimant would have earned £300 if he had worked his rostered shifts with the respondent. He commenced employment with Costa Coffee on 10 June as a store manager and earned £538 in his first week with them.

6. On 14 June, he received a letter from Mrs Bell [19] acknowledging his resignation. The respondent stated he was "required to provide one month's notice period, it was clear from your communications that this was not to be honoured and as such we agreed that no notice period would be required to be worked. As a consequence of this breach of contract we are not obligated to provide salary compensation for un worked notice period."

7. On 19 June the claimant emailed Mrs Bell [21] he restated that Zoe had told him that the notice period was one week. In a letter dated 20 June [20], the respondent states "you resigned with one week notice period which you did not work".

8. In a letter dated 13 July [23], Mr Bell provided the final salary slip showing the deductions for wine and training costs [41]. In the letter he states that the claimant refused

to work the notice period. That is not correct, the claimant was willing to do so but was not permitted to do so.

9. Clause 17 of the contract of employment [39] provides “You expressly agree that the Company may withhold from any money due to you, the value of any,,, losses for which you are reasonably considered …to be responsible.”

10. Whilst in employment the claimant was supplied with 12 bottles of wine and a list of nearby Bed and Breakfast establishments to make gifts to. He returned 4 bottles on 21 June having been asked to do so. The respondent ascertained that he had not made the gifts to the establishments on the list. The letter of 20 June addressed the issue of the wine [20]. The deduction is based on the wholesale price of the wine which had not been accounted for.

11. Clause 22 [31] provides that “Reasonable training costs i.e. planned courses, one to one coaching and learning, may be reclaimed from employee salary should an employee terminate employment within the following time frames”. A sliding scale is then shown based on period of employment.

12. Ms Gibbons and Nuno worked morning and evening shifts in order that the claimant could find out what happened in each part of the day. The training involved showing him how the till system worked and what the cleaning schedules were where the procedures were and where to do the ordering. He did not attend any external courses. £400 represents 5 hours a week of support over 6 weeks.

Law

13. In the case of a breach of contract, the *prima facie* measure of damages will be a sum equivalent to the wages which would have been earned, between the time of actual termination and the time which the contract might lawfully have been terminated by due notice. This means that usually the *prima facie* measure of damage will be wages for the missing notice period. **Lavarack v Woods of Colchester Ltd** [1967] 1 QB 278 CA restricted notice period damages to the minimum contractually payable.

14. The measure of damages is subject to adjustment in a number of ways. The one relevant to this claim is to take account of the employee’s mitigation of loss.

15. Section 13 of the Employment Rights Act provides:

Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

Discussion and decision

16. The claimant set out his position clearly, he was giving a week's notice to end his employment and was intending to work the notice period. Because of communication misunderstandings on the respondent's side between Mrs Bell who was on holiday and thought the claimant was in breach of contract by not giving a month's notice, Ms Gibbons who was not on duty and Nuno who was at the restaurant, the claimant was sent away on 8 June and not paid. This constitutes a breach of contract by the respondent.

17. As it happened, the claimant was able to obtain employment immediately and earned more in the notice period than he would have had he worked his rostered shifts, accordingly no damages fall to be awarded.

18. There were relevant contractual provisions permitting the deductions. £75 for wine which was not returned but not used for the respondent's business is wholesale cost and reasonable. The deduction of training costs was a reasonable assessment of the amount accordingly there were no unlawful deductions from wages and these claims are dismissed.

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I D Truscott QC Employment Judge

Date: 25 February 2019