



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Gregson

Respondent: Dunscair Bridge Brewery Limited (in Administration)

Heard at: Manchester **On:** 2 April 2019

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: Mr S Binafeigha, Solicitor

Respondent: No attendance and no response presented

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent made unlawful deductions from the wages of the claimant and is ordered to pay her the gross sum of £2,276.63.
2. The respondent constructively dismissed the claimant wrongfully and in breach of contract in not giving notice and is ordered to pay her the net sum of £296.86.
3. The claimant's remaining claims are dismissed upon withdrawal by her.

REASONS

1. By a claim presented on 6 September 2018 the claimant claimed sex discrimination and harassment, unlawful deduction of wages and wrongful dismissal in respect of the termination of her employment by the respondent in June 2018.
2. The respondent did not present a response since at an early point in the proceedings the Administrators of the respondent company notified the Tribunal of their appointment with effect from 26 September 2018, resulting in a stay of proceedings. However, the respondent gave permission by email dated 26 November 2018 for the proceedings to be continued by the claimant, indicating they would not defend them but that the claimant would rank only as a creditor entitled to

a dividend on a pari-passu basis with other creditors and that there were significant liabilities.

3. In those circumstances, the respondent did not attend the hearing and the claimant was represented by her solicitor and provided her witness statement and copy of various wage slips dating from January 2018 to June 2018. The Tribunal accepted her evidence as that of a witness of truth albeit on occasions her recollection of events needed prompting.

Findings of Fact

4. The key findings of fact are as follows. The claimant was employed as a Telesales Assistant with the respondent brewery in Bolton from 16 March 2017 originally at a rate of pay of £7.50 an hour for her 37.5 hour week, the adult National Minimum Wage rate. Her monthly pay thus amounted to £1,218.75 gross. She made a good impression and was told by the manager, Mr Glenn Jones, early on that she was doing well and that he would increase her pay from April 2017 to £8.50 per hour. In the event, that pay rise was never given and the claimant continued to receive pay at the rate of £7.50 per hour together with earned bonus for sales she had achieved each month. The claimant did not realise that her pay had not been increased until April the following year when the National Minimum Wage was increased to £7.83. Even then, the respondent did not increase her pay up to the agreed £8.50 per hour, only increasing it to the the statutory adult National Minimum Wage of £7.83 per hour with effect from May 2018, and backdating in May her pay for the missing increase from £7.50 to £7.83 per hour for April 2018. When the claimant's employment came to an end at the end of June 2018, her pay had never been increased to the promised £8.50 per hour.

5. On 25 June 2018, there was a scene when Mr Jones raised his voice continually at the claimant and she needed to go outside for a coffee and cigarette, deciding then to put her bags in the car. When Mr Jones repeatedly asked her "are you giving seven days' notice?" she told him only that she was putting her stuff in the car but she did then leave to go home and never returned. At about 3.00pm that afternoon he emailed her saying he had accepted her notice to terminate her employment, although she replied indicating that she had not terminated it and expressed how strongly she felt at his behaviour towards her.

6. Beyond her pay for end of June 2018, no further payments were made by the respondent. In effect, her employment came to an end at the end of June 2018 by virtue of her resignation which was accepted by the respondent. The claimant's contract of employment provided for her to give four weeks' notice of termination of employment but up to the end of her second year of employment for her only to receive one week's notice of termination from the respondent.

The Law

7. To those facts the Tribunal applies the law which is found variously at the Equality Act 2010 in respect of claims of sexual discrimination and harassment, section 3 of the Employment Tribunals Act 1996 read together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 for the wrongful

dismissal/breach of contract claim, and Part II of the Employment Rights Act 1996 for the unlawful deduction from wages claim.

Conclusion

8. At the hearing, the claimant confirmed that she was not pursuing claims of sex discrimination or harassment and bullying in general terms beyond the circumstances of her wrongful dismissal claim. Those remaining claims are dismissed upon withdrawal by her but the Tribunal concludes that she was put into a position that she was forced to resign by the respondent's repudiatory breach of contract towards her, in massively undermining her at work on 25 June 2018. That fully justified her resignation at that time and the respondent was in breach of contract in failing to give contractual notice or pay in lieu.

9. In those circumstances, the respondent is ordered to pay the claimant damages in the sum of £296.86 reflecting £318.75 gross weekly pay (£8.50 per hour for 37.5 hours) less her average weekly deductions for tax and national insurance of £21.89, a total of £296.86.

10. Moreover, throughout the period of her employment from April 2017 through to March 2017 and then after that time through until the end of June 2018 when her employment came to an end, the respondent failed to pay her the increased salary promised at the rate of £8.50 per hour. For April 2017 to March 2018 this amounts to £1 per hour underpayment (paid at £7.50 per hour only) for 37½ hours across 52 weeks, a total of £1,950, and for April to June 2018 an additional £326.63 representing 13 weeks at the reduced shortfall of 67pence for 37½ hours per week.

11. Accordingly, the respondent made a total unlawful deduction from the claimant's wages in the sum of £2,276.63 and is ordered to pay her this sum.

Regional Employment Judge Parkin

Date 4 April 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 April 2019

FOR THE TRIBUNAL OFFICE

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NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2414999/2018**

Name of **Mrs A Gregson** v **Dunscar Bridge Brewery**
case(s): **LTD (In Administration)**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **16 April 2019**

"the calculation day" is: **17 April 2019**

"the stipulated rate of interest" is: **8%**

MR J HANSON
For the Employment Tribunal Office