



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Hancock

Respondent: Nottingham F & B Ltd

HELD AT: Manchester

ON: 29 March 2019

BEFORE: Employment Judge Tom Ryan

REPRESENTATION:

Claimant: In person

Respondent: Mr C Ince, Director

JUDGMENT having been sent to the parties on 8 April 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By the claim issued in this case the claimant alleged that the respondent had made unauthorised deductions from her wages in not paying her for the period 1-17 May 2018 at which point she resigned as Managing Director of the company. She also alleged that holiday pay was due to her.

2. The respondent, acting through solicitors, filed a response in which they contended amongst other things that the claimant was not entitled to any wages because she had improperly, as Managing Director, paid herself more than an agreed sum of £25,000 by way of salary.

3. The claimant's case is to this effect. There had previously been dealings between Mr Ince and the claimant in relation to other companies apparently owned by Mr Ince. There are disputes about those and there are indeed other underlying disputes about this relationship which I am not required to determine. The question for me solely is this: was the claimant entitled to be paid at a particular rate? She says the rate is £30,000 per year. The respondent disputes that saying the only rate of pay that Mr Ince offered was £25,000 and when the claimant started in effect without a concluded agreement that was the proper sum by which to calculate her wages.

4. The claimant accepts there was no agreement as to the rate of salary. She says that she became a director and therefore was entitled to set her own pay at £30,000.

5. However what is clear is, and the records at Companies House on the internet for Nottingham F & B Ltd show, that at the time that this employment was entered into, Mr Ince was the sole shareholder and a director of the respondent.

6. The postings on Companies House website at around the end of 2017/early 2018 Mrs Hancock, as a director made certain registrations. They certainly included the registration that she was a director. There is no dispute that at the time that she worked in the company she was a director.

7. What is in dispute is to whether she was ever a shareholder. If at the time the agreement was entered into, which was around 12 or 13 October 2017, the sole shareholder was Mr Ince, and it appears to be common ground that he was, then effectively he owned the company through the medium of being the sole shareholder.

8. Therefore, unless Mr Ince either agreed the salary or allowed the claimant, either expressly or impliedly, to set her own salary, and the claimant does not put her case in that way, she just maintains "as a director I was entitled to set my salary", then the best the claimant can do in my judgment is rely upon the salary that was offered even though it was not agreed expressly by her at the time. By implication she accepted it when she started without making any other agreement.

9. That having been the salary at start, the question then is whether the claimant was entitled, as she admits she did, to increase her salary to £30,000.

10. This is a claim for the 17 days' wages and/or the holiday pay that has accrued which is said to be 10.94 days for the holiday year less any holiday taken. The claimant accepted that if I determine the issue of rate of pay against her at £25,000 per annum as against the £30,000 per annum then she accepts she cannot succeed as to either of these claims because they would be swallowed up by the sums that she had already been paid.

11. As far as wages are concerned she would not have been entitled to take salary at the higher rate and therefore the overpaid salary would more than cover the the 17 days unpaid. As far as holiday pay is concerned the claimant does not pursue that claim. So the sole issue for me is: was the claimant entitled to set her own salary at £30,000?

12. The claimant's assertion is that she was the shareholder, and on 3 January 2018 at Companies House, Mrs Hancock registered herself with Companies House as a person who from 13 October 2017 held directly or indirectly 75% or more of the shares in the company. It is common ground there was only 1 share.

13. The claimant's case is this. There was no agreement with Mr Ince that he would transfer or give his share to her. That is what she told me in evidence, notwithstanding that she appeared to suggest the contrary in the two written statements I have seen. That was her oral evidence, and there was no agreement she says to transfer the share.

14. The claimant's justification for so registering herself was that she alleged she had been contacted by the company's Bank, RBS, and they had instructed her to register the share in her name, presumably for some financial reason, and to get herself registered as director.

15. I understand the reasons why the Bank, which I infer holds a charge or debenture over the company's assets, might want to deal with the person who is actually the registered director. But I can see on the basis of the information I have recited and I have been given, and the evidence of Mrs Hancock, no conceivable basis for a Bank telling a Managing Director of a director of the company to go on to Companies House website and register a change in shareholding. That is a private matter between the shareholders.

16. Even if I were persuaded that this is what the Bank asked Mrs Hancock to do I cannot, on the information before me accept that Mrs Hancock was lawfully entitled to do so without even informing Mr Ince. For example, the day before he entered into this arrangement with her Mr Ince might have transferred the shareholding in his company to his partner or a child or a friendly neighbour, and he would be perfectly entitled to do that. There was absolutely no obligation upon him to do so in Mrs Hancock's favour, and Mrs Hancock frankly agrees that he did not do so.

17. In my judgment that finding, which is inevitable, is sufficient to determine the case, because the best I can do for Mrs Hancock is say that on the email exchange I have seen, whilst a sum of £25,000 is proposed and the counter sum of £35,000 is proposed, the only person with authority to offer the salary would be Mr Ince on behalf of the company at that point, as its shareholder and director, and the claimant could either accept or reject it. She did not reject it, she merely proposed another sum. She says nothing was agreed and she herself decided to increase the salary and give instructions to payroll to pay the increased salary in her status as a director. In my judgment she had insufficient authority to do so.

18. The Latin expression for doing something without authority is "ultra vires", whether it satisfies that test or not it does not matter, it simply means doing something that is "beyond your powers". In my judgment, what Mrs Hancock did on the evidence I have seen was clearly beyond her powers as a director and therefore I find that the sums she claims were not sums of wages that were properly payable to her and for that reason the claim was dismissed.

Employment Judge Tom Ryan

Date 9 April 2019

REASONS SENT TO THE PARTIES ON

.23 April 2019

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