EMPLOYMENT TRIBUNALS

Claimant Ms Megan Lockey

Respondent Mr Jake Dodd t/a Alex Edward Salon

JUDGMENT OF THE EMPLOYMENT TRIBUNAL AT A REMEDY HEARING

HELD AT NORTH SHIELDS ON 13th AUGUST 2018
EMPLOYMENT JUDGE GARNON (sitting alone)

Appearances
For Claimant: no attendance
For Respondent: no attendance

JUDGMENT

1. On the claim of unfair dismissal I award compensation of £309.15 payable by the respondent to the claimant. The Recoupment Regulations do not apply.
2. On the claim of wrongful dismissal I award damages of £200 payable by the respondent to the claimant.
3. On the claim of unlawful deduction of wages I order the respondent to repay to the claimant £928.83.
4. I make no award under s 38 of the Employment Act 2002.

REASONS

1. The claim was served on 1 June 2018. A response was due by 29 June. None was received. On 5 July I signed a judgment on liability only under rule 21 of the Employment Tribunal Rules of Procedure 2013 (the Rules) which was posted to the parties on 19 July when they were given notice of the date of this remedy hearing.

2. At all material times the claimant was 19 years old and paid the national minimum wage of £5.90 per hour for 37 hours work per week. This gave her a gross weeks pay £218.30. She was employed from 1 December 2016 until she was dismissed without notice on 26 April 2018. Whilst employees with less than two years continuous service do not normally have the right to claim unfair dismissal the reason for dismissal in this case was plainly that she was asserting a statutory right to be paid her wages. Section 108(3) of the Employment Rights Act 1996 (the Act) exempts her from the requirement for two years service .

3. My reasons for not issuing a judgment on remedy as well as liability on 5 July were that I needed the claimant to confirm (a) her net pay (b) whether she had been given a standard statement of terms and conditions of employment and (c) whether she had

received benefits in the period between dismissal and securing a new job on 8 May at a better rate of pay.

4. This hearing was due to commence at 11.30 . On 9th August the parties were informed by post of the change of start time from the originally listed one of 9.45. The claimant did not attend. Rule 47 provides in those circumstances I may dismiss the claim or proceed with the hearing in the absence of a party but before doing so consider all information available to me and make any enquiries that may be practicable about the reason for that party's non-attendance. At my direction a member of tribunal staff placed a telephone call to the claimant's mobile phone at approximately 11:50 pm. It went straight to voicemail.

5. Nothing at all was heard from the respondent until, at approximately 10.30 this morning, he telephoned the tribunal saying he had a sick note, could not attend and wanted a postponement. He was informed by the clerk he had to apply in writing and because he had not entered a response he would only be entitled to be heard on remedy . He said he intended to apply for reconsideration of the judgment on liability. He emailed the tribunal 11:24 attaching a scanned sicknote saying he is not fit for work due to depression and alcohol problems. The doctor assessed his condition on 26 July but backdated the sick note to 22 June for a period of eight weeks expiring on 16 August .First this does not convince me the claimant was unable to attend the tribunal today because being unfit for work and being unable to attend a tribunal are entirely different matters. Second, it fails to explain why he has not contacted the tribunal in any way until this morning . None of the tribunal's communications to the respondent have been returned by Royal Mail.

6. The Rules include

70. A Tribunal may, .. . on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. ..

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal..

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

7. Rule 20 provides that if an application is being made for extension of time in which to file a response after the time limit for doing so has expired a draft of that response must be provided with the written application.

8. The respondent's email does not ask for reconsideration. Any application for one would be well out of time. The only ground for a reconsideration is whether one is necessary in the interests of justice. That means justice to both sides and to other litigants. Neither party has attended today and has given no good reason. The prejudice to other litigants would be that tribunal time which could be spent dealing with their cases is being needlessly expended dealing with a case in which the respondent has no sensible argument for not contacting the tribunal until today and the claimant no sensible argument for not attending. The Rules make provision for determinations without a hearing. Everyone is still entitled to a hearing if they follow the rules to avail themselves of that right. Tribunals send to every respondent very detailed explanations of what they must do, when they must do it and the consequences of not complying. This respondent has ignored the claim, a procedure followed which resulted in a judgment. To allow a respondent, who has not taken advantage of the opportunity to defend on liability to do so after a Rule 21 judgment would make a mockery of the system. Under the 2004 rules, DH Travel -v-Foster decided even where what was called a "default judgment" on liability was made , a respondent still had the right to be heard at the remedies hearing. The application of this under the 2013 rules has just been confirmed by the Court of Appeal in Office Equipment Systems Ltd -v- Hughes

9. I do not think it would be just to dismiss the claim . Rather I shall deal with it in both arties absence and make awards which are the absolute minimum to which the claimant would be entitled.

10. The common law provides a contract of employment may be brought to an end by reasonable notice. Dismissal without such notice is termed "wrongful". Damages for wrongful dismissal are the net pay due during the notice period (see Addis v The Gramophone Company) In this case the statutory minimum period is one week In the absence of the claimant I can do no more than estimate the deductions for tax and national insurance from he gross pay. My best estimate is that her net weekly pay would be £200.

11 The law relating to unlawful deduction of wages in s13 of the Act which includes :

"*Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion*."

The claim form sets out the claimant was not paid for 20 hours worked in March(£118) or anything for the month of April. Because April was not a completed month and I do not know which hours she worked, the best I can do is to divide her week's pay by 7to get a day's pay and multiply by the 26 days she worked That produces £ 810.83 which is slightly less than she has asked for.

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12. There are two elements to compensation for unfair dismissal. The basic award is an arithmetic calculation set out in s 122 which having regard to the claimant's age and length of service is half a week's gross pay (£ 109.15) . The compensatory award is explained in s 123 which as far as relevant says:

(1) .., the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

I cannot make the enquiries I needed to make in order to quantify a compensatory award other than that for loss of statutory rights upon which I award less than the customary sum (£350) due to the fact she had short service and was on low pay. The compensation for unfair dismissal is limited to the basic award and that element as the only compensatory award.

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TM GARNON EMPLOYMENT JUDGE

SIGNED BY EMPLOYMENT JUDGE ON 13th AUGUST 2018