



THE EMPLOYMENT TRIBUNALS

Claimant
Ms Joyce Summerside
Ms Leah Jane Smith

Respondent
Ms Martina Lawson t/a “ Taste of Home”

AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON

ON 3rd September 2018

JUDGMENT (Liability and Remedy) **Employment Tribunals Rules of Procedure 2013 –Rule 21**

1. The name of the respondent is amended to that shown above.
2. The claim of unlawful deduction of wages is well founded. I order the respondent to repay to Ms Summerside £ 300 and to Ms Smith £ 250 gross of tax and National Insurance (NI) .
3. The claim for compensation for untaken annual leave is well founded. I order the respondent to pay compensation to Ms Summerside of £ 592.93 and to Ms Smith £211.64 gross of tax and NI.
4. The claim of breach of contract is well founded. I order the respondent to pay damages to Ms Summerside of £ 270 and to Ms Smith of £ 231.24 on which no tax is payable .
- 5 Under s 38 of the Employment Act 2002 I increase the awards to Ms Summerside by £ 600 and to Ms Smith by £ 500 on which no tax is payable
6. The claims of unfair dismissal are dismissed on withdrawal by the claimants .
7. The Hearing listed for 15th October 2018 is vacated.

REASONS

1. The claims were presented on 30th May 2018 against “ Taste of Home” but the text of the claims makes clear that was a trading name of Ms Lawson . The claims were served by post to the trading address of the respondent on 25th June. They have not been returned as undelivered in the postal system There is no injustice in the amendment at paragraph 1 of the judgment as arrangements should always be made for mail addressed to a business address to be forwarded (see Zeitsmann and Du Toit –v- Stubbington).
2. The response was due by 23rd July 2018 but none was received. I am required by Rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and , if so, obliged to issue a judgment which may determine liability and remedy. The Rules empower me to seek further information which I did by an Order of 30th July. I have in the claim form and the

reply to that order sufficient to enable me to find the claims proved on balance of probability and determine sums to be awarded.

3. Neither claimant had sufficient continuity of employment to claim unfair dismissal and both have withdrawn that claim in writing . Ms Summerside's week's pay was £300 gross, £270 net and Ms Smith's £250 gross, £ 231.24 net

4. The law relating to unlawful deduction of wages is in Part 2 of the Employment Rights Act 1996 (the Act) and that relating to compensation for untaken annual leave in the Working Time Regulations 1998 (WTR). Compensation for these two elements is awarded gross of tax and NI. Both were dismissed without notice when the business closed on 23rd February 2018 . Ms Summerside had started on 14th August 2017 and taken one week's paid leave. Ms Smith started on 6th March 2017 and had taken 4.6 week's paid leave. Neither was given a written statement of terms of employment

5 The wages owed are for one full "week in hand". The holiday pay is based on accrued but untaken entitlement applying the formula in Regulation 14 of WTR . At common law, a contract of employment may be brought to an end only by reasonable notice. Statutory minimum periods of notice are set out in Section 86 of the Act and in this case would be one week for each claimant Damages for this are based on net pay.

6. Section 38 of the Employment Act 2002 applies to these proceedings and says that if an employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and when the proceedings were begun the employer was in breach of its duty to the employee under section 1(1) of the Act to provide a written statement of terms of employment the tribunal **must**, other than in exceptional circumstances, increase the award by the two weeks pay and may, if it considers it just and equitable in all the circumstances, increase the award by four weeks pay In this case no exceptional circumstances apply but there are no aggravating features to merit the higher award, so I award two weeks pay to each claimant.

TM Garnon Employment Judge
Date signed 3rd September 2018