



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4120982/2018

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Held in Glasgow on 14 December 2018

Employment Judge: P O'Donnell

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Ms N O'Toole

**Claimant
In Person**

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Clydeview Care Home Ltd

**Respondents
No appearance and
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:-

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1. The claimant was dismissed by reason of redundancy and is entitled to a statutory redundancy payment of £1092.

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2. The claims of unlawful deduction of wages and breach of contract were presented outwith the time limit set down in s23(2) of the Employment Rights Act 1996 and the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 respectively. Further, that it was reasonably practicable for the claimant to have presented the claim within the relevant time limit. In these circumstances, the Tribunal does not have jurisdiction to hear those claims.

REASONS

Introduction

1. The claimant has brought complaints in relation to the following matters:-

- a. That she is due a statutory redundancy payment;
- 5 b. Unlawful deduction of wages in respect of wages due to her in relation to a week's holiday she had taken immediately prior to her dismissal;
- c. Unlawful deduction of wages in respect of wages due to her for additional hours worked in the role of acting manager;
- 10 d. Breach of contract in respect of a failure by the respondent to give proper notice of dismissal.

2. The respondent did not submit an ET3 in response to the claim and did not attend the hearing.

Evidence

- 15 3. The Tribunal heard evidence from the claimant who also produced documents in support of her claim.

Findings in Fact

4. The Tribunal makes the following relevant findings in fact:-

- a. The claimant commenced employment with the respondent on 16
20 March 2015 as a staff nurse. She worked 24 hours a week in that job. She was paid £13 an hour.
- b. From 5 March 2018, the claimant had agreed with the respondent that she would act up as manager. She would work additional hours in this role over and above the hours she worked in the role of staff nurse.
25 She would be paid £20 an hour for doing this work.
- c. On 26 March 2018, the claimant took a week's holiday.
- d. On 31 March 2018, she was phoned by other employees who informed her that the care home and closed on 29 March 2018.
- e. The claimant was not informed of this by the respondent until 4 April
30 2018 when she was contacted by the proprietor, Dr Reheela Khalid,

who informed her of the closure of the home and that the claimant was dismissed as a result.

- f. During the course of this conversation, Dr Khalid advised the claimant that she would be paid all the monies due to her once the residents' families had paid the fees owed to the respondent.
- g. The claimant tried to contact Dr Khalid 3 weeks later to find out what was happening. However, Dr Kahlid's mobile phone had been disconnected and emails were being returned.
- h. During this time, the claimant spoke to other employees who reported that they had not been paid and could not contact Dr Khalid.
- i. About 7-8 weeks after the claimant was dismissed, she was contacted by the family of one of the residents. During the course of that conversation, it was disclosed that all fees had been paid.
- j. The claimant contacted ACAS on 24 August 2018 after talking to other employees who had taken action to recover the monies owed to them.
- k. The ACAS Early Conciliation Certificate was issued on 7 September 2018.
- l. The claimant spoke to ACAS about what to do next and was told to bring a claim to the Employment Tribunal. She did not think she had the evidence to support her claim but then found this.
- m. The ET1 was submitted on 2 October 2018.

Relevant Law

- 5. Section 135 of the Employment Rights Act 1996 provides that an employee is entitled to redundancy payment where they are dismissed in circumstances where they are redundant.
- 6. The definition of redundancy can be found in section 139 of the Employment Rights Act 1996 and includes the situation where the employer ceases to carry on the business in which the employee is employed.
- 7. The amount of any redundancy pay is determined by section 162 of the 1996 Act and is a number of weeks' pay depending on age and length of service.

8. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
- 5 9. Section 23(2) states that the Tribunal shall not consider a complaint of deduction of wages unless it is presented within 3 months of the date of payment of the wages. Where there are a series of deductions then s23(3) states that the time limit runs from the last deduction in that series.
- 10 10. The Tribunal has discretion under s23(4) to hear a claim outwith the time limit set in ss23(2) and (3) where they consider that it was not reasonably practicable for the claim to be presented within the 3 month time limit and it was presented within a further period that the Tribunal considers to be reasonable.
- 15 11. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996.
- 20 12. Where an employer does not give the correct notice of dismissal then an employee can recover damages for this breach of contract equivalent to the salary they have lost for the relevant period.
- 25 13. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. The 1994 Order provides that any claim for breach of contract must be lodged within 3 months of the end of the claimant's employment. It contains a discretion for the Tribunal to hear a complaint out of time in similar terms to the discretion under s23(4) of the 1996 Act set out above.

Claimant's submissions

14. The claimant accepted that her claims for unlawful deduction of wages and breach of contract were not lodged in time. She had taken her employer's

word that she would be paid. She had not realised that there was a time limit for pursuing her claims.

Decision

Redundancy Pay

- 5 15. The Tribunal finds that the claimant was dismissed by reason of redundancy; the circumstances in which she was dismissed fall squarely into the definition of redundancy in section 139(1)(a)(i) of the 1996 Act.
16. The claimant was 42 at the time of her dismissal and had 3 years' service. She is therefore entitled to a redundancy payment of 3.5 weeks' pay.
- 10 17. The claimant's gross pay per week was £312 (£13 per hour x 24 hours a week). She is, therefore, entitled to a redundancy payment of 3.5 weeks x £312 = £1092.00.

Unlawful deduction of wages/Breach of Contract

- 15 18. The Tribunal finds that the claims for unlawful deduction of wages and breach of contract were not presented within the relevant time limit under s23 of the Employment Rights Act 1996 or the 1994 Order, respectively. The claimant was dismissed on 4 April 2018 when she was informed of the close of the care home by the respondent. The time limit for lodging either would have expired on 3 July 2018. The time limit had, therefore, expired when the claimant contacted ACAS to commence Early Conciliation on 24 August 2018 and so she could not benefit from any extension of time as a result of Early Conciliation.
- 20 19. The Tribunal considered whether or not it would exercise its discretion under s23(4) ERA or the 1994 Order to hear the claim out of time. For the reasons set out below, the Tribunal considered that it would not do so.
- 25 20. The Tribunal considered that it was reasonably practicable for the claim to have been presented in time. There was no evidence before the Tribunal that the claimant was, in any way, unable to have taken advice and lodge a claim in time. Although she had put faith in her employer to do the right thing,

5 this does not allow the Tribunal to conclude that it was not reasonably practicable for her to have taken action. The same would apply in respect of the fact that the claimant was not aware of the time limits for lodging a claim; she was not prevented from taking advice, as she subsequently did, which would have identified the time limits.

21. In these circumstances, the claims for unlawful deduction of wages and breach of contract being lodged out of time and the Tribunal not being willing to exercise its discretion to hear those claims out of time, the Tribunal does not have the jurisdiction to hear the claim.

10 22. In light of the decision on the time limit issue, the Tribunal has not considered the substantive issues regarding whether or not the claimant was subject to an unlawful deduction of wages or breach of contract.

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Employment Judge: P O'Donnell
Date of Judgment: 10 January 2019
Entered in register : 16 January 2019
and copied to parties

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