



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Carlton

V

Young Individuals Count Ltd

Heard at: Watford

On: 7 June 2019

Before: Regional Employment Judge Byrne

Appearances

For the Claimant: In person

For the Respondent: Response not presented

JUDGMENT

1. The respondent is ordered to pay to the claimant outstanding wages in the total sum of £1,358.00
2. The respondent is ordered to pay to the claimant outstanding holiday pay pursuant to the provisions of the Working Time Regulations 1998 in the sum of £432.00

REASONS

1. I heard evidence on oath from the claimant. No response was presented by the respondent and there was no attendance on their behalf at the hearing. I make the findings of facts that follow.
2. The respondent worked for the claimant as a support worker on 16 April 2018 up until the last work he carried out for the respondent on 13 August 2018. He was not provided with any written documentation to confirm the basis on which he carried out that work. He was required to provide to the respondent each month details of his availability to work as a support worker. In his first month of working, April 2018 this was done by email and thereafter by completing availability sheets emailed to him by the respondent which he completed and returned. His hourly rate of pay was £7.83 which increased in July 2018 to £8.00. Initially, he was paid on a fixed sleepover rate of £30.00 per night in addition to his hourly rate and the sleepover rate increased to £40.00 per night with effect from July 2018.

3. The respondents provide semi-independent living units for vulnerable young people aged 16-21. Shifts run from 9:00 to 23:00 daily, with a fixed sleepover rate as set out above. Night staff are “on call” and expected to be alerted to any incidents that occur, in which case they record the extra hours worked on their monthly time sheet.
4. The claimants last shift worked was the week ending 9 August 2018 when he was suspended from duties pending a disciplinary investigation and after a meeting on 20 August with senior management Mr Ross Browne, director, he decided that the claimant would not be offered any further work with the respondents.
5. The claimant was owed part-payment for work carried out in July and payment for all work carried out in August at the time he ceased working for the respondent. In the course of a telephone conversation with Mr Ross Browne on 13 September he raised with him the outstanding wages due to him and was told by Mr Browne “I’ll get that paid”. However, nothing was paid and after complying with the early conciliation requirements the claimant instituted these proceedings on 18 November 2018.
6. The claimant was told that he was not entitled to any holiday pay until he had worked for the respondent for a period of 6 months. That is a breach of the provisions of the Working Time Regulations 1998 and there is no legal basis to justify that statement.
7. Between the 20 and 23 July 2018 the claimant worked 42.5 hours with sleepovers. That was confirmed in his monthly time sheet for July. Those monies have not been paid to him. The total sum due is 42.5 hours at the hourly rate of £8.00, £340.00 plus £40.00 for each of the three sleepovers, a further £120.00 making a total of £460.00. His August time sheet included his claims for work done from 27 to 30 July (because time sheets run from the 24th of the previous month) and the 10 to 13 August. He worked in total 82 hours with six sleepovers as recorded in his August timesheet. The sum due to him in respect of August is 82 x £8.00 and six sleepovers at £40.00 each, a further £896.00. The total sum due to him for unpaid wages is £1,356.00.
8. Turning to the claim for holiday pay, applying the provisions of s13 and s14 of the Working Time Regulations 1998 having worked a total of 445 hours during the 5 months beginning April 2018 until he ceased worked for the respondent in August 2018 his holiday pay entitlement is 54 hours and I order the respondent pay to him in the sum of £432.00 outstanding holiday pay to which he was entitled.

Regional Employment Judge Byrne

Date: 28 June 2019.....

Sent to the parties on:

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For the Tribunal Office