EMPLOYMENT TRIBUNALS

Claimant: **Miss Hannah Beaumont**

Respondent: **Manalbe Ltd t/a 5 Star Childcare**

Heard at: **Leeds** **On:** **Friday 28 June 2019**

Before: **Employment Judge R S Drake**

Representation
Claimant: Mr J Beaumont (Claimant's Father)
Respondent: Ms M Naylor (Managing Director

JUDGMENT

1 The Claimant's complaint of unfair dismissal fails and is dismissed

2 The Claimant's complaint of unlawful withholding of pay and/or non-payment of and at the relevant prevailing rate prescribed by the National Minimum Wage Act 1998 fails and is dismissed.

3 The Claimant's claim for unpaid notice pay of £586.62 (after deduction of an invoice of £464.60 for her own daughter's nursery care cost accrued during notice the Claimant should have given) succeeds and she is awarded, and the Respondent shall pay to her, the aggregate resultant sum of £118.02

REASONS

Issues

1. These were as determined by EJ Shulman in his Case Management Directions dated 26 March 2019.

Determination Notes and Reasons

2. At commencement of this hearing, I sought to clarify the issues and identify the evidence being adduced to deal with those issues and noted in particular the absence of a witness statement for the Claimant. I explained the limiting effect this would have on her ability to prove her case.

3. I canvassed the evidence to be adduced by both parties and related it to each of the issues to be established noting that in all issues the burden pf proof rested with the Claimant according to the civil law standard, and thus that of a balance of probabilities.

4. Upon noting that the Claimant accepted that her first period of engagement with the Respondents was as an apprentice and ended at the latest by 1 October 2017 and was resumed after a gap of a month by a new similar fixed term contract on which she recommenced employment on 31 October 2017, she thus did not have continuity of service by her own admission and that her renewed service was in the nature of an apprenticeship.

5. Further I noted that on recognising this the Claimant accepted she had been paid throughout her engagements at rates exceeding the then prevailing rates of pay prescribed by the NMWA and that thus her claim under this head was limited.

6. Noting as above that she didn't have continuity of service, I noted that the Claimant thus accepted that the onus was on her to establish that her termination of employment with effect from 31 January 2019 was because of making a complaint on 6 November 2018 (and no later) that she was not being paid at the right rate so as to establish she had been automatically existed for having asserted a statutory right.

7. Noting that she had not provided a witness statement and no other probative documents in respect of unfair her unfair dismissal claim allowed time to be taken to reconsider the claims in full.

8. I also noted that it was common ground that the Respondents owed her final month's pay which they had volunteered to pay but that separately at the Claimant's own admission she had not given a contractual one month notice to withdraw her own daughter from the Respondent's nursey at which she had been engaged.

9. After allowing time to reflect I was advised that the parties would by consent submit to disposal of the claims in the manner set out at paragraphs 1 to 3 inclusive of the above Judgment.

Employment Judge R S Drake

Date: 3 July 2019

Public access to Employment Tribunal decisions (Judgments and Reasons for the Judgments) are published in full online shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case. Requests for Written Reasons must be made within fourteen days of a Judgement being sent where such Judgement are not accompanied by Reasons.