



EMPLOYMENT TRIBUNALS

Claimant: Miss J English

Respondent: Tantrum Hair Extensions

Heard at: Reading **On: 27 June 2019**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: In Person

For the Respondent: Mrs L Simpson (Owner)

JUDGMENT

1. The respondent failed to pay the claimant in lieu of entitlement to annual leave. The respondent is ordered to pay to the claimant the sum of £247.85.
2. The respondent has made an unauthorised deduction from the claimant's wages. The respondent is ordered to pay to the claimant £72. This is the gross amount. If the respondent pays the tax and national insurance due to HMRC, payment of the net amount will meet the judgment debt.
3. The claimant's claim for notice pay is dismissed.

REASONS

1. In a claim form presented on 8 October 2018 the claimant made a complaint that the respondent had made deductions from her wages, that the claimant was in breach of contract and that the respondent had failed to pay her in respect of holiday. The respondent denied the claimant's claims.
2. The claimant's employment with the respondent commenced on the 29 August 2017.
3. The claimant and respondent entered into a written contract of employment which began on 29 November 2017.

4. At the commencement of the claimant's employment it was explained to the claimant that she would receive training. The cost of the training was to be deducted from the claimant's wages and if the claimant left the respondent's employment within 12 months the cost of the training would be retained by the respondent. If the claimant's employment continued after 12 months the claimant would be repaid the equivalent of the cost of training.
5. The following provision appeared in the employee handbook which was signed by the claimant.

"All members of staff must work a 3 month probationary period. In this time you will receive full Tantrum hair extensions training. The cost of this training will be deducted from your wages by the employer at the start of your employment and held until the end of your employment. If you terminate your employment, or employment is terminated by Tantrum within the first twelve months of your employment from the date of full time contract being issued, the training amount will be deducted from any monies due to cover cost of your training."
6. At the point that the claimant's employment came to an end the claimant was being paid £9 per hour by the respondent.
7. The claimant had 3.67 days untaken holiday at the date that her employment came to an end. It was agreed between the parties that this was equivalent to £247.85 and subject to the respondent's contention that it was entitled to deduct this from the claimant's final pay it was agreed that the claimant was entitled to this.
8. The basis for the contention that the respondent is entitled to deduct the sum of £247.85 is that the cost of covering the claimant's unexplained absence after the 3 September 2018 can be deducted from the claimant's pay. The respondent's contention is not well founded because the respondent has failed to prove that there was any cost to the business involved in covering for the claimant or what the cost to the business was. Even if such a cost was deductible from the claimant's pay it was not proved.
9. There was a dispute of fact between the claimant and respondent as to whether there were any sums of outstanding in respect of wages due to the claimant at the date of the termination of the claimant's employment. This arose in two distinct ways:
 - (i) The claimant alleged that in respect of the pay for the week of 27 August 2018 that she was paid short the sum of £84.72. The claimant did not persist with this claim when she was provided with a copy of her pay slip dated 8 September 2018.

- (ii) The claimant says that she was not paid for working on 3 September 2018 and claims £72. The respondent denied that the claimant worked this day. If the claimant worked that day she is entitled to payment of £72 as the last payment to the claimant was in respect of the period ending 2 September 2018.
10. I ordered the respondent to provide further documents namely: (i) the claimant's pay slip for the week ending 8 September 2018 (i.e. this payslip will be dated c. 15 September 2018); and (ii) a copy of any email showing that this payslip was despatched to the claimant.
11. I have come to the conclusion that the claimant did work on the 3 September 2018. I come to this conclusion for the following reasons. The claimant says she did work on that date. There are text messages produced which show that the claimant did not work on the 4 September 2018. There is no indication that the claimant had not been at work on the 3 September 2018, which was otherwise a working day for her, in the email the claimant informs the respondent that she will not be at work on the 5 September 2018. The claimant produced a train ticket which was dated the 3 September for travel from Frimley to Guildford timed at 8:40am this is the time that she would be purchasing a ticket when travelling to work in Guildford.
12. The respondent has not fully complied with the order I made. The respondent has provided a partial copy of a pay slip, there is no reference on the payslip that it relates to the claimant. The respondent has not provided any document showing, as Mrs Simpson claimed, that the pay slip was previously sent to the claimant around the 8-15 September 2018. The document produced does not support the position that was put forward by Mrs Simpson. There are other documents that the respondent has in its control which have not been produced, such as the electronic clocking in and out records, there was no suggestion of an impediment to producing these documents.
13. The major dispute between the claimant and respondent has been over the question whether the claimant is entitled to notice pay. The claimant says that she was ready willing and able to work her notice and the respondent states that the claimant was not willing to work the notice period.
14. The accounts given by Mrs L Simpson and the claimant are irreconcilable. I found both the witness apparently credible. There was nothing in the accounts that given by either person which suggested that they were not telling the truth.

15. I noted that the claimant wrote a letter of resignation which stated that she intended to work her notice period. The claimant says she was willing to abide by this but was sent home by the respondent.
16. The claimant accepted in her account of the events on the 7 September 2018 that Mrs Simpson put forward a determined argument to try to get the claimant not to leave her employment. I also take into account that there was nobody available to cover the claimant's work that day and someone had to be brought to the Guildford business from Kingston.
17. There are factors which would tend to lead me either direction. I have not been able to conclude that I prefer one witness' evidence over that of the other and therefore the burden of proof being on the claimant I am of the view that the claim has not been proved. The claimant has not shown that she was ready and willing to work the notice period. The claimant's claim for notice pay therefore fails.

Employment Judge Gumbiti-Zimuto

Date: 16 July 2019

Sent to the parties on:

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For the Tribunals Office