



# THE EMPLOYMENT TRIBUNAL

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**BETWEEN:**

**Claimant**

**Ms G Grozeva**

**AND**

**Respondent**

**Wayne Bhagan**

**SITTING AT:** LONDON SOUTH                      **ON:** 25 April 2019

**BEFORE:** EMPLOYMENT JUDGE C HYDE

**APPEARANCES:**

**For the Claimant:** In Person

**For the Respondent:** Did not attend and was not represented

## **JUDGMENT**

**The judgment of the Tribunal was that**

1. The claim for unlawful deduction of wages was well founded and the Tribunal declared that the Respondent was to pay to the Claimant the sum of **£232.00 gross** forthwith.
2. The unfair dismissal complaint was not well-founded and was dismissed.
3. The application to amend the claim form to include a complaint of whistle-blowing was refused.

## **REASONS**

Pursuant to a request from the Claimant sent on 12 May 2019.

1. By a claim form which was presented on 25 May 2018 the Claimant complained that she had been unfairly dismissed from her employment as a Customer Service Agent. A strike-out warning was given in respect of the unfair dismissal complaint as the Claimant, on the face of it, had insufficient service. That warning was given on 27 June 2018.
2. The Claimant worked for about four days for the Respondent on the 7<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> April 2018, carrying out four shifts for Mr Bhagan whose business traded as 'Deliver me drinks'. She noticed that the trading name had recently changed to 'Party Refresh'.
3. The Claimant complained about an incident which occurred on 12 April 2018. Although she had stated in the claim form that her first shift was on 6 April 2018, she verified in evidence, by reference to the text messages received from Mr Bhagan, that her first shift was actually on 7 April 2018. She complained that she had been verbally abused by Mr Bhagan who called her 'shit' on her fourth shift with the company. She alleged that he shouted at her and also suddenly blamed her for unreasonable things, commenting that she was 'all over the place', was 'not taking calls within three minutes' and was not looking at him whilst he was speaking without interrupting. She described being given her marching orders during that last shift by Mr Bhagan. She said that as a result she just left the building with no other comment.
4. She described that she worked her first shift with Mr Bhagan, who trained her and that he had abused people over the phone on a couple of occasions. She said that in respect of all three previous shifts, inclusive of the shift on which she left, she was not paid.
5. Finally, she indicated that the second and third shifts were worked alongside someone called 'Nathalie' who she described as really helpful and easy to get along with.
6. Elsewhere in the claim form under the section in which she was asked to state what she wanted if her claim was successful, she indicated that she wanted compensation only. She continued by entering the following text in box 9.2:  
  
*'I would like to receive £2,000 as a compensation due to wasting time and suffering a moral abuse. Please bear in mind I was working on a self-employed basis but keep all my correspondence with the Respondent.'*
7. The strike-out warning which was sent to the Claimant on 27 June 2018 explained that under section 108 of The Employment Rights Act 1996,

Claimants are not entitled to bring a complaint of unfair dismissal unless they had been employed for two years or more except in certain specific circumstances. Such circumstances did not seem to apply in her case. The letter continued that it appeared from her claim that the Claimant was employed for less than two years. She was told that if this was the case, the Tribunal could not consider her complaint that she had been unfairly dismissed. She was then warned that as she did not appear to be entitled to bring that part of her claim, an Employment Judge was proposing to strike it out. She was given until 11 July 2018 to give reasons in writing why her complaint of unfair dismissal should not be struck out. No or no adequate representations were received from her on this issue by the date of the hearing.

8. In respect of her complaint that she had not been paid for the shifts that she worked she was asked by letter dated 17 October 2018 on the instructions of Employment Judge Freer to state precisely how much money she said she was owed in respect of the alleged unpaid shifts. She was asked to respond on or before 24 October 2018.
9. No response was received.
10. In the meantime, the Respondent was in contact with the Tribunal by letter dated 19 October 2018. He stated that he had only just been made aware that the case had been brought against him by Ms Grozeva. He gave his full postal address which included details which had not been previously included in the address details provided by the Claimant in the claim form, namely that his business operated from '15 - 17' Ingate Place. He asked for a postponement of the hearing which was then due to take place on 23 October.
11. That hearing was postponed due to a lack of judicial resources.
12. In an email sent by the Claimant to the Tribunal dated 17 October 2018, she responded to the letter sent on the instructions of Employment Judge Freer in relation to clarifying the nature of the compensation being sought. She identified that the £2,000 plus court fees were a remedy for unpaid shifts in April 2018, verbal offence at the workplace; and that she had also reported whistle-blowing and signalled a compulsive behaviour at the workplace on the part of the Respondent. She now increased her request for compensation to £5,000 at the forthcoming court hearing.
13. By a further letter dated 14 January 2019 and sent to the Claimant on the instructions of Regional Employment Judge Hildebrand, the Claimant was informed that the only claim being considered was for unlawful deduction of wages. She was asked again to specify how she arrived at the figures claimed.
14. By a further letter from the Tribunal sent to the Claimant and the

Respondent, the parties were informed that Regional Employment Judge Hildebrand had directed that the claim form and other relevant documents should be re-sent to Mr Bhagan at the address appearing on that letter. The letter was dated 16 January 2019. The address to which the claim was sent was the address which had been provided by Mr Bhagan in the email referred to above. The Respondent was informed that the claim form was being sent to him and along with that was a notice of claim and/or notice of hearing and a blank ET3 response form for completion. He was also told that the time limit for presenting a response was set out in the notice of claim. In the separate notice of claim/notice of hearing which provided for a hearing date on 25 April 2019, the notice of 16 January 2019 gave the Respondent until 13 February 2019 to provide a response.

15. The Claimant again corresponded with the Tribunal indicating that her claim was for £2,000 and court fees (email sent on 14 January 2019 at 11.56).

16. The Tribunal responded to the Claimant by letter dated 1 April 2019 on the instructions of Employment Judge Spencer. The Claimant was informed that the remedy figure that the Claimant had sought set out insufficient information. She was asked the following specific questions:

*Which days/hours worked did you not receive payment for?*

*What was the rate of pay agreed?*

*How you calculate the amount claimed?*

17. The Claimant had also raised some queries about the proper Respondent and was told that her claim was against Mr Bhagan in person and not against the company. She was told that if Mr Bhagan was not the person who employed her, she should claim against the legal person, ie the company. She was also told, however, that the Tribunal does not give advice and was directed to Citizens Advice and law centres for advice.

18. By email sent to the Tribunal on 1 April 2019, the Claimant responded to the Tribunal's latest correspondence above. She stated that the dates of work and rates of pay for them were as follows:

*7 April 2018 – 9pm to 6am - £72*

*9 April 2018 – 11pm to 5am - £48*

*11 April 2018 – 11pm to 5am - £48*

*The midnight – 7am shift was unfinished due to the incident*

She further stated that her hourly rate of pay was £8.

19. She went on to explain that her claim for the higher figure was because of the verbal offence/harassment/dismissal and unpaid wages for April 2018. She appeared to include a claim to cover the period before she found a new job which she stated 'potentially could last for several months or longer'. She estimated that a remedy of £2,000 amounted to approximately one month of employment.
20. Among other matters she also reiterated that she had reported whistleblowing by the Respondent as witnessed during the shift on 7 April 2018.
21. At the hearing the Claimant produced a set of transcripts of text messages between herself and Mr Bhagan to verify the shifts that she was asked to work by him. The Tribunal accepted her evidence on this as credible.
22. The Tribunal considered the unfair dismissal complaint and as no representations had been made to dispute that the Claimant had insufficient service, that claim was dismissed forthwith. The Claimant had been given about ten months in which to provide representations and none had been forthcoming.
23. She informed the Tribunal that the names 'Party Refresh' and 'Deliver Me Drinks' were trading names for Mr Bhagan. The Tribunal accepted this also and considered that the Respondent had been properly joined.
24. The Tribunal decided on the rate of pay by applying the total that was promised to the Claimant in the text messages from Mr Bhagan to the number of hours which she was required to work on that shift. He told her on 7 April 2018 that she could earn £72 by working from 9pm – 6am.
25. The Tribunal was further satisfied on the basis of the evidence provided by the Claimant about the instructions received from Mr Bhagan about attending work that she had indeed worked the following shifts and was therefore entitled to be paid as follows:
  - 7 April 2018 – 9pm – 6am = £72
  - 9 April 2018 – 11pm to 5am = £48
  - 11 April 2018 – 11pm to 5am = £48
  - 12 April – 10pm – 6am = £64.00

In respect of the final shift the Tribunal considered it appropriate for the Claimant to be paid as if she had completed the whole shift.

The total sum therefore earned but unpaid equalled **£232 gross**.

26. In error during the hearing, the Tribunal applied a multiplier of 9 to the hours worked, and arrived at a total of £243. This was not justified based on the Claimant's clear evidence and the Tribunal's finding above,

that she was due an hourly rate of £8 an hour – as stated by the Claimant in her email to the Tribunal sent on 1 April 2019 at 21:01. That arithmetic error has been corrected in this decision.

27. The Tribunal announced its award and the Claimant then asked what consideration had been given to her whistle-blowing complaint. The Tribunal considered that this was not a claim which had been made in the claim form and it had first been raised by the Claimant sometime after the presentation of the claim. It did not appear to the Tribunal, in the way that the matter was put in the email from the Claimant, that there was any good reason to amend the claim to allow that complaint to proceed, having regard to the principles which apply to the consideration of applications to amend. No clear whistleblowing allegation had been formulated. There was further no basis, having regard to the events described by the Claimant in her four shifts of work, to believe that the facts which would need to be asserted in support of a whistle blowing complaint had occurred. The application to amend the claim form was therefore refused.
28. The Tribunal also considered the issue of whether the Claimant was self-employed as she had stated in her claim. Albeit there was limited information available, the Tribunal took into account that the Claimant was trained by the Respondent as set out in the text messages, and also she confirmed that prior to the start date she had taken in her passport and bank details on the first shift. She had also been given a document described as a new starter form.
29. The Tribunal considered that the engagement was akin to that of either an employee or a worker. The Tribunal attached some weight to Mr Bhagan's intention as expressed in a text message he sent to the Claimant on 11 April 2018 to the effect that the plan was that after training the Claimant, she would be confident to 'run it solo'. The Tribunal considered that this showed a degree of integration into the Respondent's operations taken with the training plans and at the very least the Claimant had status of a worker.
30. Although the papers had been re-served on the Respondent as set out above there were no representations from the Respondent and no attendance by or on behalf of Mr Bhagan.

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Employment Judge Hyde

Date and Place of Judgment:  
25 July 2019  
London South