



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Brzezinska-Caputa

Respondent: Mr M Maniakowski trading as Atlas Physio

Heard at: Leeds

On: 6 August 2019

Before: Employment Judge JM Wade

Appearance:

For the Claimant: In person (10am until 11.40am)

For the Respondent: In person (12.45pm until 1pm)

RULE 21 JUDGMENT

1 The claimant's complaint of a failure to provide itemised statements of deductions (pay slips) succeeds. The sums that were paid and the sums deducted are those set out below:

October gross salary:	£1833
Sum paid on or around 1 November 2018 in two installments):	£1528.04
Deductions for PAYE income tax and employee National Insurance:	£304.96

November gross salary:	£1833
Sum paid on or around 1 December 2018 in two installments:	£1531.41
Deductions for PAYE income tax and employee National Insurance:	£301.58

December salary (two weeks)	£846.15
Sum paid on or around 31 December 2018:	£764.20
Deductions for PAYE income tax and employee National Insurance:	£ 81.95

2 The claimant's complaint of untaken holiday on the termination of her employment succeeds and the respondent shall pay to her the gross sum of £501.19

3 The claimant's complaint of a failure to pay notice pay is dismissed.

4 The claimant's complaint of unlawful deductions from her wages is stayed pending the respondent's confirmation that the HMRC records have been brought up to date.

REASONS

1 The claimant initially presented claims alleging unfair dismissal, and entitlement to notice pay, holiday pay and other payments. The "other payments" complaint concerned the claimant's allegation in her claim form that pay slips had not been provided and there was no evidence of payments to HMRC of sums deducted.

2 The claimant's unfair dismissal complaint was dismissed on 10 May 2018 for want of the requisite two years' employment. The claim in respect of notice pay (wrongful constructive dismissal) is misconceived; the claimant gave three weeks' notice rather than four (the requirement in her contract). Save for the deductions issue, she was paid in respect of that three week period. At common law she was required to have accepted a repudiatory breach and terminated her employment forthwith to access damages for the breach; this she did not do.

3 The claimant was employed by the respondent pursuant to a written employment contract from 1 October 2018 to 14 December 2018. Her salary was £22,000. Salary payments were made to her as recorded above but she was not provided with itemised pay slips at the time of payment nor with a P45 when she ended her employment. She tells me that enquiries with HMRC continue but there is no record of the respondent making payments of PAYE deductions in respect of her employment.

4 The calculation in respect of holiday untaken by the date when the employment ended is a matter of maths based on an annual entitlement of 5.6 weeks.

5 The respondent was not required to enter a response on service to the unfair dismissal claim. He was advised that his response (to the other complaints) should be with the Tribunal by 3 May 2018. There was no response but on strike out of the unfair dismissal claim he was informed that the other claims continued to a hearing and he must respond on those claims. He did not do so.

6 A hearing was listed for three hours in Hull at 10 am today. Yesterday due to reasons of judicial resources there was a change of time and shortening of the hearing to three hours commencing at 2pm. The claimant received the notification by email and telephoned the Tribunal to say she could not attend Hull at 2 pm but could attend Leeds at 10am. In the absence of a response, this was confirmed in a notice of hearing to the parties (a ten o'clock hearing in Leeds), but as the communication method for the respondent was by post, he did not receive notice of the changes. He arrived in Hull this morning for 10am.

7 The original notice of hearing, sent on 28 June 2010, provided that it was sent to the respondent for information only, and he would only be entitled to participate to the extent permitted by the Judge. Today I directed that the respondent be informed by the clerk in Hull that if he could attend Leeds today I would hear any application he wished to make to extend time to enter a response.

8 This morning from ten o'clock the claimant provided sufficient information as appears for me to be able to enter a Rule 21 Judgment (Judgment in default of response). She was not able to remain past 12 noon due to late notice of the change of venue. The respondent attended at 12.45, having travelled from Hull.

9 I heard him and was satisfied that his personal circumstances were such after the claimant's employment ended that there were good and compelling reasons for his failure to complete the Tribunal's response form. However, permitting him time to enter a response and for him to seek to defend the claims also involves me assessing the merits of any defence that may be put forward.

He told me he had received some legal advice to attend and put forward his facts in case they were at odds with the claimant's.

10 On the facts, the respondent's account of the relevant matters do not differ from that of the claimant; he accepts he did not provide pay slips, which was in error, but arose out of this being his first venture into employing a colleague to work with him. He did provide the claimant with a comprehensive written contract. The events which led to the claimant resigning were not easy for a new business to navigate. Nevertheless, he accepts statements of pay and deductions should have been given and he has taken steps to put that right. He had hoped the statements would be available today but that has not yet been possible.

11 On the holiday pay complaint, the respondent accepts no holiday pay was paid at the end of employment, and his understanding was that it was not due because the claimant had been unwell and not at work for December. That is not a defence to the claims, given the contract term as to pay for sickness absence, and Regulation 14 of the Working Time Regulations 1998.

12 In these circumstances it is not in the interests of justice for the respondent to have extra time to enter a response, and I am able to give a Rule 21 Judgment. It is to be hoped that the respondent's enrollment as an employer with a PAYE reference can take place as soon as possible to enable the HMRC record to be made accurate for the claimant and respondent in respect of the 2018/2019 tax year. That ought to resolve any issue of unlawful deductions but out of caution I have stayed that claim (put it on pause) pending the pay slips being provided to confirm that there were, in fact, no unlawful deductions.

13 Finally, it is for the claimant to account to HMRC in respect of income tax or employee national insurance due on the holiday pay awarded above, which she can declare in her return to HMRC.

Employment Judge JM Wade

Date 6 August 2019