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EMPLOYMENT TRIBUNALS

Claimant: Miss Ella Curtis
Respondent: Suzie Dean (t/a Jeneveve)
Heard at: East London Hearing Centre
On: 5 August 2019
Before: Employment Judge Burgher

Appearances

For the Claimant: Mr J Curtis (Father)

For the Respondent: In person

JUDGMENT

- 1 The Claimant's claim for unlawful deduction of wages succeeds.
- 2 The Claimant's claim for unpaid notice pay fails and is dismissed.
- 3 The Respondent has failed to provide the Claimant with a written statement of particulars of employment.
- 4 The Respondent is ordered to pay the Claimant the sum of £76.10 in respect of her claims.

REASONS

- 1 The issues the Tribunal is required to determine were identified as:
 - 1.1 Whether the Claimant is entitled to £50.40 in respect of one week's notice pay; and

1.2 Whether the Respondent had unlawfully deducted £27.50 in respect of a work T shirt the Claimant was given by the Respondent.

2 The Claimant did not attend the hearing. However, her parents did and her father, Mr J Curtis, made representations and asked questions on her behalf.

3 Mrs Dean gave evidence under oath and I was referred to a selection of text messages between her and Miss Curtis.

4 I have found the following facts from the evidence.

5 Mrs Dean operates a family business. She has done so for over 15 years and is in the business of providing prom dresses for special occasions.

6 Mrs Dean stated that she offered the Claimant a trial period, which was to be assessed over four separate weeks, for the Claimant to demonstrate her reliability and ability to work with her.

7 The role was initially a Saturday job and the Claimant was required to work six hours. However, January is a very busy month for the Respondent and an additional 6 hours work on Sunday was offered. The Claimant was paid the minimum wage of £4.05 an hour given that she was 16 at the time.

8 The Claimant was not given a contract of employment or any written particulars of employment.

9 The Claimant did not have a reliable attendance at work during the short period she worked for the Respondent. Between 17 November 2017 and her dismissal on 19 January 2018 the Claimant did not attend on four separate occasions and notified Mrs Dean on the morning of each non-attendance thereby her letting down.

10 Sometime in January 2018 the Claimant was given a work T shirt.

11 On Sunday 19 January 2018 the Claimant called Mrs Dean to say that she could not attend for work. By this time Mrs Dean had had enough and told the Claimant that she would not be required to return at all. The Claimant replied that she did not mind as she had found another job.

12 The Respondent paid the Claimant her outstanding wages but did not provide the Claimant with any notice payment and deducted £27.50 from the Claimant's wages as she did not return the T-shirt despite the request to do so. The T-Shirt was eventually returned some 4 to 5 weeks after, by which time the Respondent had to incur costs to buy another T-shirt for another member of staff.

Law

13 Section 86 of the Employment Rights Act 1996 ('ERA') provides that where an employee has been employed for one month or more, the minimum period of notice is one week. However, section 86(6) of the ERA disapplies this if the contract can be determinable by the other party by reason of the conduct of the other party.

14 Section 1 ERA requires an employer to provide an employee with written statement of terms and conditions of employment not later than 2 months after the beginning of employment. As an aside, from 6 April 2020, employers will be under an obligation to provide the written statement of particulars at the beginning of employment.

15 Section 13 of the ERA specifies the circumstances where an employer can deduct sums from wages. There needs to be specified contractual entitlement to do so. The Respondent did not have such specified contractual entitlement and there were no written terms and conditions to demonstrate this.

16 In these circumstances the Respondent was not entitled to deduct £27.50.

17 The Claimant's unreliability at work over a short period means the Respondent has established that there was a conduct that entitled her to dismiss the Claimant without notice under section 86(5) ERA.

18 However, the Respondent did not provide the Claimant with written statement of particulars, as required by section 1 ERA. Had this been done it is unlikely the case would have come to Tribunal.

19 The failure to do so can be the subject of further compensation under section 38 of the Employment Act 2002. I award 2 weeks' pay for this failure. A week's pay is $6 \times 4.05 = £24.30$. Although 2 working sessions were usual for January normal weekly hours were Saturday only. 2 weeks' pay is therefore £48.60.

20 The Respondent is therefore ordered to pay the Claimant £76.10 (£27.50 + 48.60) in respect of her claims.

Employment Judge Burgher

6 August 2019