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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: S/4101018/2019

Held at Glasgow on 24 April 2019

Employment Judge: David Hoey

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Mr J Bell

**Claimant
In Person**

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Stonegate Pub Company Ltd

**Respondent
Represented by:-
Ms D Burke –
HR Manager**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim for payment of notice pay and consequential losses is dismissed.

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REASONS

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1. This case called for a full Hearing to determine liability (if anything was due) and remedy (what specifically was due). The Claimant represented himself and the Respondent was represented by Ms Burke.

2. The Hearing began by identifying what the issues the Tribunal had to decide were. The Claimant explained that he believed he was due to be paid 4 weeks' notice at full pay. The respondent's position was that his notice period was covered by a Doctor's fit note certifying him as unfit to work. He had been paid one week's notice and the remainder was statutory sick pay, which was, the respondent maintained, the sums to which the claimant was entitled. The respondent asked the claim be dismissed.
3. The claimant gave evidence and both parties lodged productions.

Facts

4. I find the following facts established on the balance of probabilities.
5. The claimant was engaged as an employee via a contract of employment which allowed him to provide 4 weeks' notice to terminate the contract.
6. The claimant had been absent from work. When he considered himself fit to return to work he met with his line manager and told him that he was not sure he wanted to return to work.
7. His line manager told the claimant that if he wanted to resign he should do so by email and submit a sick note to ensure that his pay was unaffected. A message was sent to the claimant to that effect.
8. The claimant procured a fit note from his local medical practice which certified the claimant as unfit to work during his notice period.
9. The claimant did no work during his notice period.
10. The claimant believed that the respondent would pay him full pay during his notice pay but the respondent believed that he would be paid the sums he was contractually due, statutory sick pay (provided a certificate was provided that authenticated the absence).

The Law and Decision

11. Regrettably this case arose due to both parties being at cross purposes. The
5 claimant understood that he was being told to procure a fit note to cover his
absence so he would get full pay. The respondent was of the view he would
secure that to which he was contractually entitled.

12. In these cases the onus is on the party seeking the sums in question to
10 establish entitlement to the relevant amounts. The legal position is that it is
for the claimant to establish his entitlement to the sums in question. There
requires to be evidence showing the claimant is entitled to be paid full pay
during his notice period when he is subject to a medical certificate stating that
he is unfit to work. The claimant required to satisfy the Tribunal that there was
15 some form of binding undertaking that required the respondent to pay him full
pay.

13. While I have sympathy for the claimant regrettably he was unable to prove
20 that he was due to be paid full notice pay during his notice period.

14. In terms of the claimant's contract of employment he was not entitled to paid
notice when he is unable to work. He indicated his inability to work by the
submission of a note from a medical practitioner which certified him as unfit.
While the claimant believed he was told he would be paid full pay that was not
25 what he was told. The claimant candidly explained he was told he would be
"paid", which he understood to mean full pay but that was not what he was
told.

15. The respondent's position was that he would be paid the sums contractually
30 due and that was what he was paid.

16. In all the circumstances the claimant was not entitled to be paid full pay where he submits a note from a medical practitioner certifying him as unfit for work, where no work was done and where he was not told he would be paid full pay.

5 17. The claim is therefore dismissed.

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Employment Judge

David Hoey

Date of Judgment

25 April 2019

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**Entered in register
and copied to parties**

02 May 2019

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