



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Knight

Respondent: Mrs A Elding
t/a Flo's Friends – Community Care & Support Services

Heard at: Boston Court House **On:** Friday 26 July 2018

Before: Employment Judge (sitting alone)

Representation

Claimant: In Person

Respondent: Did Not Attend and Not Represented

JUDGMENT having been sent to the parties on 8 August 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

The decision of the Employment Judge is that:-

1. The complaint of unfair dismissal succeeds and accordingly:-
 - (a) Mrs Knight is entitled to a basic award in the sum of £434.00.
2. Mrs Knight is also entitled to a compensatory award made up as follows:-
 - (a) Loss of statutory rights - £450.00
 - (b) Six months loss of wages at £865.00 per month - £6,920.00
3. Mrs Knight's claim of wrongful dismissal also succeeds and she is entitled to damages in the sum of £434.00.
4. Mrs Knight's claim of unlawful deduction from wages in respect of a failure to pay holiday pay also succeeds and she is entitled to the sum of £1216.00.
5. In total therefore the Respondent is ordered to pay to the Claimant the sum of £9.449.00.

REASONS

1. Mrs Elding, who is the owner and manager of Flo's Friends Community Care & Support Services, was not present and was not represented. The clerk to the tribunal rang the mobile number given by Mrs Elding but there was no reply. Given that Mrs Elding had also failed to attend the preliminary hearing on 21 September 2018, I decided to proceed in her absence, though I have put the matters raised in the Respondent's Response to Mrs Knight.
2. Mrs Knight brings claims firstly of unfair dismissal. It is for the employer to show a potentially fair reason for dismissal and if such a reason is made out, it is for me to determine whether the dismissal was fair within the meaning of section 98 of the Employment Rights Act 1996. The second claim Mrs Knight advances is wrongful dismissal, ie a failure to pay notice pay. The third claim is one of a failure to pay holiday pay and the final claim is one of arrears of wages. In fact, Mrs Knight explains that the arrears concerned are arrears of statutory sick pay and this tribunal has, in the circumstances of this case, no jurisdiction to hear that claim.

Findings of fact

3. Mrs Knight began her employment with Flo's Friends on 7 December 2015. The difficult point to determine is the effective date of termination. An earlier decision of Judge Ayre has already determined that Mrs Knight has sufficient service, ie more than 2 years of continuous employment to bring a claim of unfair dismissal.
4. I have seen correspondence written by Mrs Knight to Mrs Elding, all of which was without response. Further, Mrs Knight has never received a P45 from Mrs Elding.
5. However, in all the circumstances, I am of the view that the contract of employment came to an end on or about 31 March 2018.

6. In July 2017, Mrs Knight undertook surgery to reconstruct her shoulder. She produced fit notes to Mrs Elding and was, up until December 2017, paid statutory sick pay. I accept that Mrs Knight had informed Mrs Elding that she was fit for light duties but Mrs Elding insisted that she did not return to work until she could carry out her full range of duties as a care assistant.
7. When Mrs Knight did not receive her statutory sick pay, she went to see Mrs Elding having had no response to telephone calls and text messages. She eventually managed to see Mrs Elding, although I accept Mrs Knight's evidence that Mrs Elding did her best to avoid her. That meeting ended with Mrs Elding slamming the door in Mrs Knight's face and produced nothing constructive for Mrs Knight.
8. There then followed email correspondence which was all one way from Mrs Knight to Mrs Elding asking for both information as to whether she was still employed, payment of statutory sick pay and details of allegations that it appeared were being made against her. There was no reply from Mrs Elding and eventually Mrs Knight sought advice from the CAB, which eventually led to the proceedings that we are dealing with today.

Unfair dismissal

9. It is clear, not only from Mrs Knight's evidence but also from the Response, that there was no disciplinary procedure whatsoever. Therefore, it follows that at that stage the dismissal was unfair.
10. However, it is also necessary for me to consider the allegations made against Mrs Knight in the Respondent's Response because that might lead to a deduction for contributory fault.
11. The first allegation was that Mrs Knight was witnessed working whilst claiming statutory sick pay. No evidence to support that contention has been advanced today by the Respondent and Mrs Knight denies the truth

of that allegation. I accept her evidence.

12. The second matter is described as “concerns were raised regarding financial abuse”. This appears to be an allegation that Mrs Knight took advantage of a service user called Ken Beresford. Again, there is no evidence from the Respondent to support that allegation and Mrs Knight denies it. Again, I accept her evidence.
13. The third matter is an allegation that Mrs Knight attended Mr Beresford whilst claiming SSP. Mrs Knight accepts that she visited Mr Beresford, who she describes as a friend of the family, in order to keep him company and to have a cup of tea with him. I accept that evidence and plainly Mrs Knight was doing nothing wrong; she was acting as a friend.
14. The next matter is an allegation that Mrs Knight fraudulently claimed statutory sick pay. For the first time an allegation is actually supported, this time by a document from HM Revenue and Customs dated 30 May 2018. HMRC came to the conclusion that Mrs Knight was not entitled to SSP for the period from 25 July 2017 to 17 November 2017. This plainly flies in the face of the fact that Mrs Knight underwent surgery in July 2017 and produced fit notes thereafter. Indeed, that decision was overturned, effectively by a later decision of 17 December 2018. Thus, there is no evidence of fraud, indeed the contrary is the case.
15. It is therefore plain that both procedurally and in substance, the dismissal was unfair and Mrs Knight succeeds in that regard.
16. The next matter is breach of contract, ie wrongful dismissal. Again, there is absolutely no evidence to suggest that Mrs Knight was guilty of gross misconduct. There has been no repudiatory breach of her contract of employment and thus her claim succeeds.
17. Turning now to holiday pay, Mrs Knight’s evidence is that the holiday year began on 6 April of each year (ie the financial year) and that she took no

holiday in her final year of employment. Thus, she is entitled to 5.6 weeks of holiday pay.

18. Finally, I turn for completeness to the claim for arrears of wages and, as I have explained above, the tribunal does not have jurisdiction to deal with a failure to pay statutory sick pay; this is a matter to be pursued with HMRC.

Employment Judge Blackwell

Date: 27 August 2019

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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