



EMPLOYMENT TRIBUNALS

Claimant: Miss M G Bracamonte

Respondent: Metropolis London Music Limited t/a Metropolis

Held at: London Central **On:** 22 August 2019

Before: Employment Judge Khan (Sitting alone)

Representation:

For Claimant: Ms B Vincent-Emery, Lay Representative

For Respondent: Mr O Sussat, Director

JUDGMENT having been sent to the parties on 23 August 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules and Procedures 2013, the following reasons are provided.

REASONS

1. By a claim form presented on 6 February 2019 the Claimant complains that the Respondent made unauthorised deductions from her wages. The Respondent resists this claim.

The Issues and the Law

2. The issues that I am required to determine are set out in Employment Judge Goodman's Order dated 5 June 2019 which are as follows:

2.1 What was the term of the contract at the start of the contract?

2.1.1 It is agreed that these terms are set out in the Claimant's contract dated 5 September 2017. This provided, so far as is material, that the Claimant was employed as casual receptionist cover with effect from 2 September 2017, working as required and paid the hourly rate of £7.50.

2.2 Was this term varied at some later date and if so, what variation was agreed?

2.2.1 It is also agreed that in April 2018 the Claimant's hourly rate of pay was increased to £7.83.

2.2.2 The Claimant claims that her contract was varied subsequently to the following effect: she was employed in the role of Head Receptionist from 5 June 2018 on an annual salary of £18,000 pro rata. The Respondent says that any purported agreement to this effect is not valid as it was made with employees of the Respondent who did not have actual or ostensible authority to vary the Claimant's contract.

2.3 If a pay increase was agreed, from what date was this effective?

2.3.1 The Claimant claims that the Respondent agreed on 12 September 2018 to pay her an annual salary of £18,000 pro rata to be backdated with effect from 5 June 2018.

3. The right not to suffer unauthorised deductions is set out in section 13 of the Employment Rights Act 1996 ("ERA"), which, so far as is material, provides:

(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of this deduction

...

(3) where the total amount of wages paid on any occasion by an employer to a worker employed by him where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker on that occasion (after the deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the workers' wages on that occasion.

Procedure

4. At the start of the hearing the Claimant applied to amend her claim to add a new complaint of unfair dismissal. I refused this application on the basis that the Claimant had not been employed by the Respondent at

the date of termination for at least two years and she was not therefore eligible to bring such a complaint.

5. During the hearing the Respondent applied for costs in relation to its preparation of the bundle. The Respondent complained that it had agreed, at the Claimant's insistence, to include a considerable number of documents in the bundle that were not relevant to the issues in dispute. In consequence the bundle exceeded 700 pages. The Respondent said that this had put it to considerable and unnecessary cost. I refused to make an order for costs against the Claimant. The Claimant had until recently been a litigant in person and had been anxious to ensure that all documents that could be relevant to the issues in dispute were contained in the bundle. I did not find that this was unreasonable in the circumstances and accordingly concluded that an order for costs was not warranted.
6. The Claimant gave evidence herself. The Respondent called Richard Connell, CEO. I read the pages in the bundle to which I was referred. I also considered short closing submissions from both parties.

The Facts

7. I make the following findings of fact on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
8. The Claimant was employed from 2 September 2017 until 27 October 2018. She was initially employed as casual receptionist cover. She was recruited by Georgina Walker, Head Receptionist. Her first shift was on 11 September 2017.
9. On 9 May 2018 Ms Walker asked the Claimant to cover her role for three days a week. Ms Walker explained that this cover was necessary because she would be working for the Respondent as a Studio Assistant for these days. Ms Walker would revert to her role as Head Receptionist for the remainder of the week. The Claimant agreed. Ms Walker gave the Claimant a copy of the job description for this role.
10. The Claimant met with Ms Walker and Alexandra Nielson, PA to Mr Connell, on 16 May 2018 to discuss her new role. Ms Walker emailed the Claimant later that day to say that she would be planning a half day's training in early June for her and she would confirm when the Claimant would start working in this role and on which days.
11. It was agreed that the Claimant would cover the Head Receptionist role on Mondays, Tuesdays and Thursdays from 8:30am until 5:30pm/6pm with an added extra evening shift from 5pm until midnight. A corporate email account was set up for the Claimant as well as a user account on the IT system to facilitate her new role.

12. Ms Walker sent an email to colleagues on 24 May 2018 to confirm that the Claimant would be working three days a week in reception and “taking over immediate reception line management. This is to start in mid-June”.
13. The Claimant’s first shift in the new role was in fact 5 June 2018. From this date she asked Ms Walker for an updated contract several times and on each occasion she was told that her query had been referred to Ms Nielson.
14. The Claimant resigned on 6 September 2018.
15. The Claimant met with Ms Nielson and Marnie Keeling, Studio Manager on 12 September 2018 when Ms Keeling told her that Mr Connell had not accepted her resignation. The Claimant was asked to take over full responsibility for the Head Receptionist role should this be necessary. The Claimant raised the issue of her pay and it was agreed that she would be paid on the same basis as Ms Walker i.e. £18,000 per annum. This would be paid on a pro rata basis because Ms Walker worked five days a week in this role, whereas the Claimant would be working only four days in this role. The Claimant understood that this had been agreed by Mr Connell because he wanted to retain her. It was agreed, if required, that the Claimant would work four days a week i.e. Monday to Thursdays and she would need to find permanent cover for the remainder of the week. The Claimant agreed in principle to this proposal.
16. At around 4.30pm later that day Ms Nielson confirmed these arrangements. The Claimant was told that she would be taking over full responsibility for the Head Receptionist role with immediate effect, she would be paid an annual salary of £18,000 and this would be backdated to June 2018. The Claimant agreed. The effect of this was that the Claimant’s resignation was withdrawn.
17. From the emails I was taken to in the bundle the Claimant’s job title changed to Head Receptionist from 18 September 2018.
18. The Claimant wrote to the Respondent on 1 October 2018 to request an updated contract.
19. The Claimant met with Mr Connell on 11 October 2018 when various topics were discussed, including her pay and contract which remained unchanged. She left the meeting feeling reassured that all outstanding issues would be resolved.
20. On 12 October 2018 Ms Nielson emailed the Claimant to say that the contract issue would need to be resolved by Human Resources. She also confirmed that the Claimant’s pay would be backdated.
21. The Claimant then emailed Ms Keeling on 15 October 2018 about her pay.

22. Later that day Ms Nielson emailed the Claimant to confirm that she would be paid an annual salary of £18,000 and this would be backdated but this would need to be discussed with Human Resources. This email was copied to Mr Connell. I accepted Mr Connell's evidence that he did not read this email at the time given the volume of emails that he receives on a daily basis.
23. The Claimant submitted her resignation letter on 17 October 2018. Her employment ended on 27 October 2018.

Conclusions

24. I find that the Claimant undertook the Head Receptionist role on a job share basis with Ms Walker from 5 June 2018. Ms Walker was working as a Studio Assistant for three days a week from June 2018 and the Respondent required full-time cover for the Head Receptionist role from this date. The Claimant's first shift in this role was on 5 June 2018.
25. The Claimant took up this role in the expectation that her pay would be increased but there was no evidence that the Respondent agreed to increase the Claimant's wages at this point.
26. I have already found that that at a meeting with Ms Keeling and Ms Nielson on 12 September 2018 the Claimant was asked to take over full responsibility as Head Receptionist and it was agreed, in principle, that her pay would be matched to Ms Walker's salary of £18,000 and backdated to June 2018. I have also found that Ms Nielson confirmed this offer with the Claimant later that day and the Claimant accepted this offer.
27. I accept Mr Connell's evidence that only he or the Chairman had the power to expressly authorise any financial commitment for the Respondent, including any new appointments involving an increase to the wages bill. However, the Claimant was not aware of this. I find that she understood, not unreasonably, that Ms Nielson and Ms Keeling had authority to agree to her appointment as Head Receptionist, to match her pay with Ms Walker's salary and to backdate this salary to June 2018. It is relevant that Ms Nielson was Mr Connell's PA and Ms Keeling was the Studio Manager. They were both in positions of trust and / or seniority and both exercised delegated authority to some degree. I find that the Claimant also understood that this agreement had been sanctioned by Mr Connell. The offer made by Nielson and Ms Keeling had been made at the same meeting that she was told Mr Connell had refused to accept her resignation and she assumed that these issues were linked.
28. I also find that the Claimant understood, not unreasonably, that the involvement of Human Resources in relation to this agreement was only a formality. This was because she had agreed to retract her resignation in order to continue in the Head Receptionist role on the terms offered by

Ms Keeling and Ms Nielson on 12 September 2018. Having done so, she continued to work in this role until her resignation took effect.

29. I therefore find that whilst neither Ms Nielson nor Ms Keeling had express authority to agree to vary the Claimant's contract they had ostensible authority to do so. The Claimant relied on this when she continued to work and took over full responsibility for the Head Receptionist role. The Respondent benefitted from this.
30. Accordingly, I find that the Claimant's contract was varied to the effect that from 5 June 2018 she was employed by the Respondent in the role of Head Receptionist, initially on a job share basis with Ms Walker, on an annual salary of £18,000 pro rata.
31. In failing to increase the Claimant's pay from 5 June 2018, the Respondent failed to pay what was properly payable to her between this date and the date when her employment terminated on 27 October 2018. The Respondent therefore made a series of unauthorised deductions to the Claimant's wages from June to October 2018.

Remedy

32. I find that the Respondent made a series of unauthorised deductions to the Claimant's wages in the total gross sum of £667.12 calculated as follows:
 - (1) the gross sum of £85.32 in June 2018
 - (2) the gross sum of £166.21 in July 2018
 - (3) the gross sum of £148.03 in August 2018
 - (4) the gross sum of £117.28 in September 2018
 - (5) the gross sum of £150.28 in October 2018

Employment Judge Khan

Dated: 10/10/2019.....

Judgment and Reasons sent to the parties on:

11/10/2019

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For the Tribunal Office