



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE, sitting alone

BETWEEN:

Claimant

MRS F MALIK

AND

Respondents

**(1) Mrs Parmijit Kaur
(2) VGMEDISPA Ltd**

ON: 6 September 2019

APPEARANCES:

For the Claimant: In Person

For the Respondents: No attendance – Email sent by Collette Horne on 5 September 2019 at 10.16am

JUDGMENT

The Judgment of the Employment Tribunal is that: -

1. The unfair dismissal complaint was dismissed upon withdrawal because the Claimant did not have the necessary two years' continuous service of employment.
2. The claim for notice pay was not well founded and was dismissed.
3. It was declared that the Respondent made unlawful deductions from the

Claimant's pay in respect of wages and payment for accrued holiday which was outstanding at the termination of her employment. The Respondent having paid the final sums due to the Claimant on 1 November 2018, no further sums were ordered to be paid to her.

5. The Respondent was ordered, under section 24(2) of the Employment Rights Act 1996 to pay to the Claimant the sum of **£120.00** in respect of bank charges incurred by the Claimant over the period from the beginning of July to the end of October 2018 as a result of late payment of her salary.
6. The claim for breach of contract/unlawful deduction of wages in respect of **£19.75** commission was well founded and the Respondent was ordered to pay that sum to the Claimant forthwith.

REASONS

1. There was no attendance by the Respondent. An email was sent dated 5 September as referred to above from Ms Collette Horne in which she stated:

"I contacted the court today regarding the above hearing. The Claimant Mrs F Malik was employed by VG Medispa, the respondent P Kaur was a director of the Company.

VG Medispa officially went in to liquidation on the 22nd August 2019. I was employed as the HR Manager and out of courtesy I am contacting the Court to advise you of this in order to not waste the Courts time."

2. The Tribunal then made a search in the Company House register in order to determine the precise status of the Respondent. The search did not indicate that there was any change to the status of the Respondent company and indicated that it remained 'active'.
3. In those circumstances therefore, the Tribunal informed the Claimant of the situation and of the company search. Although it was possible that the Company House records had not been updated given the date of the 'purported liquidation' on 22 August 2019, the Tribunal considered that on the basis of the information available it was appropriate to proceed. If the Tribunal was not entitled to proceed then this was a matter which could be brought to the Tribunal's attention with the correct supporting documentation in due course.
4. The Tribunal heard evidence from the Claimant and considered a number of payslips and emails which had been exchanged between the parties in relation to these matters.

5. The Tribunal also considered the original claim and response presented on 14 August and 9 October 2018 respectively, and the order of Employment Judge Nash following the preliminary hearing which took place on 18 December 2018, written confirmation of which was sent to the parties on 4 April 2019.
6. In that order the issues had been identified and the Judge had directed the parties to set out their respective positions in respect of each of the claims in correspondence in January 2019.
7. As a result of having reviewed that correspondence and the Claimant having confirmed that the payments said to have been made to her by the Respondent had been made, the Tribunal was not satisfied that as of the date of the hearing there was any further money outstanding in relation to unpaid wages. The Tribunal noted, however, that this money had not been paid to the Claimant until a part payment of £550 in mid-July 2018 for June 2018 and then a further payment of £1166.10 which was not paid to the Claimant until 1 November 2018. That payment, the Respondent indicated, included the outstanding holiday pay of twenty-two hours which they had acknowledged when the Claimant tendered her resignation in mid-June 2018.
8. It appeared to the Tribunal that as the last of the payments in respect of wages (salary and holiday pay) had not been made until 1 November 2018, on the Respondent's case, after the presentation of the claim, the Tribunal made the declaration that there had been unlawful deductions of wages, but did not order the payment or repayment of any further sums to the Claimant as the Respondent had paid the outstanding sums.
9. The Tribunal also considered whether it was appropriate to make an award to the Claimant in respect of any consequential losses as a result of the Respondent having delayed in paying her wages under section 24(2) of the Employment Rights Act 1996. The Claimant cited sums totalling just under £30 which was what she had paid in respect of bank charges and overdraft charges in July 2018 having not received her pay. The Tribunal was satisfied that these overdraft charges were due to the Claimant being in a negative balance just prior to the beginning of July 2018. Doing the best that it could the Tribunal multiplied that figure by four to cover the period before the period received the final settlement of her salary bill in November 2018. This award then was in the sum of £120.
10. In relation to the notice pay claim, the Tribunal noted that this in effect overlapped with the Claimant's claim for unpaid wages. She tendered her resignation on 15 June 2018 and the employment was due to have ended on 14 July 2018 with the Claimant working her notice. In fact, the Claimant's last day of work was 23 June 2018 although she

acknowledged that she attended work on 28 June 2018 but she did not stay, due she said difficulty with the manager. She then presented a sick note for a week. Although the Tribunal did not have a copy of the Claimant's contract of employment, this had been provided to the Claimant in accordance with the order of Employment Judge Nash as an attachment to the email sent to her on 7 January 2019. The Claimant did not suggest that she was entitled to anything more than statutory sick pay during that timeframe. For the remaining period it was unclear whether the Respondent had made a payment to the Claimant but equally the Claimant was unable to demonstrate through her documentation or calculation what further sum was due to her, if any, in respect of the remaining period of the first two weeks of July. The Respondent's email of 31 January 2019 certainly indicated that an amount of £543.24 had been paid net for July wages. It appeared to the Tribunal that this was what was to be expected for a half-month which would have taken the Claimant up to the expiry of her notice.

11. In all the circumstances therefore, the Tribunal was not satisfied that there was any further sum due. There had been contemporaneous reference to a claim for commission. Once again, the Tribunal had nothing else apart from the figures that the Respondent provided to establish that the Claimant was entitled to commission. However, the Respondent attempted to rely on a clause of the contract which they interpreted as meaning that they were entitled to charge the Claimant for a day's salary for each day during the notice period when she did not work. The Tribunal disagreed and considered that that clause which was quoted in full in the email from the Respondent of 31 January 2019 was an erroneous reading of the term. It provided:

'if you leave without giving the proper period of notice or leave during your notice period without permission, VGMedispa Ltd shall be entitled as a result of your agreement to the terms of this contract to deduct a day's pay for each day not worked during the notice period, provided always that the company will not deduct a sum in excess of the actual loss suffered by it as a result of your leaving without notice an any sum so deducted will be in full and final settlement of VGMedispa Ltd claim for your breach of contract. This deduction may be made from any final payment of salary which VG Medispa Ltd may be due to make to you. The amount to be deducted is a genuine attempt by VGMedispa to assess its loss as a result of your leaving without notice. It is not intended to act as a penalty upon termination.'

12. In the email the Respondent then maintained that although the Claimant was in breach of her notice period by not returning to work, any further hours after 23 June, they were 'yet to charge' her for the three-week period.
13. The Tribunal took this as an indication that the Claimant had, indeed,

been paid in respect of those three weeks. The Tribunal, however, did not consider that it was a correct reading to say that they could charge the Claimant for three weeks. It simply meant that they were entitled not to pay her for that three weeks or for any period during the notice period when she did not work. They would after all have the money that they would have paid her otherwise available to pay a substitute.

14. The similar suggestion that the Respondent could deduct an outstanding figure of £19.75 in respect of commission was also, the Tribunal considered, misconceived. It appeared from the email of 31 January 2019 that the Respondent had not, in fact, paid the Claimant the £19.75 commission. The Tribunal considered therefore that this claim was well founded and the Respondent was ordered to pay that sum to the Claimant forthwith.

Employment Judge Hyde

Date: 7 October 2019

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