



THE EMPLOYMENT TRIBUNALS

Claimant
Ms Farzaneh Pebdini

Respondent
Arabesque Sunderland Limited

MADE AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON

ON 23 September 2019

JUDGMENT (Liability and Remedy) **Employment Tribunals Rules of Procedure 2013 –Rule 21**

The claims of breach of contract (wrongful dismissal), entitlement to a redundancy payment unlawful deduction of wages and compensation for untaken annual leave are well founded. I award

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|---|------------|
| (a) damages for breach of contract | £ 492 |
| (b) a redundancy payment | £ 492 |
| (c) repayment of an unlawful deduction of wages | £ 356.80. |
| (d) compensation for untaken annual leave | £ 2176.84. |

The total payable is **£ 3517.64.**

The Hearing listed for 15 October 2019 is cancelled.

REASONS

1. The claimant, born 22 September 1988, was employed from 1 April 2016 to 22 June 2019 when she was dismissed without notice upon closure of the restaurant at which she was employed. Her claim was presented on 2 August 2019 and served on 19 August 2019, by post to the registered office of the respondent as confirmed by a company search. A response was due by 16 September 2019 but none was received.

2. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and, if so, obliged to issue a judgment which may determine liability only or liability and remedy. I have in the claim form sufficient information to enable me to find the claims proved on a balance of probability and determine the sums to be awarded.

3. The claimants' gross weekly pay was £164. The common law provides a contract of employment may be brought to an end by reasonable notice. Dismissal without such notice is termed "wrongful". Damages for wrongful dismissal are the amount of pay due to the employee during the notice period (see Addis v The Gramophone Company) which under s 86-88 of the Employment Rights Act 1996 (the Act) is 3 weeks. Since recent changes to taxation practice I award the sum gross of tax.

4. The law relating to redundancy payments is in Part XI of the Employment Rights Act 1996 (the Act). A claimant is entitled to a payment of 1 weeks pay for every complete year of continuous employment during the whole of which she was over 22 but under 41, so the number of weeks pay is 3

5. The law of unlawful deduction of wages is in Part 2 of the Act. The claimant was owed £356.80 for work done.

6. The claimant was never allowed any paid holiday. The Working Time Regulations 1998 say where a worker's employment is terminated during the course of a leave year, and on the date on which the termination takes effect the proportion she has taken of the leave to which he is entitled under Regulations 13 and 13A in the leave year differs from the proportion of the leave year which has expired, Regulation 14 requires her employer to make her a payment in lieu of untaken leave. The claimant's leave year in the absence of a relevant agreement is the anniversary of her commencement. Her annual entitlement is 5.6 weeks and 22.74% of the leave year had expired . Her compensation is $£164 \times 5.6 \times 22.74\% = £208.84$.

7. Since the decision of the Court of Justice of the European Union in King-v-Sash Window Company Ltd, the claimant is also entitled under Regulation 30 to compensation for the leave under Regulation 13 (4 weeks per year) which she was not permitted to take in the three years before that. That come to 12 weeks pay = £1968 Wages include holiday pay and she could instead claim a further unlawful deduction but in that case an Employment Tribunal would be limited by section 23(4A) of the Act to awarding arrears only up to two years before presentation of her claim ie up to 2 August 2017 which is a lesser sum .

TM Garnon Employment Judge

Date signed 24 September 2019 .