



EMPLOYMENT TRIBUNALS

Claimant: Ms C. Cole

Respondent: Mr. N. Ismael trading as Honey Pots

HELD AT: Mold

ON: 16 October 2019

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Litigant in person

Respondent: Litigant in person

JUDGMENT

The judgment of the Tribunal is:

1. The claimant was unfairly dismissed by the respondent on 8 December 2018; the claimant does not claim any Compensatory Award and her Basic Award is ordered on the basis that at the effective date of termination of employment the claimant was aged 47 years, had completed 10 years continuous employment and her gross weekly wages was £284.54 (a Basic Award of £3,699.02);
2. The respondent dismissed the claimant in breach of contract by not giving to her the notice to which she was entitled where the statutory minimum notice was 10 weeks and her gross weekly pay was £284.54; the respondent shall pay to the claimant damages in this regard in the sum of £2,845.40;
3. By concession of the respondent, the respondent did not pay to the claimant holiday pay due to her on termination of her employment. The respondent shall pay to the claimant £512.19, in respect of nine days accrued but untaken holidays at a daily rate of £56.91 gross, subject to statutory deductions;
4. By concession of the respondent, the respondent made unauthorised deductions from the claimant's wages in the sum of £58.73 gross and shall pay that sum to the claimant subject to statutory deductions;

5. The respondent failed to provide the claimant with written particulars of employment and shall pay to the claimant two week's wages in the sum of £569.08 in relation to this failure;
6. In consequence of the above the respondent shall pay to the claimant £7,684.42 (subject to statutory deductions where indicated at paragraphs 3 and 4 above).

SUMMARY REASONS

This brief summary is provided to assist the parties in understanding the above judgment and especially as the respondent did not take notes of the full oral judgment when it was announced; it is not intended to take the place of full written reasons.

- 1 Mr Ismael bought this business from Mrs Meade on 12 November 2018. At that time Mrs Cole had worked for Mrs Meade for 10 years, her regular working hours were worked over a five-day week and she was entitled to 28 days annual leave in the leave year that ran from 1 April until 31 March each year; in her final year, and before the transfer to Mr Ismael, Mrs Cole had taken 12 days holiday leaving 9 days outstanding and due to her by the date that she was dismissed; her gross weekly wage was £284.54, a daily gross rate of £56.91; her contract (being those unwritten terms) transferred to Mr Ismael.
- 2 Immediately following the sale of the business to Mr Ismael Mrs Cole continued to work a five-day week; she did not take any more holidays before her employment ended; Mr Ismael did not give the claimant a written statement of employment details (such as his full name and address, hours and days of work, rate of pay, holiday entitlement and the like);
- 3 Mr. Ismael has a job as a chef in addition to running this business; he found it difficult to make a profit in this business and decided to reduce the claimant's working week to 4 days with the intention of his working on Thursday of each week. He told Mrs Cole that she was no longer to work five days each week; Mrs Cole objected and would not agree. Mr Ismael would have liked Mrs Cole to work for him but not according to the contract that had been established over time. He valued Mrs Cole but tried to change her contract; he wanted her to work reduced hours and he wanted flexibility to reduce hours further if he thought it necessary, although he had no definite plan to reduce her days below four days each week.
- 4 On 8 December 2018 Mr Ismael and Mrs Cole had a conversation which Mrs Cole recorded on her phone. She produced a transcript for this hearing and we read it along with the recording which we listened to; it is an accurate transcript. During the conversation Mr Ismael said to Mrs Cole that she was to "go" if she was not happy with his insistence that she reduce to 4 days a week and he told her not to come back; he said she would not accept four days each week or that he could say in the following January, "if the business is very quiet", that she would only work two or three days, adding: "don't work for

me, no problem thank you very much Catherine no problem". That, and his other comments in the context of that conversation, was a dismissal because the claimant did not accept a variation in her contract that was being forced on her. She had no prior warning. Mr Ismael did not follow a fair consultative procedure about a variation in the contractual hours and did not follow any procedure before dismissing the claimant without notice. He did not offer her any definite new contractual terms; she refused to reduce her days and to accept uncertainty as to what further reductions there might be in the future.

- 5 In short, I believed Mr Ismael that he was worried about not making a profit and that he would have liked Mrs Cole to stay at work. He did not however honour her contractual or statutory rights and did not follow a fair procedure before dismissing her; Mrs Cole was entitled to rely on those rights and her claims all succeeded (albeit her holiday pay and wages claims succeeded because Mr Ismael agreed that she was right).

Employment Judge T.V. Ryan

Date: 16.10.19

JUDGMENT SENT TO THE PARTIES ON
9 November 2019

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing (and no such request was made) or a written request is presented by either party within 14 days of the sending of this written record of the decision.