



EMPLOYMENT TRIBUNALS

Claimant: Miss L Brown

Respondent: Stockton Care Limited

Heard at: Middlesbrough

On: 4 November, 2019

Before: Employment Judge Nicol

Representation

Claimant: appeared in person

Respondent: did not appear

JUDGMENT

Upon the respondent having failed to submit a response to the complaint within the prescribed time and having failed to provide evidence as to what efforts it had made to submit the response within time or to attend this hearing and the Tribunal finding that it was appropriate to proceed in its absence and after hearing the claimant, it is the Judgment of the Tribunal that

- 1 The respondent failed to submit its response within the prescribed time or to support an application for an extension of time so that its response should now not be accepted
- 2 The Tribunal is satisfied that a proper determination can properly be made in respect of the claimant's complaints that she was unfairly dismissed, that she did not receive notice or a payment in lieu of notice, that she did not receive all of the wages to which she was entitled from the respondent and that she did not receive all of the holiday pay to which she was entitled on the termination of her employment
- 3 The claimant's complaints that she was unfairly dismissed by the respondent, that she did not receive notice or pay in lieu of notice, that she suffered unlawful deductions from her wages and that she did not receive all of the holiday pay to which she was entitled on the termination of her employment are well founded

- 4 The claimant's complaint that she suffered discrimination on the ground of the protected characteristic of disability should proceed to a hearing but the respondent will only be allowed to participate in these proceedings to the extent permitted by the Employment Judge at that hearing
- 5 The claimant shall comply with the directions given following this hearing

AND the respondent is ordered to pay the claimant

- 1 in respect of the claimant's complaint that she was unfairly dismissed a basic award in the sum of £1302.00 (one thousand three hundred and two pounds) together with a compensatory award capped at the sum of £4836.00 (four thousand eight hundred and thirty six pounds)
- 2 in respect of the claimant's complaint that she did not receive notice or a payment in lieu of notice the sum of £1116.00 (one thousand one hundred and sixteen pounds)
- 3 in respect of the claimant's complaint that she suffered unlawful deductions from her wages the sum of three hundred and seventy-six pounds eighty five (£376.85), and
- 4 in respect of the claimant's complaint that she did not receive all of the holiday pay to which she was entitled on the termination of her employment the sum of eight hundred and sixty-four pounds fifty three (£864.53)

AND in respect of these amounts the claimant shall account to Her Majesty's Revenue and Customs for any income tax and/or National Insurance Contributions that may be due

REASONS

- 1 The respondent failed to attend this hearing. The Tribunal was satisfied that it had had proper notice of the hearing and that it was appropriate to proceed in its absence.
- 2 These are complaints by Gemma Brown ('the claimant') against Stockton Care Limited ('the respondent') arising out of her employment with the respondent as a domestic assistant. The claimant's employment with the respondent commenced on 1 October, 2004, and the effective date of termination was 16 May, 2019, when the claimant had been in continuous employment for fourteen complete years.
- 3 After the respondent was served with notice of the complaints by the claimant, the respondent failed to present its response within the prescribed time. A private preliminary hearing had been arranged before the respondent sent an email to the Tribunal stating that attached to it was its response which it contended had previously been sent to the Tribunal by email within the prescribed time. The email was an original and did not include a forwarded copy of the earlier email to which the response had allegedly previously been attached. The respondent was informed that its email would be treated as a request for an extension of time for presenting the response and that it would be considered at the preliminary hearing whether the response would be accepted.

4 The respondent's proposed response is limited in detail. It confirms that the details given by the claimant concerning her hours of work and wages are correct. It indicates that disciplinary action was started against the claimant but only shows that a fact finding meeting took place at which the claimant provided an explanation for her actions. The reasons for apparently rejecting the explanation is not given. There is not any mention of a disciplinary hearing or of the claimant being offered an appeal against dismissal. Apart from the complaint of unfair dismissal, none of the claimant's other complaints is mentioned.

5 The Tribunal considered that it would have been a simple matter for the respondent to have demonstrated when it supposedly resubmitted its response that it was a resubmission, if that was the case. It had failed to do this then or subsequently despite being on notice that this was a matter to be considered at this hearing.

6 The Tribunal had regard to Rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations, 2013.

7 The Tribunal finds that the respondent's response was submitted out of time without adequate explanation or evidence supporting its contention that it was submitted within time. It is therefore not appropriate to accept the response so that the respondent should be barred from defending these complaints save to the extent that might be permitted by a Tribunal at a final hearing before a Judge sitting alone (Rule 21 (3)). The fact that the response appears to be incomplete could have been dealt with by further and better particulars, if the response had been accepted.

8 Having also considered the Form ET1 submitted by the claimant, the Tribunal was satisfied that it could make final determinations on parts of the complaints (Rule 21(2)).

9 With regard to the alleged unfair dismissal, the claimant contends that she was accused of stealing an item from a person being cared for by the respondent. The claimant admitted taking the item but not that she intended to steal it. She further contends that the matter was not properly investigated, the disciplinary process was badly handled and she does not appear to have been offered an appeal against dismissal. Having regard to all of the circumstances, the Tribunal finds that the claimant was unfairly dismissed.

10 The claimant was not given notice or a payment in lieu of notice. The Tribunal finds that this complaint is well founded.

11 The claimant alleges that she was not paid her wages whilst she was suspended before her dismissal. The Tribunal finds that this complaint is well founded.

12 The claimant also contends that she did not receive all of the holiday pay to which she was entitled. The Tribunal finds that this complaint is well founded.

13 However, the Tribunal was not satisfied that the claimant had sufficiently demonstrated that she had suffered discrimination in respect of the protected characteristic of disability and the claimant is therefore required to comply with the directions that will be given after this part of the hearing (Rule 21(2)).

14 With regard to the complaints that the Tribunal has found to be well founded, the

Tribunal makes the following findings based on the claimant's weekly wage of £93 (gross and net) and her age of 38 years at the time of dismissal.

15 In relation to the unfair dismissal the Tribunal finds that the claimant is entitled to the following payments

Basic award

93 x 14 years continuous service at age 38 years £1302.00

Compensatory award

The claimant has been unable to work or seek employment since her dismissal because of the effect on her anxiety and the stigma attaching to her reason for dismissal. She does not expect to obtain alternative employment within the next year.

Loss of earnings from 8 August, 2019, (end of notice period) to date of hearing

93 x 12.5 £1162.50

Loss of earnings for one further year

93 x 52 £4836.00

Loss of statutory rights £300.00

Total £6298.50

Capped at 52 weeks' wages £4836.00

16 Compensation for lack of notice

Having regard to her length of continuous service, the claimant was entitled to twelve weeks' notice

93 x 12 £1116.00

17 In respect of unpaid wages as claimed by the claimant £194.64

18 Compensation in respect of unpaid holiday pay as claimed by the claimant £394.08

19 Accordingly, the Tribunal orders the respondent to pay to the claimant

19.1 In respect of the unfair dismissal, basic award of £1302.00 and a compensatory award of £4836.00

19.2 Compensation in respect of not been given notice or a payment in lieu of notice £1116.00

19.3 In respect of unpaid wages, the sum of £194.64

19.4 Compensation in respect of unpaid holiday pay, the sum of £394.08

Employment Judge Nicol

Date 12 November, 2019

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