



EMPLOYMENT TRIBUNALS

Claimant: Ms R Lingyte
Respondent: Aperta Bars Limited
Heard at: Cambridge Hearing Centre
On: 13 November 2019
Before: Employment Judge Foxwell

Representation

Claimant: Mr C Aitken (Friend)
Respondent: Written representations

JUDGMENT

1. The Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay the Claimant the gross sum of £1,230.

REASONS

1. The Claimant, Ms Ramita Lingyte, was employed by the Respondent as General Manager of the Old House Pub & Kitchen in Northampton for 12 days in January 2019, ending on 25 January 2019. Her employment ended when she resigned without notice.
2. Having gone through early conciliation between 5 February and 8 February 2019, on 12 February 2019 the Claimant presented a claim for 12 days' pay which she alleged she had not received. She claimed £1,052 which I have established today is the amount she says is due net of tax; the gross figure is £1,230.
3. The Claimant also made a complaint of unfair dismissal but this was rejected by the Tribunal as she had insufficient continuous service to make such a claim.

4. I find that the claim before the Tribunal is one for unpaid wages under Part II of the Employment Rights Act 1996 (while the Tribunal has also coded it as a claim for breach of contract, this adds nothing to the complaint).
5. Mr Sunny Kooner, a director of the Respondent, filed a Response on its behalf asserting that the Claimant had never worked for the company and that her claim was false. The Response did not contain a counterclaim.
6. On 22 October 2019 Mr Kooner wrote to the Tribunal saying that he was unable to attend today's hearing due to a back condition but asking whether he could submit evidence in writing. On Employment Judge Brown's instructions a response was sent on 30 October 2019 that written representations would be considered if submitted 7 days in advance but that, if Mr Kooner wished to attend, adjustments could be made at the final hearing to accommodate his condition.
7. On 6 November 2019 Mr Kooner submitted a written submission with some supporting documents, including a contract of employment issued to the Claimant dated 7 January 2019. Contrary to what had been said in the Response originally, Mr Kooner now accepted that the Claimant had been employed by the Respondent but alleged that she was unreliable and did not fulfil her duties. He asserted that her resignation without notice was in breach of contract and had caused the Respondent losses of £2,040 in replacing her at short notice. Additionally, he asserted that there were stock losses of £325.43 and a cash shortage of £95.77 which he sought to reclaim from the Claimant on the Respondent's behalf.
8. Mr Kooner has not attended today's hearing nor has the Respondent sent anyone else to represent it (a company search shows that there are other officers). I have nevertheless considered the terms of the Response and Mr Kooner's written submission and supporting evidence.
9. I heard evidence from the Claimant. She confirmed that she worked 12 days for which she has not been paid. I was satisfied by her evidence that the gross pay due for this period was £1,230.
10. I rejected the Respondent's counterclaim as the Tribunal does not have jurisdiction to hear it. The only circumstances in which a Tribunal has power to hear a counterclaim by an employer (known as "an employer's claim") is where there is a complaint of breach of contract by the employee and the employer raises its counterclaim within 6 weeks of service of the complaint on it (see The Employment Tribunals (Extension of Jurisdiction) Order 1994). In this case the Claimant did not bring a claim of breach of contract (notwithstanding the Tribunal's coding) but, even if she had, the counterclaim asserted in Mr Kooner's November submissions was not presented to the Tribunal within the relevant time limit in the 1994 Order.
11. I have had regard to the fact that an employer may make authorised deductions from final pay in accordance with the scheme in Part II of the Employment Rights Act 1996 but the Respondent has made no attempt to quantify final pay or to identify deductions from it. These would be shown on a payslip.
12. Accordingly, the claim succeeds.

Employment Judge Foxwell 13.11.19

JUDGMENT AND REASONS SENT TO THE PARTIES ON

.....29.11.19.....

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FOR THE TRIBUNAL OFFICE