



EMPLOYMENT TRIBUNALS

Claimant: Ms Karen Davis

Respondent: Clover Leaf Childcare Ltd

Heard at: Manchester (in public) **On:** 25 November 2019

Before: Employment Judge Hoey (sitting alone)

Representatives

For the claimants: Not present and not represented but written submissions considered under cover of email dated 26 July 2019

For the respondent: Miss Tatlow and Miss Evans (directors)

JUDGMENT

The claimant's application for a Preparation Time Order is refused.

Discussion and reasons

1. This case called as a preliminary hearing to determine the claimant's application for a time to pay order. Two directors of the respondent were in attendance and the claimant had indicated that she would not be present, but had sent written representations under cover of her email of 26 July 2019 which were considered in detail.
2. At the hearing I took the respondent through each of the points made by the claimant in support of her application and considered their response.

Facts

3. The claimant had raised a claim in respect of holiday pay, arrears of pay and a failure to provide itemised pay slips. The respondent denied sums were due but then discovered that they had underpaid the claimant by £100 which was due to an administrative oversight and that the sum due in respect of her accrued holidays had been unclear as the claimant's working pattern had changed and the respondent was not clear how to calculate the sums due.

4. The respondent accepted that the claimant was due around £150. They denied that the claimant had not received wage slips as these had been sent to her.
5. There were therefore matters which were in dispute between the parties which required to be determined by a hearing.
6. At the time Orders were issued, the respondent was in negotiations with the claimant via ACAS. Unfortunately, due to 2 conciliators dealing with the case, there were delays (for which ACAS apologised). The respondent believed that given they were in negotiations and given they were offering sums approaching what the claimant was seeking (on a commercial basis, despite the value of the claim in the respondent's eyes being less) they did not deal with Tribunal correspondence.
7. The respondents decided to pay the claimant £800, which was a little more than what she sought but was rounded up. The respondent disputed the sums due but decided to pay what the claimant sought to conclude matters.
8. The respondent apologised at the time for the failure to comply with the Orders. Their position was that there was an oversight which led to the underpayment and that they had acted as quickly as they could in the circumstances. The payroll department had dealt with wage slips and queries raised by the claimant were dealt with within a reasonable period of time. The respondent's position was that they sought to conclude matters as quickly as they could once the issues had been identified.
9. Payslips were sent to the claimant by text message to ensure she received a copy, albeit it transpired the claimant was unable to open these and paper copies were sent. The dispute between the parties related to hours worked. The claimant had not realised that she was not entitled to payment in respect of certain breaks which sums had been claimed. That resulted in the sums sought by the claimant in terms of her hours not matching the pay she received. It had taken time to reconcile the sums sought and hours worked.
10. In short the respondent's position was that they had acted reasonably in defending the claim and in dealing with queries from the claimant and ACAS. They accepted they had made an error but resolved this and paid the claimant more than what she was seeking, despite the fact she was, in the respondent's view, only legally entitled to significantly less.
11. The respondent had incurred significant legal costs and both directors had attended the Tribunal to explain the position. They had paid the claimant the sum she sought to conclude matters. They had apologised for the error and maintained some of the delay was due to ACAS, for which ACAs had apologised at the time.

The law

12. In terms of rule 76 of the Employment Tribunals (constitution and rules of procedure) Regulations 2013 a Tribunal may make a Preparation Time Order where a party has Acted vexatiously, abusively, disruptively or otherwise unreasonably in the way proceedings have been conducted. That can include where a party has breached an order of the Tribunal.

Reasoning

13. I considered matters carefully. I had considered the claimant's email and its contents and the attachments. I also considered the respondent's response to each of the points arising. On balance I decided that the respondents had not acted vexatiously, abusively, disruptively or otherwise unreasonably in the facts of this case.

14. In this case the parties were in dispute as to what sums were due. The purpose of a Hearing is to determine such a dispute. In this case, the respondent was in negotiation with the claimant and paid the claimant the sums she was seeking, despite believing the sums due were considerably less. The discussions took place at the time the orders ought to have been complied. The respondent believed that the orders would be superseded given they offered to pay what the claimant sought.

15. Having balanced the facts in this case carefully, I concluded that the threshold for making a Preparation Time Order was not met.

16. In the circumstances the claimant has received the sums she sought, despite there being a disagreement as to the sums. While there was a failure by the respondent to comply with the orders, they were in discussions with the claimant via ACAS and they sought to progress matters swiftly. Due to errors on the part of ACAS matters were not dealt with as expeditiously as they could otherwise have done. That was not the fault of the respondent.

17. I accept the claimant went to considerable effort to set out what she was due.

18. Equally the respondent sought to deal with their response and communicate their position to the claimant, via ACAS, trying to resolve matters without further delay, which was occasioned for reasons not entirely within the respondent's control.

19. The respondent had apologised for the delay and sought to progress matters swiftly.

20. In all the circumstances it is not just to make a Preparation Time Order in this case.

21. I have decided therefore to refuse the claimant's application.

Employment Judge Hoey

Dated: 25 November 2019

JUDGMENT SENT TO THE PARTIES ON

13 December 2019

FOR THE TRIBUNAL OFFICE