



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms AM Rosales Quinde

v

Full Sack Limited

Heard at: London Central

On:

4 December 2019

Before: Employment Judge E Burns

Representation

For the Claimant: In person

For the Respondents: Mr T Luther (director of the respondent)

JUDGMENT

1. The judgement of the tribunal is that the respondent has unlawfully failed to pay wages to the claimant and/or that such failure is a breach of contract.
2. The tribunal orders the respondent to pay **£2,563.73** gross to the claimant within 14 days of today's date.

REASONS

1. The respondent ran a Tapas restaurant, but ceased trading on 30 May 2019.
2. The claimant was employed as a Chef de Partie between 1 September 2018 and 30 May 2019.
3. The respondent admits that the claimant was entitled to, but was not paid payments on termination of her employment. This is because the respondent currently has a negative bank balance. The respondent is hoping to sell its lease in order to pay its creditors (which includes both directors). At the moment the landlord is being very patient, but if it takes a different view, the company may become insolvent.
4. The following payments were discussed and agreed to be due:

- (a) wages for May 2019 of £1,051.73 – the claimant was paid half of her wages for May 2019. She produced a pay slip showing that the full gross amount due was £2,103.47 and a bank statement confirming that she had been paid half of the net amount. Both parties agreed the amount due.
 - (b) wages in lieu of the claimant’s entitlement to 4 weeks’ notice of £1,440 – the claimant produced a contract of employment showing that she was entitled to 4 weeks’ notice from her employer. She said that she was paid £9 per hour and on average worked 40 hours per week. I calculated this as $4 \times 40 \times £9 = £1,440$ which was agreed by both parties
 - (c) holiday pay of £72 – the claimant said that she had 1 day’s holiday pay outstanding. The respondent was unable to provide any evidence that this was not the case as Mr Luther had not checked the position before attending the hearing. I made a finding on the balance of probabilities that the claimant was correct and she was entitled to 1 day’s holiday pay. I calculated this on the basis of an 8 hour day as $8 \times £9 = £72$ which was agreed by both parties.
5. The claimant’s claim also included a claim for a service charge (tips). This is not mentioned in her contract of employment. She explained that she had received a fixed amount each month of £285. Mr Luther explained that the amount was based on the expected level of tips received from customers, but was always intended to be a proportion of the actual receipts. He explained that in the last month of trading there were insufficient customers and no-one was paid a service charge.
6. The claimant accepted that the payment was a discretionary payment linked to actual receipts from customers and that there were insufficient receipts in May 2019. We noted that although her payslip for April 2019 included “Tips”, no amount was included on her May payslip. She also accepted that she would not normally be due to receive any Tips payment during an unworked notice period or while on holiday in any event.
7. The claimant’s claim for the other payments succeeds and the respondent is ordered to pay within 14 days.

Employment Judge E Burns
4 December 2019

Sent to the parties on:

5/12/2019

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For the Tribunals Office