



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Dickinson

v

JLE Catering (1989) Limited

PRELIMINARY HEARING

Heard at: Sheffield

On: 30 October 2019

Before:

Employment Judge Shulman

Appearance:

For the Claimant:

In person

For the Respondent:

Did not appear and was not represented

JUDGMENT

1. The claim of unfair dismissal is withdrawn by the claimant and hereby dismissed for want of jurisdiction.
2. The respondent shall pay the claimant one week's notice pay in the sum of £227.07.
3. The respondent shall pay the claimant holiday pay in the sum of £372.69.
4. The claim in relation to minimum wage is hereby dismissed as the claimant failed to offer any evidence in relation to that claim.

REASONS

1. **Claims**
 - 1.1. Unfair dismissal
 - 1.2. Notice pay
 - 1.3. Holiday pay
 - 1.4. Minimum wage

2. **Issues**

- 2.1. Unfair dismissal – whether the Tribunal has jurisdiction to hear the claim
- 2.2. Notice pay – whether the claimant was dismissed by the respondent or resigned of the claimant's own accord
- 2.3. Holiday – whether the claimant is entitled to holiday pay
- 2.4. Minimum wage – what was claimant's hourly minimum wage

3. **Matters occurring at the outset of the hearing**

- 3.1. The respondent did not appear at the hearing at 10:00am and the Tribunal gave the respondent 15 minutes in which to attend.
- 3.2. At the end of that 15 minute period the clerk telephoned the telephone number given on the response form in order to enquire about the respondent's attendance. There was no response on that telephone number.
- 3.3. Throughout the time that this case has been dealt with by the Tribunal the correct title of the respondent has been JLE Catering (1989) Limited but the Tribunal noted that in more recent correspondence, including the notice of hearing, the title of the respondent was referred to as JJE Catering (1989) Limited.
- 3.4. However, the rest of the address for the notice of hearing was correct and indeed that was the notice which was on the claim form.
- 3.5. The respondent had earlier failed to file a response in time and said that it had never received the claim form. It was out of time for filing the response but the response was admitted.
- 3.6. Taking all the circumstances into account the Tribunal decided to hear the case in the respondent's absence.
- 3.7. The Tribunal warned the claimant that should the respondent have a good excuse for not attending the hearing a Judge would consider whether or not it was appropriate to reopen the matter.

4. **Facts**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts proved on the balance of probabilities:

- 4.1. In relation to the unfair dismissal the claimant was employed from 1 October 2018 until 1 April 2019 but there was a change of management in November 2018. The claimant did not have sufficient qualifying period to make a claim for unfair dismissal.
- 4.2. The claimant says that he was late on 2 occasions. Jamie Ellis of the respondent told him off for being late and on the second occasion there was an argument between the claimant and the respondent and the respondent told the claimant to get his stuff and leave. The claimant thought and believed that he had lost his job. He wrote a letter recording termination on 1 April 2019, although it is fair to say that the respondent wrote back on 2 April 2019 stating that the claimant had resigned.

- 4.3. The claimant's monthly salary net was £983.90 which makes his annual net salary £11,807.88 which if divided by 52 gives a weekly sum of £227.07.
 - 4.4. The claimant did not have a contract of employment.
 - 4.5. With regard to the claimant's holiday entitlement in the absence of contract the claimant said it was 28 days per annum and that he had taken 5 days since 1 October 2018. His annual pay is £11,807.88 and the daily holiday pay rate is £45.41.
 - 4.6. Minimum wage – there was no evidence in relation to this.
5. **Determination of the issues (after listening to the factual submissions made by the claimant)**
- 5.1. Unfair dismissal – the Tribunal has no jurisdiction to hear the claim because the claimant does not have the necessary qualifying period.
 - 5.2. Having heard the claimant the Tribunal is satisfied that the claimant was dismissed and is entitled to one week's notice pay of £227.07.
 - 5.3. With regard to holiday pay and with regard to the calculation in regulation 14(3)(b) Working Time Regulations 1998 $A=28$ $B=1/2$ $C=5$ days – $(28 \times 1/2) - 5 = 9$ days and the claimant is entitled to 9 days holiday in the sum of £372.69
 - 5.4. Minimum wage – there was no evidence in order for the Tribunal to make a determination and that claim is dismissed.

Employment Judge Shulman

Date: 31 October 2019

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