



EMPLOYMENT TRIBUNALS

Claimant: Miss E Martins

Respondent: Pure Skin Beauty Ltd

Heard at: Croydon (in private)

On: 21/10/2019

Before: Employment Judge Wright

Appearances

For the Claimant: In person

For the Respondent: Mr N Hans-Barker – director/owner

JUDGMENT

The claimant's claim succeeds in part. The respondent is ordered to pay the gross sum of £470.20 to the claimant. The claimant is to account to HMRC.

1. The respondent requested written reasons.
2. The respondent applied for leave to amend the response to include an employer's counterclaim against the claimant. The application was refused.
3. The respondent had specifically stated in the response that '[the claimant] handed in her notice via WhatsApp message and refused to service notice. This refusal has cost the company thousands of pounds in cancelled treatments over her notice period. This would also be cover by deductions in her contract. [The respondent] has not yet chosen to pursue this loss'. The respondent was therefore on notice of the potential to bring a counterclaim, but expressly chose not to do so. Furthermore, the respondent was granted an extension of time within which to present the response. The response was due on the 3/9/2019 and an extra 14 days was requested. As the respondent was not informed of this until 23/9/2019, the time was extended until

7/10/2019. The respondent still had from 7/10/2019 to any point prior to the hearing starting to make an application to include an employer's counterclaim and it did not do so.

4. It was not considered in accordance with the overriding objective and not proportionate to now allow the respondent to make a counterclaim.
5. The respondent deducted £250 from the claimant's final salary payment to cover the cost of a training course she attended. The respondent contends that it was entitled to deduct this sum under a 'general deductions' clause in the contract. The respondent said that the claimant could use the skills she had obtained from the training course elsewhere. This was despite the fact the respondent had benefitted from the claimant putting those skills to use for four months prior to her departure. Any clause which purports to deduct costs which represents an employer's investment in an employee needs to be clear and proportionate in order to avoid it being a penalty clause. The employee needs to know what the consequences are, if they decide to leave and how much they will have to repay. There was no such clause in the contract and the claimant was not made aware that if she left within a certain period of time, a sum representing the cost of the training would be deducted. The claimant was not informed in advance of the training that if she left within a certain period of time, the respondent would seek to recoup the cost of the training course. The respondent is therefore ordered to pay £250 to the claimant.
6. The claimant also claimed £511.82 in respect of a bonus she said she had earned during February 2019. The bonus was not contractual and therefore it was discretionary. Under the contract, the claimant should have given the respondent one week's notice as she had been employed for more than one month, but she was still in the probationary period. She left without giving notice. In these circumstances, the respondent was entitled to exercise its discretion not to pay a bonus to the claimant.
7. The claimant claimed £5 in expenses for some gloves she had purchased. The Tribunal was shown messages between the parties and the respondent agreed to her incurring the expense and to then reimburse her. The respondent is ordered to pay £5 to the claimant.
8. The claimant claimed £620.00 in holiday pay. The holiday year is January to December. The claimant said that she had not taken any holiday in 2019. The claimant worked seven weeks of the holiday period. Her pro-rata claim therefore equates to 20 hours holiday pay, calculated to be £215.20.

9. The amounts the respondent is ordered to pay to the claimant are: £250 + £5 + £215.20 = £470.20.

Employment Judge Wright

Date: 22 October 2019