



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss A Thompson

V

**City and Suburban Services
Limited**

Heard at: London Central

On: 5 December 2019

Before: Employment Judge Joffe

Representation

For the Claimant: Mr M Jaufurally, solicitor

For the Respondent: Mr J Roddy, consultant

JUDGMENT

The Judgment of the Tribunal is as follows:

1. By consent, the respondent is ordered to pay to the claimant £750 in respect of her claims for unlawful deductions from wages.
2. The claimant's application for costs is refused.

REASONS

1. Having given oral reasons for refusing the claimant's costs application, I was asked to provide those reasons in writing.
2. Mr Jaufurally applied for a proportion of the claimant's costs to be paid under rule 76(1)(a) of the Employment Tribunal Rules of Procedure on the basis that the respondent had behaved unreasonably. The unreasonable behaviour he pointed to was defending the claimant's claims and then ultimately consenting to judgment in the sum of £750.
3. Both parties gave conflicting accounts to me of their previous willingness to settle the claimant's claims but that was not a matter I could resolve. I was not presented with any clear evidence such as a without prejudice save as to costs letter offering to settle in a particular amount.
4. I could not conclude that the respondent's defence of the claim had been unreasonable. In her original claim form and schedule the claimant had made claims for unlawful deductions and holiday pay which were very difficult to understand, both as to the legal basis for various claims and as to the calculations. She claimed a total of £5028.46 including £1000 for 'the inconvenience this has caused me and the advice I had to solicit'.
5. On 2 December 2019, a further schedule of loss was submitted on the claimant's behalf. This schedule still did not explain the legal basis for claiming the various sums, claimed a sum for unpaid overtime between May and September 2018, a claim that on its face is significantly out of time unless an extension were granted, and again claimed '£1000 as per ET1'. As I discussed with the parties, claims for non-financial loss are not available as part of an unlawful deductions claim. This schedule claimed a total of £4695.53 and was prepared by the claimant's solicitors.
6. Witness statements were exchanged on 4 December 2019. The claimant's statements runs to some six paragraphs.
7. We spent about 40 minutes at the outset of the hearing clarifying the issues in the claimant's claims. We agreed there were four heads of claim including the prima facie out of time overtime claim. By the time we broke, so that the parties could have time to try to resolve their dispute, the claimant had given evidence in chief and cross-examination had commenced. It appeared by that point that the claimant may have misunderstood how payments she had received in respect of holiday pay had been calculated, she had given no evidence to explain why she had not pursued the out of time overtime claim earlier and it was entirely in the balance as to whether the claimant would succeed in any of her claims.

8. In the circumstances, I cannot say the respondent has behaved unreasonably in defending claims which were unclear until they were discussed at the hearing, which may or may not have succeeded had the hearing continued, were overstated in respect of the £1000 claimed for 'inconvenience' and costs (although Mr Jaufurally suggested this sum was foregone interest, he accepted he had no evidence to support that claim) and where the parties ultimately agreed a payment which was less than a quarter of the sum claimed in the schedule.

Employment Judge Joffe
London Central Region
06 Dec 2019

Sent to the parties on:
09/12/2019

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For the Tribunals Office