



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4123486/2018

Held in Glasgow on 12 August 2019

Employment Judge: Rory McPherson

Mr Derek G Caldwell

**Claimant
In Person**

Dunskey Estate

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the respondent is ordered to pay damages in breach of contract to the claimant in the sum of **One Thousand and Four Hundred and Seventy Six Pounds and Thirty One Pence (£1,476.31)** which sum is payable immediately to the claimant.

REASONS

Introduction

Preliminary Procedure

1. This claimant brought a complaint for breach of contract and holiday pay in respect that the respondent had failed to pay outstanding wages and further had failed to pay outstanding holiday entitlement and failed to pay notice pay.
2. The respondent was notified that they were required to present a response by 9 January 2019.
3. The respondent did not submitted an ET3 timeously.
4. The Respondent issued a form of response late on 14 January 2019 and they were notified by the Tribunal 18 January 2019 the response had been rejected under Rule 18 of the Schedule 1 to Employment Tribunals (Constitution & Rules and Procedures) Regulations Rules 2013, no application having been made for

any extension of time. The respondent was further notified by the Tribunal on 18 January 2019 that their participation at the Final Hearing would only have been to the extent permitted by the Judge who heard the case.

5. The notice of this Final Hearing had been issued to the correct address for the respondents and, in particular had been issued by the Tribunal to the respondent e-mail address at 3.32 pm on 23 May 2019 which the respondent had used in its e-mail to the Tribunal at 3.31pm on 19 February 2019.
6. The respondent did not appear and was not represented. The Tribunal's clerk contacted the respondent at the outset of the hearing.

Evidence

7. The Tribunal heard evidence from the claimant.

Findings in fact

8. The claimant was interviewed by the respondent and was offered the role of Head Chef with the respondent e-mailing the claimant on Friday 6 July 2018 stating, so far as material "*thank you for coming to the interview and we look forward to working with you. The terms of your contract -23000gbp GROSS annual... - 5 weeks holiday – black out period from May to February each year – 3 weeks of holiday must be taken each year....*"
9. The claimant was employed by the respondent from Monday 9 July 2018 to Monday 13 August 2018 as Head Chef at the respondent's large country house premises, providing meals for guest wedding parties and sporting groups.
10. For the part month Monday 9 July 2018 to Tuesday 31 July 2018 the claimant was paid £1,320.94 net direct into his bank account being the equivalent to £77.70 net per day or £388.51 net per week.
11. The respondent did not provide a wage slip of equivalent notification of the breakdown of the payment. The claimant does not dispute that the payment made for the month of Monday 9 July 2018 to Tuesday 31 July 2018 was incorrect.

12. The claimant was not paid for the period Wednesday 1 August to Monday 13 August 2018 a period of 11 working days.
13. The respondent did not provide written terms of contract setting out the major terms on which the claimant was employed including the intervals at which remuneration is paid, pension and pension schemes and the length of any notice the employee is required to give.
14. The claimant did not take any holidays in his period of employment and his holiday year was the calendar year.
15. The claimant was dismissed by the respondent on Monday 13 August 2018.
16. The claimant was not paid notice.
17. The claimant who resides in Dumfries and Galloway had required to take time off work to attend at this hearing. The claimant had incurred cost in travelling to the Tribunal for this Final Hearing.
18. The notice of this Final Hearing had been issued to the correct address for the respondents and, in particular had been issued by the Tribunal to the respondent's e-mail address at 3.32 pm on 23 May 2019, which e-mail address the respondent had used in its e-mail to the Tribunal at 3.31pm on 19 February 2019. No satisfactory reason was provided by the respondent for their non-attendance at this Final Hearing.

Submission

19. The claimant provided oral submissions, seeking payment against the respondent for unpaid wages, holiday pay and notice pay.

Hearing in absence of respondent

Discussion and Decision

Relevant Law

20. The Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, (the Tribunal Rules) Rule 3 provides as follows:

“The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

21. Having regard to the Overriding Objective including dealing with matters fairly and justly, including so far as practical ensuring that parties were on an equal footing, having regard to the existing decision that the ET3 was not permitted late as notified to the respondent 18 January 2019 together with the notice to the respondents of the limit to their participation, and further dealing with this case in a way which is proportionate to the complexity and importance of the issues, avoiding unnecessary formality, and avoiding delay and saving expense; it would not have been appropriate to discharge this Final Hearing. Against the existing direction that the respondent’s participation would only have been to the extent permitted by the Judge who heard the case it was, appropriate, having regard to the notice of this Final Hearing having been issued to the respondent at the email provided by the respondent, to proceed with this Final Hearing in the absence of the respondent.

Relevant Law and Decision

Relevant Law

Provision of Terms and Conditions and Provision of Itemised Pay Statement.

22. In terms of s1 of ERA 1996 each employee is entitled to receive from his employer not later than two months after the beginning of the employee's employment, a written statement of the major terms upon which he is employed. The Employment Act 2002 (EA 2002) provides at s38 that where the matter is before the Tribunal, it is required to increase an award by at least 2 weeks' pay and the Tribunal may if it is just and equitable increase that award to 4 weeks' pay.
23. Section 8(1) of ERA 1996 provides that:
- (1) [A worker] has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*
24. There is however no provision for any award or uplift in respect of a failure to provide the required itemised pay statements at or before the time at which any payment of wages or salary is made. The role of the Tribunal would have been restricted, in terms of s11 of ERA 1996 to ascertaining what information ought to have been included.

Discussion and Decision

Provision of Terms and Conditions and Provision of Itemised Pay Statement.

25. The respondents had not complied with their obligations to provide written terms and condition under s11 of ERA 1996 to provide itemised pay statements at least through 2018. There is, however, no provision for any compensation payment for such failure.

Discussion and Decision

Provision of terms and conditions

26. The claimant was not provided with written statement of the terms of her employment. The present statutory basis for such written terms is provided in

the ERA 1996. The claimant would have been entitled to 2 weeks' pay had written terms not been provided by 9 September 2018, however as he had not worked for 2 months by the end of the notice period the claimant is not entitled to an award under this hearing.

Relevant Law & Discussion and Decision

Unlawful deduction of wages contributions.

27. In terms of s23 of the Employment Rights Act 1996 an employee may bring a claim that an employer has made unlawful deductions of wages.
28. The claimant is entitled to her outstanding net pay which amounts to 11 working days being **£854.70**

Relevant Law & Discussion and Decision

Notice Pay

29. Section 86(1) and 86(1)(a) of the Employment Rights Act 1996 provides that *"The notice required to be given by an employer to terminate a contract of employment of a person who has been continuously employed for one month or more- is not less than 1 weeks' notice if the period of continuous employment is less than two years"*
30. The Claimant is entitled in terms of s86 of the ERA 1996 to a sum equivalent to 1 week's net paid notice of termination being **£388.51**

Relevant Law & Discussion and Decision

Holiday Pay

31. The claimant is entitled to holiday pay accrued in terms of the reg 30 of the Working Time Regulations 1998. The claimant is entitled to accrued holiday pay equating to 3 days untaken accrued holidays equating to **£233.10**.

Conclusion.

32. The claimant is entitled to be paid the cumulative sums in relation to the elements of breach of contract as set out above (£854.70, £388.51 and £233.10) being **£1,476.31**.

Conclusion

33. The claimant is awarded the sums set out above.

Employment Judge: R McPherson
Date of Judgment: 16 August 2019
Date sent to parties: 16 August 2019