



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Miss S Musumeci

CH&CO. Group

Heard at: London Central Employment

On: 8 January 2020

Before: Employment Judge Adkin (sitting alone)

Representations

For the Claimant: Claimant in person, supported by Ms A Aiello

For the Respondent: Mr F Azman (Counsel)

WRITTEN REASONS

1. These are written reasons for a judgment given orally and confirmed in a written judgment dated 10 January 2020 which was sent to the parties on 13 January 2020.
2. The Claimant worked as a Catering Assistant for the Respondent between 2 July 2018 and 18 May 2019. She presented a claim for unpaid holiday pay on 20 September 2019.

The Dispute

3. The Claimant's claim is for unpaid holiday pay in the sum of £1,090.62 plus interest relating to a six-month period during which she was absent on sick leave.
4. The Respondent admits that holiday pay is owing in this case and agrees the method of the calculation set out in the claim form, but not the amount. There

appeared initially to be a dispute as to the number of hours worked in July and August 2018, which are part of the reference period for the calculation of the amount of holiday entitlement owing. On the Respondent's figures the correct figure is £851.58.

5. A sum of £599.11 was paid to the Claimant on 3 January 2020, i.e. just a few days before this hearing. This represents the Respondent's figure of £851.58 less deductions of £170.20 for tax and £82.27 for national insurance. I did not receive evidence of this in the documentary bundle, but it was shown to me on the screen of a mobile telephone.
6. At the outset of this two hour hearing it was contended for the Claimant that she ought to be able recover as much as £4,000 for the inconvenience she had suffered due to late payment. This is substantially more than the figures contained within the claim form.
7. I canvassed with the Respondent and it was confirmed that timesheets were in existence but had not been included in the bundle of documents. These contain the data which are the basis for the calculations of each month's pay.
8. After nearly an hour of discussion trying to clarify what was actually in dispute I raised a concern that I did not have adequate evidence to determine this claim and called a 10 minute adjournment so that both parties could consider whether a longer adjournment to reconvene the hearing on a different day was required, so that the Claimant could gather whatever evidence she needed to substantiate her claim including receiving disclosure of timesheets.
9. After this 10 minute adjournment, both parties urged on me that they did not want to adjourn the hearing, but would rather proceed on the basis of the limited evidence before me. I exercised my discretion, taking account of the wishes of the parties and also of proportionality and proceeded to deal with the claim and did not adjourn the hearing.

Law

10. The Claimant's claim could be characterised as one falling under the Working Time Regulations 1998 or alternatively under Part II of the Employment Rights Act 1996.
11. The Employment Rights Act 1996 contains the following provisions which relates to a claim of unlawful deductions falling under section 13 & 23:

23 Complaints to employment tribunals

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2))

24 Determination of complaints

(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—

(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13

24 (2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

Evidence

12. I have been directed to a slim bundle of documents containing 42 pages, comprised of ACAS certificate, pleadings and Tribunal correspondence and correspondence between the parties. In addition to this bundle I also received payslips from the Respondent which related to July, August and September 2018.
13. I was supplied separately with wage slips for the period September 2018 – May 2019. The Claimant handed up sick certificates for the period 5 September 2018 – 30 September 2019 in relation to a back injury.
14. I have not been supplied with any witness statements.
15. The Claimant gave brief oral evidence to confirm that the content of her claim form was accurate. During the course of that oral evidence, in response to Mr Azman's questions she conceded that the Respondent's number of hours figures for July and August 2018 were correct and it followed that the correct figure for unpaid holiday pay was £851.58.
16. The Claimant accepted that she had received the net figure of £599.11, which she had noticed in her bank account at the weekend (4 & 5 January). She did not suggest that the calculations of tax or national insurance work incorrect, although in fairness to her she was given very little time to consider this information. I am informed that the payslip which contains the detailed calculations has yet to be sent out to her, which was somewhat unsatisfactory.
17. It was said in submissions on the Claimant's behalf, following the conclusion of evidence, that she had lost £80 wages by attending this hearing today.

Conclusions

18. Given that the Claimant accepted in cross examination that the Respondent's figures were correct, it follows that the gross value of the claim for unpaid annual leave is £851.58. From this sum deductions for tax and national insurance must be made.
19. As to the claim for interest, unlike the County Court, in the Employment Tribunal there is no freestanding discretionary power to award interest to reflect a

successful claimant being kept out of that money prior to judgment. The only basis to award interest would be if the Claimant could prove financial losses under section 24.

20. The Claimant did not produce any evidence in support of financial losses she contends are arising as a result of late payment of the unpaid annual leave pay. She did not take the opportunity to adjourn this hearing so that she could obtain more evidence.
21. The principal cause of any financial difficulty that the Claimant experienced during the material period was that she was absent on sick leave and receiving SSP rather than her usual wages. I understand from the Claimant's correspondence on the file that she is, in separate proceedings, pursuing a claim for personal injuries. If her injury has caused her additional losses as a result of impecuniosity caused by being unable to work, she may reasonably seek to recover sums in those proceedings.
22. *Interest* - I am not satisfied based on the evidence I have heard that there have been financial losses arising from the late payment of the annual leave pay. The Claimant has not put forward a figure that she says she has lost by way of interest, nor has she produced evidence from which such a figure might be calculated. I am not satisfied that this part of the claim is made out.
23. *Inconvenience* - As to the claim for compensation for "inconvenience", I do not consider that this should be correctly characterised as financial losses falling within section 24(2) and do not consider that I have the power to make such an award.
24. *Lost wages* - As to the question of £80 wages lost to attend today's hearing raised for the first time in submissions, this was not substantiated by documentary evidence and the Respondent did not have the opportunity to challenge this in evidence. Taking a pragmatic view, however, I would have accepted the quantum of this figure.
25. I have considered whether I should make an award for the £80. The Claimant was asked to consider whether she was pursuing the discrepancy between the Respondent's figure and her own by a letter sent from the Acting Regional Employment Judge 18 December 2019. This was an opportunity to indicate whether or not she agreed the Respondent's figures and potentially avoid the hearing. She did not take this opportunity with the result that this hearing was necessary. At the hearing she agreed the Respondent's figures. In the circumstances therefore I do not consider it would be appropriate to order a sum for £80 wages lost.

Employment Judge Adkin

Date 23 Jan 2020

WRITTEN REASONS SENT TO THE PARTIES ON

27/1/2020

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FOR THE TRIBUNAL OFFICE

Notes

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