



EMPLOYMENT TRIBUNALS

Claimant: Miss A Richards

Respondent: The Rabbit Hole (Bristol) Ltd

Heard at: Bristol **On:** 10th January 2020

Before: Employment Judge R Harper MBE sitting alone

Representation
Claimant: In Person
Respondent: Miss V Joseph-Monteith

JUDGMENT

1. The claimant was an employee.
2. The claimant is entitled to receive the sum of £775 holiday pay to be paid by the respondent.
3. The breach of contract claim succeeds and the respondent is to pay the claimant the sum of £3,000.
4. The unlawful deduction from wages claim succeeds and the respondent is ordered to pay the claimant the sum of £8,557.50.

REASONS

1. In November 2019, Employment Judge Livesey clarified the claims to be determined. That clarification shows that I have to determine whether the claimant was an employee or a worker, whether she was entitled to holiday pay under the Working Time Regulations, whether she was entitled to notice and whether there were unpaid wages..
2. In this case I have heard evidence on oath or affirmation from the claimant, from Miss Joseph-Monteith who is the sole Director of the respondent company, also from Mr M. Chambers.
3. The documents in this case, particularly from the respondent's position, were a mess. The respondent's bundle was only produced today. The respondent had been ordered in November to provide a witness statement by the 13th December which she did not do, and she told me that her "statement" was in fact what had been set out in the ET3 response form to the claim.
4. As a result of the dialogue at the beginning of the case, both parties decided that they wanted the case to proceed. The claimant was happy for the case to proceed even though none of her witnesses were in attendance in court. I made the point to her that witnesses who do not attend a court hearing are likely to have no weight at all attached to their evidence because they are not there to be cross examined. The claimant decided that she wanted to proceed.
5. During the case, in the morning, Mr Chambers turned up and handed an envelope to the Tribunal clerk to be given to the respondent and this envelope contained his witness statement. Even the respondent had not seen it and certainly, of course the claimant had not seen it.
6. The claimant, surprisingly, indicated that she would have no objection to Mr Chambers being called as a witness. and although there was some delay over the lunch period for Mr Chambers coming back to the court, the Tribunal eventually heard evidence from him. His evidence was honestly given but frankly was of no assistance in determining the issues in the case.
7. The Tribunal has considered all the documents to which its attention has been drawn but it makes the point that if it's attention has not been drawn to a document, then the Tribunal has not considered it.
8. In this case there are serious allegations made by the respondent of forgery. Particularly of the signature of the respondent on the purported employment agreement and also forgery or fabrication of evidence in relation to a particular email. When allegations of fraud or forgery are made by a party the obligation on proving such fraud or forgery is entirely upon that party. No

supporting evidence has been called for example, of a forensic nature, to support the allegations of fraud or forgery. Having heard both the claimant and also Miss Joseph-Monteith I reject the allegations that the signature on the employment agreement was a forgery or that the email was fraudulently produced.

9. I found the claimant to be very straightforward in her evidence; courteous and helpful. I found the respondent's witness to be very confused and muddled in the presentation of her evidence. She had great difficulty during her evidence in focussing on the main issues in the case. For the avoidance of doubt there is a further claim which is brought by the claimant against the respondent in the County Court but I have not had to consider that in any way. I was told by the respondent that there is also litigation involving the company with the landlord in the High Court. Again, I have not had to trouble myself with that litigation. The Respondent seems, at present, to be surrounded by litigation.
10. The claimant worked for the respondent between the 26th November 2018 until February 2019. The employment contract is to be found at page 12 of the claimant's bundle with a frankly bizarre job title of "general bitch and culinary witch". At the time when the contract was being drawn up the claimant said that she had been a friend with Miss Joseph-Monteith and they had both found that description hilarious. Miss Joseph-Monteith disagreed with that assertion. The agreement is, in my view, clear and it records the intentions of the parties that this would be an employment relationship.
11. The top of the contract describes the relevant job being an executive chef. At the time, and indeed even now, there was in fact not a kitchen for the claimant to work in. The contract records a number of responsibilities to be undertaken by the employee, it also records the rather generous compensation for the hourly working and also records the period of notice and so on. It does not record anything to do with holiday pay which is regrettable but there is a statutory entitlement to holiday pay so that does not necessarily need to be set out in this particular document.
12. Although the job was initially for the role of executive chef, like many jobs, jobs evolve and soon the claimant was a trusted key holder. She was living free on the premises, she was liaising with contractors, she emailed on one occasion with a lawyer about a draft trade agreement, and she was purchasing items. The liaising with the lawyer document is to be found at page 89 of the bundle, and her dealing with a Councillor, for example, is to be found on page 77.
13. On page 75 is quite a significant document in my view, which is a "jobs to be completed in priority order" document which sets out a wide range of tasks for the claimant to undertake. I find that the claimant also dealt with some hiring and firing of contractors, for example Sean Corcoran, and another man called Lee. The agreement was a contract of employment. After not being paid for the first month, the claimant became concerned. However, she was able to live for a while off savings and because she was then friendly with Miss Joseph-Monteith she was a little bit more relaxed than perhaps other employees might have been in similar circumstances.

14. On page 37 there is evidence that the claimant purchased numerous items on behalf of the business.
15. On page 72a the respondent herself referred to the claimant as a site manager. The respondent had also provided links to the claimant to gov.uk about written terms and conditions of employment. The respondent gave a reference to the claimant to be found on pages 26 – 27 saying explicitly that the claimant had been employed by the respondent. This reference had been drafted by the claimant but signed by Ms Joseph-Monteith. The signature confirms that the claimant did very many “non culinary” duties. Miss Joseph-Monteith said that she only signed the reference to get the claimant off her back but there was no suggestion that this signature was not her signature or that she was put under any improper pressure to sign. If a document is signed, then it is quite clearly a presumption that somebody has read the document before signing it and by signing it approves the truth of it. That document sets out numerous tasks that were undertaken by the claimant, very much echoing her own evidence as to what she did on site.
16. In this case, if one was for a moment to park the evidence of Mr Chambers, where there is any doubt to resolve between two conflicting witnesses then the contemporaneous documents such as the written agreement, and the reference, are important indications of what was intended and what happened. The note written by the claimant on pages 23 and 24 of the bundle is also important because it is a clear, well written document, which makes numerous references to factors which would support the assertion that the claimant was employed.
17. For all the above reasons therefore, I conclude that the claimant was not, as the respondent tried to assert, a friend hanging around the site who has manufactured her employee’s status and now sues for money owed. I find that the agreement was valid, the claimant was an employee and that it was the intention of both parties that the claimant should become an employee not just for executive chef purposes but for other tasks. The claimant was not on a trial period but as a result of the respondent having a concern about the claimant’s alleged drug taking, and her attitude, neither of which I make findings about, the employment came to an end.
18. In the evidence of the respondent and in her cross examination of the claimant there was not much realistic challenge to the figures claimed in, and recorded in, the previous case management order. I find therefore, working through the heads of claim in this case that having regard to the Working Time Regulations that the figure claimed is correct namely £775. The agreement provides for the payment of notice that being four weeks and again it is recorded in the case management order the calculation and I find that to be correct I find a payment of £3,000. In relation to the unlawful deduction from wages, there was no serious challenge in cross examination that the work had not been undertaken according to the timesheets which apparently had been signed by the respondent. Today was that opportunity to challenge; that opportunity was not taken. Where there is no challenge then, as I indicated to the parties at the beginning of the hearing, unchallenged evidence is likely to be accepted as accurate. I therefore find that there is also the sum of £8,557.50 owed to the claimant for unlawful deduction from wages.

19. Having considered the final head of claim which is the failure to provide payslips under Section 8 of the Employment Rights Act that amounts to me considering a declaration as to what should have been in the payslips but bearing in mind the figure that I have ordered for the unlawful deduction from wages and how they have been calculated clearly by the claimant I don't see the need to set out that information here.

Employment Judge R Harper MBE

Date: 28th January 2020
