



EMPLOYMENT TRIBUNALS

Claimants: 1. Miss R Purnell
2. Miss L French
3. Miss M Hall

Respondent: Thomas Davin t/a The Chorlton Green

Heard at: Manchester

On: 7 January 2020

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimants: Each in person

Respondent: Did not attend

WRITTEN REASONS

Introduction

1. These are the written reasons for the Judgment in each of the three cases delivered orally at the conclusion of the hearing on 7 January 2020, and sent out to the parties on 21 January 2020. Written Reasons were requested by the respondent in an email of 27 January 2020.

2. By a claim form presented on 25 June 2019 the three claimants each brought a complaint seeking payment of holiday pay arising out of their employment at the Chorlton Green Restaurant in Manchester. Each claimant had been employed since October 2018, Miss Purnell as Assistant Manager and Miss French and Miss Hall as members of staff. Miss French and Miss Hall left in the spring of 2019, and Miss Purnell had last worked a shift in the first week of June 2019.

3. A response form was filed on 15 August 2019. It said that the claim was defended. The respondent had not been aware that staff were entitled to holiday pay. The respondent was willing to pay anything that was due. However, it asserted that the claimants had been overpaid because no deductions had been made for tax or national insurance contributions, and/or because they had received tips on top of their wages. The response form said that any amounts so paid should be deducted from what is due.

4. The respondent was ordered to confirm the proper title of the business. By email of 5 September 2019 the Tribunal was informed that the business was in the name of Thomas Davin, although his wife, Denise Davin, looked after the paperwork and was dealing with the case.

5. By a letter of 26 October 2019 the parties were informed that the claim would be heard on 7 January 2020.

The Hearing

6. The three claimants attended the hearing on 7 January 2020 but there was no attendance on behalf of the respondent. Under rule 47 I decided to proceed in any event. The main point raised by the respondent in its defence appeared to be a point of law, being whether amounts paid to the claimants for other purposes could be deducted from the amounts due to them by way of holiday pay.

7. I was provided with a bundle of documents by the claimants to which I will refer below as appropriate. Those documents included a statement from each claimant which explained how they had worked out their figures for holiday pay. The documents also included exchange of text messages with the manager, Callum Winsper, about the claims for holiday pay.

8. Each of the claimants gave oral evidence in person having affirmed that her witness statement was true.

The Issues

9. The issues for me to determine were as follows:

- (a) What if anything was the figure in respect of holiday pay due to each claimant?
- (b) Was the respondent entitled to reduce the amount owing by any amounts overpaid to the claimants by reason of a failure to make tax and national insurance deductions and/or amounts paid by way of tips?

Title of Respondent

10. It was agreed that in the light of the email from the respondent saying that the business was in the name of Thomas Davin the title of the respondent in these proceedings should be amended to Thomas Davin t/a The Chorlton Green. It appears that "The Chorlton Green" is not a legal entity.

Findings of Fact

11. Having heard oral evidence from the claimants and having considered the claim form, response form and the documents provided during this hearing, I found the relevant facts to be as follows.

12. The leave year for each claimant ran from the date of her appointment.

13. Miss Purnell was employed from 23 October 2018 until a date in June 2019. She worked 32.5 hours a week at £8.50 per hour. She worked on average four days in each week. She limited her claim to the period to the end of March 2019. Her pro rata entitlement to annual leave in that period, expressed in hours, was 182 hours. She received no payment for holidays. Miss Purnell should have been paid upon termination of her employment for 182 hours of leave at £8.50, making a total of £1,547.00.

14. Miss French was employed between 26 October 2018 and the end of March 2019. She worked nine hours per week at £7.50 per hour. She had taken all of December off by way of annual leave but had not received any payment. She was owed annual leave of 22.23 hours at £7.50 per hour making a total of £166.73.

15. Miss Hall was employed from 26 October 2018 until she resigned in late March 2019. She worked on average 15.3 hours per week at a rate of £7.50 per hour. Having been employed for 21 weeks her pro rata entitlement was 34.17 hours making a total of £256.28. No holiday pay had been paid to her.

Relevant Legal Principles

16. These claims were brought under the Working Time Regulations 1998. The combined effect of regulation 13 and 13A is to give each worker an entitlement to 5.6 weeks of paid annual leave during each leave year.

17. Regulation 14 requires an employer to make a payment in respect of annual leave which has accrued but is untaken upon termination of employment.

18. Regulation 16 requires an employer to make payment in respect of periods of leave. Where employment ends part way through a leave year there is a pro rata entitlement under regulation 15A.

19. The remedy for a breach of these provisions is an Employment Tribunal complaint under regulation 30(1)(b). A claim must be brought within three months of the date upon which payment should have been made. If the claim succeeds regulation 30(5) applies:

“Where on a complaint under (1)(b) an Employment Tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or 16(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.”

Conclusions

20. The first matter I considered was whether in principle any award in respect of holiday pay could be reduced by other payments made by the respondent to the claimants.

21. The respondent claimed credit for other payments as follows. It paid Miss Purnell her tips of £1,012.00 during her employment and she had also received an overpayment of £970.11 in respect of a failure to make deductions for tax and national insurance. Miss French had received tips of £242.00 during her employment. Miss Hall received tips totalling £473.00.

22. I made no factual determination as to whether these amounts had actually been paid. Instead I concluded that regulation 30(5) did not allow for any credit even if these payments had indeed been made. The payments due to a worker in respect of annual leave which she takes under regulation 16, or the payment in respect of accrued but untaken annual leave upon termination under regulation 14, are intended to be precise mathematical amounts. Regulation 30(5) requires the Tribunal to order the employer to pay the amount which it finds to be due to her. That can be contrasted with other types of claim under these Regulations where the remedy under regulation 30(4) is to award such amount as is considered just and equitable. That provides a broader discretion to the Tribunal which is absent from regulation 30(5). I therefore decided that no credit should be given for any sums allegedly overpaid to the claimants.

23. It followed that the claimants were entitled to be paid for the amounts due to them in respect of annual leave. Although the respondent had provided a counter Schedule of Loss which provided alternative figures, the absence of the respondent at this hearing meant that there was no evidence to support those figures. I went through the figures with each claimant during her oral evidence and I was satisfied on the information before me that their calculations were correct.

24. I therefore made the awards recorded in the three individual Judgments.

Employment Judge Franey

24 February 2020

WRITTEN REASONS SENT TO THE PARTIES ON

25 February 2020

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