



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE (sitting alone)

BETWEEN:

Claimant

MISS R THOMPSON

AND

Respondent

INSPIRED THROUGH SPORT LIMITED

ON: 17 January 2020

APPEARANCES:

For the Claimant: In Person

For the Respondent: Did not attend – Response not returned

JUDGMENT

The Judgment of the Employment Tribunal is that: -

1. The unfair dismissal complaint was struck out as the Claimant did not have sufficient service under the Employment Rights Act 1996, section 108.
2. The Claimant was wrongfully dismissed and the Respondent is ordered to pay her the sum of **£293.50** in damages equivalent to one week's notice.
3. It is declared the Respondent unlawfully deducted the sum of **£352.25 gross** from the Claimant's wages in respect of six days pay. This relates to the period from the end of March to the beginning of April 2019. The Respondent is ordered to repay that sum to the Claimant forthwith.
4. It is further declared that the Respondent unlawfully deducted the sum of

£528.30 gross from the Claimant's wages in respect of nine days' annual leave which had accrued but which were untaken at the termination of employment at £58.70 gross per day. The Respondent is ordered to repay that sum to the Claimant forthwith.

5. It is further declared that the Respondent unlawfully deducted the sum of **£117.40 gross** from the Claimant's wages in respect of two Bank Holiday days (19 and 22 April 2019) at £58.70 per day gross. The Respondent is ordered to repay that sum to the Claimant forthwith.
6. The name of the Respondent was amended from 'Joe Goldsmith' to 'Inspired Through Sport Limited'.

REASONS

1. Written reasons are provided as the Respondent was not present at the hearing. They are set out only to the extent that the Tribunal considers it necessary to do so to explain its decision, and only to the extent that it is proportionate to do so. Further, all facts were found on the balance of probabilities.

2. By a claim form which was presented on 10 June 2019, the Claimant complained that the Respondent had unfairly dismissed her; that they had made unlawful deductions from her wages; that they had not paid her holiday pay under the Working Time Regulations, and that they had wrongfully dismissed her and that she was entitled as a result to damages in respect of notice pay. The date by which the response was supposed to have been returned was 13 September 2019. As set out in the heading of this Judgment, there was no attendance by or on behalf of the Respondent and no representations had been received.

3. The Claimant had named Joe Goldsmith as the Respondent, as he was the person who appeared to the Claimant to be in charge. The papers had been served at the address which also appeared to be the address for the company known as 'Inspired Through Sport Limited'. The registered address of the company was 161-165 Greenwich High Road, London SE10 8JA and the company registration number is 09275760.

4. Having considered the information that was given to the Claimant in relation to her payslip, it appeared that her former employer, and therefore the correct Respondent, was Inspired Through Sport Limited. The Tribunal therefore amended the name of the Respondent accordingly. I was satisfied that as the address for service was the same and that the Claimant believed that Mr Goldsmith was one of the

two people running the business, that it was very likely that the Respondent company was aware of these proceedings.

5. By letter dated 16 August 2019 the Claimant had been given notice that because she had insufficient service to bring a complaint of unfair dismissal, the Tribunal was considering striking out that claim. She was given a date by which to respond. She did not provide any response to that warning by the due date. There did not appear any valid grounds for allowing the Claimant to proceed with the unfair dismissal complaint. She accepted this and the Tribunal confirmed in this Judgment that this complaint was struck out.

6. The Claimant worked from 28 January to 30 April 2019 in a sales capacity. She was entitled to be paid monthly and produced documentary confirmation that she had been paid at the end of February and on 29 March 2019. That was the last pay that she received. She worked up to 5 April 2019. She then took nine days annual leave from 5 April 2019 which had been pre-arranged. It came to a longer period because two of the days were the Bank Holidays just before and after Easter.

7. The Claimant believed that she had signed a contract on the day that she started but that she was not given a copy of it. Nor had she anticipated that she would start work on that day as she believed that she was only attending for a second interview.

8. Further, the documents which she had been given in relation to commission earned were not available to her.

9. However, the payslips that she produced showed gross salary of £1272.38 and commission on the payslip in March 2019 of £308.00. In the circumstances, she did not press a claim for commission as she could not establish her entitlement to any outstanding sums.

10. There were deductions for PAYE of £118.40 in the March payslip and national insurance of £105.48. The Tribunal used this figure to calculate that the total gross monthly pay was £1580.38 and the total net monthly pay was £1356.50. The daily rate therefore worked out at £58.70.

11. The Tribunal accepted the Claimant's account in the claim form of the circumstances in which her employment ended, namely that because she had to take four days leave after the expiry of her pre-arranged annual leave because of the illness of her son, the Respondent peremptorily dismissed her. The Tribunal was satisfied that she had communicated the position in terms of her absence appropriately with the Respondent in respect of each of those days. It did not appear to the Tribunal therefore that the Claimant had

committed an act of gross misconduct in fundamental breach of contract and therefore the Respondent was not justified in terminating her employment. If the employment was to be terminated, it should have been terminated with notice.

Employment Judge Hyde
Dated: 21 February 2020

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