



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

MS I IGNATOVA

ISS FACILITY SERVICES LTD

Heard at: London Central

On: 21 February 2020

Before: Employment Judge O Segal QC

Representations

For the Claimant: In person

For the Respondent: Did not appear

JUDGMENT

Pursuant to s. 12 Employment Rights Act 1998, the tribunal determines that the Claimant has continuity of employment from 2008

REASONS

1. The tribunal dealt today with a final hearing concerning whether the Claimant had been paid all salary due to her; whether the Respondent had paid all pension contributions to the pension scheme provider that it should have done, both on its own behalf and by way of employee contributions deducted from the Claimant's salary; and what was the significance if any of a P45 apparently issued in error during 2019.
2. I deal with those issues in that order below.
3. The Claimant represented herself. She provided the tribunal, materially, with copies of payslips, bank statements, correspondence with the Respondent and with JLT, the pension scheme provider.
4. The Respondent did not attend and was not represented, but had provided to the tribunal in writing: a statement of Mark Deller, Senior Payroll Manager, dated 14/2/20, together with 37 pages of accompanying documents.

Salary

5. The Claimant took me carefully through the relevant payslips. She accepted Mr Deller's evidence that, eventually, she had been paid all salary due to her, but pointed out (as was obvious and as Mr Deller accepts) that some of those payments had been made late.
6. I therefore say no more on this issue.

Pension contributions

7. The Respondent ought to have been paying throughout the material period employer's contributions and (having made the deduction from the Claimant's salary) employee contributions.
8. Between May 2018 to date (inclusive) that has not happened.
9. There is a suggestion in Mr Deller's statement that the problem might be isolated to June and July 2019. That is wrong.

10. There is clear evidence from JLT, dating to December 2019, that no contributions, employer or employee, have been paid in to the scheme since April 2018. That is corroborated by the payslips May 2018 to July 2019 inclusive.
11. From August 2019, the payslips record that:
 - 11.1. The Respondent has been/would be making the appropriate employer's contributions (the payslip for August 2019 indicates a contribution covering some three and a half months); however, those monies have not been received by JTL; and
 - 11.2. The Respondent has deducted the monthly sum of £100.83 from the Claimant's salary as her employee; but again those sums have not been paid into the JTL pension scheme on the Claimant's behalf.
12. This is a lamentable situation, which the Claimant has tried very hard to sort out both with the Respondent and with JTL for several months, without success. There is no evidence that the Respondent has attempted to address the situation until the last week or so, although Mr Deller writes that "*This is currently being investigated with JTL ...*" and he confirms that "*If it is found that [the Claimant] has missed any contributions, these can be made up over a number of pay runs to suit [her] ...*".
13. Clearly the Respondent has been in breach of the Claimant's contract of employment over several months in these respects, albeit that breach may have arisen from administrative incompetence rather than deliberate intent. **I would expect the Respondent to remedy the situation with urgency.** If it does not do so, the Claimant would be at liberty to claim for breach of contract in the civil courts.

The P45 sent in error

14. Mr Deller confirms that the P45 sent on 18/9/19 was sent in error. The Claimant was naturally concerned that the tribunal formally confirm the extent of the continuity of her employment.
15. On the basis of evidence given by her, I find that she has continuity of employment from 2008 (she was not able to give me the precise date in 2008, but that could be established one hopes if necessary). There has been more than one TUPE

transfer of her employment during the period 2008 to date, but none has affected her continuity period.

Employment Judge Segal

21 February, 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

24/2/2020

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FOR THE TRIBUNAL OFFICE