



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Owen

**Respondent:** Gellifawr LLP

**Heard at:** Carmarthen **On:** 13<sup>th</sup> January 2020

**Before:** Employment Judge Howden-Evans

**Representation:**

**Claimant:** In Person, supported by Mr Owen, the Claimant's father

**Respondent:** In Person, by Mr John, Manager

**JUDGMENT** having been sent to the parties on 20th January 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. It is agreed that the Claimant was employed by the Respondent as a Kitchen Porter, from 20<sup>th</sup> April 2019 until 18<sup>th</sup> May 2019. The respondent employs 25 staff at a busy wedding venue, Gellifawr Woodland Retreat in Fishguard.

2. The Claimant has brought claims of:
  - 1.1 automatic unfair dismissal (per s104 Employment Rights Act 1996), asserting the reason for her dismissal was because she had asserted a statutory right in requesting her payslip;
  - 1.2 unlawful deductions of wages, asserting she was not given adequate notice pay;
  - 1.3 unpaid annual leave (per Working Time Regulations 1998) asserting she was not paid sufficient holiday pay when her employment came to an end; and
  - 1.4 seeking compensation for failure to provide her with a statement of employment particulars and for failure to provide her with an itemised pay statement.
  
3. The Issues I had to determine were:
  - 2.1 Had Ms Owen asserted a statutory right?
  - 2.2 Was this assertion made in good faith?
  - 2.3 Was this the reason or principal reason for her dismissal
  - 2.4 How much notice of the termination of her contract was the claimant entitled to and was she provided this notice or paid a payment in lieu of notice?
  - 2.5 When the claimant's employment came to an end, was she paid all of the compensation she was entitled to in respect of annual leave accrued but not yet taken?
  - 2.6 Did the respondent fail to provide the claimant with a statement of employment particulars?
  - 2.7 Did the respondent fail to provide the claimant with an itemised pay statement at or before the time at which payment of wages was made?
  
4. As I explained at the start of the hearing, S104 Employment Rights Act 1996 says it is automatically an unfair dismissal if an employee is dismissed because they have alleged their employer has infringed a statutory right of theirs. The right to receive an itemised pay slip is a statutory right – every employee is entitled to receive a pay slip before or at the same time as receiving their pay. The employer had actually breached this as they had arranged a payment on 16th May 2019 to tide Ms Owen over until the business's monthly pay date and the claimant had not been provided with a pay slip on or before that date. I am satisfied that Ms Owen had asserted a statutory right and that she had made this assertion in good faith.
  
5. Ms Owen bears burden of proving that the principle reason for her dismissal was that she had alleged that her employer had failed to provide her with a payslip. Mr John is saying that the reason she was dismissed was the

manner in which she spoke to Mr John when she was requesting her payslip.

6. s104 is intended to shield an employee from unreasonable behaviour by their employer as a consequence of the employee acting reasonably in accordance with their rights....however it is not intended to enable an employee to act as they see fit without fear of any possible consequences.
7. I have asked myself whether the claimant was just being assertive in the way in which she asked for her payslip, (as Ms Owen has suggested today) or whether she overstepped the mark and asked in a manner that was totally inappropriate.
8. It is admitted that on 18<sup>th</sup> May 2019 the claimant chose to speak to Mr John in the kitchen in front of other employees. It is also admitted that Mr John walked away during the conversation and the claimant tried to continue the conversation (in evidence she said she tried to call him back). I can see that as a manager, Mr John could take offence at being challenged in front of other staff. The claimant accepts in her account in the claim form that when he was explaining his decision to dismiss her, Mr John said “there is a way to talk to people” and a “way to ask people for things” and that she apologised during that meeting for making him feel that way. I believe the principle reason the claimant was dismissed was because of the manner in which she had spoken to Mr John, ie in a confrontational manner, in front of other staff, demanding he continue the conversation after Mr John had said he would get the payslip to her and was trying to walk away. It was not because she had asked for a payslip; rather it was because she had behaved in a confrontational and negative manner towards Mr John in front of other colleagues.
9. If this had been an ordinary unfair dismissal claim, I would have had no difficulty finding that the claimant had been unfairly dismissed, as clearly she did not have the disciplinary process that should be provided to every employee. However as the Claimant has less than 2 years’ service she is not able to bring an ordinary unfair dismissal claim.
10. Turning to the claimant’s outstanding holiday pay claim – this would have been £67.89. The claimant was paid for her notice period, but this was short by £4.67. The respondent has paid more than this £72.56 in the subsequent payment of £217.00, so neither of these claims succeeds.
11. Whilst the employer did fail to provide a pay slip on time I did not find that the employer had made any unnotified deductions to Ms Owen’s pay – they had actually overpaid her.

12. Whilst the employer had not yet provided Ms Owen with a statement of employment particulars, at the time of her dismissal, the claimant had not yet worked for the Respondent for 2 months. S1 Employment Rights Act 1996 provides that a statement of employment particulars must be provided within two months of employment beginning.
  
13. The Claimant's claims for automatic unfair dismissal, notice pay, holiday pay, and for compensation for failure to provide the claimant with a statement of employment particulars and for failure to provide the claimant with an itemised pay statement are not well founded and are dismissed.

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Employment Judge Howden-Evans

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Date 15<sup>th</sup> March 2020

REASONS SENT TO THE PARTIES ON 20 March 2020

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FOR THE TRIBUNAL OFFICE