



EMPLOYMENT TRIBUNALS

Claimant: Ms V Hymers
Respondent: Ms J Braithwaite t/a The Finchingfield Lion
Heard at: East London Hearing Centre
On: 22 May 2020
Before: Employment Judge Russell

Representation
Claimant: Mr R Taylor (Solicitor)
Respondent: Did not attend, not represented

JUDGMENT

1. The Claimant was dismissed in breach of contract in respect of notice and the Respondent is ordered to pay damages to the Claimant in the sum of £1,238.
2. The Respondent has failed to pay the Claimant's holiday entitlement and is ordered to pay the Claimant the sum of £2,940.
3. The Respondent failed to give the Claimant a statement of employment particulars and is ordered to pay the Claimant £2,100.

REASONS

1. By a claim form presented to the Tribunal on 5 December 2019, the Claimant brought claims for breach of contract in respect of notice, pay for holiday entitlement accrued but untaken at the date of her dismissal and failure to provide her with a written statement of employment particulars. No Response was received by the prescribed date of 8 January 2020. The Respondent has

been notified by letters dated 26 April 2020 and 11 May 2020 that Judgment could now be entered. The Respondent did not reply to either letter.

2. Notice of today's hearing was sent to the Respondent on 11 December 2019 and on 18 May 2020, when the parties were notified that today's hearing would be held by telephone in accordance with the Presidential Guidance on the conduct of proceedings during the Covid-19 pandemic. The parties were asked to provide telephone numbers or an explanation why they could not attend by telephone. Again, no reply has been received from the Respondent. In the circumstances, I am satisfied that the Respondent has had notice of this claim and the hearing, has failed to give any reason for her failure to attend and that it is just to proceed in her absence.

3. This remedy hearing has been a remote hearing by telephone to which nobody objected. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I was referred to copies of the Claimant's payslips and a short witness statement, as well as the contents of her claim form.

4. The Claimant was employed from 14 May 2018 to 24 July 2019 as a member of the kitchen staff at The Lion at Finchingfield public house owned and operated by the Respondent. On 24 July 2019, the Respondent told the Claimant that she was summarily dismissed. There was no allegation of misconduct relied upon as the reason for dismissal. The Claimant was not paid notice pay. I accepted the Claimant's evidence that she had previously been verbally told by the Respondent that she would be entitled to two weeks' notice in the event of termination of the contract of employment.

5. I accepted the Claimant's evidence that throughout her employment she had not taken annual leave as she had not been afforded the opportunity to do so. Nor despite her repeated requests had she been provided with written particulars of employment, or even an offer letter setting out the principal terms on which she was employed. This was a particularly serious failure and warrants an award of four weeks' pay (for the purposes of an award made under s.38 Employment Act 2002, a week's pay is capped at £525).

6. Having regard to the payslips supplied by the Claimant, I find that the average pay calculated over the preceding 12-week period was £800 gross per week, £619 net per week.

7. The claims are undefended and are supported by the evidence submitted by the Claimant. The claims of failure to pay holiday entitlement on termination, breach of contract in respect of notice and failure to provide written particulars of employment all succeed. The Claimant is entitled to the following sums as compensation:

- (a) Holiday pay: the Claimant was entitled to 28 days' holiday for the year ending 14 May 2019 and 7 days' holiday for the period to the date that her notice would have expired if the Respondent had not acted in breach of contract. 35 days@£84 = £2,940
- (b) Notice pay: two week's pay as verbally agreed. 2@£619= £1,238

- (c) Failure to provide written particulars: 4@£525 = £2,100.
8. The total award to be paid by the Respondent to the Claimant is **£6,278.00**

Employment Judge Russell
Date: 21 May 2020