



Case Numbers: 3331377/2018
3331378/2018

EMPLOYMENT TRIBUNALS

BE-MEEN

Claimants

- 1 Mr D S Logoja and
- 2 Miss S M Bunclanu

Respondent

Quality Home Care Anglia
Ltd

Held at Cambridge on 4 March 2020

Representation

Claimants: In Person
Respondent: Mr I Allan, Managing
Director

Employment Judge Kurrein

JUDGMENT

Unauthorised Deductions

- 1 The Respondent has made unauthorised deductions from the Claimant's pay as follows:

First Claimant

- 1.1 The sum of €251.00 gross in respect of pay earned in November 2017
- 1.2 The sum of E528.75 gross in respect of double time pay eamed in December 2017 and January 2018
- 1.3 The sum of E671.87 gross in respect of pay earned in March 2018

Second Claimant

- 1.4 The sum of 2370.50 gross in respect of pay earned in November 2017
- 1.5 The sum of 2528.75 gross in respect of double time pay eamed in December 2017 and January 2018

- 2 The Respondent is ordered to pay the Claimant the following sums as compensation for those unauthorised deductions:
 - 2.1 The First Claimant, the sum of E1,451.62
 - 2.2 The Second Claimant the sum of 2899.25

Holiday Pay

- 3 The Respondent has failed to pay the Claimants in respect of accrued and untaken holiday pay and is ordered to compensate them as follows:
 - 3.1 The First Claimant, in the sum of E1,229.06
 - 3.2 The Second Claimant in the sum of E1,173.60
- 4 The above Judgment will be satisfied if the sums due are paid net of appropriate deductions for tax and national insurance that are properly calculated and accounted for to HMRC.

Written Particulars

- 5 The Respondent failed to provide the Claimants with written particulars of employment. It is ordered to pay each of them a lower award of two weeks pay, being E978.00 each without deduction.

REASONS

- 1 On 16 July 2018 the Claimants presented a claim to the tribunal alleging unauthorised deductions and a failure to pay holiday pay.
- 2 The Respondent did not present a response to that claim. It was a re-served, the following clarification of the Respondent's identity, and it presented a response on 6 February 2019.
- 3 On 3 July 2019 I conducted a preliminary hearing at which I defined the issues, to include a claim for failure to provide written particulars of employment, and gave directions for the further conduct of the case.
- 4 The Respondent failed to comply with any of those directions and on 6 December 2019, following a warning, the Respondent's response was struck out for failure to comply with those directions and because the response was not being actively pursued.
- 5 The matter came before me today for a remedy hearing. Mr Alan attended on behalf of the Respondent. I indicated to him that I would allow him to participate in the hearing solely to the extent of being permitted to cross-examine the Claimants and make closing submissions. He raised no objection.
- 6 I heard the evidence of each of the Claimants and considered the documents in the bundle they had prepared for my use. There was little challenge to the points they made in their evidence. I heard the submissions of the parties. I make the following findings of fact.

- 7 The Claimants are Romanian nationals who were introduced to the possibility of working for the Respondent by an acquaintance. They received a telephone call in Romania from Miss Wright, who appeared to be the Respondent's manager, but not the registered manager, of the care homes it ran. I accepted that in the course of that conversation the Respondent offered, with at least ostensible authority, and the Claimant accepted, an offer of employment with the Respondent. It was an express term of that contract that they would work 15 hour shifts and be paid per shift at a rate of £135. They would also be provided with accommodation, a company car for work use and a fuel payment.
- 8 The Claimants promptly resigned from their jobs in Romania and travelled to England to start their employment just two weeks later, on 16 November 2017.
- 9 They received their first payment for the work they have done in December. They were dismayed to find that they had been paid as an hourly rate of £9 per hour, rather than the shift rate of £135 per shift. The discrepancy appears to have arisen because they were not paid for the full 15 hour shift (there was no work for them to do). I accepted their evidence that the first Claimant was paid £251.00 gross less than he should have been, and the second Claimant was paid £2370.50 less than she should have been.
- 10 Although they asked for a contract or written agreement they were never provided with one.
- 11 Both Claimants raised the issue of underpayment with the Respondent's manager, who referred it on to Mr Hall. Following a meeting between all concerned Mr Hall agreed that the Claimant would be paid on a shift rate basis from then onwards, but refused to compensate them for the shortfall in pay for November.
- 12 In the period before Christmas 2017 a notice was placed on the staff noticeboard asking staff to volunteer to work shifts over the Christmas period. The dates on that form were from Christmas Eve to Boxing Day and New Year's Eve to New Year's day. It sought volunteers for four different shifts, morning, lunch, tea and bed. Above that table it stated, "All staff working the shift below will be paid double time. This will be paid out at your hourly rate of pay."
- 13 The Claimant volunteered to work all the shifts they could, but were dismayed to find when they were paid in early January 2018 that they had not received any payment above the normal shift rate. I accepted their calculation that they suffered a shortfall in the pay they were entitled to in the sum of £2528.75.
- 14 The Claimant sought a meeting to discuss this issue with the Respondent but, although purportedly arranged, it did not take place.

- 15 In March 2018 Mr Hall informed the Claimants that he could not afford to pay them the shift rate that he had paid up until then, and that in future it would be reduced to an hourly rate. The Claimants sought to remonstrate with him, but he was adamant. It was as a consequence of this that both Claimants resigned from their positions.
- 16 I accepted the First Claimant's evidence that he was underpaid by the sum of E671.87 as a consequence of that change in his rate of pay up to his effective date of termination on 6 April 2018.
- 17 It is neither necessary nor proportionate to set out the parties submissions.
- 18 Based on the evidence before me I was satisfied that the initial agreement between the parties was based on the Claimants been paid per shift at a rate of E1 35.00. That is what was offered and accepted.
- 19 The Respondent had no right to unilaterally vary a fundamental term of the Claimants' contracts relating to pay.
- 20 Those deductions from the agreed rate of pay were clearly unauthorised. However, the first took place in early December 2017, and the last took place in April 2018. The Claimant started early conciliation on 20 April 2018, so that deductions made prior to 21 January 2018 will be out of time unless there is a series of deductions each of which is within the three months of the next.
- 21 I am satisfied that the Claimants agreed to work extra shifts over the Christmas/New Year holidays because of the inducement offered to them of being paid double time. I have no doubt that was a variation in the payment terms. The failure of the Respondent to honour it, in payments made in early January and February were further unauthorised deductions.
- 22 In the above circumstances I am satisfied that there was a series of unauthorised deductions made by the Respondent. The last of these is in time, there is less than three months between each of them, and I have jurisdiction to deal with them all.
- 23 It was the Claimants case that they had taken no holiday during their employment by the Respondent. They calculated that they were due to be paid 11.5 days of holiday when they left their employment. They receive nothing. Mr Alan sought to suggest to them that their payslips showed that they had been paid holiday pay. There were copies of all the Claimants' payslips in the bundle before him. He was unable to identify any payment he was referring to.
- 24 I find that the Respondent has failed to pay the Claimants in respect of the holiday pay they had accrued during their employment and had not used.
- 25 The Respondent did not challenge any of the Claimants' calculations, so I have based my Judgment on them.

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- 26 This was a relatively short period of employment, but the Respondent clearly should have provided the Claimants with a statement of particulars of employment. In the circumstances of this case I consider a lower award of two weeks pay to be appropriate.

Employment Judge Kurrein

8 March 2020

Sent to the parties and entered in
the Register on 01.06.2020

For the Tribunal J Moossavi

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