



EMPLOYMENT TRIBUNALS

Claimant: Mrs Araletta Hurlow

Respondent: Stardust Entertainment (UK) Limited

REMEDY JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The respondent has made unauthorised deductions from the claimant's wages in respect of pay for time on suspension. The respondent is ordered to pay the claimant the gross sum of £900.
2. The claimant was dismissed in breach of contract in respect of notice. The respondent is ordered to pay damages to the claimant in the gross sum of £300.
3. The respondent has failed to pay the claimant's holiday entitlement. The respondent is ordered to pay the claimant the gross sum of £915.
4. The sums in paragraphs 1, 2 and 3 are the gross sums. If the respondent pays the tax and national insurance due to HMRC on these payments, payment of the net amount will meet the judgment debt.
5. The respondent has made an unauthorised deduction from the claimant's wages in respect of a deduction for smart pension. The respondent is ordered to pay the claimant the sum of £52.50.
6. The claimant sustained financial losses attributable to the unauthorised deductions from her wages. The respondent is ordered to pay the claimant the sum of £379.16 to compensate her for these financial losses.
7. The claimant was not provided with an employment contract and did not have a statement of written particulars as required by section 1 of the Employment Rights Act 1996. The claimant is entitled to an award of £600 (two weeks' pay) under section 38 of the Employment Act 2002.
8. The total sums to be paid by the respondent to the claimant are:
 - 8.1 £2,115 (a gross sum from which tax and national insurance may be deducted if paid to HMRC); and
 - 8.2 £1,031.66 (a net sum which must be paid to the claimant in full).

REASONS

The claim and the parties

1. The claimant Mrs Hurlow made a claim on 26 May 2019 after early conciliation with Acas from 24 April 2019 to 24 May 2019. Mrs Hurlow complained of unauthorised deduction from wages, breach of contract (notice pay) and unpaid holiday. The respondent failed to present a response to the claim, and a rule 21 judgment was issued on 1 December 2019.
2. A remedy hearing was arranged for 30 March 2020. That hearing was converted to a telephone case management hearing because of the Covid-19 measures. The hearing was attended by the claimant and Mr Morley who is representing her. The respondent did not attend and was not represented. At the hearing, the claimant said that she would like to provide some written information and documents to see if a written decision on remedy could be made without the need for a further hearing.
3. I decided, after reviewing the further information provided by the claimant, that a determination of the remedy could properly be made without a hearing. This decision has been made under rule 21 of the Employment Tribunal Rules of Procedure, as the respondent did not present a response to the claim.
4. The first judgment was issued against Stardust Entertainment (UK) Limited, Black Diamond Gentlemen's Club and Lauren Lines. Mrs Hurlow clarified that her employer was Stardust Entertainment (UK) Limited; this remedy judgment has been issued against the employer only.

Points for me to decide

5. I have to decide how much Stardust Entertainment (UK) Limited ('Stardust') owes Mrs Hurlow in:
 - 5.1. pay (deduction from wages);
 - 5.2. notice pay; and
 - 5.3. holiday pay.
6. Mrs Hurlow said in her witness statement that she was not given any contract of employment; I also have to decide whether this entitles her to an increase in any award she receives.

Facts

7. I have to decide what happened (the facts). I reach my decision about what happened by considering the evidence, and deciding what I think is most likely to have happened.
8. Mrs Hurlow worked for the respondent from 12 November 2018 to 10 April 2019 as a club manager.

9. Mrs Hurlow was not given a written contract of employment or written statement of particulars of employment at any point in her employment by Stardust. Mrs Hurlow did not give any authority or consent for deductions from her pay.
10. Mrs Hurlow worked three nights a week for the first three months of her employment and two nights a week for the last two months. She was paid £150 per night before tax. Her gross weekly pay for 12 November 2018 to 11 February 2019 was £450. Her gross weekly pay for 12 February 2019 to 10 April 2019 was £300.
11. Mrs Hurlow was suspended from 15 March 2019 to 5 April 2019. She was told not to come into work and was not paid during this period.
12. In April 2019 Mrs Hurlow's payslip recorded a deduction of £52.50 for 'smart pension'. This was an error as Mrs Hurlow was not a member of the pension scheme.
13. While employed by Stardust Mrs Hurlow did not take any paid annual leave.
14. Mrs Hurlow was dismissed on 10 April 2019 without notice.
15. As a result of the deductions from her wages, Mrs Hurlow incurred overdraft charges of £379.16 in total.

The law

Pay (deductions from wages)

16. Section 13 of the Employment Rights Act 1996 says that an employer must not make a deduction from the wages of a worker. There are some circumstances in which a deduction can be made, this includes where deductions are required by law, authorised in the worker's written contract, or made with the written consent of the worker.

Notice

17. Section 86 of the Employment Rights Act 1996 says that employees have a right to a minimum of one week's notice after they have worked for an employer for one month. This increases after they have worked for an employer for two years. A failure to give notice is a breach of contract.
18. The Employment Tribunals Extension of Jurisdiction Order 1994 allows employees to bring some claims for breach of contract in the employment tribunal. This includes claims for notice pay.

Holiday pay

19. The Working Time Regulations 1998 give workers a minimum entitlement to paid holiday. The minimum entitlement is to 20 days (4 weeks) paid holiday each year, plus an additional 8 days per year which can include bank holidays (regulations 13 and 13A).
20. A worker who leaves employment part way through a leave year is entitled to be paid for untaken holiday (regulation 14). The start date of a leave year and the way in which part payment is calculated can be set out in a specific agreement which the employer has

made with its workers. If there is no specific agreement, the fall-back position is for the start date of the leave year to be the employment start date, and for the worker to be entitled to the proportion of their full leave entitlement equivalent to the proportion of the leave year they have worked.

Written statement of particulars of employment

21. Section 1 of the Employment Rights Act 1996 imposes a duty on employers to provide a written statement of particulars of employment. Section 38 of the Employment Act 2002 provides for awards to be made in some cases where employers breach that duty, including cases of unauthorised deduction from wages, breach of contract, and unpaid holiday pay.

22. Where section 38 applies and:

- 22.1. a tribunal makes an award to an employee and,
- 22.2. when proceedings were started the employer was in breach of the duty to provide a written statement of particulars of employment,

then the tribunal must make an award equal to two weeks' pay and may make an award equal to four week's pay.

Conclusions

23. Having decided what happened and considered the law as summarised above, I have reached the following conclusions about what Mrs Hurlow is owed by Stardust.

Pay

24. Stardust did not have any legal power to suspend Mrs Hurlow without pay. Mrs Hurlow was entitled to be paid for the three week period from 15 March 2019 to 5 April 2019. Mrs Hurlow would have worked 6 nights during this period, and earned $6 \times £150 = £900$. Non-payment of this sum was an unauthorised deduction from Mrs Hurlow's pay. This is the gross sum.

25. Mrs Hurlow was not a member of the pension scheme. The deduction from her pay in April 2019 for 'Smart Pension' was an unauthorised deduction. Mrs Hurlow is entitled to be paid £52.50. This was not a taxable figure. It is the net sum which should be paid to Mrs Hurlow in full.

26. As a result of the deductions from her pay, Mrs Hurlow incurred overdraft charges. These were £379.16 in total. The overdraft charges were attributable to the unauthorised deductions and Stardust should pay Mrs Hurlow £379.16 to compensate her for this financial loss. This is the net sum which should be paid in full.

Notice pay

27. Mrs Hurlow was not given any notice. As she had worked for Stardust for more than one month but less than two years, she was entitled to one week's notice. Pay for a week's notice is £300. This is the gross sum.

Holiday pay

28. Mrs Hurlow did not take any paid holiday while working for Stardust. As there was no specific agreement about the dates of the leave year, her leave year started on her employment start date.
29. From 12 November 2018 to 11 February 2019 (when she worked three days a week) Mrs Hurlow's entitlement to paid holiday was 4.2 days. This is calculated as 3/12 months x 28 days x 3/5 days per week.
30. From 12 February 2019 to 10 April 2019 (when she worked two days a week) Mrs Hurlow's entitlement to paid holiday was 1.9 days. This is calculated as 2/12 months x 28 days x 2/5 days per week.
31. In total Mrs Hurlow built up 6.1 days holiday which was untaken when her employment ended. She is entitled to pay for untaken holiday in the sum of 6.1 x £150 = £915. This is the gross sum.

Written statement of particulars

32. Stardust did not provide Mrs Hurlow with a contract of employment or written statement of employment particulars. This was in breach of the duty under section 1 of the Employment Rights Act 1996. Stardust was in breach of this duty when Mrs Hurlow was employed and when these proceedings were started.
33. Section 38 of the Employment Act 2002 says that a tribunal must increase certain awards where an employer is in breach of the duty to provide written particulars of employment. I have made awards Mrs Hurlow in relation to unauthorised deduction from wages, breach of contract and holiday pay. These are awards to which section 38 applies.
34. An increase of the award under section 38(3) must therefore be made. The increase is an additional award of two weeks' pay (£600). It is not just and equitable to make an award of four weeks' pay.

Summary of award

35. Stardust must pay Mrs Hurlow:

1. Pay for 15 March 2019 to 5 April 2019	£900
2. Notice pay	£300
3. Pay for 6.3 days untaken holiday	£915
Total	£2,115

36. These sums are the gross sums. If the respondent pays the tax and national insurance due to HMRC on these payments, payment of the net amount will meet the judgment debt.

37. Stardust must also pay Mrs Hurlow:

1. Smart pension deduction	£52.50
2. Compensation for financial losses	£379.16
3. Increase in award for failure to provide written statement of employment particulars	£600
Total	£1,031.66

38. These sums are net sums and they must be paid to Mrs Hurlow in full.

Employment Judge **Hawksworth**

Date: 24 June 2020

JUDGMENT SENT TO THE PARTIES ON

.....16/07/2020

AND ENTERED IN THE REGISTER

.....S.Kent

FOR THE TRIBUNAL OFFICE