EMPLOYMENT TRIBUNALS

Claimant: **Miss R. Grant**

Respondent: **Jack Bell (trading as "The Cock Pub and Kitchen")**

Heard at: **East London Hearing Centre (in private by telephone)**

On: **Monday 13 July 2020**

Before: **Employment Judge A. Ross (sitting alone)**

Appearances
For the Claimant: In person
For the Respondent: No appearance

JUDGMENT

1. **The Respondent made unlawful deductions from the Claimant's wages and breached her contract of employment by not paying her notice pay.**

2. **When the proceedings were begun, the Respondent was in breach of his duty to the Claimant under section 1(1) Employment Rights Act 1996. It is just and equitable to increase the award by the higher amount within section 38(4)(b) Employment Act 2002.**

3. **The Respondent shall pay the Claimant £4,563.37 assessed as follows:**

    3.1. Unlawful deduction from wages: £1486.30 (gross);
    3.2. Breach of contract: £977.07;
    3.3. Higher award under section 38 Employment Act 2002: £2,100.

REASONS

1. The claim was listed for a 1 hour final hearing to start today. On 2 July 2020 the parties were notified that in accordance with the guidance on the conduct of

proceedings during the Covid-19 pandemic this hearing was converted to a final hearing by telephone.

2. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was Audio. A face to face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are the Claim form and additional sent by email by the Claimant, specifically a whats App message and a payslip dated 5.12.19.

3. By a claim form presented on 21 February 2020, following a period of early conciliation from 23 January to 7 February 2020, the Claimant brought complaints of unlawful deduction from wages and breach of contract (for notice pay).

4. The Respondent failed to file an ET3 Response. By letter 27 June 2020, he was informed that he may only participate in any hearing to the extent permitted by the Employment Judge. In the event, he did not attend and he sent no documents or correspondence to the Tribunal.

Amendment application

5. For reasons given during the hearing, I allowed the application to amend the name of the Respondent to that set out above. The amendment was minor and this name was that set out in the Early Conciliation Certificate.

The issues

6. The issues which fall to be determined by the Tribunal are as follows:

Unauthorised deductions

6.1. Did the Respondent make unauthorised deductions from the Claimant's wages in accordance with ERA section 13? Was the Claimant, on or about 5 December 2019 and 5 January 2020, paid less in wages than she was entitled to be paid and if so, how much less?

Breach of contract

6.2. To how much notice was the Claimant entitled?

6.3. Did the Respondent fundamentally breach the contract of employment whether by failing to pay the Claimant for work done or by breaching the implied term of trust and confidence such as to entitle her to resign?

In addition, having heard the evidence of the Claimant, the following further issue arose for determination:

Did the Respondent breach section 1 or 4 Employment Rights Act 1996? If so, under section 38 Employment Act 2002, should the Claimant be awarded the

lower amount (2 weeks pay) or was it just and equitable to enhance the compensation by the higher amount (4 weeks pay)?

Findings of fact

7. The Claimant gave oral evidence under affirmation. I accepted her evidence as honest and reliable. She verified the contents of her ET1 as true then expanded on the contents. It was clear that she made no attempt to exaggerate her claim.

8. The Claimant had sent documents to the Tribunal, which at the start of the hearing had not been located and printed by administrative officers. I adjourned the hearing so that these could be located and the Claimant re-sent them in two emails, the attachments to which were printed over lunch. I read them and the hearing continued at 2pm.

9. The Claimant was employed as manager of The Cock Pub and Kitchen from 4 November 2019 until her resignation with notice on 17 December 2019. It was agreed with the Respondent that her starting salary would be £30,000 per year, rising after 3 months.

10. The Claimant did not receive a written contract of employment. She asked for one; and was then sent a set of terms via a photo on WhatsApp. I have seen that WhatsApp message; it does not state who her employer was. The Claimant asked for a copy so she could sign it; but no copy was given to her.

11. I concluded that the Claimant was employed by the Respondent, Mr. Bell. He is the owner of The Cock Pub and Kitchen business. The Claimant was never told that she was being employed by any other person or company. She explained that her only payslip is in the name of “Bloomin Jack’s Kitchen Ltd”, but that she had not agreed to be employed by them. I accepted that evidence.

12. After the first month when employed as manager, the Claimant was entitled to be paid £2,500 gross salary. In fact, as shown on the payslip, on 5 December 2019 she was only paid £2,000 gross (with only NI deducted).

13. During her second month of employment, the Claimant decided that she could not trust the Respondent, because he had not paid her what she was owed after the first month, and he had not paid another former staff member, and he had not provided the statement of terms that she requiested. In addition, She was working far in excess of 5 days and 40 hours per week. The Respondent changed shifts and working days at short notice. He acted as if he had no respect for her or other staff.

14. I found that there was a breach of an express term as to payment of her salary, which was a fundamental breach of contract. Further, or in the alternative, I found that there was a breach of the implied term of mutual trust and confidence. The Respondent acted in a way that indicated that he would not be bound by the contract made with the Claimant.

15. On 17 December 2019, the Claimant resigned.

16. The parties had agreed that the notice period should be 2 weeks, during the probation period, evidenced by the notice term in the WhatsApp photo sent by the Respondent, that the Claimant sought to have agreed in writing.

17. Having resigned, the Claimant did not work her notice period because of her health.

18. After her resignation, the Respondent had failed to pay the Claimant for the 12 days worked between 5 and 17 December 2019. He would not respond to her requests for payment.

19. The Respondent failed to pay the Claimant her notice pay.

Conclusions

20. Applying the relevant law and the issues to the facts set out above, I reached the following conclusions.

21. The Respondent had made unlawful deductions from the Claimant's wages as follows:

    21.1. On or about 5 Dec 2019, a deduction of £500 gross;

    21.2. On or about 5 January 2020; a deduction of £986.30 gross, calculated by working out the daily gross pay on a salary of £30,000 and multiplying by 12 days.

22. The Respondent had fundamentally breached the Claimant's contract of employment entitling her to resign. Because she was constructively dismissed, the Claimant was entitled to her notice pay.

23. This equates to 2 x net weekly pay. The Claimant accepted the net pay was £488.53 per week after Tax and National Insurance.

24. I considered the terms of section 38 Employment Act 2002, which I incorporate in this set of Reasons. I applied this section as I was required to do. I concluded as follows:

    24.1. The Respondent breached the duty under s.1(1) ERA by not giving the Claimant a copy of the statement of terms; the Whats App photo does not satisfy the duty to "give" to the Claimant a written statement of terms.

    24.2. The Whats App photo does not satisfy the statutory requirements in any event. In particular, it does not state the name of the employer nor the date when the employment began, nor the place of work. These are all serious breaches; it is fundamental that an employee knows who employs them and their start date.

24.3. In all the circumstances, it would be just and equitable to award the higher amount (four weeks pay) under section 38(4)(b) EA 2002 because:

24.3.1. The Respondent is an experienced employer with at least 2 businesses (including a florist with two or more branches) and the Claimant estimated that he employs in the region of 40-50 members of staff (some salaried and some on zero hour contracts).

24.3.2. The Claimant specifically asked for a written statement of her terms, which was never provided. The Respondent should not have ignored what was in effect a warning to comply with his duty under s.1 ERA.

24.3.3. The Respondent has not engaged at all in these proceedings nor with the Claimant ahead of these proceedings, despite having no possible defence to the claim for unpaid wages. It would be just for the compensation for the Claimant to be enhanced in those circumstances.

24.4. The higher amount is equivalent to 4 weeks gross pay. Although the Claimant's gross pay was £576 per week, in the course of writing up this judgment, I noted that there was a maximum weekly pay permitted under this section: see section 38(6) Employment Act 2002. The maximum pay at the relevant time was £525. Therefore, I reconsidered my decision on this point in the interests of justice, I assessed the award as £525 x 4 = £2,100.

Employment Judge A. Ross
Date: 14 July 2020