



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Dunn

Respondent: Aloto Logistics Ltd

Heard via: CVP **On:** 9/7/2020

Before: Employment Judge Wright

Representation:

Claimant: Ms J Carpenter - representative

Respondent: Ms Y Montaz - representative

LIABILITY JUDGMENT

It is the Judgment of the Tribunal that the claimant's claim of two weeks' statutory notice pay fails and is dismissed. The claim for unauthorised deductions from salary succeeds and the claimant is awarded the gross sum of £333.32.

REASONS

1. This case was listed for a one-hour hearing and was converted to a hearing via CVP on ?? due to the current pandemic.
2. After some initial technical problems, the hearing commenced. It was confirmed the claimant was claiming five-days' pay as a result of a change

in the cut-off date for the calculation of a month's pay. She was also claiming two weeks' notice pay.

3. The Tribunal had before it a bundle of approximately 70-pages. It heard evidence from the claimant on her own behalf and from Mr A Bunn, a director of the respondent. The witnesses were questioned and then the representatives provided closing submissions. The Tribunal makes the following findings of fact and reaches the following conclusions.
4. The claimant's employment commenced on the 29/7/2017 and she was employed as a Customer Services Supervisor until she resigned on 17/10/2019. The background is not relevant to the issues which the Tribunal has to determine, however, while the claimant had been on annual leave, an audit had been carried out, which identified issues which the respondent considered warranted further investigation. Upon her returned to work, the claimant was informed of the position and was suspended on full pay on 3/10/2019. On 11/10/2019 and 14/10/2019 the claimant attended two investigation meetings. On 15/10/2019 the claimant was invited to attend a disciplinary meeting on 18/10/2019.
5. As a result of this and the way the process was conducted, the claimant resigned on 17/10/2019. Mr Bunn gave the claimant until 22/10/2019 to reconsider her position as he was 'surprised' at her decision. He did however point out that the disciplinary process would continue. On 21/10/2019 the claimant confirm she had resigned on 17/10/2019 and Mr Bunn said he accepted her decision on 22/10/2019.
6. The issue in respect of notice pay turns upon whether or not the claimant resigned giving two weeks' contractual notice (her case). Or, whether she resigned with immediate effect (the respondent's case).
7. The claimant's letter of resignation states {pages 51-52):

'I have regrettably made the decision to tender my resignation in lieu of notice... Please confirm the date of termination taking into account any holiday days owed.'
8. After being asked to reconsider, the claimant said (page 54):

'... I am confirming my resignation in lieu of notice effective from 17/10/2019 as I consider my position to be untenable.'
9. On 18/11/2019 the claimant said she had resigned on 17/10/2019 in lieu of notice and claimed she was owed a payment in lieu of notice under her contract of two weeks' pay from the 17/10/2019. Mr Bunn replied that he

- has understood the resignation letter of 17/10/2019 to be resigning with immediate effect and that she was not being held to her notice period.
10. At the hearing, the claimant referred to being placed on garden leave for the notice period. There had been no previous mention of garden leave by the claimant in any of the correspondence or in the ET1 claim form.
 11. The claimant also referred to have taken some advice before writing her letter of 18/11/2019.
 12. The issue to determine therefore is what is meant by the phrase 'resignation in lieu of notice'? *In lieu*, means 'instead'; therefore to pay in lieu of notice, means to pay someone instead of them working their notice. The Tribunal finds that the claimant intended the phrase resignation in lieu of notice, to resign instead of working her notice; not the meaning she now contends, which is to resign giving two weeks' notice.
 13. The reasons for that conclusion is that Mr Bunn made it quite clear that if the claimant withdrew her resignation, he would continue with the disciplinary process. The claimant resigned in order to avoid the disciplinary process; and to do so, she resigned with immediate effect on 17/11/2019 in order that she did not have to attend the disciplinary meeting on the following day.
 14. The claimant asked Mr Bunn to confirm the date of termination. If she had resigned giving two weeks' notice, she would know when this was and would not need to ask Mr Bunn. She would have asserted that her last day was 30/10/2019.
 15. The claimant made no attempt to 'work' her notice. She now says this was due to her being suspended from work; yet she did not say to Mr Bunn, I have resigned [on her interpretation] giving you two weeks' notice, but I am suspended – what do you wish me to do for those two weeks if I cannot attend work? Particularly, if as she was claiming, she had given two weeks' notice.
 16. The claimant had also attended a training day with a view to securing a job with one of the respondent's rivals and this was in breach of the instruction regarding the suspension. When on 3/10/2019 she was told to remain available for work during her normal working hours and she was unavailable when contacted about a meeting due to this.
 17. The Tribunal finds that the claimant sought advice regarding the outstanding pay she was claiming and as a result of that, then made a claim in respect of the notice period, relying upon the ambiguity of the phrase she had used in the resignation letter. The finding is therefore that

- the claimant did not resign and give two weeks' notice; she resigned with immediate effect. The claimant's claim for notice pay therefore fails.
18. The claimant also claims an unauthorised deduction from her wages. On 3/12/2018, Mr Bunn wrote to staff to inform them the cut off date for calculating pay was changing to the 25th of the month, with staff being paid on the last day of the month. He went on to say this will mean that there will be an initial shortage in pay as a result and therefore the proposal was to roll it out over the next two months. For December, the cut off date would be the 28th, with staff being paid on the 31st and for January the cut off date would be the 25th, with staff being paid on the 31st.
 19. The claimant said that she had been underpaid for five days during this period. Mr Bunn maintained that there was no underpayment as the claimant had been paid from 26/9/2019 (the 25/9/2019 being the cut off day) to her last day the 17/10/2019.
 20. Mr Bunn's position was not disputed and it is clear from the claimant's pay slip, she was paid for 16 days on 31/10/2019 and there were 16 working days between 26/9/2019 and 17/10/2019.
 21. That does not however account for the underpayment in December and January, once the cut off date was moved. It is agreed the claimant was underpaid at that time and she was not (as she says she was told), paid in her final salary payment.
 22. Furthermore, the claimant's pay slips show that in November 2018 her gross pay was £2,166.66. She was then paid £2,000 in December and January. From February 2019 to September 2019 she was paid £2166.66 per month. There is therefore a shortfall of $£166.66 \times 2 = £333.32$ from the December and January pay, this has not been accounted for during the year and was not accounted for in the final month's pay and it remained outstanding upon termination of employment.
 23. The respondent is therefore ordered to pay the gross sum of £333.32 to the claimant. The claimant is to account to HMRC.

Employment Judge Wright
13 July 2020