EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs Georgia Dervisi	**v**	**Foster & Co Developments Limited (In creditors voluntary liquidation)**

Heard at: Remotely (by CVP) **On**: 22 July 2020

Before: Regional Employment Judge Foxwell

Appearances

For the Claimant: In person
For the Respondent: Did not appear
Tribunal Interpreter: Mr Pavlos Konstantineas

Observing: Employment Judge Loy

JUDGMENT

1. The respondent has made an unauthorised deduction form the claimant's wages and is ordered to pay the claimant the gross sum of £1,342.18.

2. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to her in the sum of £671.09.

REASONS

1. The claimant, Mrs Georgia Dervisi, is Greek. She has had the assistance of an interpreter appointed by the tribunal, Mr Pavlos Konstantineas, during this hearing. In fact, Mrs Dervisi's English is very good and she was able to conduct most of the hearing in English, I understand nevertheless why she felt reassured that an interpreter was present throughout. I am grateful to Mr Konstantineas for his assistance.

2. On 6 November 2019, having gone through early conciliation between 9 September and 9 October 2019, Mrs Dervisi presented to the tribunal claims of unauthorised deduction from wages and seeking an itemised payslip. Subsequently, she filed a schedule of loss seeking in addition damages for breach of contract as to notice and consequential losses flowing from her

dismissal. She also requested a remedy in respect of the respondent's failure to provide written reasons for her dismissal. Finally, she asked for an additional award under s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 because of an alleged unreasonable failure by the respondent to follow a relevant Code of Practice.

3. These claims have come before me today for determination in a hearing conducted remotely using the Cloud Video Platform.

4. The respondent has not appeared and is not represented. A search at Companies House reveals that it went into Creditors Voluntary Liquidation on 15 June 2020. I am satisfied that it is appropriate to proceed in those circumstances. Voluntary liquidation does not give rise to an automatic stay of proceedings.

5. I heard evidence from Mrs Dervisi which I accept. The respondent entered a response and I considered that also in reaching the findings set out below.

6. The parties agree that the claimant was employed between 2 and 15 July 2019. The claimant asserts that her agreed salary was £2,916 per calendar months gross. This is equivalent to an annual salary of £34,992, slightly less than the £35,000 per annum that she refers to elsewhere in her claim. She claimed £1,364.15 as unpaid wages.

7. In its response, the respondent said that the claimant's rate of pay was £1,211.53 for a 42½ hour week. It was unclear whether this was a weekly or monthly figure. If weekly, that would point to a much higher rate of pay than that claimed by the claimant; if monthly, it would have resulted in the claimant receiving significantly less than the National Minimum Wage for each hour worked (by my calculation, it equates to an hourly rate of £6.58, when the National Minimum Wage stood at £8.21 at that time).

8. I prefer the claimant's evidence and find that she was entitled to pay at the rate of £2,916 per calendar month gross.

9. Following the decision of the Supreme Court in *Hartley v King Edwards VI College [2017] UKSC39*, the daily rate of pay for salaried employees must be calculated on a calendar day basis. In other words, one divides the annualised rate by 365 and multiplies it by the number of days between the beginning and the end of the employment.

10. Adopting this approach, I calculate the claimant's daily rate at £95.87. It is an agreed fact that her employment lasted for 14 days. Accordingly, I find that she was entitled to receive pay of £1,342.18 gross for the period of her employment. Mrs Dervisi told me, and I accept, that she received to pay at all. Accordingly, I award that sum to her. I award it gross as I have no confidence that the respondent will pay the necessary tax and National Insurance on any net award. It will be for the claimant to account to the tax authorities for any tax or National Insurance due on the sums she recovers.

11. I make no order in respect of the claimant's application for an itemised payslip. I explained to her that under Part I of the Employment Rights Act 1996 I could not award compensation for this omission and it served little purpose to set out particulars at this stage.

12. I also explained to the claimant that the right to receive written reasons for dismissal contained in s.92 of the Employment Rights Act 1996 applies only where an employee has been employed for at least two years. That is not the case here.

13. Similarly, I explained that I did not have power to award compensation for losses flowing from her dismissal save in respect of her notice period. This power arises only where an employee claims unfair dismissal and in most circumstances employees require two years' service to do so.

14. I treated the claimant's schedule of loss as an application to amend to include a complaint of failure to pay notice pay. Applying the factors set out in *Selkent Bus Company v Moore*, I decided that it was just to permit the claimant to amend to include this complaint. The claim arises from the facts set out in the claim form, which allege dismissal without explanation or notice, even though the cause of action was not spelled out expressly. The respondent has not participated in these proceedings and it is difficult therefore to assess any prejudice that it may suffer particularly as it is now in Creditors Voluntary Liquidation.

15. I find that the claimant is entitled to a minimum of one week's notice, pursuant to s.86 of the Employment Rights Act 1996. Applying the same daily rate of £95.87, I award £671.09 under this head. I have made no deduction for the incidence of tax or National Insurance as this sum may also prove to be taxable if, and when, the claimant receives it.

16. I declined to award any uplift under s.207A of the 1992 Act as it did not appear to me that a relevant Code of Practice was engaged at the time of the claimant's dismissal. This was not a disciplinary dismissal, rather my impression is that it arose because of financial difficulties the respondent was experiencing. In any event, given that dismissal was early in the employment and during a probationary period, upsetting though its peremptory nature was, it was not objectively unreasonable to dismiss in short order if the employer considered that the relationship was not working out. There was no suggestion in the claim form that the decision to dismiss was on any of the proscribed grounds in the Equality Act 2010 or under Part IVA or s.103A of the Employment Rights Act 1996.

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Regional Employment Judge Foxwell

Date: 24 July 2020

Sent to the parties on:7 September 2020

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For the Tribunal Office