



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms Daniela de Oliveira Nascimento v**

**Beauty Revolution Limited**

**Heard at:** Watford

**On:** 13 August 2020

**Before:** Employment Judge Allott

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** Did not attend

## **JUDGMENT**

The judgment of the tribunal is that:

1. The claimant was unfairly dismissed and the respondent is ordered to pay her:
  - 1.1. A basic award of £1,350.
  - 1.2. A compensatory award of £11,140.
    - (i) Loss of statutory rights: £500.
    - (ii) Loss of earnings £10,400.
    - (iii) Job seeking expenses: £240.
2. The respondent has made unauthorised deductions from the claimant's wages and is ordered to pay the claimant the gross sum of £6,300.
3. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay to the claimant damages in the sum of £1,200.

## **REASONS**

### **The respondent's absence.**

1. On 20 April 2020 the respondent went in to Creditors Voluntary Liquidation. As such, its attendance was not expected today. The start was delayed

until 10.25 in case the respondent appeared. In the circumstances, I decided to proceed in the respondent's absence.

### The facts

2. The claimant was employed by Brazilian Beauty Academy Limited on 9 June 2014. That company went into liquidation and on 11 May 2015, the claimant was employed by Hathaway Solutions Limited. The claimant has shown me her contract of employment with Hathaway Solutions Limited. Hathaway Solutions Limited went into liquidation on 1 July 2016 and thereafter the claimant was employed by the respondent.
3. The claimant told me and I accept, that her job remained the same at each company, albeit that she worked from home after May 2015.
4. All three companies were controlled by Mr Dale Hathaway. From all that I have seen it is clear to me that Mr Hathaway trades through limited companies that periodically go into liquidation whilst the essential basics of his beauty business carry on in a new limited company.
5. I find that the claimant "TUPE" transferred from Brazilian Beauty Academy Limited to Hathaway Solutions Limited on or about 11 May 2015 and from Hathaway Solutions Limited to the respondent on or about 1 July 2016 and that, accordingly, the claimant as at least two years continuous service to present a claim for unfair dismissal.
6. The claimant worked 40 hours each week and was paid "£450 gross weekly". Those figures are agreed by the respondent in its response form.
7. In February 2018 the claimant was asked to take on the role of a departing Salon Manager, "Leo", in addition to her existing roles. The respondent has previously submitted to the tribunal a witness statement of Mr Dale Hathaway along with a bundle of text messages. The respondent's position is that the claimant resigned her employment on or around 9 February 2018.
8. I have looked at the text messages from 9 February 2018. It is clear that the claimant was complaining about the extra work involved in covering Leo's responsibilities.
9. There is the following exchange within the text messages on 9 February 2018:

“Mr Hathaway: ...if you feel so strongly and wish to leave the business then please make arrangements to bring the computer and all company paperwork, access codes, passwords etc to the salon if that is the way you feel.

The claimant: Not my wish but also not my wish cover Leo responsibility of open and close the salon plus mine.”

10. The claimant told me that thereafter she did indeed return all the respondent's company property consisting of a computer and paperwork to the salon. Thereafter the claimant did not go to the salon but told me she remained working from home for the respondent. The claimant denied that she resigned from her employment on or about 9 February 2018. The claimant told me that she did ask Mr Hathaway to remove her as a Director of the business and she told him she wanted to cease being a Personal Assistant. However, she was willing to take on Leo's role as a Manager in the salon and was, at all times, ready, willing and able to do so. She told me that Mr Hathaway told her that he would sort it out once the Director issue had been dealt with.
11. I find that the claimant did not resign on or around 9 February and only resigned when she sent her letter of resignation dated 29 May 2018.
12. The claimant told me that the last payment of wages she received was on or around 17 February 2018 when she was paid £400. Thereafter the claimant was not paid by the respondent. This is admitted by the respondent.
13. I find that the claimant resigned on 29 May 2018 as a result of the respondent not paying her wages. I find that that constitutes a fundamental breach of the contract of employment and that the claimant resigned as a result of it without having affirmed the contract. Accordingly, I find that the claimant was constructively dismissed. Further, I find that that dismissal was unfair in all the circumstances.
14. I find that the claimant was subjected to unauthorised deduction of wages between 19 February and 29 May 2018.
15. I find that the claimant's dismissal was in breach of contract and that she is entitled to three week's notice pay.
16. The claimant told me that between 4 June and 4 August 2018 she obtained temporary employment recruiting students for a university at a rate of £250 weekly. Thereafter she told me that she applied for jobs in shops and as an Administrator but a combination of her depression and a lack of references meant that she was not successful.
17. I have been shown a letter from the South London and Maudsley NHS Foundation Trust Psychological Wellbeing Practitioner, dated 30 January 2020, which states:

"I am writing to confirm that you were referred by your GP to our service on 25 June 2019. At assessment on 9 July 2019 you described difficulties with symptoms consistent with low mood and depression including feeling empty, hopeless and sad. You also reported experiencing physical symptoms such as tiredness, no energy, and body pain, as well as withdrawing from social activities and having difficulties meeting your personal care needs."
18. I have also been shown a "work well" letter dated 31 January 2020 which indicates that the claimant is being supported back into the employment

environment and has, since August 2019, progressed into three volunteering positions and two temporary paid roles.

19. The claimant has recovered three week's notice pay. That notice period would have expired on or about 16 June 2018. Prior to that date the claimant had obtained alternative employment at a rate of £250 per week. I find that at all times the claimant has had an earning capacity of £250.
20. I have taken into account the fact that the claimant has not been able to obtain alternative employment until about August 2019. Whilst some of her health issues may be related to her period of employment with the respondent and the loss of her employment, I do not consider that the unfair dismissal is wholly responsible for the claimant's inability to find alternative employment. Doing the best I can, in my judgment, a fair and reasonable amount to award her as compensation for loss of employment is to award her one year diminution in earning capacity of £200 per week. In addition, I will award her job seeking expenses of £240.

### **Awards calculations**

21. Basic award:

21.1 The claimant had three full years of service.  $3 \times £450 = £1,350$

22. Compensatory award:

22.1 I award loss of statutory rights in the sum of £500.

22.2 Loss of earnings:

$52 \times £200 = £10,400$

22.3 Job seeking expenses:

£240

23. Unauthorised deduction of wages:

23.1 14 weeks at £450 = £6,300.

24. Notice pay:

24.1 The claimant had three full years of employment.  $3 \times £400$  (net) = £1,200.

25. Recoupment:

25.1 The claimant told me that she was in the UK on an unmarried partner visa and was consequently not able to claim any state benefits.

25.2 No award is made for failing to provide a statement of terms and conditions of employment as, having been TUPE transferred from an employer who had provided a written contract of employment, so she had one.

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Employment Judge Alliot

Date: .....28 August 20.....

Sent to the parties on: 16 September 20

For the Tribunal Office