EMPLOYMENT TRIBUNALS

Claimant: **Miss L Wood**

Respondent: **A S Taverns Limited**

Heard at: **Birmingham (via CVP)**

On: **22 October 2020**

Before: **Employment Judge Flood (sitting alone)**

Representation:

Claimant: In person
Respondent: Mr A Cadman (respondent representative)

UPON APPLICATION made by the respondent on 7 August 2020 to reconsider the judgment dated 19 March 2020 under rule 71 of the Employment Tribunals Rules of Procedure 2013 (ET Rules)

JUDGMENT ON RECONSIDERATION

The judgment made and sent to the parties on 19 March 2020 is amended to now read as follows:

1. The respondent made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£464**.

2. The respondent has failed to pay the claimant's accrued but untaken holiday entitlement and is ordered to pay the claimant the gross sum of **£1260** in respect of 18 days (3.6 weeks) holiday.

3. The sums payable under paragraphs 1 & 2 above are the gross amount to be paid and the claimant is to be responsible for any income tax and National Insurance contributions thereon.

REASONS

Background

1. The claimant, Miss L Wood presented her claim to the Employment Tribunal against the respondent, AS Taverns on 8 December 2019, having gone through a period of ACAS early conciliation (as required) between 5 November and 3 December 2019.

2. The claim was issued and served on the respondent by a letter sent from the Tribunal dated 18 December 2019. This was sent to the respondent via the address "46 New Street, Worcester WR1 2DL". This notice of claim informed the respondent that if it wished to defend the proceedings, then it was required to enter a response by submitting the prescribed form by no later than 15 January 2020. Case management orders were also made at this time requiring the parties to produce written statements and attach any supporting documents by 12 February 2020. The claimant produced a statement on 6 January 2020.

3. An e mail was received by the Tribunal from the respondent on 6 January 2020. No response was presented at this time. This e mail indicated to the Tribunal that the respondent may not have received the claim or been notified of the hearing date. Following this e mail, Employment Judge Broughton ordered that the claim (and relevant documents) be resent to the respondent via e mail. An e mail was then sent to the respondent at the e mail address provided enclosing: the claim form, notice of claim and hearing, response form and case management order. The respondent was also granted an extension of time until 11 February 2020 to present a response.

4. The respondent did not present a response. An e mail was received on 6 January 2020 providing some general information about what the respondent said about the claim. However this was not a valid response to the claim in the prescribed form.

5. As no response was presented, the Tribunal then went on to inform the parties that a default judgment may be entered under rule 21 of the Employment Tribunal Rules of Procedure, and the hearing set for 31 March 2020 would be vacated. The claimant was asked for details of the sums claimed which she provided on 17 March. In accordance with that information provided default judgment was entered and sent to the parties on 19 March 2020.

6. Subsequent to that judgment being issued, the respondent has sent additional information challenging the amounts awarded in particular in respect of holiday pay on the basis that the claimant was employed by then from July to October only.

7. The respondent was asked on 31 July 2020 by the Tribunal whether it was applying for a reconsideration of the judgment sent to the parties on 19 March 2020 and if so on what grounds any application is made. The respondent made an application for reconsideration on 7 August 2020 (which the claimant resisted). I decided that the judgment **in so far as it relates to the claim for accrued but untaken holiday pay**

only would be reconsidered and a hearing was scheduled to take place before me via CVP today.

8. I had before me in addition to the documents and correspondence submitted before the judgment of 29 March 2020 and referred to above:

    a. A statement made by the claimant with supporting documents submitted on 6 October 2020; and
    b. A statement made by Mr A Cadman and Mrs S Cadman with supporting documents submitted on 8 October 2020.

9. The claimant and Mr A Cadman gave evidence at the hearing by CVP and answered questions posed by the Tribunal.

The Issues

10. I explained to the parties that the issues to be determined today was whether the judgment made on 19 March 2020 should be confirmed, varied or revoked. In order to determine this, the relevant issues were:
    a. When did the claimant start employment with the respondent?
    b. Did the claimant cease employment with the respondent on 23 March 2019 to be then re- employed again by the respondent in late June 2019 or did she remain employed during that period?
    c. Between either the original start date of the claimant's employment or (if the respondent is correct late June 2019) and 9 October 2019 how many day's holiday were accrued by the claimant?
    d. Between the relevant dates, how many days holiday were taken by the claimant?
    e. Accordingly how many day holiday remain accrued but untaken and if so how much is the claimant owed in unpaid holiday pay?

The Facts

11. On considering the evidence submitted, I made the following relevant findings of fact:
    a. The claimant started employment with the respondent on 15 February 2019. She worked a week in hand and was paid at the end of that week on 22 February 2019. She had previously been working in the pub that was now being operated by the respondent (The Old Greyhound in Worcester) and was taken on as an employee by the respondent when it took over responsibility for operating the pub around that time. Both parties agree that a contract of employment was issued to the claimant although neither had a copy of this contract available.
    b. The claimant worked shifts and was paid the fixed sum of £350 per week. She was paid in cash, but tax and National Insurance was deducted from her wages before it was paid to her.
    c. On 23 March 2019 the respondent appointed a new manager for The Old Greyhound pub, Mr P Tappenden. He moved into the premises above The Old Greyhound pub and Mr and Mrs Cadman (who also ran another pub) lived at their second pub. Mr Cadman says at this point the respondent issued a P45 to

the claimant and terminated her employment. He says she then "transferred" to the employment of Mr Tappenden. He says Mr Tappenden (or the company set up by him) was then responsible for paying the claimant (and other staff at The Old Greyhound pub). The claimant denies ever being issued a P45 or being informed her employment was being terminated. She accepts Mr Tappenden became her manager and ran the Old Greyhound pub, but she does not accept she was ever employed by him. She continued to be paid in cash weekly as before and understood that her wages were being paid to her by the respondent. She points to correspondence from the brewery, Marstons, confirming that the respondent was responsible for running The Old Greyhound throughout that period. She never received any payslips during this period. I prefer the evidence of the claimant in this regard. I conclude that the claimant's employment was not terminated at this time. She remained employed by the respondent and working at The Old Greyhound pub throughout this time. I accept that the claimant did not receive a P45 at this time even though one appears to have been created.

d. Mr Tappenden's appointment as manager of The Old Greyhound pub ended in June 2019. The respondent says it then re-employed the claimant at the end of June 2019. Mr Cadman was not sure whether a new contract of employment was issued at this time. The claimant denies that there was any re-employment and says that throughout this period she remained working at the pub and understood that she was employed by the respondent. I prefer the claimant's evidence and there is no other written evidence which suggests that the claimant's employment was ever terminated by the respondent or that it was communicated to her that she was now employed by Mr Tappenden. There was no documentary evidence to support the fact that any re-employment by the respondent took place. There may well have been some commercial agreement between the respondent and Mr Tappenden as to who was responsible for the wages of staff in this period. However the claimant remained employed by the respondent during the time when Mr Tappenden managed the pub.
e. The claimant's employment terminated on 9 October 2019.
f. The respondent says that during the time it employed the claimant she took 2 or 3 days holiday but was unable to produce any records of days taken. The claimant says she did not take any holiday, but she did have one day off sick. I have accepted the claimant's evidence that no holiday was taken in the absence of any clear or documentary evidence to the contrary.

The relevant law

12. Regulation 13 (1) and 13A of the Working Time Regulations 1998 ("WTR") provide that:
'... a worker is entitled to [four weeks'] annual leave [and 1.6 weeks' additional annual leave] in each leave year.'

13. Regulation 13(9) of the WTR provides:

'Leave to which a worker is entitled under this regulation may be taken in instalments, but —

(a) it may only be taken in the leave year in respect of which it is due, and

(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.'

14. Regulation 16 of the WTR provides:

'A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 [and regulation 13A], at the rate of a week's pay in respect of each week of leave.'

Conclusion

15. Based on my findings of fact above, I conclude that that the claimant was employed by the respondent from 15 February to 9 October 2019. This amounts to 64% of her full holiday year (which I have concluded commenced on the date her employment started).
16. The claimant's full holiday entitlement for the year was 28 days (5.6 weeks) so she had accrued 18 days (3.6 weeks) holiday as at the date of termination of her employment.
17. The claimant did not take any holidays during the period of her employment. The 1 day taken as sick leave by the claimant is not holiday entitlement taken and is not relevant to these calculations.
18. The claimant is entitled to be paid in respect of 18 days (3.6 weeks) holiday accrued but untaken holiday.
19. The claimant was paid £350 per week gross (£70 per day). Accordingly the claimant is entitled to £1260 gross in respect of 18 days (3.6 weeks) holiday accrued but untaken.

Employment Judge **Flood**

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Date: 22 October 2020