



EMPLOYMENT TRIBUNALS

Claimant: Miss K Coletto

Respondent: Gemma Kane t/a Glitterati Parties

Heard at: Liverpool

On: 20 November 2020

Before: Employment Judge Grundy
(sitting alone)

REPRESENTATION:

Claimant: In person (supported by Ms C Humphries)

Respondent: In person (supported by Mr P Jamison, McKenzie Friend)

JUDGMENT

The judgment of the Tribunal is as follows:

1. The correct respondent is Gemma Kane t/a Glitterati Parties.
2. The claimant's application to strike out the defence/ ET3 is refused.
3. The claimant's claim in respect of holiday pay is withdrawn on payment of the sums due.
4. The claimant's claim in respect of notice pay succeeds and the respondent will pay £162 to the claimant.
5. The claimant's claim in respect of failure to provide the claimant with written terms and conditions in breach of section 38 of the Employment Act 2002 succeeds, and the Tribunal awards two weeks' pay in respect of that failure, that is £324.
6. The total award is therefore £486.

REASONS

Introduction

1. The claimant was employed on 29 June 2019 by the respondent who as an individual is Gemma Kane who operates the trading entity of Glitterati Parties, which is a business which hosts parties and other events in Liverpool. There is a plethora of reasons why this case has not been able to be dealt with until today, not least being affected by COVID-19 which has caused delays, but also there has been non compliance with orders on the respondent's side.
2. Notwithstanding that, today I have heard evidence from Katie Coletto and I have heard from Mr Jamieson who is the partner, both in business and in life, of Gemma Kane. Gemma Kane has been present throughout.
3. I have seen bundles of document from the claimant numbering 59 pages and from the respondent which was not numbered but which I have had before me.
4. The respondent wished to rely on a transcript of a meeting between Ms Jamieson and the claimant, which was 45 minutes long. This case has been listed today for two hours as a final hearing. It would be disproportionate for me to therefore adjourn to consider a 45 minute transcript indeed a written transcript was not available so that would mean listening to 45 minutes of evidence given the dispute relates to sums under £1000.
5. Both of the parties gave evidence on oath. I have considered their evidence in reaching my conclusions.
6. At the outset of the hearing, the claimant sought to strike out the respondent's defence for non compliance. I did not allow that because I felt it right to hear the respondent on all issues. The respondent has now paid the claimant's holiday pay in full so that issue was no longer before me. The respondent has also provided the vast bulk of the claimant's itemised payslips. The respondent agrees that there is a deficit on the payslips for 14 January 2019 and 4 February 2019, which the respondent will amend, and the respondent will also provide the payslips for 26 March 2019 and 30 April 2019.
7. The remaining issues which I have to determine relate to whether the claimant is entitled to notice pay, that would be for one week pursuant to section 86 of the Employment Rights Act 1996 given her employment was for less than two years; depending on the reason for dismissal and an issue on whether the claimant should be awarded a sum in respect of failure to provide written terms and conditions in breach of section 38 of the Employment Act 2002 for which I can choose to award two weeks' pay or four weeks' pay, and the issue of who should be the respondent in this case. That debate has been between Gemma Kane t/a Glitterati Parties and Glitterati Limited.

8. I have had cause to consider section 38 of the Employment Act 2002 and section 86 of the Employment Rights Act 1996.

Findings of Fact

9. It is clear that there is much bad feeling between the claimant and the respondent. It is also clear that Ms Kane had suffered some mental health difficulties during 2019 relating to her pregnancy, Mr Jamison being her partner. The claimant is very aggrieved that the respondent has not adhered to Tribunal orders, and it is clear from my reading of the extent of the directions and Case Management Orders that have been made in this case that that is right: they have not always been adhered to.

10. This matter did not settle through the conciliation process and therefore the Tribunal has had to reach its conclusions today.

11. The payslips now provided to the claimant show that the respondent was Glitterati Parties. There is no reference to a limited company. The claimant, was employed by Ms Kane, in my judgment. The company itself, Glitterati Limited, was not incorporated until 9 June, and I accept the evidence of Mr Jamieson that it did not trade until this year, hence I accept and find that the proper respondent is Gemma Kane t/a Glitterati Parties.

12. Perhaps the more difficult question, is the question of whether or not the claimant was dismissed for gross misconduct or for misconduct. Certainly the respondent did invite the claimant to a disciplinary hearing, and in the letter the disciplinary was mentioned as being for alleged gross misconduct, however the letter of dismissal did not mention gross misconduct, it mentioned conduct, and in my judgment the claimant was entitled to rely on that label to claim one week's notice.

13. I have considered generally the conduct that is alleged against the claimant in concluding that conduct is the right label. The claimant accepts that she did join a WhatsApp group. The WhatsApp group was derogatory about the respondent. However, there is no evidence that the WhatsApp group, and certainly the claimant's joining of it, caused and undermined the respondent's business. So I conclude that it is right to place the label of "misconduct" rather than "gross misconduct" on that conduct. Therefore the respondent is liable for a weeks notice pay.

14. No issue was taken as to any of the amounts claimed.

Conclusion

15. The claimant's claim for notice pay succeeds. As I have indicated, she is only entitled to a week's pay because of the length of time she was employed, and the figure in respect of notice pay awarded is £162.

16. In respect of the failure to provide written terms and conditions, I accept Mr Jamieson's evidence that that has now been rectified in terms of the business going forward. It is often the case that employees bring that claim as a result of other claims and grievances that they have, so it is a lesson learnt. It was not provided. It creates certainty if written terms and conditions are provided. Certainty was not

there. That is what has meant this case has probably rattled on for longer than it needed to, and exercising my judgment I do not feel that it is appropriate to award a four week period: two weeks seems to sound as a reasonable period of award in respect of that not having been provided, so I make the award of £324 rather than for four weeks.

17. The total amount due is £486 and that is the judgment of the Tribunal.

Employment Judge Grundy

Date 27.11.20

JUDGMENT AND REASONS SENT TO THE PARTIES ON
1 December 2020

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2410846/19
Miss K Coletto v Gemma Kane t/a Glitterati Parties

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 1 December 2020

"the calculation day" is: 2 December 2020

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.