



EMPLOYMENT TRIBUNALS

Claimant: Ms E Williams

Respondent: Cavali Investments Ltd

Heard at: Hybrid – in person at Cardiff and by CVP
On: 17 December 2020

Before: Employment Judge S Moore

Representation

Claimant: In person

Respondent: Mr Jaswal, Director

RESERVED JUDGMENT

The Respondent made an unauthorised deduction from wages. The Claimant was not paid for seven hours work on 22 June 2019. The Respondent is ordered to pay the Claimant the sum of £57.47 for outstanding wages.

The Claimant's claim for unpaid notice pay and holiday pay fails and is dismissed.

Background and Introduction

1. The ET1 was presented on 27 October 2019. The Claimant brought claims for unauthorised deduction from wages in respect of unpaid wages, holiday pay and a breach of contract claim relating to unpaid notice pay. There was a preliminary hearing on 6 July 2020 that made case management orders and listed the hearing for 7 September 2020. That hearing had to be postponed as the Claimant had not provided a witness statement and sought to rely on audio recordings that had been disclosed but were in dispute as to the content.
2. EJ Harfield directed the Claimant to provide a witness statement and draft transcripts for the audio files on or before 14 September 2020. The Claimant did not comply with this order. The re-listed hearing on 30 September 2020 was postponed by EJ Harfield. The Claimant was given further time, until 7 October 2020 to provide her witness statement and draft transcripts of the audio recordings. The case was re-listed to 18 November 2020.

3. The Claimant did not comply with the order to provide the draft transcripts. EJ Harfield directed that unless the Claimant provide full transcripts of the audio recordings by midday on 16 November 2020 she was debarred from relying on any evidence relating to the content of those discussions at the Hearing. The Claimant did not provide the transcripts
4. The hearing on 18 November 2020 had to be abandoned as the Claimant was unable to connect to CVP and could connect by audio only. It was re-listed as a hybrid hearing with the Claimant attending in person and the Respondent by video link. The Claimant was ordered to attend the hearing with clean unmarked copies of all of the evidence that had been provided including the Respondent's witness statements.
5. The Claimant attended the hearing on 17 December 2020. She did not have all of the documents and the Tribunal had to provide copies of the Respondent's witness statements. It was explained to the Claimant that she was unable to rely on the audio transcripts as per EJ Harfield's Unless Order.
6. It is appropriate to record the issues that arise during the hearing. It had been listed for one hour but lasted 2.5 hours and the Judgment was reserved. The Respondent called three witnesses; Ms J Wellings (Receptionist/ Administrator) , Mr M Yarnold (Hotel Manager) and Mr Jaswal (Company Director). I had two different witness statements for Mr Yarnold. One was signed and dated 6 August 2020 and had 4 paragraphs. The other was unsigned but had 9 paragraphs. It was confirmed Mr Yarnold relied on the 9-paragraph statement
7. I also had two witness statements for Mr Jaswal, one was dated 10 August 2020 and the second was dated 11 September 2020. The latter dated statement had been produced as a supplementary statement in compliance with an order by EJ Harfield and accordingly both stood as Mr Jaswal's evidence.
8. I had before me one further witness statement for a Mr A Mahmood but as this witness did not give evidence at the hearing I did not attach any weight to their evidence.
9. I had an email dated 7 October 2020 from the Claimant which stood as her statement save for the extracts that quoted or referenced the audio transcripts; this evidence being debarred by the Unless Order.
10. The Claimant had to be repeatedly asked to refrain from interrupting cross examination questions before it was finished and wait for the question and also not ask questions during her cross examination. I explained that she would have the opportunity to ask questions when the Respondent gave their evidence. Both parties also had to be asked to stop interrupting each other and speaking over each other. The hearing was adjourned at one point as the conduct of the Claimant had rendered the hearing unmanageable and a break needed to be taken.
11. During the Respondent's evidence Mr Jaswal repeatedly tried to lead the witnesses and asked questions during supplementary and re-examination that either led the witness or sought to elicit evidence that was entirely new

or had not arisen from the Claimant's evidence or questions put during cross examination.

The issues

12. The issues were identified in the case management order dated 6 July 2020.

The Law

Unauthorised Deduction from Wages

13. The right not to suffer unauthorised deduction from wages is as set out in Section 13 ERA 1996. The definition of wages in S27 ERA 1996 includes holiday pay, statutory sick pay and notice pay payable under the contract of employment.

Findings of fact

14. I make the following findings of fact on the balance of probabilities.

15. The Claimant commenced employment as a Food and Beverage Assistant on 7 June 2019 at the Maes Manor Hotel in Blackwood. This hotel is owned and operated by the Respondent.

16. The Claimant signed her statement of particulars of employment on 16 June 2019. This provided that she was entitled to 5.6 weeks per annum. The holiday year ran from the first day of her employment. The contract provided as follows:

"Your number of days of annual statutory holiday entitlement is calculated by multiplying the number of days you work in a normal working week by the annual entitlement of 5.6 weeks (subject to a maximum of 28 days).

Holiday entitlements will accrue on a pro rata basis of hours worked and accumulated on a monthly basis with 1/12 of your annual entitlement being accumulated for each completed month worked within the relevant holiday year."

17. Between 7 June 2019 and 9 September 2019 (the effective date of termination) the Claimant would have accrued 30.6 hours holiday based on working 4.5 days average per week.

18. The Respondent monitored hours worked with signing in sheets. The Claimant's signing in sheets for June, July, August, and September 2019 were before me. The Claimant worked an average of 20.85 hours over the eleven-week period and she received £8.21 per hour. The average numbers of days worked per week was 4.5. The July 2019 signing in sheet records the Claimant had taken 4 days leave that month which was also recorded on the July 2019 pay slips (see below). It also has a handwritten note which was scribbled through, but visible that states the Claimant was not paid for 7 hours worked the previous month on 22 June 2019. The August 2019 signing in sheets recorded the Claimant had taken 2 days holiday on 26th

and 27th August 2019 which was also recorded on her August pay slip (see below).

19. There is a dispute between the parties about the events that led to the Claimant's termination of employment.
20. Mr Yarnold's evidence was as follows.
21. On 9 September 2020 he telephoned the Claimant at around 3pm and requested that she come in for a meeting regarding allegations of bullying that had been made against her. Mr Yarnold had also posted a letter of the same date to the Claimant that corroborated this account.
22. The Claimant allegedly reacted badly to this request and informed Mr Yarnold she believed he was sacking her. Mr Yarnold sought to explain the meeting was "procedure" and he was "unable to get a word in edgewise". Approximately 40 minutes later the Claimant arrived at the hotel and was aggressive and abusive to Mr Yarnold and other members of staff. The Claimant called a staff member a "fat cunt" and was then asked to leave by Mr Yarnold or he would dismiss the Claimant to which the Claimant is then alleged to have said "You're sacking me anyway so I quit and you can stick your fucking job up your arse you bald headed prick". The police had to be called and the Claimant subsequently left the hotel.
23. Mr Yarnold's account was corroborated by Ms Welling. Ms Welling's evidence was as follows. Ms Wellings was present on 9 September 2019 at the hotel. She described the Claimant entering the hotel screaming and ranting "I want to see Mike!" [Mr Yarnold]. Ms Wellings described that Mr Yarnold came to reception and the Claimant started to scream and shout at him saying "I can't believe your fucking sacking me" to which Mr Yarnold replied "I've only asked you to come in for a meeting" to which the Claimant replied "I don't care anyway you can stick your fucking job I quit!"
24. Ms Wellings also corroborates that the Claimant called another member of staff a "fat cunt." She felt very frightened and confirmed the police were called and the Claimant was made to leave. Ms Wellings did not go home until 6pm instead of her usual finish time of 3pm as she was too nervous to leave the hotel.
25. I did not have any witness evidence in the Claimant's witness statements addressing her version of events that day as the only written evidence related to the audio recordings. The Claimant was asked about the events in cross examination. The Claimant's evidence was that Mr Yarnold had not telephoned her at all, it was her that had telephoned him on 9 September 2019 and he then proceeded to sack her during that call. She then proceeded to go to the hotel to request payroll details and copy pay slips and was told to "Fuck off" by Mr Yarnold. She denied there had been any verbal abuse or attacks on Mr Yarnold or other staff and was insistent she had not resigned. She accepted that the police had been called.
26. I have preferred the account of Mr Yarnold and Ms Wellings and I find that the Claimant resigned during the telephone call to Mr Yarnold on 9 September 2020. My reasons are as follows. Mr Yarnold wrote to the Claimant on 9 September 2019 asking her to attend a meeting to discuss

some concerns. Had he intended to merely dismiss her during that telephone call that took place to inform her of the meeting it is unlikely he would have written the letter asking her to attend the meeting. I also took into account that Mr Yarnold wrote a further letter which corroborates his account on 10 September 2019 and the Claimant did not challenge that letter until these proceedings.

27. Where the accounts differed I found Mr Yarnold and Ms Wellings to be more reliable and credible witnesses. Mr Yarnold's evidence was corroborated by the contemporaneous documentation. Ms Wellings, whilst an employee of the Respondent had no reason to be untruthful in her account to the Tribunal and I also found her to be measured in her responses. The Claimant was volatile when giving evidence and prone to outbursts of shouting and interrupting when the Respondent's case was put to her in cross examination yet denied behaving in the manner described on 9 September 2019.
28. Mr Yarnold subsequently wrote to the Claimant on 10 September 2019. It set out the same account as Mr Yarnold's witness statement of events on 9 September 2019. Mr Yarnold informed the Claimant the Respondent was accepting her resignation as the Claimant's conduct the previous day had been "unacceptable behaviour". She was informed she would receive her P45 and pay slip would be posted at the end of the month
29. The Claimant subsequently emailed Mr Yarnold and it appears a meeting was arranged but on 12 September 2019 Mr Yarnold informed the Claimant he had to cancel the meeting after speaking to the directors as it was a police matter.
30. The Claimant emailed Mr Yarnold later that day setting out what she was owed. This was said to be 69 hours, £40 under payment from July, notice pay of one week for being sacked over the telephone for no reason and 6 days holiday pay.
31. On 17 September 2019 the Claimant had to be removed from the premises a second time by the police.
32. The Claimant had provided a printout of her bank statement showing the payments received by the Respondent between June – September 2019. These were as follows:
 - 28 June 2019 - £484.39
 - 26 July 2019 - £774.44
 - 30 August 2019 - £884.29
 - 27 September 2019 - £544.61
33. I had sight of the Claimant's pay slips. The Claimant maintained that these were forgeries. The net payments on the pay slips matched the amounts the Claimant had received in her bank account as set out above. The number of hours recorded on the pay slips also matched the hours on the Claimant's signing in sheets she had signed. The Claimant was paid

£246.30 holiday pay on 31 July 2019 and £123.15 on 31 August 2019. I find they were not forged documents as they matched the time sheets and contained all of the appropriate HMRC information.

34. It was accepted that the Claimant was not paid any notice pay.

Conclusions

Notice Pay

35. As I have found the Claimant resigned without notice on 9 September 2020 she is not entitled to receive notice pay.

Holiday pay

36. The Claimant was unable to explain what holiday pay was outstanding and why. There were documentary records before me that evidenced the Claimant had received two holiday pay payments in July and August 2019 which totaled £369.45. Her contract of employment provided her holiday year began from the date she commenced employment which was 7 June 2019. She therefore accrued holiday up until the date of her resignation on 9 September 2019 which was 12 weeks and 1 day. Based on the number of hours per week (20.85) having accrued 30.6 hours holiday payable @ £8.21 per hour this amounted to £251.23. The Claimant has therefore been overpaid her holiday pay and I find no sum is due from the Respondent to the Claimant.

Wages

37. The hours recorded in the Claimant's signing in sheets matched the hours paid on her pay slips. There is one exception. The Claimant's July 2019 time sheet states (albeit has been scribbled through) that she was owed 7 hours pay for 22 June 2019. I have concluded this is the underpayment of £40 the Claimant has cited in her ET1. I order the Respondent to pay the Claimant the sum of £57.47 gross pay in respect of this outstanding seven hours. Other than this I conclude the Respondent has not made an unauthorised deduction from wages and no other sums are due to the Claimant.

Employment Judge S Moore

Date: 14 January 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
18 January 2021

.....
FOR EMPLOYMENT TRIBUNALS