



EMPLOYMENT TRIBUNALS

Claimant: Miss M Mirza

Respondent: Loudslurp MHS Ltd

HELD by CVP

ON: 19 February 2021

BEFORE: Employment Judge Shulman

REPRESENTATION

Claimant: In person

Respondent: Did not appear and was not represented

JUDGMENT

The Tribunal gave Judgment as follows:

1. In respect of the complaint for eight days unauthorised deduction from wages the respondent will pay compensation to the claimant in the sum of £524.64.
2. In respect of the complaint for unauthorised deduction of wages for October and November 2020 the complaint is dismissed.
3. In respect of the complaint for unauthorised deduction of wages in respect of the month of September 2020 the respondent will pay compensation to the claimant in the sum of £105.64.
4. In respect of the complaint of no holiday pay for the holiday year 1 June 2019 to 31 May 2020 the respondent will pay compensation to the claimant in the sum of £368.24.
5. In respect of the complaint of no holiday pay for the holiday year 1 June 2020 (part) to 7 October 2020 the respondent will pay compensation to the claimant in the sum of £920.60.
6. The grand total payable by the respondent to the claimant is £1919.12.

REASONS

1. Claims

- 1.1. Unauthorised deduction of wages (three claims).
- 1.2. No holiday pay (two claims).

2. Issues

The issues in this case relate to:

- 2.1. Unauthorised deduction of wages – whether the respondent engaged in unauthorised deduction of wages, in respect of periods when the claimant was working from home, in respect of a period 8 days of the claimant's contract, in respect of short payment of a month's wages and in respect of periods when paid in lieu of notice and following termination.
- 2.2. No holiday pay - whether the claimant was entitled to carry over used holiday pay from one year to the next, having particular regard, to the Working Time (Coronavirus) (Amendment) Regulations 2020 (the Regulations) and further whether the claimant was entitled to holiday pay in the last holiday year in which she worked.

3. The law

The Tribunal has had regard to the Regulations. The particular provisions of the amended Working Time Regulations 1998 which the Tribunal has to consider are the effects of Covid-19 pursuant to Regulation 13(10) of the Working Time Regulations 1998 but also whether or not it was reasonably practicable for the worker to take some or all of her leave in the relevant year as a result of the effects of Covid-19 and whether she is entitled to carry forward untaken leave. The Tribunal has also had regard in relation to reasonable practicability to the Guidance issued subsequent to the Regulations.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. In relation to the claim that the claimant makes of eight extra days for working at home these dates were as follows:

26 March 2020

8 June 2020

9 June 2020

10 June 2020

16 July 2020

17 July 2020

22 July 2020, and

23 July 2020.

The claimant's net pay monthly was £1994.64, and annual net pay £23,935.68, leaving a daily figure net of £65.58.

- 4.2. The claimant also claims unauthorised deduction of wages for October and November 2020. The claimant's contract was terminated with effect from 7 October 2020 and she received pay in lieu of notice. Promises were made by the respondent to the claimant as to future working.
- 4.3. The claimant is further claiming £105.64 unauthorised deduction of wages for the month of September 2020. This is because she was paid £105.64 short. She should have received £1692.00 and only received £1586.36 making the difference £105.64.
- 4.4. In respect of the holiday year 1 June 2019 to 31 May 2020 the claimant claims 23 days, being entitled to 28 days holiday, but this can only be the subject of a carry over claim. The claimant states that she only took five days holiday in that year. The claimant's claim arises over the right to carry over pursuant to the Regulations. The period where such carry over is open to consideration runs from 23 March 2020 up to 31 May 2020 and as a proportion of the full year there is only four days available for carry over. The balance of the possible carry over (19 days) cannot be dealt with by the Regulations. The claimant's contract of employment is clear that carry over is not permitted and although the claimant claims that she was promised an element of carry over her contract does not permit variation other than in writing, of which there was no such variation. Covid-19 did have an effect on the claimant and the workforce was disrupted. Taking into account the annual net salary of the claimant (£23935.68) this yields a daily rate for holiday pay purposes of £92.06.
- 4.5. The claimant claims 10 days holiday pay for the period 1 June 2020 up to 7 October 2020 amounting to 10 days, which if awarded would be at the same daily rate as in relation to the other claim for holiday pay.
5. **Determination of the issues (After listening to the submissions made by and on behalf of the claimant and after reading the response):**
 - 5.1. The Tribunal is satisfied that the claimant worked eight extra days at home and taking into account the daily figure of £65.58 and the number of days the Tribunal awards the claimant £524.64.
 - 5.2. As far as the claim for unauthorised deductions of wages for the months of October and November 2020 are concerned the claim has been made under the heading of unauthorised deduction of wages. However it is clear that there are no wages owing during that period. The initial period in October was the subject of a payment in lieu of notice and the balance of a period was a period when the claimant was not employed by the respondent any longer so that claim is dismissed.
 - 5.3. The claimant has made out her case for the fact that she should have received in September 2020 £1692.00 but only received £1586.36 and therefore the Tribunal awards the claimant the sum of £105.64.
 - 5.4. The claim for no holiday pay for the year 1 June 2019 to 31 May 2020 23 days is not straightforward. The claimant put her claim on the basis that her carry over was permitted by the Regulations. It is clear that for that holiday year only the period 23 March 2020 to 31 May 2020 was covered by the coronavirus situation and therefore for the claim to be made out under the Regulations the correct proportion of days eligible is four and not 23. It is clear that the claimant falls to be considered for

carry over under the Regulations. It is also clear pursuant to the Guidance that the extent to which the workforce of the respondent was disrupted by coronavirus did not make it reasonably practicable for the claimant to take her holidays within the relevant period of the holiday year from 1 June 2019 and therefore the Tribunal finds that it was not reasonably practicable for the claimant to take that leave in the previous holiday year and that some carry over was available and therefore the claimant would have been entitled to carry over four days at £92.06 per day and the Tribunal awards the claimant £368.24. At the end of the case the claimant did raise the question of the balance of the days she was claiming (19 days) by way of normal carry over basis, which the Tribunal pointed out to her was never part of her case in that she had sought to rely entirely on the Regulations. In any case her contract did not permit carry over. Although the respondent is alleged to have promised some sort of carry over arrangement orally, that was withdrawn. Furthermore the contract required a written variation. The Tribunal was not asked however to adjudicate on that particular matter and does not do so.

- 5.5. With regard to the claim for 10 days holiday pay for the period 1 June 2020 to 7 October 2020 the Tribunal agrees that the number of days due, with no holiday having been taken by the claimant, was 10 and at the same rate as the claim at paragraph 5.4 of £92.06 the Tribunal makes an award of £920.60.

Employment Judge Shulman

Date 1 March 2021