



EMPLOYMENT TRIBUNAL
England and Wales
London Central Region

Claimant: Ms L Stock
Respondent: Boodles
Before: Mr J S Burns
Representation
Claimant: in person
Respondent: Ms K McManus (Solicitor)

JUDGMENT

1. The claim for unauthorised deduction of wages succeeds
2. The Respondent must pay the Claimant £1250 by 21/1/21

REASONS

1. The claim was for short pay. The Claimant and the Respondent's accountant Mr M Penhaligon gave evidence on oath. The hearing was by CVP with no technical problems. The Claimant has not sent all her documents to the Respondent's solicitor before the hearing but most of the relevant documents were in the Respondent's electronic bundle which we all had, and the few which Ms McManus did not have made no difference to the outcome and she sensibly chose to continue with the hearing without them.
2. The Claimant was employed as an assistant chef by the Respondent. She received a low salary which had been further reduced in exchange for her being given the benefit of tied accommodation as a benefit in kind. Her occupation of the accommodation was valued at £3000 per year and £250 per month for tax purposes. It was understood that if the Claimant elected at any time not to occupy the accommodation her salary would be increased immediately by £250 per month.
3. The Claimant occupied the accommodation under a written license agreement which stated that it would be terminated if either party gave 4 weeks notice or if the Claimant moved out.
4. The Claimant moved out on 18/3/20 and when at work that day told Mr Penhaligon that she had done so and asked for her salary to be adjusted accordingly. Mr Penhaligon (who was busy dealing with complications caused by the lockdown) said "OK". He agreed in his oral evidence that the Claimant would have reasonably understood from this that her salary would be increased by £250 per month.
5. On 23/3/20 the Claimant cleared her possessions from the accommodation and told Mr Phillips, another manager, that she had done so. There was a delay until early April in the Respondent giving her directions for sending the key. In these circumstances and having regard to the termination provisions in the license agreement, I find it came to an end on 23/3/20 and her salary was increased as a matter of contract by an extra £250 per month from then on.

6. Further, given Mr Penhaligon's response on 18/3/20 the Respondent is estopped in any event from contending that the salary had not been so increased.
7. On 1/4/20 the Claimant signed a variation of her contract document in the form of a letter to her from the Respondent in which it stated that it would continue paying her 100% of her salary but she did not have to come to work.
8. Thereafter the Respondent paid her 100% of her salary as it had been in February 2020 – this being the result of the fact that the furlough payments obtainable by the Respondent from the government under the Coronavirus Job Creation Scheme (CJRS) had to be based on the February 2020 salary and not on later figures. Hence it did not pay the Claimant the extra £250 per month for the five months April to August 2020 while her employment continued. (She resigned with effect from 31/8/20).
9. The details of the CJRS are a matter between the government and the employer and are not part of the employment contract between employer and employee unless expressly incorporated into the contract.
10. The salary had been increased as described above by an extra £250 per month in March 2020. The furlough letter which the Claimant signed could have stated that she would be paid 100% of her February salary but it did not in fact state this. It simply stated that she would be paid 100% of her salary, which, as at 1/4/2020, had already been increased by £250 per month.
11. Hence the Respondent was liable to pay her the extra £250 per month for the next 5 months while the arrangement lasted, and by not paying this has made an unlawful deduction to the extent of £1250.

Date 7/1/21
J S Burns Employment Judge
London Central
For Secretary of the Tribunals

Date sent to the Parties: 15/1/21