



EMPLOYMENT TRIBUNAL
England and Wales
London Central Region

Held by CVP

Claimant: Ms A Tahir

Respondent: Zee Subway Ltd

Before: Mr J S Burns

Representation

Claimant: In person

Respondent: Mr Zeeshan Younas (Director)

JUDGMENT

1. The name of the Respondent is changed from Younas Services Ltd to Zee Subway Ltd.
2. The claim for arrear pay is dismissed.

REASONS

1. The Claimant claimed arrears of pay. She claimed that she had worked for the whole of September 2019 before her employment came to an end and that she was due £1020 being 130 hours x £8.50 per hour but had been paid nothing for that month. The Respondent agreed that the Claimant had been paid nothing for September 2019 but contended that the Claimant had worked only until 13/9/2019 following which she had been dismissed for gross misconduct and the wages which the Claimant was due for her work to 13/9/2019 namely £536.16 were extinguished by set-off against damages caused by the Claimant.
2. It was agreed at the outset that it was Zee Subway Ltd and not Younas Services Ltd which had been the employer of the Claimant, and by consent Zee Subway Ltd was substituted as the correct Respondent.
3. I heard evidence from the Claimant and then from Mariam Sheik (the Claimant's cousin) and then from Somia Akhtar (the Claimant's mental health nurse), and then from Mr Younas. The documentary evidence consisted of witness statements from the Claimant and Ms Sheik, a sick note for the Claimant from 18/9/2019 to 4/10/2020, a Respondent's bundle and a copy of a text message on 13/9/2019.
4. I am sorry that the Claimant is suffering poor mental health which I am sure explains the unfortunate events at work in September 2019.

Findings of fact

5. The Claimant was employed as a "sandwich artist" by the Respondent which runs a subway sandwich shop in Holborn.
6. The Claimant was entitled to be paid on an hourly rate.
7. She started displaying erratic behavior while at work on 13/9/20, swearing at staff, telling

customers to go and shop elsewhere and racially abusing an African customer. The Claimant was in a rage and not behaving rationally. Mr Younass told the Claimant to get changed and leave the premises.

8. Shortly after the Claimant had visited the toilet at the rear of the premises, Mr Younas found that the lid of the water tank on the toilet had been smashed. This had not been reported earlier in the day as it would have been if it had been smashed earlier. On a balance of probabilities the Claimant smashed the toilet lid in a fit of rage. The Respondent later had to have the whole toilet replaced at a cost of £400.
9. The Respondent terminated the Claimant's employment summarily for gross misconduct with effect from 16/9/2019 by letter of that date.
10. The Claimant was ill in the second half of September 2019 and obtained a doctor's certificate stating she was unfit for work. I do not find that she worked for the Respondent after 13/9/2019.
11. When the Claimant left the premises on 13/9/2020 she took a uniform with her. She also had another uniform at home. She failed to return these uniforms to the Respondent. She had signed agreements with the Respondent dated 5/8/2017 and 26 /7/19 that if on leaving her employment she failed to return her uniforms, the Respondent could make deductions from her pay of £80 per uniform.
12. The Claimant also took a key to the shop door with her when she left. She refused to return this key to the Respondent which she should have done because it was the Respondent's property. The Respondent acted reasonably by getting the locks changed at a cost of £300 which was also a loss to the Respondent caused by the Claimant's conduct.
13. The employment contract dated 5/8/2017 signed by the Claimant contained a deductions clause 7 providing that the Respondent could make deductions from the Claimants' pay for inter alia "*losses sustained during the course of (her) employment which were caused through (her) conduct*" and such deductions could be made in full on termination of employment.

Conclusion

14. The Respondent was entitled to deduct £400 (toilet) plus £160 (uniforms) plus £300 (changing locks) total £860 from the Claimant's final pay. I find that the correct amount of her final pay was £536.16 and hence this was completely extinguished by the lawful deduction. Hence the Respondent is not liable to pay the Claimant anything.

Date 3/2/21
J S Burns Employment Judge
London Central
For Secretary of the Tribunals

Date sent to the Parties -04/02/21