



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101966/2020 (A)

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Held via telephone conference call on 6 August 2020

Employment Judge I McFatrige

10 **Ms D Strachan**

**Claimant
In Person**

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Mr J Hamilton t/a The Travellers Rest

**Respondent
Not present and
Not represented
(No ET3)**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The respondent unlawfully withheld wages from the claimant in the sum of
25 £110.83. The respondent shall pay the sum of £110.83 to the claimant in respect thereof.
2. The respondent was in breach of contract in respect of his failure to pay notice pay to the claimant. The respondent shall pay the sum of £240 to the claimant in respect thereof.
- 30 3. As at the date of termination of her employment, the claimant was due £66 in respect of annual leave accrued but untaken. The respondent shall pay to the claimant the sum of £66 in respect thereof.
4. The claimant was unfairly dismissed by the respondent. The respondent shall pay to the claimant the sum of £4220 as compensation therefor.

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REASONS

1. The claimant submitted a claim to the tribunal in which she claimed that she had been unfairly dismissed and was due various payments following the termination of her employment by the respondent. The respondent did not enter a response within the statutory period. An employment judge decided that it would not be appropriate to issue a judgment under rule 21 but that a hearing should be fixed. The hearing was fixed to take place by telephone conference call. Arrangements were made so that any member of the public wishing to attend would be able to attend the hearing by being given dial in details. As it happens, no member of the public attended. At the hearing, the claimant gave evidence on her own behalf. On the basis of her evidence, I found the following essential matters to be proved or agreed.
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2. The claimant commenced employment with the respondent on or about 7 November 2017. She was employed as a cleaner to clean the public house premises known as the Travellers Rest. The claimant lives next door to these premises. The claimant would clean the premises in the early morning. Her hours each week would vary slightly. On average, she earned £120 per week.
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3. In or about August 2018, a new manager was appointed to the premises by Mr Hamilton. This was a Mr Cairney. The claimant had little to do with Mr Cairney since she came into work early in the morning and Mr Cairney was not usually there.
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4. From the outset of her employment, the claimant had occasionally had periods when her wages were delayed. Up until July 2019, she had received payslips on a semi regular basis. These ceased from July 2019 onwards as she understood the person who prepared the payslips had left. Up until around July 2019, the claimant had received pay for her occasional days off. In October 2019 she was told that she would not be receiving holiday pay as she was 'casual'.
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5. At the beginning of December 2019, the claimant became concerned as she had not received her wages for two weeks. She contacted the bar manager through the bar staff asking him for her wages. She still did not receive them.
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6. On the early hours of 15 December, she became aware of a disturbance around her house which she surmised came from the bar. She became aware that Mr Cairney, the bar manager, and others were outside making a noise. She recognised Mr Cairney's voice and asked him to keep the noise down. At the same time, she also asked him if he could see to it that her wages her paid.
7. Later on that night, the claimant surmised at about 2.15am in the morning, an envelope was put through the claimant's door which contained her wages taking her up to the previous week. There was also a note telling in it telling the claimant that she should hand in her key.
8. The claimant attended at the bar the following morning as usual to clean it. She asked a member of staff why she had been told to return her key. The member of staff did not know but indicated that she would speak to Mr Cairney. Later on that day, the member of staff contacted the claimant and told her that she was dismissed with immediate effect. 15 December 2019 was the claimant's last day of employment.
9. As at 15 December 2019, the claimant was due to be paid the hours she had worked for one week. The amount of pay she was due was £110.83.
10. The claimant had not taken any holidays since her new holiday year started on 7 November 2019. As at the date of termination of her employment, she was due three days holiday. The claimant's average weekly pay was £120. This was the gross and net figure.
11. The claimant did not receive any notice of termination of employment nor did she receive any pay in lieu of notice.
12. Following the termination of her employment, the claimant did not take immediate steps to find other work since it was Christmas and firms would not be looking for cleaners. Subsequent to this, she decided to start looking for work but the Covid-19 pandemic ensued and the claimant has not been able to take any steps to find alternative work to date. She remains unemployed.

13. I had no doubt that the claimant was giving honest evidence. She was careful not to over egg the pudding and her evidence essentially confirmed what was said in her statement of claim. Initially, it was not clear to me whether her employer was still Mr Hamilton or whether the business has transferred to Mr Cairney. She confirmed that she had already been through this with ACAS and that Mr Cairney was simply Mr Hamilton's manager. Mr Hamilton remained her employer. She was frank about the fact that she had not taken immediate steps to find other work however I accepted her explanation as to the difficulties she would have finding other work during the lockdown and immediately subsequent to this.

Discussion and decision

14. I accepted the claimant's evidence that as at the date of termination of her employment, she had not been paid for her final weeks work. I accepted her evidence that her earnings were normally around £120 per week but for that week, she was due £110.83. This sum was unlawfully withheld and the respondent is now ordered to pay this amount.

15. It was clear to me that the claimant had been dismissed without any notice. In terms of section 86 of the Employment Rights Act 1996, she was entitled to two weeks' notice having accrued two years continuous service. She is entitled to pay in lieu of notice. This amounts to £240.

16. The claimant confirmed that she had started work on 7 November 2017. She was unaware of any written contract of employment or any document she had signed which varied the leave year. Accordingly, it appeared to me that in terms of the Working Time Regulations, the leave year began on 7 November and terminated on 6 November in each year. The claimant indicated that up until 2019, she had received some holiday pay for her very occasional days off albeit she had possibly not received her full annual entitlement. She indicated that she had taken time off in October for which Mr Cairney had refused payment. She accepted however that there had been no arrangement to carry leave entitlement forward and accordingly it appeared to me that as at the date of termination of her employment, she was only

entitled to the leave accrued between 7 November 2019 and 15 December 2019. This amounts to three days. The respondent shall therefore pay to the claimant the sum of £66 in respect of this.

5 17. On the basis of the claimant's evidence, I was satisfied that she had been unfairly dismissed. She had not received any reason for the termination of her employment. It was clear that no procedure whatsoever had been carried out. She was entitled to a basic award of 3 weeks pay based on her two years continuous service during both of which she was over the age of 41. This amounts to £360.

10 18. With regard to the compensatory award, I considered that whilst the claimant had not taken immediate steps to find alternative employment, the reasons she gave for that were reasonable. I thought that it was unlikely that she would have been able to find alternative employment prior to the Covid-19 lockdown happening in March 2020 even if she had taken immediate steps to
15 find other work. Clearly, she could not find other work during the lockdown. I did however consider that if the claimant had taken steps immediately after the lockdown ended, then there was at least the possibility she would have found other work by now and that she should be able to find other similar work within a reasonably short timescale.

19. In all the circumstances, I felt it appropriate to award the claimant 30 weeks' pay by way of wage loss which amounts to £3,600. I also award £300 for loss of statutory rights. The total compensation for unfair dismissal is therefore £4220 (£3,600 + £360 + £300).

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10 Employment Judge: Ian McFatridge
Date of Judgment: 07 August 2020
Entered in register: 12 August 2020
and copied to parties

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