



EMPLOYMENT TRIBUNALS

Claimants: Miss Joanne Cooper
Miss Timea Gondosch

Respondent: Gurleen Enterprise Ltd

Heard at: London South **On:** 20 April 2021

Before: Employment Judge Beckett (sitting alone)

Appearances:

For the Claimant: Miss Cooper and Miss Gondosch

For the Respondent: Mr Dildar Bhangu

JUDGMENT

1. The Claimants' claims in respect of pay arrears, notice pay and holiday pay are well founded.
2. Miss Gondosch's claim in respect of unfair dismissal was withdrawn at the hearing and is dismissed.

REASONS

Issues to be determined

3. The Claimant Miss Cooper (JC) claimed notice pay, holiday pay and arrears in a claim form dated 6 June 2020.
4. The Claimant Miss Gondosch (TG) claimed unfair dismissal, arrears, notice pay and holiday pay in a claim form dated 8 June 2020.
5. Miss Gondosch's claim relating to unfair dismissal was withdrawn at the hearing. The Claimant TG accepted that she had insufficient service as she had worked for the Respondent for less than 2 years.

6. The issues to be decided were agreed with the parties at the outset of the hearing, and were as follows:
 1. What were the dates of employment for each claimant?
 2. How had the employment of each claimant come to an end?
 3. Was there an agreement between the parties that each Claimant was to be furloughed?
 4. What pay, if any, was each Claimant entitled to during the furlough period?
 5. What notice pay, if any, was each Claimant entitled to?
 6. What holiday pay, if any, was each Claimant entitled to?

The Hearing

7. The Claimants both gave evidence. The Respondent called evidence from Mr Dildar Bhangu, the manager of the Love Brownies café in Canterbury.
8. The parties had not created an agreed bundle of documents. Miss Cooper sent an email to the Tribunal attaching her statement of events, with supporting documents (which appeared as photographs and screenshots). Miss Gondosch provided a 12 page document, which contained her statement and supporting evidence. She also sent an audio recording of a meeting with the Respondent (23 minutes).
9. The Respondent sent the Tribunal 4 photographs of screenshots and when asked to, provided further email correspondence.

Findings of facts

10. Based on the evidence heard and the submissions made, I found the following facts.
11. The Claimant JC worked for the Respondent from 16 January 2020, as a café assistant. This start date was not disputed between the parties.
12. The Claimant TG worked for the Respondent from 12 December 2019, when she undertook 4 days of training with the Respondent. She then in the café getting it ready to be opened, and after it opened as an assistant. TG stated that she started at the café on 1 January 2020, but the Respondent DB stated that she had started in the café on 13 January 2020.
13. In light of the paid training, and in light of the lack of any formal agreement, I find that TG started work for the Respondent on 12 December 2019.
14. The Respondent did not give either Claimant a written contract. He did not provide either Claimant a written document dealing with hours of work, pay or any rights in respect of leave or notice pay.

15. Hours and days worked by each Claimant varied from week to week.
16. JC worked 13 hours per week. This was agreed evidence. She was paid £452 before tax per month.
17. TG stated within her claim form that she worked 35 hours per week. The Respondent disputed this and stated that TG worked 28 hours per week.
18. Both TG and DL agreed that TG's monthly pay before tax was £750.
19. Issues arose when the period of lockdown was announced in March 2020. As the business was a café/ restaurant both Claimants raised concerns as to their future, and they sought clarification as to their ongoing status.
20. JC raised concerns with DL as to the lack of proper anti-bacterial cleaning products and hand sanitiser, and she was concerned that the environment was not safe. She also told DL that she was concerned as she lived with her elderly parents at the time, who were vulnerable.
21. DL gave evidence that JC had said that she was leaving and would not be returning until Covid-19 had ended. JC disputed this, and stated that she had told DL that, in light of her concerns, if another member of staff could work that first lockdown weekend, she would prefer that. However, she added that she was available if needed.
22. I find JC's account in respect of this aspect of evidence credible. It is supported by the various text messages provided to the Tribunal. JC did not end her employment with the Respondent in March 2020.
23. TG was concerned about her family in Hungary and advised DL on 18 March that she was going to go back to Hungary as soon as she could. DL agreed that family should come first and she should return. In any event it was clear that the café would have to cease trading.
24. On 20 March the parties became aware of the furlough scheme and DL confirmed that he would be seeking assistance for his employees, and would make claims for JC and TG. That agreement was made, and is set out in the various text messages I have seen. Indeed, DL accepted in evidence that he had been trying to obtain furlough payments for both JC and TG, and that they were both still employees of his.
25. I find therefore that TG did not leave her employment on 18 March 2020 as claimed by the Respondent in his ET/3 form. She was still employed by him throughout March, April and May 2020, whilst the discussions regarding furlough continued.
26. In support of the Claimants' positions, I have seen the proposed pay slip for the April payment, which were prepared at the request of the Respondent. Those show a payment of 80% of the normal wages due. TG's payslip (at page 7 of her bundle) stated that she would receive £660.74 as "furlough pay" without any deductions, so as her net pay.

27. The agreement as to furloughing staff was to be made by the employer, DL, and the Government. The Claimants had both expressed their agreement to be furloughed and indeed they chased their payments during April and May 2020. DL stated in evidence that those 2 months were very stressful and miserable, as he was being chased but was unaware of the provisions for furlough, was relying on his accountant and that no one had ever been in this position before.
28. In a conversation over group text on 7 May 2020 (page 5 of TG's bundle), DL confirmed that the accountant was still dealing with the claim, and that as soon as he had the money in the account he would pay everyone.
29. JC responded, saying that if some staff could be paid sooner and then DL reclaim the money, she would wait for her payment as others were really struggling financially. DL replied saying that he was also struggling, the same as everybody and that he had thought "we gonna get this furlough quick".
30. On 12 May 2020 other staff asked for any update, and DL confirmed he was still waiting for a response. TG asked whether the payment had been claimed for May as well as April. DL said that "he will do, just waiting to get it sorted", referring to his accountant.
31. The Respondent opened the café on 16 May 2020 as a takeaway only. DL did not inform JC or GT that he had reopened the café.
32. On 19 May 2020 DL sent a message to the group (his employees) saying that the government had rejected the furlough claim for their shop, and that he was "not in any position to help anybody this time". He attached a screenshot of a message from his accountant, which said that the "HMRC have currently rejected the furlough claim due to the late filing of the monthly payroll reports".
33. In evidence, the Respondent accepted that he had not in fact registered JC or TG as employees, which lead to this issue. Within the text messages he said that all they could do was sue the accountant and the government as they "agree to pay this and they should do now".
34. It is clear from all the messages that JC and TG were still employed by the Respondent during April and May 2020.
35. On 10 June TG met with DL in person at the café. She recorded their meeting and has provided the audio recording, which I have listened to. She also provided a note of the meeting including some parts transcribed verbatim, at pages 10 to 12 of the bundle.
36. Within that meeting, DL referred to HR having generated P45s for everyone. TG asked, that if someone was doing P45s, did that mean that they were going to be fired. DL replied "yeah" and added that there were no jobs, as they were trading only as a take away and only needed a few people. DL

confirmed that TG was still employed by him, but said it was a probation period and she had no contract.

37. DL then said that he was not going to fire GT, and would speak to HR and sort things out, if she still wanted to work. GT asked for a contract during the meeting.
38. On 11 June TG contacted the Respondent asking for her contract. She asked for the contract to be dated from January 2020.
39. The following day DL replied saying that he could not sign anything, that if he needed a contract he would get one from the HR company to give to his employee. He then stated "you will receive your p-45, thanks" (page 6 of TG's bundle). She responded "I've been your employee from January so I'm entitled to a contract from 01.01.2020 until 10.06.2020. As that's the day you informed me of my redundancy. Thanks."
40. TG asked questions about this and asked for the contract. The Respondent DL simply repeated that she had left work on 22/03/20 and that he had sent her P45. After a further question, he sent a message to TG stating "Plz stop bothering me now" on 12 June 2020 at 09.23.
41. DL then sent out P45s to JC and TG, without any accompanying explanation.
42. JC's P45 showed her leaving date as 19 March 2020.
43. TG's P45 showed her leaving date as 22 March 2020.
44. I find that until 12 June JC and TG were both still employed by the Respondent. By sending the P45s, the Respondent dismissed them both on that date, without notice.

Pay arrears

45. JC was paid £452 per month. She had worked for the Respondent for just shy of 5 months. She is owed pay for March, April, May and part of June 2020 at 80% of her usual rate, which would be £361.60 per month.
46. I find that she was owed a total payment of £1,193.28 for those months.
47. TG was paid £750 per month. She had worked for the Respondent for 6 months. She is owed pay for March, April, May and part of June 2020, at 80% of her full time rate, which would be £600 per month.
48. I find that she was owed a total payment of £1,980 for those months.

Law relating to holiday pay

49. Under the Working Time Regulations 1998 workers are entitled to 5.6 weeks leave each leave year.

50. The Claimants are entitled to be paid in lieu of accrued but untaken holiday on termination of employment. There was no contractual right and therefore leave must be calculated with the statutory formula, as set out in Regulation 14(3)(b) of the WTR.
51. Each Claimant has only worked part of a leave year, which entitles them to a pro rata accrual under reg 13(5) of the WTR.
52. Dealing with this aspect proportionately, whilst considering what is just and equitable, I find that JC was owed £1,323 in payment for accrued but untaken holiday.
53. Again, doing the best I can with the figures provided, I find that TG was owed £2,561 as payment for accrued but untaken holiday.
54. The above sums are calculated at the furlough rate of pay.

Conclusions

55. In respect of the dates of employment for each claimant, I find that JC was employed from 16 January 2020. As set out above, I find that TG was employed from 16 December 2019 when she had undertaken the training with the Respondent in order to start work as soon as the café opened.
56. Both claimants remained in the employment of the Respondent until 12 June when they were dismissed without notice.
57. There had been an agreement between the parties that each Claimant was to be furloughed. This was supported by numerous text messages over several months.
58. During the furlough period, each Claimant was entitled to 80% of their usual wages.
59. Neither Claimant was given a written contract or any information as to their pay, job description or terms and conditions of employment. The Claimants are therefore entitled to, at common law, to “reasonable notice” of termination. I have considered the relevant statutory period of notice under s86 ERA 1996, and the nature of the Respondent’s business, namely catering. I find that each Claimant is entitled to 2 weeks’ pay in lieu of notice.
60. Again, in respect of holiday pay there was no contractual agreement. The Claimants are entitled to pro rata payments in respect of their accrued but untaken holiday leave.
61. Further, as neither Claimant was given written particulars of employment, I make a further award of 2 weeks’ pay under s38 Employment Act 2002.
62. The claims are well-founded as set out above.
63. I order the Respondent to pay Joanne Cooper £2,742.28.

64. I order the Respondent to pay Timea Gondosch £4,916.00.

Employment Judge Beckett
Dated: 3 May 2021

Sent to the parties on
Date: 11 August 2021

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