



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100918/2020

Hearing Held by Cloud Video Platform (CVP) on 21 October 2021

Employment Judge B Campbell

10 Mrs P Toward

Claimant
In Person

Newlands Post Office Ltd

Respondent 15
Represented by:
Ms F Siddique
Director

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that:

1. The claimant did not receive payment for accrued and untaken annual leave upon her employment with the respondent ending, and the respondent is ordered to pay her **£462.39** in compensation;
2. The claimant was paid less than the National Minimum Wage between the 25 dates of 1 April and 24 August 2019 and as such suffered a series of unlawful deductions from wages, and is awarded **£175.56** in compensation; and
3. The respondent was in breach of its obligation to provide itemised payment statements to the claimant throughout the period of her employment, and a declaration is made to that effect.

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REASONS

Introduction

1. This claim arises out of the claimant's employment by the respondent, which began on 29 August 2017 and ended on 24 August 2019. The claimant makes 5 a number of complaints as detailed below.
2. The claimant represented herself at the hearing and gave evidence. The respondent was represented by Mrs Siddique who is a director of the respondent. She also gave evidence. Both parties submitted documents which were considered at the hearing and those were useful in clarifying a
10 number of details.
3. At the end of the evidence both parties gave oral submissions. Judgment was reserved on the day, to be provided in writing after deliberation.

Legal Issues

- 15 4. The legal questions before the tribunal were as follows:
 - 4.1. Did the respondent pay the claimant for her full entitlement to holiday pay in compliance with the Working Time Regulations 1998 (**WTR**)?;
 - 4.2. Did the respondent pay the claimant the National Minimum Wage throughout her employment, as required by the National Minimum Wage
20 Act 1998 and subsequent Regulations (**NMW**)?;
 - 4.3. Did the respondent provide the claimant with properly itemised payslips consistent with section 8 of the Employment Rights Act 1996 (**ERA**)?;
and
 - 4.4. If the respondent was in breach of any of those duties, what remedy
25 should be granted?

5. The claimant had raised a complaint that she had not been entitled to take adequate rest breaks in the course of her working day. She maintained that she was forced to eat her lunch at her workstation rather than take a lunch break elsewhere. This was disputed by the respondent. In any event, the claim was one which could only fall within Regulation 12 of the WTR and as such it is not one which an employment tribunal has the power to decide.

Accordingly it is not included in the above set of issues to be determined.

Relevant law

6. Under the WTR each worker is entitled to a minimum amount of annual leave. For a full-time worker that entitlement is 28 days per year. The employer can decide when a holiday reference period will begin and end, provided that period is a full 12 months. By default it will begin each year on the anniversary of the worker's service commencement date.

7. Employees generally can request when to use their leave, and they must be paid at their normal rate in full for leave days taken. However, within reason and subject to conditions, an employer can refuse a holiday request for a given date or dates, or dictate that workers should use their accrued leave on given dates. Workers should not agree to receive payment instead of taking leave as a rule, but at the point when their service ends they are entitled to be paid for any accrued leave not taken at the same rate. The right to be paid for accrued holidays on termination of employment and the method of their calculation are set out in Regulation 14(2) and (3) of WTR. If a worker does not receive the pay they are due they can submit a claim to the employment tribunal under Regulation 30. If a tribunal rules in their favour it can award the equivalent of the leave in monetary terms.

8. Every employee is entitled to be paid the National Minimum Wage by their employer. It is calculated as an hourly rate which can then be applied pro rata as need be to other arrangements for pay. It typically increases each year in April. The rate was as follows in recent years of relevance to this claim (figures for adults 25 and over and therefore applicable to the claimant):

8.1. April 2017 - £7.50;

8.2. April 2018 - £7.83;

8.3. April 2019 – £8.21.

9. If an employee is paid less than the National Minimum Wage then they may
5 make a complaint to an employment tribunal that an unlawful deduction has been made
from their pay under section 26 ERA. The amount of the deduction will be the difference
between the NMW rate prevailing and the amount they were paid. A complaint can be
made about a series of deductions. The claim must be raised within three months after
the deduction, or the last of a series 10 of deductions, adjusted to reflect the need to go
through ACAS early conciliation before the claim is presented to an employment tribunal.

10. A worker is entitled to receive a statement of their pay on or before the date
when they are paid. That must contain certain information about the amounts
and any deductions as set out in section 8 ERA.

15 11. If an employer is believed to be in breach of section 8, then under section 11(1)
ERA a claimant can ask an employment Tribunal to make a declaration of
what the correct information should have been, had properly compliant
statements been provided.

12. Such a referral can normally only be made whilst the employment (or 20
engagement for a worker) is still continuing, or within three months of it coming to an end,
again as adjusted to reflect the timing of completion of ACAS early conciliation.

13. An employment tribunal may confirm which of the required information
required by section 8 was not provided, but it should not look into whether 25 particular
amounts which were provided are accurate. It may make an award of compensation up
to the value of any 'unnotified deductions' made in the 13-week period.

Findings of Fact

14. The following findings of fact were made as they are relevant to the issues in
the claim.

15. The claimant was an employee of the respondent from 29 August 2017 until
5 24 August 2019. The claimant resigned from her employment without providing notice.

16. The respondent operates as a post office and the claimant worked as a
Counter Assistant there.

17. The claimant worked 25 hours per week. She was paid £7.50 per hour from
10 her commencement date until 1 April 2018 when the rate increased to
£7.83. As such, she was paid the National Minimum Wage.

18. On occasion she would be asked to work overtime which she had the right to
accept or decline. If she worked it, she was paid for the time at her standard
rate.

15 19. The claimant's working day began at 9am and ended at 5.30pm. She was entitled
to a 30-minute lunch break and two shorter breaks of 10 to 15 minutes each
day. Those breaks were to be taken 'when convenient', meaning at suitable
intervals during the day but where possible at quieter times in terms of
customer numbers.

20 20. Typically Ms Siddique would be based at the post office when the claimant was
working, although not necessarily always serving customers.

21. The claimant was not provided with any written terms and conditions of
employment, either at the time of beginning her service with the respondent
or at any later point. All terms were agreed verbally or implied by the parties'
25 conduct.

Holidays

22. There had been no clear discussion or agreement between the parties as to the
claimant's entitlement to annual leave. The claimant understood that she was
entitled to 'the legal minimum'. Similarly, nothing was specifically said 5
when the respondent's leave year began or ended.

23. The respondent closed on certain days recognised as holidays. The claimant would be paid as normal for those days despite not working. During the claimant's period of service they were identified as follows:

23.1. **2017** – 25 and 26 December;

10 23.2. **2018** – 1 and 2 January, 30 March, 7 and 28 May, 6 August, 25 and 26 December;

23.3. **2019** – 1 and 2 January, 19 April, 6 and 27 May, 5 August.

24. The claimant only formally asked to take two days as paid annual leave during her service with the respondent. Those were:

15 24.1. a day in or around August 2018 when she was experiencing pain. She contacted Mrs Siddique and agreed that the day could be taken as a holiday. She was paid for it; and

24.2. a later pre-arranged day of leave when she wished to spend some time with her son. Again she was paid for the shift.

20 **Pay**

25. The claimant's rate of pay was the National Minimum Wage. On starting employment with the respondent she earned £7.50 per hour. That increased to £7.83 in April 2018 as her payslips showed and as she accepted.

26. The claimant's pay did not increase to £8.21 in April 2019 as it should have 25 done. This finding is made on the balance of probability. Although she did not receive itemised payslips which she could check to verify her basic rate, the claimant received the same amount of net weekly pay from April 2019

onwards as she had done in the months immediately before. That continued until her employment ended in August 2019. There was no evidence to the contrary. Mrs Siddique could not say that she had taken steps to ensure the rate increased. No payslips covering the dates of April to August 2019 were 5 produced to the tribunal.

Pay statements

27. The claimant was paid weekly in cash but did not receive any payslips to show her earnings or any deductions made from them.

28. The claimant only received payslips after her employment with the respondent 10 ended and she took steps to pursue her claim. She received from the respondent's external accountants a set of payslips covering 26 March 2018 to 24 March 2019 with some gaps.

29. Mrs Siddique had understood that the claimant was receiving payslips from the respondent's accountants. The only time the claimant had asked her 15 directly for payslips was near the beginning of the claimant's service. That was in relation to evidence that the claimant's local authority required of her earnings. Mrs Siddique provided the necessary information to the authority directly. When the claimant raised that she had not received pay statements on commencing her claim, Mrs Siddique arranged for them to be sent to the 20 claimant by the accountants.

30. The claimant always received the same amount of cash per week, unless she had worked overtime. She did not suggest that she had been underpaid in a general sense, only that her hourly rate had not increased to match the National Minimum Wage figure.

25 31. The claimant does not take issue with the information contained in the payslips she received after her employment ended. Her only observation was that none of them included overtime she worked. However, she was not claiming that she had worked overtime in any given week and not been paid for it.

32. Both parties therefore agreed that the payslips which were produced to the Tribunal were accurate for the time periods they covered.

Conclusions

5 Discussion and decision

Issue 1 - holidays

33. The claimant felt that she had been unduly restricted by the respondent in terms of when she could take annual leave. She stated that Mrs Siddique imposed conditions, such as that it would need to be at a time when another 10 member of Mrs Siddique's family could cover for her. That might be her eldest son, who had a part-time job of his own, her elder daughter who was at university in Aberdeen and so could only provide cover outside of term time or her younger daughter who was still at school. Whilst this was largely true, Mrs Siddique's sister was also trained to cover the claimant's duties and at 15 times did so, along with Mrs Siddique's mother. Also, Mrs Siddique's son only worked at weekends in his job. Mrs Siddique therefore believed the claimant could take holidays much more freely, but just chose not to ask for them.

34. It is found that the claimant was generally able to request and to take annual leave. However, she was entitled to be paid for certain leave accrued at the 20 time of her resignation and which she did not take.

35. It is necessary to calculate the claimant's annual holiday entitlement as that was never formally agreed. She was entitled to the statutory minimum annual leave entitlement set out in Part II of WTR. That is 5.6 weeks or 28 days for an employee working full time five days per week, or the pro rata equivalent 25 if working less. The claimant's contractual working time was 25 hours per week. She did not work full time. She worked between 9am and 5.30pm with breaks on the days that she worked. She therefore is taken to have worked three out of five full days per week for these purposes. Her leave entitlement was that proportion of a full-time worker's entitlement to 28 days, i.e. 17 days.

36. It is also necessary to identify the annual leave reference period, or holiday year. In the absence of any agreement, that is to be taken as starting on each anniversary of an employee's commencement date. Therefore, the claimant's 5 holiday year began on 29 August each year and ended on 28 August the following year.

37. The holidays which the claimant was granted because of the post office being closed in her last holiday year were 25 and 26 December 2018, and 1 and 2, 19 April, 6 and 27 May and 5 August 2019 – a total of eight days.

10 38. Of the two days of requested paid leave that the claimant took, one fell within her last holiday year.

39. Therefore, the claimant took nine days of paid leave in 2018-2019. This left eight days not taken.

40. It is noted that she resigned five days before completing her last holiday year, 15 but she had still accrued 17 days by then due to rounding up.

41. The claimant is therefore entitled to eight days of paid annual leave, each calculated at eight hours of working at the NMW rate of £8.21. This equates to £525.44. Net of employee National Insurance contributions that amounts to **£462.39**.

20 **Issue 2 – payment of the National Minimum Wage**

42. The claimant's pay did not increase from £7.83 to £8.21 on 1 April 2019. She was therefore not paid the national Minimum Wage between that date and her resignation date of 24 August 2019.

43. As she was paid less than she was entitled to, both contractually and by 25 statutory law, a series of unlawful deductions was made from her pay.

44. The difference between hourly rates is 38p, or £9.50 per week. The number of weeks in which she was paid short was 21, equating to £199.50 in gross terms. The value net of deductions for employee National Insurance contributions is **£175.56**. This is the amount she is entitled to receive as 5 compensation for the unlawful deductions.

Issue 4 – pay statements

45. The right of a worker to receive itemised pay statements is set out in section 8 of ERA.

10 46. Specifically, it says:

8 Itemised pay statement.

(1) *A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*

15 (2) *The statement shall contain particulars of—*

(a) *the gross amount of the wages or salary,*

(b) *the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*

20 (c) *the net amount of wages or salary payable,*

(d) *where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment;*

(e) *where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—*

25 (i) *a single aggregate figure, or*
(ii) *separate figures for different types of work or different rates of pay.*

47. Whilst the payslips provided to the claimant after her employment ended did contain the necessary information that section 8 requires, the claimant clearly was not provided with them 'at or before the time at which any payment of wages or salary is made'. As a secondary point, the payslips which were ultimately

provided were incomplete. In particular, they did not cover the dates of 25 March to 24 August 2019 – the claimant's last five months of service.

48. Therefore, whilst it is entirely possible that the payslips were not provided on 10 time through an oversight, even by Mrs Siddique's own admission they did not satisfy section 8 in the above two ways.

49. Considering the Tribunal's power under section 11 ERA it is possible and appropriate to make a finding that the respondent did not provide the claimant with pay statements as required by section 8 ERA at any time during her 15 period of employment. This declaration is made under section 12(3)(a) ERA.

50. Having seen the claimant's payslips which were provided at a later date, it is possible to identify that 'unnotified deductions' were made from the claimant's pay. Those were for employee National Insurance contributions and pension contributions. They amounted to £23.86 every four weeks.

20 51. Under section 13(4) ERA the Tribunal can order that an employer who has made unnotified deductions should pay to the employee the total of those deductions made in the 13-week period ending with the individual's application, or some of them. Its power to make an award in this situation is discretionary and it need not be exercised on an 'all or nothing' basis.

25 52. Unfortunately for the claimant in this claim it is not possible to award her any amount in relation to unnotified deductions, due to the timing of her claim to the employment Tribunal. It was registered on 13 February 2020, almost five months after her employment ended. No unnotified deductions were made in the 13-week period immediately before that date.

53. In any event it would not have been appropriate to make an award even the Tribunal had power to do so, principally as the deductions were properly lawful and an attempt was made to rectify the error once it became known, albeit that it was only partially successful.

5 54. Therefore the declaration under section 12(3)(a) ERA is the only remedy she is entitled to for this complaint.

10 Employment Judge: Brian Campbell
Date of Judgment: 12 November 2021
Entered in register: 15 November 2021
and copied to parties