Case Number: 2207483/2020 (V)

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Piteira	**V**	**Benjamin Tolla (trading as Curtis Sloane)**

Heard at: London Central (by video) **On**: 8 November 2021

Before: Employment Judge P Klimov (sitting alone)

Representation

For the Claimant: in person

For the Respondent: in person

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable due to the Coronavirus pandemic restrictions and all issues could be determined in a remote hearing.

UPON a reconsideration of the judgment given orally to the parties at the end of the hearing on 8 November 2021 on the Tribunal's own initiative under rule 73 of the Employment Tribunals Rules of Procedure 2013, and without a hearing.

JUDGMENT

1. On its own initiative, the tribunal has decided to reconsider the judgment given orally to the parties at the end of the hearing, and has decided to vary the announced judgment in respect of the award of £100 for the failure to provide the claimant with itemised pay statements, because it is in the interest of justice to do so.

2. By failing to pay to the claimant for her accrued but untaken statutory holiday of 4.3 days the respondent has made an unauthorised deduction from her wages contrary to section 13 of the Employment Rights Act 1996 (ERA) and in breach of regulation 14(2) of the Working Time Regulations 1998 (WTR) and is ordered to pay to the claimant the gross sum of **£430**

in respect of the amount unlawfully deducted, and to account to HMRC for any tax and Ni due.

3. The respondent has failed to give to the claimant a written statement of particulars of employment in breach of section 1 of the Employment Rights Act 1996 and is ordered to pay to the claimant the gross sum of **£1,000**, being the amount equal to two weeks' pay, calculated in accordance with section 38 of the Employment Act 2002.

4. The respondent has failed to give to the claimant written itemised pay statements for July and August 2020 in breach of section 8 of the Employment Rights Act 1996.

5. The claimant's complaint of unauthorised deduction from wages in respect of her salary for July and August 2020 fails and is dismissed.

6. The claimant's complaint of sexual harassment shall proceed to be determined at a final hearing to be listed by the Tribunal at a case management preliminary hearing on 7 February 2022.

REASONS

Claims and Preliminary issues

1. By a claim form dated 7 December 2020 the claimant brought complaints of: (i) unlawful deduction from wages in respect of her salary for July and August 2020 and holiday pay, (ii) failure to provide particulars of employment, (iii) failure to provide itemised pay statements for July and August 2020 and (iv) sexual harassment.

2. She identified the respondent as Curtis Sloane Ltd at Portland Road, London W11 4LA. The claim form was served at this address on 25 May 2021 and the respondent was asked to file a response, if it intended to defend the claim, by 22 June 2021.

3. On 22 June 2021, the respondent sent to the Tribunal an email from **benjamintoller@curtis-sloane.com** email address, saying that he had "*no knowledge or have we ever presented ourselves or represented Curtis Sloane Ltd or have we ever had dealings with anyone associated with this company… We have returned the claim form*".

4. On 6 September 2021, Employment Judge Goodman adjourned the final hearing and ordered that Benjamin Tolla, trading as Curtis Sloane, is substituted for Curtis Sloane Limited as respondent to the claim. She also ordered that the claim form be re-served on the respondent and extended the respondent's time to respond to the claim to 11 October 2021. She listed the final hearing of all claims, except sexual harassment claim, to take place at 10am on 8 November 2021.

5. She gave the following reasons:

8. *Notice of hearing for today was posted on 19 July 2021 to Curtis Sloane Ltd in Wolverhampton, and emailed to the claimant. Thus it does not seem to have come to the attention of Benjamin Tolla or the business trading in London W11.*

9. This morning the staff have shown me an email sent by the claimant stating that she has only recently received notice of hearing as it went to junkmail, that she has technical difficulty, and seeking a postponement. She did not join the hearing when it started at 10 am this morning.

10. It seems clear from the information available that although the claim has come to the attention of the intended respondent, he has not been correctly identified, nor, importantly, notified of this hearing. It is in the interests of justice to postpone the hearing to give him the opportunity to respond.

6. On 6 September 2021, the order was emailed to the claimant and to the respondent to **benjamintoller@curtis-sloane.com** email address.

7. On 7 September 2021, the Tribunal sent the Notice of Claim (enclosing the claimant's claim form) and the Notice of Hearing for the final hearing on 8 November 2021 to the respondent at Portland Road, London W11 4LA. Both notices incorrectly named the respondent as Curtis Sloane Limited.

8. The respondent did not present a response.

9. On 29 October 2021, the respondent wrote to the Tribunal as follows:

Dear Sir/Madam.

It seems to me we have crossed wires . I do not trade and has ever traded as Curtis-Sloane Ltd . All mails addressed to Curtis Sloane Ltd at my address are simply returned to sender unopened. I explained as much to Ms Boswell in person and by email - we simply can't respond to on behalf of a legal entity that we have nothing to do with . Doing so would have exposed me to legal jeopardy or is the Tribunal insisting that I misrepresent who we are?

Also , how come Judge Goodmans Order of the 6th of September attached to your email was never communicated to me until now ?

Please advise ASAP

Regards

Benjamin

10. On 5 November 2021, I made an order that the issue of the correct name of the respondent be considered as a preliminary issue at the hearing on 8 November 2021.

11. At the hearing today, the respondent acknowledged that he was aware that the claimant had brought a tribunal claim against him from his communications with ACAS. He also accepted receiving letters from the

Tribunal, but because these were addressed to Curtis Sloane Limited he chose not to open the letters and returned them to the Tribunal. He also claimed that he had received EJ Goodman's orders only "*last week*".

12. Having considered the evidence in front of me, I was satisfied that the respondent was properly notified of the claim against him. He knew that a claim was being pursued against him by the claimant. He received EJ Goodman's orders on 6 September 2021 by email. I reject his contention that he has not received the orders until a week before the hearing. The tribunal records show that the document containing the Orders has been emailed to him on 6 September 2021 at the same email address as he was using for corresponding with the Tribunal. The Orders clearly state that he has been named as the respondent in the proceedings and if he wished to defend the claim he must present a response by 11 October 2021.

13. Therefore, when the Notice of Claim and the Notice of Hearing had arrived at his address on 8 or 9 September 2021 (being sent by the Tribunal on 7 September), incorrectly naming Curtis Sloane Ltd as respondent, it would have been apparent to the respondent that these letters were intended for him and contained tribunal papers related to the claimant's claim against him. The fact that he chose not to open the letters and returned them to the Tribunal does not mean the notices were not properly served on him.

14. Under Rule 86 of the Employment Tribunals Rules of Procedure 2013 ("ET Rules") (***my emphasis***)

"Documents may be delivered to a party (whether by the Tribunal or by another party)—
(a) by post;
(b) by direct delivery to that party's address (including delivery by a courier or messenger service);
(c) by electronic communication; or
(d) by being handed personally to that party, if an individual and if no representative has been named in the claim form or response; or to any individual representative named in the claim form or response; or, on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.
(2) ***For the purposes of sub-paragraphs (a) to (c) of paragraph (1), the document shall be delivered to the address given in the claim form or response (which shall be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question***.
(3) ***If a party has given both a postal address and one or more electronic addresses, any of them may be used unless the party has indicated in writing that a particular address should or should not be used***."

15. Rule 91 of the ET Rules states:

"*A Tribunal may treat any document as delivered to a person, notwithstanding any non-compliance with rules 86 to 88, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.*"

16. For the reasons stated above I am satisfied that the substance of the Notice of Claim and the Notice of Hearing of 7 September 2021 came to the attention of the respondent. I, therefore, decided that it was in the interest of justice and in accordance with the overriding objective under Rule 2 of the ET Rules to proceed and consider the claimant's claims, except for sexual harassment, on their merits.

17. The respondent has failed to present a response and therefore under Rule 21(3) was only entitled to participate in any hearing to the extended permitted by the judge.

18. I decided that notwithstanding the respondent's failure to present a response it would be in the interest of justice to allow the respondent to address the Tribunal on the issues of remedy, in particular, because the claimant's claim for unlawful deduction from wages with respect to her July and August 2020 salary was not properly particularised, and it was not clear from her ET1 how much she claimed the respondent had unlawfully deducted from her wages.

19. At the end of the hearing, I announced my judgment to the parties. However, in preparing my written judgment and reasons I realised that I had miscalculated the period of 13 weeks between the date of the unnotified deduction of the claimant's accrued but untaken holiday pay (31 August 2020) and the date of the presentation of her claim form to the tribunal (7 December 2020). That period is more than 13 weeks and therefore under s.12(4) ERA I cannot make a monetary award to the claimant.

20. Therefore, I find that it is in the interest of justice to vary the judgment to make a declaration that the respondent was in breach of its duty under s8 ERA by failing to provide the claimant with itemised pay statements but make no monetary award. I have also decided that a hearing was not necessary in the interest of justice, and that it would be disproportionate and not in accordance with the overriding objective under Rule 2 of the ET Rules to call another hearing to deal with this issue. However, the parties may make their written representations on this issue and apply for a reconsideration of my judgment under Rules 70-72 of the ET Rules.

Findings of Fact

21. The claimant was employed by the respondent as personal assistant/office manager from 8 July 2020 to 31 August 2020, when she resigned. Her gross annual salary was £26,000 per annum, which equates to £2,166.67 per month, £500 per week and £100 per day (all figures are gross).

22. In or around early July 2020, the respondent sent to the claimant a copy of a contract of employment between Chainfocus Ltd – employer and Eva Kiivit – employee. The document did not specify the salary and stated the employee's role as Sales Negotiator. The respondent asked the claimant to amend the contract. The claimant corrected the errors and returned the corrected draft to the respondent. The respondent refused to sign the contract. He did not provide any other document to the claimant containing particulars of her employment.

23. The claimant was paid salary of £1,480.92(net) for July 2020 and £1,776.67 (net) for August 2020. The respondent did not provide the claimant with itemised pay statements showing tax, NI or other deductions made from her salary.

24. Upon her resignation on 31 August 2021, the claimant has accrued 4.3 days of statutory holiday entitlement. The respondent has failed to pay the claimant for her accrued by untaken holiday.

The Law and Conclusions

Unlawful deduction from wages – Salary for July and August 2020

25. Section 13(1) of the ERA states:
"*An employer shall not make a deduction from wages of a worker employed by*
him unless—
(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

26. Section 13(1)(a) permits deductions if they are '*required or authorised to be made by virtue of a statutory provision*'. This covers, for example, deductions in respect of PAYE for income tax and national insurance contributions.

27. Section 13(3) ERA provides:

"*Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion*."

28. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages. Where a tribunal finds a complaint under section 23 ERA well founded it shall make a declaration to that effect and shall order the employer to pay the worker the amount of any deductions made in contravention of section13 ERA (s24(1)(a) ERA).

29. The claimant was unable to explain to me why she says her salary payments for July and August 2020 were not correct. She accepted that she was paid £1,776.67 (net) for August 2020. Her ET1 says that he monthly net pay was £1,776. According, to the Salary Calculator at https://www.thesalarycalculator.co.uk/salary.php the gross salary of £26,000 translates to a monthly net pay of £1,778.52, when using the default tax code.

30. The net salary payment for July 2020 of £1,480.92 appears to be a pro-rata payment of the claimant's monthly salary for the period from her start date – 8 July to 30 July 2020.

31. The claimant claims that because the respondent has failed to provide her with itemised pay statements, she cannot accurately check whether correct amount of tax and NI have been deducted from her salary. However, she does not allege that any other types of unauthorised deductions have been made from her wages.

32. Therefore, I find that the claimant has failed to show that the respondent has made any unauthorised deduction from her wages for July and August 2020. Accordingly, that element of her compliant of unauthorised deduction from wages fails and is dismissed.

Holiday pay

33. The Working Time Regulations 1998 ("WTR") give workers the entitlement to 5.6 weeks leave each leave year (including any bank holidays the worker is entitled to take).

34. Employees are entitled to be paid in lieu of accrued but untaken holiday on termination of employment, however the employment came to an end (Reg 14 WTR).

35. Regulation 16(1) of the WTR provides that a worker is entitled to be paid at the rate of a week's pay in respect of each week of annual leave to which he or she is entitled under Reg 13 (basic leave) or Reg 13A (additional leave). A 'week's pay' is calculated in accordance with Ss.221-224 ERA.

36. If the employer fails to pay the worker for his/her accrued by untaken statutory holiday, the worker may bring a claim under Reg 30 WTR or in the alternative as a claim for an unauthorised deduction from wages under s.13 ERA.

37. The claimant says that she has calculated her holiday entitlement as 29.6 hours. The respondent says that his accountant has calculated the claimant's holiday entitlement as 3 days. The respondent did not provide his calculations.

38. I have calculated the claimant's holiday entitlement using the government statutory holiday entitlement online calculator as 4.3 days. During the hearing I showed to the parties the results of the online calculations on screen, including the input data of start and end date and number of days worked per week.

39. I decided to make the award based on the government on-line holiday entitlement calculator for 4.3 days – £430. The respondent said that he accepted what the government calculator showed, however, wished to verify the calculations with his accountant. I explained that under Rule 69 of the ET Rules the respondent could apply to the Tribunal to correct any clerical or other accidental slips or omissions or apply for a reconsideration of the judgment under Rule 70.

Failure to provide particulars of employment

40. The legal requirement to provide workers with a written statement of their employment particulars is contained in ss.1-6 of ERA.

41. Where an employer does not give a worker written particulars as required by s1 ERA, the worker may complain to an employment tribunal (s11 ERA).

42. Under s38 of Employment Act 2002 ("EA 2002"), if an employee succeeds in his/her claim under any of the tribunal jurisdictions listed in Schedule 5, (which includes claims for unauthorised deduction from wages under s13 ERA), and when the proceedings were begun the employer was in breach of its duty under s.1 ERA, the tribunal must, (save in the exceptional circumstances which would make an award or increase under that subsection unjust or inequitable), make an award of the minimum amount equal to two weeks' pay to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount, equal to four weeks' pay, instead.

43. The claimant has succeeded in her claims for unauthorised deduction from wages. I find that the respondent has failed to provide the claimant with particulars of employment. The contract the respondent sent to the claimant contained wrong parties and wrong employment details. Therefore, in my judgement, it did not satisfy the requirements of s.1 ERA.

44. When the claimant amended the details and returned the draft to the respondent, the respondent refused to sign it and to send it back to the claimant. The respondent did not send to the claimant any other documents containing particulars of employment. It follows, that the respondent did not provide any particulars of employment to the claimant and was in breach of its duty under s1 ERA when the proceedings were issued by the claimant.

45. I take into account that the respondent is a sole trader and does not have a dedicated HR department. I also take into account that the respondent sent to the claimant a sample contract for her to amend. However, he

then refused to accept it and did not give to the claimant any alternative document containing particulars of employment.

46. I find that there are no special circumstances which would make the minimum amount award unjust or inequitable. However, it will not be just and equitable to award the higher amount.

47. Therefore, I make an award for £1,000 (gross), which equals to the claimant's two week's gross pay.

Failure to provide itemised pay statement

48. S. 8 ERA states that "*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*".

49. A worker who has not been provided with an itemised pay statement (either because the employer has failed to give the worker a statement or because the statement the employer has given does not comply with what is required) has the right to refer the matter to an employment tribunal — S.11(1) ERA.

50. If a tribunal finds that a worker has not received a pay statement, or that the worker has received one but it does not contain the required particulars, it must make a declaration to that effect — S.12(3) ERA. Where the tribunal finds that any unnotified deductions have been made during the 13 weeks immediately preceding the tribunal application, it may also make a monetary award to the worker — S.12(4), in a sum not exceeding the aggregate of the unnotified deductions so made.

51. I find that the respondent has failed to give to the claimant her itemised pay statements for July and August 2020, and that was in breach of the respondent's duty under s.8 ERA. However, because the unnotified deduction of the claimant's accrued holiday pay was made on or before 31 August 2021, the last day of her employment with the respondent, the deduction has not been made during the 13 weeks immediately preceding the claimant's tribunal application on 7 December 2021. Therefore, no monetary award can be made to the claimant under s.12(4) ERA.

Sexual harassment

52. The claimant complains that she was sexually harassed by the respondent. However, her claim form does not provide particulars of her complaint of sexual harassment.

53. On 6 September 2021, Employment Judge Goodman ordered the claimant to send to the respondent and the Tribunal further information of her claim of harassment by 20 September 2021. The order said that the claimant "*must state what behaviour exactly she complains of, the date, who was involved, and what was said or done*". The claimant has failed to do so.

54. At the hearing today, the claimant said that she had sent something to the Tribunal in November. I was able to find in the correspondence file copies of her letter to HMRC dated 20 October 2021 and her undated letter to ACAS, containing the following allegations:

> Mistreatment in the working place: the employer demonstrated impolite and rude behaviour, losing completely the emotional control with different stakeholders, including myself. Adopting an unacceptable aggressive behaviour, asking to shut up the mouth and screaming loudly to impose his point of view, suppressing the counterpart to speak freely without being interrupted. Moreover, diverse episodes of sexual orientated conversation occurred.

55. This description, however, is insufficient, as it does not contain details EJ Goodman has ordered the claimant to provide. Further, the respondent did not receive any particulars of the claimant's compliant of sexual harassment until this issue has been raised at the hearing today.

56. The claimant requested a further period of one week to provide details of her sexual harassment complaint. I decided that, notwithstanding that the claimant was in breach of the Tribunal's orders, it would be in the interest of justice to allow the claimant a further week until 15 November 2021 to provide full particulars of her complaint of sexual harassment. However, a further failure by the claimant to comply with the Tribunal's orders may result in the Tribunal deciding to strike out her sexual harassment claim.

57. The respondent will then have until 29 November 2021 to respond to the complaint.

58. I have made orders to that effect. I have also listed the remaining element of the claimant's claim for sexual harassment for a case management hearing on 7 February 2022, at which hearing an employment judge will make further case management orders and list the case for the final hearing before a full panel.

Employment Judge P Klimov
London Central Region

Dated : 8 November 2021

Sent to the parties on:

09/11/2021

For the Tribunals Office

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