



EMPLOYMENT TRIBUNALS

Claimant

Mrs J Newitt

Respondent

WWAC Automotive Ltd

v

Heard at: Reading (By CVP)

On: 29 July 2021

Before: Employment Judge Cassel

Appearances

For the Claimant:

Mrs D Smith (Daughter of Claimant).

For the Respondent:

Mr O Lonergan, Legal Advisor.

JUDGMENT having been sent to the parties on 30 July 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The claim form was received by the tribunal on 21 September 2020. In it the claimant claims to be owed unpaid wages and other payments. It was clarified that the three areas of liability argued are: a failure to make correct furlough payments; a shortfall in the payments that were made and a failure on the part of the respondent(s) to provide itemised pay statements. The claimant nominated five respondents as follows: WWAC Automotive Ltd, WAC Automotive Engineers Ltd, Woodley Auto Care Ltd, WWAC Automotive Ltd, at a different address and UCP Car Parks Ltd. The claims against the final respondent were withdrawn and those claims were dismissed on withdrawal.
2. Responses were submitted in respect of the remaining respondents and on 10 February 2021 a Notice of Hearing was sent to the parties and case management orders were made.
3. On 23 May 2021, a letter was sent to the respondents by the tribunal in which each was told that Employment Judge Quill was considering striking out the responses for failure to comply with orders that had been made. Subsequently an order for Strike Out of the responses was made and the

respondents were informed that the extent of their participation in these proceedings would be determined at the substantive hearing. The matter came before me today with the claimant being represented by her daughter, Mrs Smith, and Mr Lonergan appearing for the respondents.

4. Having heard representations from Mr Lonergan I decided and announced that he would be permitted to cross-examine the claimant's witnesses and make submissions on evidence and if appropriate on remedy.
5. As a preliminary matter, I heard representations from both parties and Mr Lonergan confirmed that the respondent shown above is the correct respondent which is the trading company which employed the claimant, a proposition with which the claimant was in agreement.
6. I was provided with a bundle of documents, a supplementary bundle of documents, the statement of the claimant, the statement of Mrs Smith and a Schedule of Loss.
7. I heard evidence from the claimant, Mrs J. Newitt, and from Mrs D Smith both of whom confirmed the truth of their written witness statements and were cross-examined by Mr Lonergan.
8. I make the following findings of fact based on the balance of probabilities having considered those documents to which my attention was drawn.

Findings of Fact

9. The claimant started her employment on 3 March 2008 as a Senior Service Adviser with Woodley Auto Centre Ltd. She was paid a salary of £23,000 per annum and received a written document in which were laid out her conditions of employment
10. The company was sold to Mr Dipen Pattni in or around 2015/2016. Mr Pattni is a director of a number of companies including the respondent. From October 2018 she ceased to receive a payslip or P60 although many requests for such documentation were made.
11. In April 2019 she received a pay rise. In evidence she stated that the gross sum was approximately £25,000 per year although it was never confirmed in writing. However her net pay increased from £1606 to £1704 per month from April 2019 to January 2020.
12. The claimant underwent a hip replacement operation and was away from work from 27 January 2020. She received what she described as "generous" sick pay. She remained off work until 16 March 2020. A meeting took place on 12 March 2020 when her return to work was discussed with Mr Patel who worked for the respondent. An agreement was reached for a phased return to full-time working starting with four hours per day Monday to Friday which arrangement finished on 25 March 2020 when she was instructed to finish work. She was cross-examined

and was adamant that no agreement had been reached to reduce her working hours to 20 and the agreement was for her phased return to normal working hours.

13. In giving evidence, Mrs Smith confirmed that she was present at the meeting on 12 March 2020 with her mother and Mr Patel and she confirmed the account given in evidence by her mother. She added that her mother had raised the issue of a review but that related solely to the speed with which she could return to full-time work and in any event because of her rapid recovery from her hip operation there was no reason why she could not have returned to full-time work shortly thereafter.
14. On 31 March 2020 the claimant signed an agreement under the Coronavirus Job Retention Scheme, which was produced at page 73 of the bundle. Within the agreement was a term that she be paid 80% of her normal gross salary. Following text correspondence a meeting took place between the claimant and Mr Pattni following which she received a pay statement which showed a net payment of £910.85.
15. The claimant again sought clarification from Mr Pattni, who was evasive and unhelpful. The claimant sought advice from the Citizen Advice Bureau. In a letter dated 5 June 2020, the CAB adviser fully laid out the basis of the dispute, referring to government guidance and those areas which Mr Pattni needed to address. Although by its nature the letter was written on behalf of the claimant it fairly set out why it was said that the respondent was in breach of its legal requirements.
16. Mr Pattni remained unhelpful and evasive. The claimant pointed to a multiplicity of potential employers, and thus respondents, which she submitted demonstrated that Mr Pattni was trying to obfuscate rather than resolve a genuine workplace dispute.
17. The claim form was issued and although I was told that efforts had been made to try to resolve matters this of course is not something that I need to consider in dealing with the claims.

Submissions and Conclusions

18. I heard submissions from both Mr Lonergan and Mrs Smith. I bear in mind that Mrs Smith has no experience as a professional adviser and is here in a lay capacity to assist the claimant. One of the claims made during these proceedings is in relation to what is said to be unpaid holiday. There is no indication within the claim form or the information provided in the body of the ET1 that a holiday pay claim was being made. The tribunal has no jurisdiction to hear any such complaint. Similarly, it was suggested that the respondent had failed to pay tax on the earnings of the claimant. This is outside of the jurisdiction of the tribunal and maybe a matter that needs to be pursued elsewhere, although that is of course up to the parties.

19. I was reminded of the obligations on an employer under the provisions of section 8 of the Employment Rights Act 1996 in relation to itemised pay statements and of section 13 of the same act, the right not to suffer unauthorised deductions. I find that the respondent has failed to provide itemised pay statements and has failed to pay to the claimant those sums to which she is entitled under the contract of employment.
20. Section 12 (3) of the Employment Rights Act places a duty on the tribunal to make a declaration if an employer has failed to give a worker any pay statement in accordance with section 8. I make such a declaration. At section 12(4) a tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the notified deductions so made. Having explained to Mr Lonergan the basis of the calculation I propose to make, notwithstanding his submissions as to liability, he accepted that the correct sum is £932.60.
21. I next deal with unlawful deductions. Under the Coronavirus Job Retention Scheme the government has issued guidance to employers as to the correct approach to making payments. I refer to what is agreed is the relevant updated publication which was issued on 7 August 2020. The first question that must be asked is whether the claimant is eligible under the scheme and the answer to that is that she has entered into a signed written agreement referred to in the findings above which was entered into by both parties. The second question is what is the entitlement under the agreement. The claimant is entitled to at least 80% of her regular wages, although a higher amount can in some circumstances be agreed between parties to such an agreement. Her entitlement under the agreement is 80% of her regular wages. The third question is what amounts to regular wages. Within the guidance the regular wage on which the calculation is to be based is that which is normally payable prior to any sickness absence.
22. In the findings that I have made there was no settled agreement, and thus no variation of her contract of employment, to vary the amount of her pay on her return from sickness. The sum to which she is entitled on a monthly basis, less the sums already paid, is £631.83. That sum must of course be reduced by 50% for the one month of October 2020 when she worked 50% of her contracted working time. Thus for the 14 months to which she was entitled to reduced unpaid pay of £631.83 and the month of October 2020 the total amounts to £9161.53.
23. Within the schedule of loss at paragraph 3 details are given as to the arrears of pay from March 2020 to June 2021. Documentation was provided. However in discussions with both representatives it was apparent that an appropriate deduction had not been made for October 2020, in line with the comments made above and thus the sum claimed must be reduced by £43.13 which makes a total of £1560.51.
24. I record in this judgment that in open tribunal having discussed the approach that I proposed to take and the calculations thereafter made,

notwithstanding any submissions on liability, both parties agreed with the calculations and the award thus made.

25. The total payable is £11,659.64. This is a net sum on which no tax or NI is payable.

26. The recoupment provisions do not apply.

Employment Judge Cassel

Date: 5 October 2021

Sent to the parties on:

25 November 2021

For the Tribunal Office