



EMPLOYMENT TRIBUNALS  
London Central Region

Heard by CVP on 1/11/2021

Claimant: Ms L Green

Respondents: (1) Ms N Burgess  
(2) Pro Lab Design Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: No appearance

Respondents: Ms N Burgess

JUDGMENT

1. The Respondents must pay the Claimant £560 holiday pay.
2. The Respondents must pay the Claimant £560 under section 12(4) Employment Rights Act 1996
3. The above sums (total £1120) are payable without deduction by 15/12/21.
4. The liability of the Respondents is joint and several, the one paying, the other to be absolved.

REASONS

1. I heard evidence on oath from Ms N Burgess and was referred to copies of payslips and bank payments relating to sums paid to the Claimant. I was sent also at the end of the hearing a copy email dated 19/7/2020 by which Ms Burgess had given the Claimant the main information required by section 1 Employment Rights Act 1996.
2. The Claimant has not stayed in touch with the Tribunal and the Respondents but I had sufficient evidence to determine this claim in her absence.
3. I was informed by Ms Burgess that the Claimant was employed not be her personally but by the company Pro Lab Design Ltd. There was no written contract produced but the fact that the company was the employer was confirmed in the email dated 19/7/20. In the circumstances I have joined the company as Second Respondent and this judgment is given against both.
4. The Claimant was employed as a trainee dental technician by the Respondent/s from 20/7/20 to 16/10/20. She issued her claim on 14/1/21 claiming arrears of pay and failure by the Respondent/s to provide payslips.
5. It is accepted that the Respondent/s failed to provide the Claimant with any payslips contrary to section 8 ERA 1996. These were issued by the Respondent/s only after the Claimant issued her claim.
6. I am satisfied that the Claimant was paid for all her hours she actually worked, at the rate of £10 per hour, such payments being made gross of tax and national insurance contributions. The total payments made were £4640 in total.
7. It is agreed that the Claimant was not paid any holiday pay. As a 5-day-a-week employee she was entitled to 28 days paid holiday per year, and pro rata for any lesser period of employment. Her employment lasted just under three months and hence she accrued an entitlement to 7 days paid holiday by the time her employment with the Respondent/s ended. She worked on average 8 hours a day - earning £80 gross per day. She is entitled

- to 7 x £80 = £560 as holiday pay.
8. The Respondents stated they were entitled to set-off the tax and national insurance contributions which they should have but failed to deduct from the Claimant's pay in relation to the hours she actually worked. I was unable to accept that as a defence because (i) it is not shown by the Respondent/s that any tax or NI has in fact been sent to HMRC by the Respondent/s in respect of the Claimant and (ii) the payment of wages gross of tax and national insurance contributions to the Claimant was illegal because any employer should deduct these sums under a PAYE scheme and pay them to HMRC, and not enter into other arrangements.
  9. In the circumstances the holiday pay (£560) due under this judgment must be paid gross and the Claimant is responsible to account to HMRC for any tax and NI she is liable to pay to HMRC on the gross amounts of all pay and holiday pay she has received or will receive from the Respondent/s.
  10. The period of 13 weeks before 14/1/21 when the Claimant issued her claim (in which she referred the issue of no payslips to the tribunal) started on 15/10/20. During the period 15/10/20 - 14/1/21 the Respondent failed to pay the Claimant £560 (her holiday pay) such deduction not being shown on any payslip provided to her, contrary to section 8 and 9 Employment Rights Act 1996
  11. The appropriate amount to order the Respondent to pay the Claimant under section 12(4) ERA 1996 (as a penalty for failing to provide payslips) is a further sum of £560, which is not taxable.
  12. In addition I would have ordered the Respondent/s to have paid 2 weeks pay to the Claimant under section 38 Employment Rights Act 2002, but for the fact that at the end of the hearing Ms Burgess sent me a copy of the email dated 19/7/20 referred to above, which substantially complied with the requirements that initial employment particulars be provided.

J S Burns Employment Judge  
London Central  
1/12/2021  
For Secretary of the Tribunals  
Date sent to parties: 01/12/2021

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