



EMPLOYMENT TRIBUNALS

Claimant: Ms H Parry

Respondent: Ultimate N&B Limited

Heard at: Cardiff Employment Tribunal

On: 2 February 2022

Before: Employment Judge E Macdonald

Representation

Claimant: in person

Respondent: N/A

RESERVED JUDGMENT

1. The claim for unlawful deductions from wages is well-founded. The Respondent is ordered to pay to the Claimant the sum of **£266** (gross), subject to deductions for tax & National Insurance.
2. The claim for notice pay succeeds. The Respondent is ordered to pay the Claimant the sum of **£1,705 (gross)**, subject to deductions for tax & National Insurance.
3. The claim for redundancy pay succeeds. The Respondent is ordered to pay the Claimant the sum of **£2,755**

REASONS

1. The Tribunal heard evidence from the Claimant, who had provided a witness statement and exhibited payslips in support.
2. The Respondent did not enter a response to the claim and has taken no part in these proceedings.
3. The Claimant had worked for the Respondent as a Beauty Therapist since 30 May 2005.
4. In March 2020 the Claimant returned to work following maternity leave. At that point she was working 3 days per week (Thursday, Friday & Saturday). She was paid £9.50 / hour for 20 hours / week, a gross figure of £190 / week.

5. In mid-June 2021 (following some time on furlough) the Claimant was told that she would no longer work on Thursdays. She was unaware that she could contest this and it was not a discussion. She was under the impression that when business improved she would resume working on Thursdays. She had two small children to provide for, and needed a job: she did not, in her view, have much choice.
6. On 24 July 2021 the Claimant was given notice of termination of employment by reason of redundancy. The stated termination date was 30 August 2021. However, on 10 August 2021 she was informed that the Respondent's salon would close on 21 August 2021.
7. Following the end of her employment the Claimant worked in a self-employed capacity "doing nails". In the period from 24 July 2021 – 16 October 2021 (a period of 12 weeks) the Claimant earned £195.
8. The Tribunal makes the following determinations.

Unlawful deductions from wages: s 23 Employment Rights Act 1996

9. The Claimant's conduct in continuing to work for the Respondent after 30 June 2021 does not amount to affirmation of the contract: *Abrahall & ors v Nottingham City Council and anr* [2018] EWCA Civ 796 per Underhill LJ. The Claimant's conduct is readily explained by her belief that the arrangement was temporary, and the need to provide for her two small children.
10. The Claimant was accordingly entitled to be paid at a rate of £190 / week. She was in fact paid at a rate of £123.50 / week effective from 30 June 2021. From 30 June 2021 – 24 July 2021 (when notice of termination was given) is a period of 4 weeks. The shortfall is $(£190 - £123.50) \times 4 =$ **£266 (gross)**
11. The deduction was unlawful.
12. The Tribunal was unable accurately to assess the net value of the deductions and the award is therefore made gross of tax & National Insurance contributions. Tax & National Insurance remain payable on that figure.

Notice pay

13. The Claimant had been employed by the Respondent for 17 complete years at the date of termination. The required length of notice pursuant to s 86 Employment Rights Act 1996 is 12 weeks. Had the Claimant been given the correct period of notice she would have received $(12 \times £190) =$ £2,280 (gross of tax & National Insurance).
14. Credit is to be given for sums received or earned during that period. Those sums consisted of £380 in respect of notice pay and £195 in respect of self-employed earnings (in the period 24 July 2021 - 16 October 2021).
15. The amount that will be awarded is therefore $(£2,280 - (£380 + £195)) =$ **£1,705** (gross of tax and National Insurance). Tax & National Insurance remain payable on that figure.

Redundancy pay

16. The Claimant was dismissed by reason of redundancy. Pursuant to ss 145, 162 & 164 Employment Rights Act 1996 she has a right to a redundancy payment calculated as follows: 12 years' employment when

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the Claimant was over the age of 22 but under the age of 41 and 5 years when the Claimant was under the age of 22 yields $(12 \times 1 \times \text{£}190) + (5 \times 0.5 \times \text{£}190) = \text{£}2,755$.

17. The Respondent will be ordered to pay that sum to the Claimant.

Employment Judge **Macdonald**
Date 2 February 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 4 February 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche