



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Martin

Respondent: Wayne Austin IFA Limited

Heard at: Manchester Employment Tribunal

On: 31 January 2022

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: In person

Respondent: Mr J Hurd, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. By consent it is agreed that the respondent made an unauthorised deduction from the claimant's pay in July 2021 of £192.31 (net).
2. By consent it is agreed that the respondent made an unauthorised deduction from the claimant's pay in August 2021 of £51.37 (gross).
3. The respondent did not pay the claimant the full amount to which she was entitled as a payment in lieu of accrued but untaken annual leave, and it is ordered to pay her the gross sum of £384.60.
4. The respondent did not breach the claimant's contract of employment with regard to notice and the claim for breach of contract does not succeed and is dismissed.

The above Judgment having been sent to the parties on 2 February 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant was employed by the respondent from 19 April 2021 as a client manager.
2. The claimant alleged that the respondent had made unauthorised deductions from her wages, by: paying her £33 statutory sick pay only (in her pay in July 2021) for the week of 28 June 2021 for which she was told to stay away from the respondent's premises for Covid related reasons; and by deducting £55 from her pay in August 2021.
3. The claimant's employment with the respondent terminated following a meeting on 17 August 2021. The claimant claimed that the respondent had breached her contract by not paying her for her one week notice period. She also claimed that she had not been paid for the accrued but untaken annual leave to which she was entitled.

Claims and issues

4. At the start of the hearing the issues which remained outstanding and were to be determined were confirmed with the parties.
5. The respondent's representative confirmed that the respondent conceded that the two claims for unauthorised deductions from wages were correctly made out. It was agreed that Judgment for the claimant would be entered in respect of each of those claims, by consent.
6. The other two issues in dispute were clarified and confirmed with the parties.
7. It was confirmed with the claimant that she was not pursuing a claim for unfair dismissal. This was raised because of the sums claimed in the claimant's schedule of loss. The claimant had not had the two years service required to pursue an ordinary unfair dismissal claim.
8. The documents and statements provided by both parties contained significant information which was not relevant to the issues to be determined in the hearing. It was emphasised to the parties that the Tribunal would not consider evidence or determine issues which were not relevant to the claims which remained to be determined. In particular, the issues which had led to the meeting on 17 August 2021 and/or to the deterioration of the relationship between the parties, were not relevant. One issue in dispute was whether the claimant was dismissed (as she contended) or had resigned (as the respondent contended). That issue would only be considered to the extent necessary to determine the issues of notice and holiday pay.

Evidence and Witnesses

9. Each party provided the Tribunal with a bundle of documents and there were witness statements provided for the claimant and for Mr Austin, a director of the respondent. The statements and the documents were read in advance of the evidence being heard.

10. An adjournment was taken to allow the claimant time to read and consider the statement which had been provided for Mr Austin and the respondent's documents. At the same time the respondent's counsel was provided with a set of the claimant's documents, which provided him with time to consider any documents which he may not have seen (the respondent's representative having only been instructed very shortly before the hearing).

11. Both parties confirmed that they were happy to proceed with the hearing and that they wished to have matters determined.

12. The Tribunal heard evidence from the claimant, who was cross examined by the respondent's representative (as well as being asked a question by the Tribunal). The Tribunal heard evidence from Mr Austin, who was cross examined by the claimant and asked questions by the Tribunal.

13. Each of the parties was provided with the opportunity to make submissions, which they each did orally. Those submissions were fully considered, whether or not they are specifically referred to in this Judgment.

The Facts

14. The claimant was employed by the respondent from 19 April 2021, she worked four days per week. She was paid £20,000 per annum.

15. It was not in dispute that the claimant's employment terminated following a meeting attended by the claimant, Mr Austin and Mr Norris on 17 August 2021. When exactly the employment terminated was in dispute. The claimant contended it terminated that day, the respondent contended that it terminated after one week's notice (albeit there was no dispute that the claimant did not actively attend work after 17 August).

16. The parties fundamentally disagreed about a number of issues which led up to, and were discussed in, the meeting on 17 August 2021, at which the claimant's employment was terminated. Those issues included whether in fact the claimant resigned or was dismissed. It was not necessary for the Tribunal to determine any of those disagreements in order to determine the claims before the Tribunal at the hearing.

17. At the meeting there was a discussion about holiday and notice. The parties' recollections differed. It was clear that it was an emotive meeting for all concerned.

18. After the meeting, the claimant was sent a letter dated 17 August 2021 by Mr Austin. Amongst other things, that said: "*I write with regard to your giving verbal notice to terminate your employment today, 17th August 2021*". The end of the letter said that the claimant had left her position immediately and that she would use up her accrued holiday as all or part of her notice.

19. The claimant's payslip of 31 August 2021 recorded that the claimant was paid £1,378.22 of basic pay and £144.23 holiday pay (less deductions). The claimant's normal monthly pay for a full month was £1,666.67. A document produced for the respondent which explained the payments made in the payslip, recorded that the figure of £1,378.22 was calculated by deducting three days from the pay due for

August (being 26-31 August 2021). The holiday pay was for 1.5 days (the respondent contended being the holiday remaining due once 4 days had been used and deducted from the 5.5 day total entitlement).

20. The P45 stated that the claimant's leaving date was 18 August 2021. When asked about this date, Mr Austin was not entirely sure as he did not create the P45, but he referred to his understanding that the date could not be the last date upon which the claimant had actually attended work.

21. On her claim form the claimant stated that the date of termination of her employment was 17 August 2021. The respondent stated on its response form that it was 25 August 2021.

The Law

22. Neither party referred to any law in the course of their submissions. As the unauthorised deductions from wages were conceded, it is not necessary to refer to the relevant law which applied to those claims in this decision.

23. A breach of contract claim can only be brought in the Employment Tribunal if the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 applies. That Order only applies to claims by an employee and where the claim arises or is outstanding on the termination of the employee's employment.

24. The claim for holiday pay arises from regulation 14 of the Working Time Regulations 1998.

25. The claimant's position was that she had neither been paid for her notice nor for the 5.5 days accrued but untaken annual leave which she had accumulated. She believed her employment had been terminated on 17 August 2017. She denied agreeing to take annual leave during a period of notice.

26. The respondent's submission with regard to notice, was that the claimant had in fact been paid for the one week's notice to which she was entitled in the pay which she was paid for August 2021.

27. The respondent's submission with regard to annual leave, was that the claimant had agreed in the meeting on 17 August 2021 to take four days of the annual leave which she had accrued during the week of notice, so that she had used that leave by not actively working during her notice period. It was the respondent's position that 1.5 days accrued but untaken annual leave had been paid in August 2021. The respondent's position was that the employment did not terminate until notice had expired. The respondent's representative, quite rightly, accepted that if the Tribunal found as a fact that the claimant's employment terminated on 17 August, the claimant would be entitled to be paid in lieu of a further four days of accrued but untaken annual leave

Conclusions – applying the law to the facts

28. In her pay for August 2021 as recorded on the payslip, the claimant was paid a full month's pay less three working days. She was not paid until only 17 August;

she was paid until 25 August. Accordingly, the claimant was paid for the week's notice which was due.

29. The claim for breach of contract cannot succeed when the claimant was paid for what was, or would have been, the notice period (even if the payslip did not spell out specifically what was pay and what was notice). There was no breach of contract with regard to payment for notice.

30. The Tribunal finds as a fact that the claimant's employment with the respondent terminated on 17 August 2021. That was the effect of what was spelt out in Mr Austin's letter of 17 August, albeit the content of that letter might have been somewhat unclear. However, in any event, the fact that the claimant's employment terminated on 17 August 2021 (or 18 August) was most vividly and clearly spelt out in the P45 issued to the claimant. The Tribunal found that the claimant did not, as a matter of fact, continue in employment after that date. She was not employed for her notice period and therefore could not have used up her accrued annual leave during any period of notice.

31. Accordingly, on the termination of her employment on 17 August, the claimant had 5½ days accrued but untaken annual leave, a figure which was common ground between the parties.

32. The claimant was paid 1½ days' holiday in her August pay, as shown in her payslip. The claimant's claim for the full 5½ days is not correct as 1½ days were paid as recorded in the payslip.

33. The claimant was due a further four days' pay in lieu of accrued holiday, and the figure for that holiday pay is £384.60. Whilst not a matter for the Tribunal, it is likely that deductions for tax and NI may need to be made from that sum before it is paid to the claimant.

34. Whatever Mr Austin intended to be the position in the discussion on 17 August, as the claimant's employment terminated on that day (as the Tribunal has found), the claimant cannot have used up her annual leave in the period which otherwise would have been notice if she had remained in employment.

Employment Judge Phil Allen
Date: 2 February 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
7 February 2022

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