



THE EMPLOYMENT TRIBUNALS

Claimant: Miss YV House
Respondent: Christopher Mallaburn T/A Hermitage Inn Hotel
Heard at: Newcastle upon Tyne Hearing Centre by telephone
On: Tuesday 22nd March 2022
Before: Employment Judge Speker OBE DL

Representation:

Claimant: In Person
Respondent: Mrs Elizabeth Evans-Jarvis (Solicitor)

JUDGMENT ON RECONSIDERATION

1. On reconsideration, paragraph 3 of the judgment entered on 23rd and 24th November 2021 that the claim of unauthorised deduction from wages succeeded and the respondent was ordered to pay to the claimant the sum of £1,523.20, is confirmed, and accordingly that sum must be paid by the respondent in addition to the other sums ordered.

REASONS

1. This was an application is made by the respondent under Regulation 71 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 for the tribunal to reconsider part of the judgment made at the final hearing of this case on 23rd and 24th November 2021. The application by the respondent was to consider paragraph 3 of the said judgment whereby the tribunal found in favour of the claimant that she had suffered unauthorised deduction from wages and that the respondent was ordered to pay to the claimant the sum of £1,523.20.
2. For the purposes of this application for reconsideration, Mrs Evans-Davis had submitted written statements by witnesses, namely Christopher Mallaburn, the respondent and Victoria Taylor, described as an administration assistant. I read those statements but it was not necessary to call either of the witnesses to give oral

evidence. It was noted that the page numbers of documents referred to in the two statements were incorrect as it appeared, and it was conceded by Mrs Evans-Davis, that they related to page numbers in a bundle prepared for an earlier preliminary hearing. This, of course, was unhelpful bearing in mind that, at the final hearing, the tribunal had the benefit of the agreed 238 page bundle and it was the page numbers in that bundle to which reference ought to have been made in the two statements. However during the hearing of the application it was possible to ascertain the correct page numbers so that the relevant documents could be considered, and they duly were.

3. The basis of the application for reconsideration was that the claimant's original contract with the respondent with a Mr and Mrs Keers (which was transferred by TUPE to the respondent) contained a lay-off and short-time clause on page 151 of the bundle. It was argued therefore that, for the relevant period, the claimant was laid-off in accordance with her original contract and therefore did not suffer unauthorised deduction of pay. It had been the respondent's intention to obtain furlough pay for the claimant and other employees but, in the event, his application for this was unsuccessful.
4. The claimant opposed the application for reconsideration. She stated that she was not informed by Mr Mallaburn that she was being laid off. She and other employees were told repeatedly that application was being made for furlough pay. After the business closed down on 23rd March 2020 the claimant was still awaiting furlough pay as had been promised but this did not transpire. Eventually Mr Mallaburn sent an e-mail to the claimant which stated that she would be on furlough leave from 20th March 2020 and also asked for the existing contract of employment to be amended to which the claimant agreed.
5. From a reconsideration of the evidence and taking into account the submissions made on both sides I find that the claimant was indeed subject to a contract at the relevant time which contained a lay-off clause. However, what is clear from the evidence is that Mr Mallaburn did not invoke that clause. Employees are not laid off merely because circumstances exist whereby the right to lay-off exists. It requires positive action which must be taken by an employer to inform employees that they are being laid-off. Where employees are laid-off, this has other implications which include effects on their entitlement to benefits as well as their entitlement to consider making application for a redundancy payment after the qualifying period of lay-off.
6. When Mr Mallaburn subsequently found that he was not successful in claiming furlough from the government scheme, he then wished to lay the employees off which he was entitled to do. However, as to the relevant period for the purposes of this application, namely 20th March 2020 to 6th July 2020, the claimant was not laid-off by the respondent and she was entitled to her wages which were calculated as set out in the judgment and reasons from the original hearing. Therefore, the judgment that the claimant is entitled to compensation for unauthorised deduction from wages is confirmed as is the order that the respondent pay to the claimant the sum of £1,523.20. That judgment is based upon the evidence received at the final tribunal hearing, the documents submitted, the evidence and cross examination

and submissions made. The respondent has provided no basis for that judgment to be varied or revoked and it is therefore confirmed.

EMPLOYMENT JUDGE SPEKER OBE DL

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
6 April 2022**

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