



EMPLOYMENT TRIBUNALS

Claimant: Miss T. Benjamin

Respondent: Mr Ranjan Kashyap

Heard at: Birmingham remotely via CVP **On:** 23 February 2022

Before: Employment Judge Mensah

Representation

Claimant: In person

Respondent: Non-Attendance

JUDGMENT

1. The correct title for the Respondent is Mr Ranjan Kashyap being the title given in the ACAS Certificate and the title given in the claim form or ET1.
2. The Claimant's holiday pay claim is made out and I ordered the Respondent to pay the Claimant £1,047.12 by no later than the 10 March 2022.
3. The Claimant's unlawful deduction of wages claim is also made out and I order the Respondent to pay the outstanding sum of £1,344.36 again by no later than 10 March 2022.
4. The total sum being £2,391.48.
5. The Claimant's claim for wrongful dismissal is not made out.

The Law

Unlawful deduction of wages

Employment Rights Act 1996 (ERA)

6. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA:

“An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.”

7. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.
8. In order to succeed in a claim the party needs to demonstrate they were a worker who brought in time claim and there exists no authorisation to make deductions and no exemption.

Holiday pay

9. Employees should have a statement of employment particulars including terms relation to holiday, which are sufficient to calculate entitlement: section 1 Employment Rights Act 1996. In practice, not all employers comply with the requirement and some employees have nothing in writing, or have terms which are not as good as the Working Time Regulations 1998 minimum.
10. If there is nothing in writing, there can be an oral contractual agreement about holidays. If the parties do not agree what, if anything, was agreed the Working Time Regulations provide a minimum leave entitlement of 5.6 weeks. If an employee has worked only part of a leave year, regulation 13(5) provides for pro rata accrual. Holiday entitlement will relate to a leave year. If the leave year is set out in writing usually in the statement of employment particulars, that leave year will apply. If there is no leave year set out in writing, the provisions of the Working Time Regulations apply: regulations 13(3) and 13A(4):
- If the claimant was appointed on or before 1 October 1998 (the coming into force of the Working Time Regulations), the leave year begins on 1 October;
 - If the claimant started after 1 October 1998, their leave year begins on the anniversary of their start date.
11. I take into account sections 221 and 224 of the Employment Rights Act 1996 in calculating a week’s pay.

Background and Findings

12. I gave summary judgment both orally and in written form on the day of the hearing. This is provided as the full written reasons.
13. The Claimant's last working day was the 7th July 2021. Her ACAS certificate is dated 9th September 2021 and the ACAS EC notification is dated 29th July 2021. Her ET1 or claim form was lodged on the 16th September 2021. I find the claim was presented in time.
14. I make the following findings of fact having heard evidence from the Claimant, the Respondent having not taken part in the proceedings, filed no ET3 and the Tribunal gave notice under Rule 21 under the Employment Tribunal Rules of Procedure 2013. I am satisfied the Respondent had been given ample opportunity to engage in this procedure and have clearly chosen to not attend the hearing.
15. The Claimant commenced employment at the Grafton Inn in Hereford on the 26 October 2020, working as part of the general cohort of bar staff. In or around April 2021, discussions took place between the Claimant and her employer regarding her promotion to the role of General Manager and on the 4 April 2021, the Claimant commenced her employment as a Manager at the Grafton Inn, in Hereford.
16. Although the Claimant told me, she had been provided with a contract of employment when she commenced employment in October 2020, no further updated or amended terms and conditions were provided. The Claimant accepts that she understood her new role and duties as the Manager at the Grafton Inn because of her previous experience in the industry but gave evidence she had not seen and could not recall any details regarding her holiday entitlement or holiday year. The failure of the Respondent to engage in these proceedings has meant there is not any evidence to the contrary. The Claimant raised concerns the Employer may be working under different names but could not take this point further and so maintained the identity as per the claim.
17. The Claimant worked until the 6 July 2021 at the Grafton Inn, which is a Public house which also serves food. The Claimant was part of a number of staff, so as Manager, there were other staff who worked in the restaurant area and bar area and at some stage there was also a Chef, albeit the Claimant says that he departed at some point and the Claimant also took on some of those duties.
18. Absent evidence to the contrary, having heard oral evidence from the Claimant which was consistent, clear, and given with appropriate concessions (such as the Claimant telling me she had had a contract of employment, despite none being filed by the Respondent), I accept the Claimant's evidence. I find she was employed and so is entitled to bring claims for unauthorized deductions of wages and outstanding holiday pay.

19. I accept that in her pay, date due to be paid on the 1 July 2021, she had not been paid her expected wage of £3,020.00 but had instead received two payments, one of £1,525.64 and the other of £350.00. In support, I have seen the copies of the notifications of those payments being received into her account as pointed to, and filed as part of her case. So, I accept that the missing payment for that period of time, that being for June, was £1,144.36 gross. The respondent did not file any evidence to the contrary and so I find there was no authorisation to make such a deduction and no evidence any exemptions apply.
20. I also accept that the Claimant worked 4-hours on the 1 July 2021 and 12-hours on 3 July 2021 and that being a total of 16-hours at £12.50 per hour or £200.00 gross.
21. Therefore the total gross sum outstanding is £1344.36 for unpaid wages. There is no evidence the Respondent had any entitlement to make any deduction from the Claimant's wages. I find they did not. On the 6 July 2021 the Claimant suffered an injury whilst at work and I understand that the injury was a slip and therefore that was her effective last day of working for her employer. The claim for wrongful dismissal is not made out because I am not satisfied that in terms of the circumstances in which her employment ended, that her employer in fact unambiguously dismissed the Claimant as of that date. The words and actions of the Employer were not unambiguous. (The general rule is that unambiguous words of dismissal or resignation may be taken at their face value without the need for any analysis of the surrounding circumstances — see *Sothorn v Franks Charlesly and Co 1981 IRLR 278, CA.*) IDS vol12, Chpt 1, 1.19
22. The Claimant's own account of the manner in which she had been informed as to circumstances and allegations occurring in work. The Claimant told me

"The last day 6th July 2021...I fell in the kitchen. My colleague saw me on the floor and helped me up. Went to Hospital and had x-rays and he [The employer] went mad and said I hadn't been to work. I decided I wasn't going back. He hadn't even called me at all. I never went back."
23. When I asked about the conversation, the Appellant told me she was told through another member of staff, a lady I understand called Becky who had no known authority to speak in such terms, that her employer had gone mad, rather than any formal notification of any pursuit of dismissal from her employer either orally or in writing. I find the Claimant has not shown she was wrongfully dismissed.
24. In terms of the holiday pay claim, I accept that the Claimant had not taken any holidays during that period of three month period, however because there isn't any clear evidence of holiday entitlement through a contract of employment, then I have instead referred back to the Working Time Regulations 1998. Where in the Regulations it is clear there is a potential entitlement of 5.6 weeks over the course of the year. I accept the Claimant therefore had accrued untaken holidays on that basis over the period of

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three months. That is 9.8 days of untaken leave and 9.8 days at a weekly wage of £750.00 gross. I find £1,047.12 unpaid holiday pay as accrued and owed as payment in lieu by the date of termination of her employment. These were holidays the Claimant was unable to take and there is nothing before me to show she had been paid for those untaken days or that this would result in double recovery.

25. Those are my full written findings and reasons for my decision and the orders that I made.

Employment Judge Mensah

Date 19.04.2022

JUDGMENT SENT TO THE PARTIES ON 29/04/2022

FOR THE TRIBUNAL OFFICE