



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs R Harfield

v

Toad Hall Nursery Limited

Heard at: Reading

On: 13 January 2022

Before: Employment Judge Gumbiti-Zimuto

Appearances:

For the Claimant: In person (assisted by Mr R Jones)

For the Respondent: Mr M Cameron, Consultant

JUDGMENT having been sent to the parties on 31 January 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In a claim form which was presented at the Employment Tribunal on 18 January 2021 Rebecca Harfield made a claim in which she sought a finding of the Tribunal that she was owed notice pay, holiday pay and arrears of pay. She also ticked the box for other payments. What the claimant seeks is a payment in respect of notice pay, holiday pay and her furlough pay.
2. The circumstances in this case are to a large extent not in dispute. The claimant was employed by the respondent on terms of employment which provided that she had two months' notice of termination of her employment.
3. The claimant was undertaking a course at Chiltern College which underpinned an apprenticeship. The claimant was removed from the course and as a result this meant that her apprenticeship was not able to properly continue. After exploring possible ways of keeping the claimant employed by the respondent it was decided that that could not happen. At the point that decision was made the claimant was on furlough. The claimant was not asked by the respondent to work her notice period.
4. The claimant sought and obtained employment working for Morrisons Supermarkets during the furlough period. There was nothing in the furlough agreement with her employer or in her contract of employment that prevented her from taking on second employment. At that time under the furlough scheme the claimant would be entitled to take on a second employment whilst on furlough.
5. The claimant gave evidence that she discussed with Morrisons the fact that

she had another and it had been agreed that she would be able to take such time off as was necessary in order for her to work out any notice period with the respondent. In the event that was not required because she was never asked to work her notice period.

6. The respondent says that the claimant is not entitled to two months' notice pay because she was not ready willing and able to work her notice period. I find that proposition unsustainable.
7. It is unsustainable because the claimant was entitled to work under the furlough scheme in a second employment. Secondly, the respondent never asked her to make herself available to work. The evidence that the claimant gave is that she would have been able to work her notice period if asked to do so. It seems to me that the claimant is therefore entitled to recover her notice period.
8. The claimant is therefore entitled to recover the sum of £3,022.88 in relation to the notice period.
9. The claimant makes a claim in respect of holiday pay and says that she was underpaid a sum of £32.34. That calculation gives credit for the sums that the claimant has been paid. No evidence has been given to counter what the claimant says about that. The claimant's account is credible, she appears to be telling me the truth and in those circumstances I find that the claimant is entitled to recover the sum of £32.34 in relation to holiday pay.
10. Finally, the claimant has indicated that she was underpaid a sum of £409.64 in relation to furlough pay. She set out clearly the calculation that she made in respect of that. That calculation was not challenged. Although the respondent put forward alternative figures, those figures were not substantiated by evidence on behalf of the respondent. The respondent's witness, Ruth Reid when asked about pay said "I do not deal with pay roll" and gave no evidence supporting any alternative calculation. It seems to me again that part of the claimant's claim is entitled to be successful.
11. The claimant's schedule of loss sets out the amount claimed. The claimant has received no payment made in respect of notice and therefore claims the sum of £3022.88. The claim for furlough pay reflects and gives credit for the amounts received by the claimant, the sum claimed is £409.64. The claim for holiday pay also reflects and gives credit for the sums received by the claimant, the sum claimed is £32.34. The claimant is entitled to these sums. The claimant is entitled to recover the total sum claimed in the sum of £3,464.86.

Employment Judge Gumbiti-Zimuto

Date: 16 June 2022

Judgment sent to the parties on

Case No: 3300512/2021

20 June 2022

For the Tribunal office