



EMPLOYMENT TRIBUNALS

Claimant: Miss Y House

Respondent: Christopher Mallaburn t/a Hermitage Inn Hotel

HELD at Newcastle by telephone

ON: Wednesday 11 May 2020

BEFORE: Employment Judge Speker OBE DL

REPRESENTATION:

Claimant: In person

Respondent: Mrs Elizabeth Evans-Jarvis (Solicitor)

FURTHER JUDGMENT ON RECONSIDERATION

1. On reconsideration of paragraph 6 of the Order made on Tuesday 26 March 2022 as to an award of compensation for unauthorised deduction from wages in paragraph 3 of the Judgment made on 23 and 24 November 2021, the Tribunal has reconsidered that award and replaced it by an award of £571.20 in place of the original award of £1523.20.

REASONS

1. This was a further application made by the respondent under Regulation 71 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 Schedule to reconsider part of the Judgment made at the final hearing of this case on 23 and 24 November 2021 and to reconsider the confirmation of that award as set out in the Judgment on reconsideration from the hearing on 22 March 2022 (sent to the parties on 6 April 2022).
2. Mrs Elizabeth Evans-Jarvis had submitted a detailed application for reconsideration on 20 April 2022 and claimed that on the basis of the lay off clause which was in the original contract of employment, the claimant had

effectively been laid off from 20 March 2020 and that accordingly there should be no award for unauthorised deduction of pay between 20 March 2020 and 6 July 2020 as had been ordered in the sum of £1523.20.

3. Mrs Evans-Jarvis argued that it was clear to the claimant and other employees from 20 March 2020 that as a result of the government lockdown due to Covid the respondent's premises had to shut down and that there was no work for the claimant. There was no work for any staff between 21 March and 6 July 2020.
4. It was argued that the respondent had effectively invoked the lay off clause which has been shown to be in the contract when all of the employees were notified on 20 March that the business had to close. The claimant had not contested the lay off from 20 March nor the non-payment of wages. No grievance had been raised. The respondent was entitled to proceed as it did and ask the employees including the claimant to consent to an amendment to the contract which would be a pre-requisite for the making of an application for furlough pay under the government scheme.
5. When the furlough scheme came into effect the respondent applied but, as was accepted at the previous hearings, the application was unsuccessful. It was denied that the respondent had made any promise that furlough pay would be successfully obtained. By 29 May 2020 it was clear that furlough pay was not to be granted and the employees including the claimant were told this. Mrs Evans-Jarvis argued that it was reasonable to consider the lay off on the basis that it could be invoked retrospectively as would indeed be the case when calculating qualification for benefits or redundancy entitlement under lay off or short term statutory provisions, the calculation only being capable of being made when the lay off had proceeded for a period of time.
6. Miss House resisted the application and considered that this was a further attempt by the respondent merely to avoid making any payment. She referred to the fact that none of the other awards made in her favour at the final hearing in November 2021 had been paid, namely money for accrued annual leave or compensation for discrimination. She argued that she had not been positively paid off and that for many weeks she had received communications from the respondent that furlough money would be paid. She maintained that the award of unauthorised deduction from wages in the sum of £1523.20 was fair and that there was no basis for changing it.
7. Mrs Evans-Jarvis had put forward an alternative argument on the basis that if there were to be a payment for unauthorised deduction of wages it should be restricted to the period between 15 April 2020 and 29 May 2020 this being the time between the respondent having issued the letter regarding furlough and the information being given that furlough money would not be paid and that the claimant would be formally laid off.
8. Having reviewed the evidence and listened carefully to the representations made I find that there is merit in the alternative suggestion. I have found previously that there was indeed a lay off clause in the contract and that this did not need to be activated by a formal written letter. It was clearly obvious to the claimant from the date of closure of the business that all of the staff were effectively laid off and this was in accordance with their contract.
9. However, on the basis of the letter sent to the claimant and others on 15 April 2020 this represented to the claimant that furlough money had been applied for and was expected to be paid and that continued to be the case following further

assurances until 29 May 2020. The claimant should have been receiving wages for that period on the basis of representations made on the amendment to the contract. The sum payable for this period is six weeks pay at 80% namely £95.20 per week producing a total of £571.20. On the basis of this application for reconsideration to vary paragraph 3 of the Judgment made on 23 and 24 November 2021 and confirmed on 22 March 2022 I do vary the judgment and substitute for the sum of £1523.20 the sum of £571.20 and that is the sum that the respondent is ordered to pay for unauthorised deduction from wages.

10. With regard to Miss House's comment that no other payments ordered had yet been made, Mrs Evans-Jarvis informed me that the accrued holiday pay has been paid today and the other award for compensation for discrimination will be paid imminently. This was reassuring as I had notified the claimant before that was said that it would be for her to enforce the Judgments made against the respondent and that there was an expectation that if a party was seeking reconsideration of part of a Judgment that other parts which were not being challenged should be satisfied and monies ordered should be paid.

Employment Judge Speker OBE DL
Date 13 May 2022

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