Case Number: 1304599/2021

EMPLOYMENT TRIBUNALS

Claimant: **Miss S Aston**

Respondent: **Dolce Catering**

Heard at: Birmingham (by CVP) **On: 22 March 2022**

Before: Employment Judge Routley

Representation
Claimant: In person
Respondent: **Miss B Breslin**

UPON APPLICATION made by letter dated ***1 April 2022*** to reconsider the judgment dated ***24 March 2022*** under rule 71 of the Employment Tribunal Rules of Procedure 2013.

JUDGMENT

The judgment dated 24 March 2022 has been reconsidered. On reconsideration, it has been upheld. The reasoning of the Tribunal is as follows:

1. The Respondent has in part based its application on an assertion that "it cannot be right as a matter of law that an employee can unilaterally determine how many hours they work and are paid for."

2. I do not accept that there is a general legal principle that an employee is unable to determine their own working hours based on the amount of work to be done. The Respondent has not set out the legal basis for this assertion.

3. If the Respondent wanted to make the Claimant's ability to claim for additional hours worked dependent on a sign-off process, then it should have stated this in the letters dated 21 and 29 October 2021. The Respondent did not do so. Nor did the Respondent provide any direct witness evidence that the Claimant had been informed that a sign-off process was in place.

4. I made a finding that, under the Claimant's contract, she was entitled to work overtime when meal numbers deemed it "necessary". I made a finding of fact that in this case, the meal numbers had in fact deemed it "necessary", and the conditions required for the Claimant to work overtime had been fulfilled. There is nothing in the Respondent's reconsideration application which persuades me that it would be in the interests of justice to overturn these findings.

5. At the start of the hearing, I spent some time clarifying with the Claimant the nature of her case. The Claimant clearly stated that her claim was that she had been underpaid by 8.5 hours per week from April 2021 until her resignation in August 2021. I therefore find that the Claimant's position on this was clear and was brought to the attention of the Respondent.

6. The Respondent has now stated that the Claimant was paid for 16.5 hours per week from 24 May 2021, rather than 14 hours. This is not a fact that was presented to the Tribunal during the course of the hearing on 22 March 2022.

7. The Respondent's case was in fact that the Claimant had not signed nor otherwise accepted the letter dated 24 May 2021, which brought about an increase in hours. No mention was made of the fact that the Respondent had unilaterally decided to pay the Claimant for these hours anyway. Miss Lorencova's statement mentions the issue of hours but does not confirm that the Claimant's pay was increased.

8. The Respondent should therefore have taken the opportunity at the hearing to challenge the Claimant on this point. The Respondent did not do so. It is not appropriate or in the interests of justice for the Respondent to attempt to introduce new evidence as part of a reconsideration application.

9. Similarly, the Respondent states in its application that the Claimant worked during term time only, and so should not be awarded for a loss of overtime after 23 July 2021.

10. As set out above, the Claimant clearly stated at the beginning of the hearing that her claim was that she had been underpaid for overtime worked up until her resignation in August 2021. The Respondent therefore had an opportunity at the hearing to challenge the Claimant on this point and did not do so. Again, it is not appropriate or in the interests of justice for the Respondent to attempt to introduce new evidence as part of a reconsideration application.

11. The Respondent's application for reconsideration is therefore refused and the original judgment remains unaltered.

Employment Judge Routley
5 July 2022

Note
Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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