



EMPLOYMENT TRIBUNALS

Claimant: Mrs Luisa Pringle

Respondent: Dique Ltd (in voluntary liquidation) & Mr Richard Grills

Heard at: London South Croydon in public by CVP

On: 28 July 2022

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: in person

Respondent: did not attend and was not represented

RESERVED JUDGMENT

The **Judgment** of the Employment Tribunal is as follows:

- 1) The claimant was unfairly dismissed by the first respondent and is entitled to the following: a basic award of £1881; a compensatory award of £500;
- 2) The claimant suffered unauthorised deductions from wages by the first respondent in respect of arrears of pay and is awarded compensation of £940 gross and in respect of accrued but untaken annual leave in the sum of £1121 gross;
- 3) The claimant is entitled to damages for breach of contract from the first respondent in respect of entitlement to notice in the sum of £1881 gross;
- 4) The complaint of entitlement to a statutory redundancy payment is unfounded and is dismissed;
- 5) The complaints against the second respondent are dismissed.

REASONS

The claim

1. By a claim form received on 5 July 2021, following a period of Early Conciliation between 28 June and 1 July 2021, the claimant brought complaints of unfair dismissal, unauthorised deductions from wages in respect of arrears of wages and accrued but untaken annual leave, damages for breach of contract and entitlement to a redundancy payment.

2. In its Response received on 9 August 2021, the respondent accepted that the claimant was entitled to notice pay but denied her other complaints.

Essential background

3. Standard case management orders were sent to the parties on 9 December 2021.
4. In a letter dated 7 March 2022, in reply to a strike out warning for non-compliance with the case management orders, Mr Grills advised that the respondent limited company was in administration. In fact a search of Companies House's website revealed that the company had been placed in Creditors' Voluntary Liquidation on 22 December 2021. The strike out warning letter was subsequently re-served at the liquidators' address but no further response has been received.

Evidence

5. I had a number of documents before me: the claimant's contract of employment; her furlough agreement; her timeline document; and her P11 deductions working sheet.
6. I heard evidence from the claimant by way of her written statement and in oral testimony. Whilst she had also provided a witness statement from Mr Harry Petrakas, the first respondent's General Manager, I explained to her that without his attendance I could not attach any weight to its contents unless it related to uncontentious matters. Mr Petrakas had been unable to attend because the claimant was uncertain until the last moment that today's hearing was proceeding.

Findings

7. I decided all the findings referred to below on the balance of probability, having considered all of the evidence given by the claimant during the hearing, together with documents referred to by her. Any failure to mention any specific part of the evidence should not be taken as an indication that I failed to consider it. I have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties.
8. The claimant accepted that she was employed by the first respondent. Mr Grills is a director of the first respondent limited company and the complaints she had brought can only be made against her employer. I therefore dismiss the complaints against Mr Grills.
9. The first respondent operated from two sites, The Marwood Café where the claimant was employed and a café/bar called Presuming Eds. Mr Grills and Mr Petrakas were directors of the first respondent limited company until a falling out between them in November 2020.
10. The claimant was continuously employed by the first respondent from 9 February 2015 until her dismissal. This only came to her attention on 21 June 2021, on receipt of her P45 showing that her employment ended on 31 May 2021. She was employed as Head Baker/Bakery Manager, latterly working

4 days per week and an average of 33 hours per week. She was paid at the rate of £9.50 per hour gross which amounts to £313.50 per week. Her role was to provide cakes and other baked goods to both sites. She supervised and managed the kitchen team, worked closely with the two site managers to decide on new products and ordering systems, undertook all of the budgeting and costings for all products and staff hours. As at her effective date of termination she had been employed for 6 complete years and was aged 35.

11. The claimant was placed on furlough by the first respondent from March 2020 onwards which was when the first Covid-19 lockdown was implemented. She returned to work when the first respondent reopened its business during June to November 2020. Thereafter when the second lockdown was implemented she was placed back on furlough.
12. Mr Grills made a number of attempts to terminate the claimant's employment. Firstly on 5 December 2020, then in March 2021 and again at the end of May 2021 at which time he offered to pay the claimant 6 weeks' pay in lieu of notice and said that the only work that was available to her would be general "skivvy" work which she would not want. She asked for the job offer in writing on several occasions and was finally provided with details of a role as a bar waiting barista employed on a zero hours contract. The claimant refused this on the basis that this was quite different from the skilled role that she was employed to do. She advised Mr Grills that she was entitled to redundancy pay. After some email correspondence between the parties, Mr Grills emailed the claimant on 14 June 2021 stating that she was not being made redundant and that she had been offered a position which was "congruent to your contract of employment". In support of this, Mr Grills purported to rely upon a zero hours contract dated May 2020 stating that the claimant was employed as a Head Barista/Coffee Maker. The claimant had never been employed in this role and the contract relied upon if it exists is false.
13. On 21 June 2021, the claimant received her P45 from the first respondent showing the end date of her employment as 31 May 2021.

Conclusions

Unfair dismissal

14. Section 98 of the Employment Rights Act 1996 sets out how an Employment Tribunal should decide whether a dismissal is unfair. There are two basic stages. Firstly, the employer must show what was the reason, or if more than one, the principal reason, for the dismissal. The reason must be one of the four potentially fair reasons set out in section 98(2) or some other substantial reason of a kind such as to justify dismissal. Secondly, the Employment Tribunal must then decide in accordance with section 98(4) whether it was fair to dismiss the employee for that reason.
15. One of the potentially fair reasons for dismissal is redundancy. Redundancy has a specific meaning under section 139 of the Employment Rights Act 1996. In broad terms, there are three main redundancy situations: closure of the business as a whole; closure of the particular workplace where the employee was employed; and reduction in the size of the workforce.

16. Certain factors can render a redundancy dismissal unfair. These are:
 - a. That there was no genuine redundancy situation;
 - b. That the employer failed to consult;
 - c. The employee was unfairly selected; or
 - d. That the employer failed to offer alternative employment.
17. Whilst the circumstances of the claimant's dismissal appear to point to a redundancy, the respondent is not here to give evidence explaining how the redundancy arose so as show to me that it was the potentially fair reason for dismissal or to go on to satisfy me that it was a genuine redundancy or for that matter how the claimant was selected, and to deal with the issue of the lack of consultation and how exactly the offer of bar work on a zero hours contract to include bar waiting barista work amounted to suitable alternative employment. Indeed, the email from Mr Grills dated 14 June 2021 specifically states that the claimant is not being made redundant and there is commensurate work to her contract available.
18. So in the circumstances I do not accept that the respondent has shown a potentially fair reason for dismissal and as a result I find that the dismissal is automatically unfair. As a result, the complaint of entitlement to a statutory redundancy payment cannot succeed and is dismissed.
19. Turning then to remedy for unfair dismissal.

Basic Award

20. I award the claimant the sum of £1881 based on 6 years' complete service with the first respondent multiplied by her gross weekly pay of £313.50 and a multiplier of 1.
21. I explained to the claimant that this is the same calculation as for a statutory redundancy payment and is a guaranteed debt payable by the Redundancy Payments Service.

Compensatory Award

22. The claimant is not seeking past loss of earnings because arrears of pay and notice pay are covered within her other complaints. I pointed out to her that as such they fall within the guaranteed debts and that the compensatory award is not a guaranteed debt in any event.
23. The only other element would be loss of statutory rights which I award in the sum of £500. The claimant states that she has no pension loss and she is not seeking future loss because she subsequently set up a self-employed business as a wedding cake baker.

Unauthorised deductions from wages

24. Under section 13 of the Employment Rights Act 1996 an unauthorised deduction from wages occurs when a worker is paid less than the amount properly payable to them and that failure to pay is not as a result of an authorised deduction. An unauthorised deduction includes 100% non-

payment of wages.

Arrears of pay

25. The claimant suffered unauthorised deductions from her wages during the period 1 to 21 June 2021 when she was simply not paid. This amounts to 3 weeks at £313.50 gross per week which comes to £940 gross. I award compensation in this amount.

Accrued but untaken annual leave

26. The claimant's contract of employment indicates that the annual leave year is from April to March.

27. The claimant suffered unauthorised deductions from her wages in respect of her accrued but untaken annual leave entitlement for the period 1 November 2020 to 21 June 2021. This amounts to 118 hours based on 33 hours worked over a 4 day working week. 118 multiplied by the hourly rate of £9.50 amounts to the sum of £1121 gross. I award compensation in this amount.

28. The claimant advised me that the Redundancy Payments Service had told her that they could not pay all of this. I explained her that whilst I could award the loss for the entire period, the only element of holiday pay which forms a guaranteed debt was that accruing in the final annual leave year.

Damages for breach of contract

29. Under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 an employee is entitled to seek damages in respect of a breach of contract arising or outstanding at the effective date of termination of employment.

30. The claimant was dismissed without notice in circumstances where she was entitled to 6 weeks' statutory notice pursuant to section 86 of the Employment Rights Act 1996. She had no income during that period. Damages are payable at her normal weekly wage of £313.50 and amounts to the sum of £1881 gross.

Employment Judge Tsamados
Date 30 August 2022

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