



EMPLOYMENT TRIBUNALS

Claimant: Miss Florence Burchill

Respondent: Delroy Philogene

Heard at: East London Hearing Centre (by telephone)

On: 11 April 2022

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Appearance not entered

JUDGMENT

1. The Respondent failed to provide the Claimant with a statutory statement of principal terms and conditions, contrary to S1 of the Employment Rights Act 1996.
2. The Respondent is ordered to pay to the Claimant two weeks' pay, £205.00, under S38 of the Employment Act 2002 in respect of that breach.
3. The Respondent made unlawful deductions from the wages of the Claimant, contrary to S13 of the Employment Rights Act 1996.
4. The Respondent is ordered to pay to the Claimant the sum of £487.46 in respect of that breach.
5. The Respondent is ordered to pay to the Claimant notice pay of £102.50.
6. The Respondent is ordered to pay to the Claimant holiday pay of £269.16.
7. The total sum the Respondent is ordered to pay to the Claimant is £1,064.12.

REASONS

The hearing

1. This matter is an appearance not entered case. Mr Philogene was sent notice of this hearing, and dialled in. He says that he filed a response on line. I checked with the Tribunal staff and there is no response filed. Nevertheless, I listened to what Mr Philogene had to say.
2. I heard oral evidence from Ms Burchill who had provided screenshots of messages passing to and from her and Mr Philogene. In large measure Mr Philogene did not disagree with what Ms Burchill said.
3. The screenshots show that there was work, at 10 hours a week, at £10.25 an hour, and consistent reference to “wages”. Mr Philogene said that he had prepared a contract and the HMRC documents for Ms Burchill to sign, but that Covid lockdowns meant she did not come in to sign them. (Ms Burchill says that was not the case for the first month, but the point is that Mr Philogene accepts that this was intended to be an employed relationship. Ms Burchill was not a self-employed contractor).
4. In the texts Ms Burchill asks that her wages be paid, and Mr Philogene gives various reasons why there is delay. Ultimately, he says, he did not pay her all the hours, because his “*virtual assistants*” (people based abroad who do admin work) did not confirm that she had done the work he had asked her to do. He was not paying her by the task but by the hour, so (if correct) this may have been good reason to end the employment, but was not a good reason not to pay her.
5. Mr Philogene thought that the hours were so low that holiday pay was not necessary, or was rolled up in the hourly rate. There was no evidence of that, and holiday pay is due to every worker. Ms Burchill had calculated the amount on the government website holiday pay calculator.
6. As to notice pay, Mr Philogene was vague. On a zoom call he had indicated that he would close if work was not done by a given date, it was not done so he stopped employing Ms Burchill. That is not the giving of notice.
7. Mr Philogene started Shoreditch Radio as a hobby, hoping it would grow. Unfortunately, he took on Ms Burchill as English employee without dealing with the matters necessary to carry on that legal relationship.

The facts

8. Ms Burchill worked for Mr Philogene from 04 March 2020 until 19 March 2021 as a producer/station manager at Shoreditch Radio, a business enterprise of Mr Philogene.
9. She worked 10 hours a week and was paid £102.50 a week (£10.25/hr).

10. She was not given a written contract of employment or statutory statement of principal terms and conditions of employment.
11. She was paid weekly, and so was entitled to one week's notice of termination of employment.
12. On 19 March 2021 Ms Burchill's employment was ended without any notice.
13. She should have been paid £102.50 as one week's pay in lieu of notice.
14. Between 01 February 2021 and 29 March 2021 Ms Burchill worked 70 hours at £10.25 an hour, which is £717.50. She also was not reimbursed for an Adobe subscription used to edit videos for 2 months (February and March) of £19.96, taking the total to £737.46. She was sent 5 payments of £50 when she asked for her wages (£250) which takes the amount deducted down to £487.46.
15. Ms Burchill had accrued holiday which she had not taken. She was not paid for this when she left. This amounted to £269.16.

Employment Judge Housego

11 April 2022