



EMPLOYMENT TRIBUNALS

Claimant: Miss K Burton

Respondent: 001 Hardy Ltd

Heard: In Nottingham

On: 14 October 2022

Before: Employment Judge Ayre, sitting alone

Representatives:

Claimant: In person

Respondent: Did not attend and was not represented

JUDGMENT

1. The claim for notice pay succeeds.
2. The claim for holiday pay succeeds.
3. The respondent failed to provide the claimant with a written statement of employment particulars, contrary to section 1 of the Employment Rights Act 1996.
4. The respondent is ordered to pay the total sum of **£2,796.25** to the claimant, which comprises the following awards:
 - a. Notice pay of £870;
 - b. Holiday pay of £1,526.25; and
 - c. £400 for failing to provide the claimant with a statement of employment particulars.

REASONS

Background and proceedings

1. The claimant was employed by the respondent as an administrator / book keeper from 20 January 2021 until 31 May 2022 when she was dismissed with immediate effect by way of a text message from the respondent's owner.
2. Following a period of ACAS Early Conciliation that started on 25 June 2022 and ended on 15 July 2022, the claimant issued a claim in the Employment Tribunal. The claim, which was issued on 15 July 2022, included claims for holiday pay and notice pay. The claimant also referred in the claim form to not having a written contract.
3. The respondent filed a response to the claim indicating that it intended to defend the case but has played no further part in the proceedings. In its response the respondent accepted that the claimant had not been provided with a contract of employment and indicated that it intended to defend the claim.
4. The case was listed for a two hour hearing today, starting at 10 am. The claimant attended the hearing centre on time, but the respondent did not attend at all.
5. A member of Tribunal staff attempted to contact the respondent by email, as no contact telephone number was provided for the respondent on the ET3. It was not possible to contact the respondent. No reason was provided for the respondent's non-attendance.
6. As the claimant was present and ready to proceed, and was clearly anxious about the hearing, I decided in accordance with Rule 47 of the Employment Tribunal Rules of Procedure, to go ahead with the hearing.
7. The hearing started at 10.39 am in the absence of the respondent. The claimant gave evidence under oath and produced documents in support of her claim, which I have read.

Findings of fact

8. The claimant was employed by the respondent from 20 January 2021 to 31 May 2022. The respondent is a very small business and the only people working for the respondent were the claimant, the respondent's owner Mr Jack Hardy, and his girlfriend.
9. At no point during the course of the claimant's employment was she provided with a written contract of employment or a statement of employment particulars. She was offered the role in a text message and was dismissed by text message.

10. The claimant worked 16 hours a week and was paid £12.50 an hour. Her weekly pay was therefore £200, and her monthly pay was £870. The claimant did not pay any tax because her earnings were below the tax threshold.
11. The claimant did not take any holiday during the course of her employment with the respondent. She asked on one occasion to take half term off and was told that she could not take the time off, and to bring her children into work instead. She therefore took her children to work with her during school holidays.
12. On 31st May 2022 the respondent's owner, Jack Hardy, sent a text message to the claimant terminating her employment with immediate effect. In the message he said that she would be paid for June 2022, which amounted to a month's notice period.
13. The claimant asked about holiday pay, and after she did so Mr Hardy told her on 7 June that she would have to work her notice period if she wanted holiday pay. By that time the claimant had another job lined up.
14. The claimant was not paid her notice or holiday pay. The claimant calculated her holiday pay using a government website, to be £406.25 for 2022 and £1,120 for 2021. I accept the figures provided by the claimant.

The Law

15. Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 provides that:

“Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if –

 - (a) The claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
 - (b) The claim is not one to which article 5 applies; and*
 - (c) The claim arises or is outstanding on the termination of the employee's employment.*
16. This provision gives employment tribunals the power to hear claims for damages for breach of a contract of employment or any other contract connected with the employment.
17. The rules on statutory holiday pay are contained within regulations 13 to 16 of the Working Time Regulations 1998. Regulation 30 gives Employment Tribunals the power to consider complaints that an individual's rights to annual leave have been breached.
18. In relation to holiday pay claims covering more than one holiday year, ***Smith v Pimlico Plumbers Ltd 2022 IRLR 347 CA*** is authority for the

principle that where a worker has been prevented from taking holiday, they can claim holiday going back to previous holiday years.

19. Section 13 of the Employment Rights Act 1996 states that:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or

(b) The worker has previously signified in writing his agreement or consent to the making of the deduction...

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”

20. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....

(3) Where a complaint is brought under this section in respect of –

(a) a series of deductions or payments...

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”

21. Under section 38 of the Employment Act 2002, where an Employment Tribunal finds in favour of a worker in certain claims and the employer was in breach of its obligation to provide a written statement of employment particulars when the proceedings were issued, the Tribunal must, save in exceptional circumstances, make an award of two weeks’ pay and can, if it considers it just and equitable in all the circumstances, award four weeks’ pay.

22. The types of complaint that section 38 applies to include claims for breach of contract, for unauthorised deduction from wages and under the Working Time Regulations 1998.

Conclusions

23. The claimant was not allowed to take any holiday during the course of her employment with the respondent. She was not paid any holiday pay on the termination of her employment.
24. She is entitled to holiday pay on termination of her employment in respect of both of the holiday years during which she worked for the respondent.
25. I accept the figures provided by the claimant for holiday pay and find that she is entitled to £406.25 holiday pay for 2022 and £1,120 for 2021. The respondent is therefore ordered to pay a total of £1,526.25 to the claimant in respect of accrued but untaken holiday pay.
26. I find that the claimant was entitled to one month's notice of termination of her employment, based upon the text message sent by Mr Jack Hardy on 31 May 2022 which suggests that her notice period was one month. The respondent has breached the claimant's contract of employment by not paying her for her notice period, and the respondent is therefore ordered to pay £870 to the claimant in respect of her notice period.
27. The respondent did not provide the claimant with a written statement of employment particulars. No such statement existed at the time the claimant presented her claim to the Tribunal. I must therefore make an award under section 38 of the Employment Act 2002. Given the very small size of the respondent's business, it would in my view be appropriate to make an award of two weeks' pay.
28. The respondent is therefore ordered to pay £400 to the claimant under section 38 of the Employment Act 2002 for failing to provide her with a written statement of employment particulars, in breach of section 1 of the Employment Rights Act 1996.
29. The claimant's claims succeed and the respondent is ordered to pay the total sum of £2,796.25 to the claimant.

Employment Judge Ayre

14 October 2022
