



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs J Ashworth

v

Abondanza Limited

Heard at: Hull by Video

On: 17 October 2022

Before: Employment Judge Miller

Appearance:

For the Claimant: In person

For the Respondent: Mr F Logozzi

JUDGMENT having been sent to the parties on 18 October 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant worked for the respondent as either a chef or a cook. That was disputed but it is immaterial to the things I have to decide.
2. On 19 July 2022 the claimant made a claim to the employment tribunal for holiday pay on termination of her employment and unauthorised deductions from wages. Early conciliation started on 7 June 2022 and ended on 19 July 2022. The claim related to deductions from the claimant's final wages of uniform costs and pay in lieu of untaken holiday.
3. The case was listed for a short video hearing. Neither party had produced any witness statements and I had a selection of documents provided to the tribunal by the parties. I therefore took oral evidence from the claimant and Mr Logozzi, the proprietor of the respondent and each was given the opportunity to cross examine the other party after they had given evidence in chief.
4. Mr Logozzi's first language is Italian and I am grateful for the assistance of the interpreter, Ms Sobrero.
5. The claimant was paid, by the end of her employment, £10 an hour. There were no written terms of the claimant's employment or a signed contract but the claimant worked from 11 February 2022 until 6 May 2022. This is exactly 12 weeks, rather than the 3 months that the claimant says, which has a slight bearing on the amount of holiday pay to which the claimant is entitled.

6. The claimant said that her average hours for the whole of her employment of 12 weeks, were 46.875 hours per week. The respondent has not given a figure for the hours that the claimant worked but said that she did not work all the hours that she claimed as part of her time sheets. On the basis of the claimant's figure she calculated her outstanding holiday pay entitlement as 62 hours at the date of the termination of her employment. In fact, the claimant's outstanding hours were 61 hours based on 12 weeks as a proportion of the year rather than 3 months as a proportion of the year.
7. The respondent initially paid the claimant a sum in respect of 50 hours untaken holiday and they deducted £67 for uniform costs.
8. In respect of the uniform, the claimant bought the uniform at the beginning of her employment and the respondent reimbursed her for that. There was no dispute about that. The total amount of the cost was in the region of £120. Mr Logozzi said that there was a verbal agreement that the claimant would have to reimburse the respondent if she left in certain circumstances but it was agreed that that agreement, if there was one, was not put in writing at any point. The claimant says regardless of that she did return her uniform as requested and the respondent says that they did in fact repay her the £67.
9. In respect of the holidays the respondent says that they did in fact pay the 62 hours originally asked for by the claimant. Mr Logozzi was not able to provide any additional information about how much holiday the claimant was entitled to, how that was calculated and, aside from confirming that she took one day as leave on 5 May 2022, was unable to give any further evidence about that. Mr Logozzi said that that was left to his payroll provider and on that basis and having regard to the figures that I have heard I conclude that the claimant was entitled to the statutory minimum 5.6 weeks holiday pay per year.
10. The figures that I have referred to previously were set out in a payslip dated 31 May 2022 which the claimant provided me a copy of. The respondent produced a second payslip with the increased holidays but reduced hours. Those hours reduced from 75 hours worked in the period to 60 hours worked after the claimant had contacted ACAS. The second payslip did not refer to any deductions. According to the respondent's calculations this resulted in a net payment of £76.18 being owed to the claimant which was not, in any event, paid because the claimant refused to accept it.
11. The respondent says that the reduced hours set out in the second payslip reflect the fact that the claimant was taking breaks and claiming that she was working for them and arriving late and putting down an earlier arrival time in the last period. Effectively, I understand Mr Logozzi to say that everything was recalculated in the second payslip and all errors were corrected. The claimant says that that isn't true. Effectively, she says, the respondent just recalculated her hours to get out of paying her what they owed her.
12. The respondent produced a witness statement from one of its employees called Charlie Reece. That witness statement refers to the claimant taking breaks and then claiming time for them. The claimant disputed the veracity of that witness statement. As Charlie Reece was not here to give evidence, I have been unable to contact him to determine whether it is his evidence or not and consequently I have given it no weight.

13. The evidence of Mr Logozzi about the claimant's breaks and timekeeping was inconsistent. He said both that the claimant worked through her breaks and was paid for them and he had to try to persuade her to take breaks; and he also said that the claimant took extended breaks and went off site. The claimant said that that probably related to later on in her employment when her hours were reduced by the respondent and she had to find something to do when she would otherwise have been working. I prefer the claimant's evidence about this and I accept that the first payslip accurately reflects the hours the claimant worked in her final month.
14. I conclude therefore that the claimant has only been paid for 50 hours of holiday and that her final wages were subject to deduction in respect of the uniform of £67.
15. I refer briefly to the relevant Law. Section 13 of the Employment Rights Act 1996 says, as far as relevant, that an employer may only make deductions from an employee's pay if they have previously given their agreement in writing to the deductions whether in a contract or otherwise.
16. The claimant had £67 deducted from her final pay. The claimant has never given any consent in writing for that deduction, and her claim of unauthorised deductions from wages is therefore successful. The respondent must pay the claimant the sum of £67.
17. In respect of entitlement to holiday, Regulations 13 and 13A of the Working Time Regulations 1998 provides that a worker has entitlement to 5.6 weeks holiday per year. Regulation 14 says that when a worker leaves their employment part way through a leave year they will be entitled to payment in lieu of any part of their leave that they have not taken on a pro-rata basis. The claimant had worked for 12 weeks, she had not taken any holiday except for one day for which she had not been paid which is in effect the same as not taking any holiday and a proportion is therefore 12/52 of a year.
18. On the basis of the claimant's average hours this comes to 61 hours in total, the claimant has been paid for 50 hours and she is therefore owed the balance of 11 hours. As the claimant was paid £10 per hour this is £110 and the respondent shall pay the claimant that sum for unpaid holiday pay.

Employment Judge Miller

3 November 2022