



THE EMPLOYMENT TRIBUNAL

Claimant: Tracy Lomas

Respondent: Building Services Kent Ltd

REASONS

Requested by Respondent

1. These are the reasons for the judgment, sent to the parties on 7 July 2022, upholding the claimant's claims.
2. By a claim form presented on 18 February 2022, the claimant brought complaints of unfair dismissal and unlawful deduction of wages in respect of holiday pay.
3. The Tribunal sent a notice of claim, enclosing the claim form, to the respondent by letter dated 9 March 2022. The notice stated that a response to the claim must be received by the Tribunal Office by 6 April 2022 failing which a judgment may be issued against the respondent. A response was not received by the deadline.
4. On 4 May 2022, a case management hearing took place. The respondent, who was in attendance despite not having completed an ET3 response, claimed that it had not received the response pack. The respondent was therefore given an extension of time until 4pm on 25 May 2022 to complete an ET3 response form. The respondent did not file a response by the extended date.
5. On 8 June 2022, the respondent submitted its ET3 response late without seeking a further extension of time or providing an explanation for the late presentation.
6. On 20 June 2022, the Tribunal wrote to the respondent informing it that the response was rejected as it had not been presented within the extended period. The respondent was advised that a judgment may now be issued and that they would be entitled to participate in any hearing only to the extent permitted by the hearing Judge. Attached to the letter was a Q&A document which included information on how to apply for a reconsideration of the rejection. No application for reconsideration was made.

7. The matter was listed for 3 hour final hearing for 4 July 2022. The Notice of hearing was sent to both parties.
8. On 27 June, the respondent wrote to the Tribunal stating that it would not be producing any witnesses at the hearing and that the only evidence it wished to rely upon was the evidence produced by the claimant and their statement (a reference to the Defence of Claim accompanying the rejected ET3 response).
9. At the hearing, I heard evidence from the claimant, who provided a number of documents, including a schedule of loss and payslips. The respondent was allowed to participate only in respect of remedy. I also considered the respondent's Defence of Claim to the extent that it related to matters of remedy.

Findings of Fact

10. The claimant was employed by the respondent from 8 July 2019 as a secretary/administrator. She job-shared with another employee. The claimant worked Tuesday to Friday and her job-share worked Monday and Tuesday.
11. The claimant was not provided with a statement of employment particulars.
12. The claimant was placed on full furlough from April to June 2020 and on partial furlough (working 3 days and furloughed 1 day) from July 2020 to April 2021.
13. On 16 January 2022, the claimant was dismissed without notice by text message. She did not receive any payments on termination.
14. The claimant's holiday year ran from January to December. She was entitled to 28 days holiday per annum. On termination she had accrued 22 days untaken holiday, which included leave carried over from 2021 because of furlough. The claimant has not been paid for this accrued leave.
15. The claimant starting a new job on 21 February 2022, earning £214.99 per week.

The Law

16. Section 94 of the Employment Rights Act 1996 ("ERA") provides the right not to be unfairly dismissed and section 98(2) ERA sets out the potentially fair reasons for dismissal. The respondent has the burden of proving the reason for dismissal.

Conclusion

17. In the absence of a reason for dismissal from the respondent, the burden has not been discharged and I therefore find that the dismissal was unfair.
18. Based on my findings at paragraph 14, the unlawful deduction of wages claim in respect of holiday succeeds.

Remedy

19. There was a dispute between the parties as to the claimant’s hours of work. The claimant contended that she worked 4 days a week. The respondent submitted that the claimant requested to reduce her working time to 3 days a week from December 2021. The respondent did not produce any evidence in support of this and sought to rely on the claimant’s December payslip showing a lesser payment than October and November. The claimant denied that she had sought to reduce her hours and contended that she could not have afforded to do so. She further stated that she did not receive any payslips during her employment and that they were only provided to her on request, after her employment had terminated.
20. There was no documentary evidence of any request made by the claimant for reduced hours and the payslips on their own do not provide satisfactory evidence of this. I therefore accept the claimant’s evidence (as opposed to the respondent’s submission) that she worked 4 days a week.

Unfair Dismissal

21. The claimant was paid £259.07 gross and 246.60 net
22. The claimant is entitled to a basic award of 3 weeks gross pay = £777.21
23. The compensatory award is as follows:
immediate loss of earnings:

a. 5 weeks @ 246.60	1233.00
b. 21.2.22- 4.7.22 - 18 weeks @ 31.61	<u>568.98</u>
	1801.98

24. The award for future loss of earnings is:

26 weeks @ 31.61	821.86
Total Loss of earnings	2623.84
Loss of statutory rights	300.00
Total compensatory award	<u>2923.84</u>

24. The total Award for unfair dismissal is 777.21 + 2923.84 = **£3701.05**

Holiday Pay

25. The claimant is awarded 22 days holiday pay amounting to **£1356.30**

26. The respondent failed to provide the claimant with a statement of employment particulars. The claimant is awarded 4 weeks pay of **£968.40**, pursuant to section 38 Employment Act 2002.

Acting Regional Employment Judge Balogun
Date: 18 November 2022