



EMPLOYMENT TRIBUNALS

Claimant: Miss R Walters

Respondent: District Enforcement Limited

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BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr D Kurpil, Director

JUDGMENT

1. The claim of unfair dismissal is hereby dismissed on withdrawal by the claimant.
2. The claim of no notice pay is hereby dismissed.
3. The claim of no holiday pay is hereby dismissed.
4. The claims of unauthorised deduction of wages including claims for expenses are hereby dismissed.

REASONS

1. Claims

1.1. Unfair dismissal.

1.2. No notice pay.

- 1.3. No holiday pay.
- 1.4. Arrears of pay and expenses – various.

2. Issues

The issues in this case relate primarily to:

- 2.1. Whether the claimant is entitled to notice pay and this relates to the effect of the notice which she gave to the respondent.
- 2.2. No holiday pay. This relates to issues of carry over.

3. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 3.1. The claimant commenced her employment with the respondent on 17 August 2020 and her employment ended on 29 April 2022, which was less than two years after commencement of employment.
- 3.2. Notice pay - On 11 March 2022 the claimant resigned from her employment with the respondent. She stated that as from 11 March 2022 she would be leaving the respondent. She agreed to serve a month's notice. On 6 April 2022 the claimant emailed the respondent expressing a wish to retract her notice. The email was headed "retraction of my notice".

The claimant's line manager, Michelle Bradbury, asked the claimant to stay after 10 April 2022 and the Tribunal finds that the parties mutually agreed an extension so that the claimant would continue to work for the respondent until the end of April 2022. This she did but on 29 April 2022 the claimant received a termination letter. It is not necessary to go into the facts of that termination.

- 3.3. Holiday pay - The claimant was entitled to 28 days holiday pay and the holiday year ran from 1 January in each year. The claimant told us that she took 10 days holiday in February but the respondent said that the claimant took 8 eight days leave. The claimant said that 8 of those 10 days had been carried forward from the previous year. In any event in the first quarter of 2022 the claimant was entitled to 7 days holiday and, therefore, she was claiming 5 days holiday pay, adding the 2 extra days which she took taking that away from the 7 days. She said that Craig Embleton, the Operations Manager, gave authority for the carry over. The respondent produced to the Tribunal a list of holidays taken by the claimant for 2021. According to the respondent this meant that there were no holidays to carry over from 2021 to 2022, even if they were authorised. The claimant disputed 9 days of that record. Nevertheless the respondent accepted that the claimant accrued leave to the end of April 2022 and that because the claimant had taken over the accrued amount of 7 days, taking in the respondent's view of 8 days, the claimant had taken one more holiday than she was entitled to. The respondent told us that the question of authority for carry over of holidays needed to be in writing. No written carry over authority appeared before the Tribunal.

3.4. Unauthorised deduction of pay - The claimant claimed that she had not been paid for 2 March 2022, 6 April 2022 or 14 April 2022. Under cross-examination she conceded that she had been paid on 6 April 2022 and 14 April 2022 and so far as 2 March 2022 was concerned she conceded that because it was the first day of sickness she was not entitled to be paid any sick pay. The claimant also had a claim for a further 2 days on sick, which she withdrew. Further she claimed expenses of £45.00 for cleaning two vehicles, a Mercedes Smart car, on a date unknown in January 2022 and an Aygo in March 2022. She said that Mr Embleton took the receipt for which the claimant had paid £45.00 in cash. Each of these two events were more than three months after the effective date of termination and no reasonable practicability issue was raised on this or any other out of time matter. Early Conciliation is taken into account in all cases. Therefore, all matters issued outside the statutory time limit are out of time. The claimant claimed £10.00 for mileage, which was to do with the cleaning or valeting of the above cars and that claim was issued out of time.. The claimant claimed £100.00 for a uniform purchased by her in January 2022 but again the claim was issued out of time. Finally the claimant claimed £360.00 for parking at £6.00 per day from January 2022 to the effective date of termination. She paid cash and Mr Embleton said she would get it back. The expenses policy of the respondent makes it clear that expenses would only be reimbursed if they were claimed using forms that are available from a line manager and the accounts department and submitted to the line manager. Further they it was required that claims for expenses be submitted within one month of being incurred and finally they must be supported by relevant documents. None of those requirements appear to be complied with in this matter.

4. Determination of the issues (after listening to the factual and legal submissions made by and on behalf of the respective parties):

- 4.1. Unfair dismissal - The claimant withdrew her claim for unfair dismissal because the Tribunal explained to her that she did not have the sufficient two years' service to make a claim and that claim is hereby dismissed.
- 4.2. Notice pay - On 11 March 2022 the claimant unequivocally served one month's notice to terminate her employment. On 6 April 2022 she attempted to "retract" her notice which was never accepted by the respondent. On 10 April 2022 the parties mutually agreed an extension of the claimant's job until the end of April 2022. It was the claimant who ended the relationship or contract, it was done by her notice and it was her notice that was extended to 29 April 2022. Because it was her notice the question of notice being given by the respondent does not arise and, therefore, the claimant's claim for notice pay cannot subsist and that claim is hereby dismissed.
- 4.3. Holiday pay - The claimant claims 5 days holiday pay. In her claim form she just ticked the holiday pay box and did not specify how many days holiday she was claiming. At the outset of the case today she claimed 4 days holiday pay. She claimed carry over with the authority of the Operations Manager, Mr Craig Embleton. There was no evidence of written authority for carry over anywhere, which is a requirement of the respondent's procedure. The respondent did not bring to the Tribunal

the record of the claimant's holiday so an adjournment was granted and the respondent produced the record which showed the holidays that the claimant took in 2021 and the beginning of 2022. The claimant disputed the record, leaving a possible 10 days of carry over, if permitted by the respondent and the claimant suggested that she had had permission to carry over 8 days. And then she did so by adding another 2 days of holiday from the new holiday year (2022). Up to the end of April 2022 the claimant was entitled in that year and the period up to the end of April 2022 to 7 days, so deducting the 2 days which she took as part of the new year she alleged her claim was 5 days. Her problem is that the 8 days leave was never authorised in accordance with the requirements of the respondent, so she had in fact taken 8 days out of the new year in February 2022. She had taken 1 more day up to the end of April 2022 than she was entitled to and the respondent has recovered the excess. There is no evidence that the claimant ever objected to this. The critical position is that the carry over requires the written authority of the respondent and the claimant was unable to produce such written authority. The carry over was, therefore, unauthorised and the claimant's claim for holiday pay is dismissed.

- 4.4. Unauthorised deduction of wages - As can be seen from the findings of fact the claims for 3 days pay was inappropriate. For 2 of the days the claimant was paid and on the other as the claimant was sick and she was not then entitled to sick pay under the respondent's sick pay scheme. That claim is dismissed. The claimant withdrew two other claims for sick pay and those are dismissed. Claims for expenses for cleaning/valeting vehicles and mileage are also dismissed because they are out of time and the question of the reasonable practicability was not raised. Finally the claim for £360.00 parking over a period of January 2022 to termination did not comply with the company's policy on the submission of expenses and is dismissed.

Employment Judge Shulman

Date: 22 December 2022

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