



EMPLOYMENT TRIBUNALS

Claimant: Miss H Settas

Respondent: Miss R Silk

Heard at: London Central Employment Tribunal via CVP
On: 22 May 2022

Before: Employment Judge Forde

Representation

Claimant: In person

Respondent: In person

RESERVED JUDGMENT

1. The Respondent's name is ordered to be changed to Miss R Silk.
2. The Respondent is granted an extension of time in respect of her response to the claim.
3. The Claimant was an employee of the Respondent from 22/03/2022 until the termination of her employment.
4. The Claimant's claim of breach of contract in respect of unpaid wages is founded and succeeds.
5. The Respondent is ordered to pay the Claimant the gross sum of £886.68.

REASONS

6. By way of a Claim Form dated 16 June 2020, the Claimant receives claims of unpaid wages against the Respondent, a claim the Respondent denies on the primary basis that the Claimant was not an employee of hers.

Case Management

7. At the beginning of the hearing I dealt with two issues. First, the Respondent stated that her maiden name was that by which she preferred to be named within the proceedings. The proceedings were titled in her married name.

8. Second, it appeared from the Tribunal's correspondence that the Respondent's response to the claim had been submitted out of time. However, I could not be certain that this was the case from the Tribunal's file. The claim appeared to have been received by the Tribunal on 16/06/2020. From what I could see, the Respondent had been in contact with the Tribunal and had submitted a response at least by June 2021 and the Claimant had been provided a copy of the same.
9. It was not clear to me that the Respondent had submitted her Response late, albeit that she had not submitted it on form ET3. The Respondent had been sent a copy of the ET1, pursuant to Rule 16(1) of the Tribunal Rules 2013. What I could see was that there was a completed ET3 which had reached the file, together with a document entitled Appendix A which was a detailed two-page rebuttal of the Claimant's claim which itself was confined to five lines within the ET1.
10. Further, it was unclear to me from the file when the ET1 had been sent to the Respondent. Lastly, by way of an email dated 04/07/2021, the Respondent requested an extension of time to submit her Response. Although not explicitly stated as such, I have further content of the Respondent's email to the Tribunal to be an application to extend time for the Response to be submitted. Within her email, the Respondent's stated that she had received the Claim Form on 21/06/2021 which itself stated that the Response must be sent to the Tribunal by 16/06/2021. I accept what the Respondent says in this regard which highlights an administrative error on the part of the Tribunal for which I apologised to the parties. However, and in the face of this error, I considered the Respondent's application. I found that the Respondent had requested an extension of time in writing. That application had not been copied to the Claimant, but it was not the case that the Claimant had seen the Response and was not prejudiced by any delay in the submission of the Response. The Respondent had already submitted the basis upon which they defended the claim. I find that in the circumstances, that it would be in accordance with the overriding objective to extend time for the Response to be admitted in this case on the basis that it would allow the Tribunal to deal with the claim fairly and justly and because it was plainly in the interest of justice to allow the Respondent to participate in claims in respect of which the Respondent strongly asserts a defence. further, in consideration of the balance of prejudice, I did not find the Claimant suffered a prejudice by granting the extension.
11. I agreed and ordered that the Respondent's name be changed to Miss Rebecca Silk.
12. The Respondent submitted that because she had not received the bundle or witness statements from the Claimant, that she was unprepared for the case. Specifically, she stated that because of these two procedural defects, that she was unaware of the case that she had to meet.
13. I found this submission very surprising for a number of reasons and I explained these to the Claimant. First, the Claimant has stated the basis of her claim in very straightforward, simple and concise terms on the ET1. Essentially, the Claimant stated that she had started work for the Respondent on 23/03/2020

and that her employment ended on 05/04/2020. The Claimant was required to work Monday to Thursday, 7:00 a.m. to 7:00 p.m. In respect of remedy, the Claimant stated in the ET1 in the following way:

"I just want to be paid my hours that I have complied by. She is aware of the hours I workd (sic) there was most days which I did overtime (sic)"

14. Second, the Respondent produced a Response in three pages of detail. Of itself, this appeared to be incongruent with the proposition the Respondent was unaware of the case that she had to meet.
15. Third, the parties confirmed that no direction for witness statements or a bundle had been promulgated to the parties. Given this, I was not persuaded that there was a procedural defect of any significance which would obstruct the Tribunal in progressing the matter to a conclusion today. Tellingly, when I read the Respondent the content of the ET1, she conceded that the claim was understood by her and that she was able to respond to it on the basis that she was able to meet it. Accordingly, her objection to the hearing proceeding was dismissed and the hearing went ahead.

Evidence

16. The Respondent gave evidence first. She spoke for some time about the job interview process. She explained that it had been agreed that the Claimant would reside at the Respondent's home and she would undertake the housekeeping duties for which she had been recruited initially under an arrangement described by the Respondent as 'a tutorial'. In summary, the Respondent argued that the 'tutorial period' covered the complex intricate aspects of housekeeping that applied to the Respondent's home. The Respondent explained to me that the job was more than just cleaning; it required detailed knowledge of how particular duties and tasks were to be executed by the Claimant during her employment. The Respondent contended that the Claimant was not an employee during the tutorial period and would only be entrusted to the extent that she would be employed and retained by the Respondent following the completion of her tutorial period. Until she had successfully completed her tutorial period, the Claimant was, for all intents and purposes, a volunteer who would remain unpaid until the Respondent deemed it appropriate that the Claimant would be paid for work undertaken.
17. The Claimant's position was straightforward. The Claimant was of the view that she had responded to an advertisement seeking a housekeeper and had accepted that engagement, notwithstanding the contents of a letter dated 22/03/2020 addressed to her from the Respondent. That letter sets out a number of conditions and includes the key condition that the Respondent relies upon, namely that the Claimant would have to be successful following the tutorial period in order for her to become an employee and receive pay for the period of tutorial.

Fact Findings

18. I find that at all material times, the Claimant was an employee of the Respondent. I make this finding on the balance of probabilities having heard evidence from both parties. I find that the Respondent's proposition that the Claimant was the subject of a tutorial period which would be determined at the Respondent's sole discretion to be an odd one.

Remedy

19. There was not before me a document which set out in clear terms how much the Claimant was to be paid for the period of her employment. During submissions, the Respondent submitted that the Claimant was to be paid the minimum wage payable at the time of her employment and this I found to be £8.21 per hour.

20. On the balance of probabilities, I find that the Claimant worked five days in the first week of her employment, starting on 22/03/2020 and was contractually entitled to be paid for four days the following week which ended on 05/04/2020. She was contracted to work twelve hours a day, starting at 7:00 a.m. in the morning, finishing at 7:00 p.m. in the evening. This means that the Claimant was entitled to be paid nine full days wages for the period of her employment. This equates to £886.68 (9 x 12 x £8.21). Accordingly, and I do order that the Respondent pay the Claimant £886.68.

Employment Judge **Forde**

Date: 25/01/2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
25/01/2023

FOR EMPLOYMENT TRIBUNALS