



EMPLOYMENT TRIBUNALS

Claimant: Miss A Watson

Respondent: Nubreed Hotels Limited (sued as Nubreed Hotels Ltd
Joseph Wicks (CEO))

HELD at Leeds by CVP

ON: 26 January 2023

BEFORE: Employment Judge Lancaster

REPRESENTATION:

Claimant: In person

Respondent: Ms C Goodman, Counsel

JUDGMENT having been sent to the parties on 27 January 2023 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 was employed for just over a year. On 25 August 2022 she was served with notice of termination on grounds of redundancy. That notice was to terminate on 23 September. Her contractual notice was in fact one calendar month which would have taken it to 25 September. Within that notice period on 30 August having contacted ACAS immediately upon the letter of termination the claimant brought a complaint to the Tribunal initially alleging unfair dismissal, but also having ticked the box saying she was owed arrears of pay. She of course did not have the necessary two years' qualifying employment to bring a claim of unfair dismissal, nor indeed to qualify for statutory redundancy payment and therefore that claim was duly dismissed.
2. In relation to the complaint of arrears of pay it is apparent from the context of later correspondence that the claimant was primarily focused on a claim for settlement and compensation. That is for the loss of wages flowing from the termination on 23 September. Because she did not at that stage, 30 August know what would or would not be included within her final payslip

due on 23 September, she could not have been specifically referring to any actual deduction from the wages due on that date apart potentially from the fact, which no one had adverted to at that stage, that she had been given less than the requisite one month calendar months' notice. That error is now expressly acknowledged in the Response, which was served and accepted late on 20th January 2023.

3. In relation to the payment in lieu of notice, as I have commented, that error on the part of the respondent was however clear on the face of the papers from 25 August onwards. Within the termination letter the respondents identified the date of termination of 23rd September and said she would be paid up to that date and they also indicated that, though not entitled to a statutory redundancy payment, she would be paid one weeks' salary described as being for "redundancy", and on the payslip she was paid by way of salary for that further week. There was therefore as at the date of presentation of the ET1, a valid claim for "arrears of pay" in respect of the already notified intention to pay less than the proper notice.
4. Within the contract the employer may terminate employment at any time by making a payment to the employee that is equivalent in value to the basic salary the employee would have received during the notice period. In my view on a proper construction of that clause, and taken in conjunction with what happened in this case, the payment in lieu of notice up to the termination date which was two days short, is severable from the separate agreement to pay one weeks' salary by way of redundancy. The claimant therefore has an unauthorised deduction from her wages the equivalent of two days' pay. In order to justify terminating her employment early the respondents in my view would have needed specifically to identify that they were paying a sum equivalent to the entirety of one calendar months' notice. The fact that the claimant in the event has received more than she might have received because of the extra salary in my view is immaterial to that construction. On my calculations given the basic salary, this equates, dividing it by 52 weeks, to £390 a week. On a five day week that would give rise to a claim of £166 gross and I award that sum.
- 5.

Employment Judge Lancaster

Date 15th February 2023

REASONS SENT TO THE PARTIES ON

Date: 20th February 2023

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