



EMPLOYMENT TRIBUNALS

Claimant: Ms Chloe Buckley

Respondent: Viktoria Moda Limited

HELD AT: Manchester

ON: 19 October 2022

BEFORE: Tribunal Judge Holt

REPRESENTATION:

Claimant: In person

Respondent: In person

WRITTEN REASONS

Introduction

1. These are the Written Reasons for the Judgment given orally, (and when I also gave reasons), at the conclusion of the hearing of this case on 19 October 2022; my oral decision having been followed with a short Judgment prepared by me on 19 October 2022 and which was sent by the Tribunal staff to the parties shortly thereafter.

2. The Claimant presented her claim to ACAS on 20 June 2022. ACAS provided a certificate on 1 July 2022. The Claim form is dated 30 July 2022. There was a response form from the respondent dated 31 August 2022. I also note, on a separate issue, that there was an acknowledgement of correspondence from the Tribunal to the Respondent on 18 October 2022 (ie the day before the final hearing) which said that Mrs Humphrey's husband had permission to join the hearing by CVP hearing and that he "may" be allowed to put questions, subject to discussions (with the trial judge).

3. The Claimant claimed unpaid wages/arrears of pay and associated expenses in the sum of £680.04. She claimed costs generally, £12.70 postal costs and interest (at 8%) because she had been caused to incur an overdraft and credit card interest charges for a period because she had got behind with her household bills and other regular payments for debts, due to the unpaid wages.

4. After the hearing, the Respondent corresponded with the Tribunal and complained that I had not allowed Mrs Humphrey's husband, who had attended the CVP hearing remotely, to act as her representative/McKenzie friend at the hearing on 19 October 2022. She also applied for written reasons out of time. On 22 December it

was confirmed to the Respondent that I would do written reasons in the new year. This document is the written reasons requested by the Respondent.

The parties to the litigation and procedural background

5. The Respondent was/is a business engaged, inter alia, making alterations and repairs to clothing. The Claimant was employed as a seamstress/dressmaker by the Respondent, through the company's director Mrs Viktoria Humphreys, to carry out customer repairs and alternations using her skills of sewing, ironing and connected talents. The Claimant has a degree relating to fashion. Making clothes was, as one would expect, part of her training because it was part of the subject matter of her degree. The role with the Respondent started on 5 May 2022. The Claimant was promised 62 hours of work a week. The employment ended on 1 June 2022. The Claimant was able to find alternative work quickly and started a new role on 14 June 2022. The Claimant was never provided with a contract of employment by the Respondent.

6. The Claimant claimed that she was to be paid on a weekly basis and that she would be paid 30% of the value of the work that she did, which I understood to mean that the Claimant would receive 30% of the monies taken from the clients by the Respondent for the alterations/repairs. In total, the Claimant attended for 8 shifts before she was dismissed by Ms Humphreys. The circumstances surrounding and the reasons for the dismissal were in dispute at the hearing. However, all that the Claimant was seeking was her unpaid wages and associated expenses.

7. At the hearing before me, both the Claimant and Ms Humphreys were litigants in person. Because they were unrepresented, I took into account the guidance at chapter 1 of the Equal Treatment Bench Book which considers litigants in person and how the Court should help unrepresented parties give evidence so as to enjoy as fair a hearing as possible.

8. As mentioned above, Mrs Humphreys had corresponded with the Tribunal and asked for her husband to participate in the hearing. He attended the CVP hearing. (I could see his details on the CVP link/screen). At the beginning of the hearing, Mrs Humphreys asked me for permission for her husband to act as her representative, and essentially for him to perform the role of what is known as a "McKenzie friend". In general terms she referred to the permission from the Tribunal (but did not show the letter to me or emphasise any of the details in the correspondence).

9. Having considered the matter of his participation, however, I declined to let the Mrs Humphrey's husband participate in the hearing because he was not in fact, it transpired, present with Mrs Humphreys. She told me that he was physically in India at the time of the hearing.

10. I noted that there is a sensitivity surrounding whether people are given permission to participate in UK-based litigation from overseas, because usually the permission of the overseas government is required. However, a more pertinent, practical problem was that Mrs Humphrey's husband was not physically present in the same room as her during the hearing. The role of a McKenzie friend is not to take over the cross-examination of witnesses, nor to "run" the hearing as if they were a qualified advocate. Rather, the role of the McKenzie friend is to guide, advise and assist the

party needing assistance. Considering the way that the hearing had been set up, I could not see how that could have been facilitated with the Respondent in the UK and her husband in India.

11. I should also note that, during the hearing, I had the assistance of a Court interpreter Ms Antonia Leice who had been booked to assist Mr Humphreys. There were no communication difficulties between them and all ambiguities were clarified as the hearing progressed. However, Mrs Humphreys gave evidence in both her own language and English, jumping between the languages without any warning. She did not take a consistent approach, despite the challenges of the hearing. Nonetheless, whilst the hearing progressed slowly, and there was a great deal of clarification as we went along, I was very satisfied at the end of the hearing that the communication challenges had not prevented Mrs Humphreys from putting questions to the Claimant and her witness, and that Mrs Humphreys had also been able to explain her case to me.

12. Finally, I record that, because Ms Humphreys was essentially a litigant in person, I assisted her formulating questions to the appellant and the appellant's witness Ms Ellie Guest. At times I had to stop Mrs Humphreys, enquire what she wanted to ascertain from the questionee and re-phrase the question for her. (As is often the case with litigants in person, Mrs Humphreys's default approach was to make statements, rather than to ask questions, and she also often bundled up several questions at the same time and I had to show her how to separate out the issues into individual questions). The Claimant did not need assistance in presenting her case. At the end of the hearing neither party complained nor suggested that the hearing had been unfair.

Issues

13. The issues in the case were:

- a. Whether the Claimant had worked for the Respondent on the day that she attended for interview;
- b. How many days the Claimant had worked for;
- c. What work the Claimant had done and the quality of her work;
- d. Whether the Claimant had damaged any of the Respondent's work equipment and tools and so whether there should be a set-off for any damaged equipment/tools;
- e. The quantum of any monies due to the Claimant from the Respondent.

14. Linked to the above, the Respondent was aggrieved because, she claimed, the Claimant had misled her relating to her skill and experience.

15. It was agreed that the Claimant had agreed to work for 62 hours a week and at 6.1 of the response form Mrs Humphreys said that the Claimant had worked for "only 8 shifts".

Evidence

16. The Respondent, the Claimant and her friend Ellie Guest gave oral evidence. Mrs Humphreys asked the Claimant and Ms Guest cross-examination questions. At the end of the case, I summed up for the Respondent what I believed her case to be and she agreed with my summary.

17. I also record that, at the hearing, I was provided with a bundle of electronic documents that had been organised by the Claimant (but which included documents from the Respondent) and other documents provided electronically. The Respondent did not make any adverse comment nor application in relation to the bundle.

18. The written material that I have seen includes a copy text message from Mrs Humphreys to the Claimant dated 5 May 2022 which says *"Hi Chloe, if you not working everyday you can come in your day of, or half day is Sat 9-2. You going to have minimum per hour UK wages. You can work for 2 companies 😊 if you can. Please give me a call sometime at evening please and let me know what you think about it? Thank you. Kind Regards Viktoria"*. There is also a text message from the Claimant to Mrs Humphreys dated 7 June which says *"Hi, just wondering when I'm getting paid, because you said it would be the 5th?"* On 10 June the Claimant messaged the Respondent saying *"Hi, I've text you on normal message but I don't know if you have received it? Could you let me know when I'm being paid please as I have bills to pay, you told me it would be the 5th and its nearly a week now"*. Mrs Humphreys did not deny these text messages had been sent/received. There is also an email from the Claimant to Mrs Humphreys chasing payment dated 12 June 2022.

19. In between those text messages set out above, there is one from the Claimant dated 19 May 2022 in which she explained that she and Ellie Guest were going to be late for work because they had been trapped in the motorway by an accident that had blocked the M56.

20. There is a document headed "letter before action" addressed to the Respondent dated 7 July 2022 in which the Claimant claimed £680.04 and which gives a breakdown of the claims for 11 dates between 5 May 2022 and 1 June 2022. The hearing bundle also claimed a breakdown of the claims in the total sum of £1,040. The global claim consisted of the claim for £680.04 unpaid wages claimed. The additional items were made up of a claim for postal costs (£12.70); loss of earnings to attend the hearing £89.64; and interest at £258.40 (at 8%).

21. I have seen a photograph of a notebook where the days and times of the Claimant's and Ms Guest's work are recorded.

22. I have seen witness statements from the Claimant dated 12 October 2022 and also from Ellie Guest (undated). Ms Guest explains that she worked for the Respondent through a government Kickstart scheme from March 2022. In April Mrs Humphreys communicated that she wanted to hire more staff and it was Ms Guest who introduced the Claimant to Ms Humphreys. Both the Claimant and Ms Guest answered cross-examination questions in accordance with their evidence in their witness statements and in a very calm and straightforward manner.

23. I have seen a witness statement from Viktoria Humphreys (who describes herself as Director/Owner of Viktoria Moda Limited) and which appends various documents. In her witness statement, Mrs Humphreys claims that the Claimant misled

her about the level of her seamstress/dress-making skills. She says of the appellant and Ms Guest “*They are friends and tricked me so that they could work together, take advantage of me and when I found them out they realised they had been caught and they both walked away, giving not notice*”. She also claims that the “Overlock” machine was damaged whilst the appellant worked for her and had to pay for repairs and she damaged an iron by using it to iron a plastic bag. However, she admits that the appellant worked for 8 shifts, although stating that she was “*unable to perform at the required standard*” (she gives examples of tasks which she claims were not “up to scratch”). Mrs Humphreys sets out in her witness statement the appellant’s claims and the items claims that she agrees to. She then sets out what amounts to a counter claim and off-sets the cost of the damaged overlocker and iron against the Claimant’s claim. To descend to the details, Mrs Humphreys agreed that she owed £608, but counter-claimed (269.99 + £40 =) £309.99. In her witness statement she sets out her offer of £298.01 which she says was made through ACAS.

24. In answering each others’ questions, the Claimant and Ms Guest as well as Mrs Humphreys essentially maintained their stances and evidence set out in their witness statements and the claim/response forms.

Relevant Legal Principles

25. Pursuant to Part II and section 13 of the Employment Rights Act 1996, an employee, such as the Claimant, has a right that the employer shall not make a deduction from their wages unless certain statutory criteria are fulfilled. Section 23 of the same Act gives the employee a right to apply to the Employment Tribunal if they wish to allege that wages have been unlawfully deducted or not paid at all, which is what the Claimant did in this case. Essentially, the Claimant’s amounts to a claim pursuant to section 13 of the ERA 1996, although I decided the case on its facts because no disputed points of law arose. Section 13 ERA is below:

Right not to suffer unauthorised deductions.

- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
- (2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—
 - (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
 - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

- (4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.
- (5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
- (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
- (7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Relevant Findings of Fact

26. In the light of the oral evidence from the Claimant, I find that she did not mislead Mrs Humphreys regarding her background. I am satisfied that she never personally, nor through Ms Guest, claimed to be a professional dressmaker. I am satisfied that the Claimant told Mrs Humphreys that she was "good at sewing" because of her degree studies in fashion at university and that she completed basic sewing tasks for Mrs Humphreys as instructed. She carried out hemming, shortening straps, unstitching items, ironing, using the overlocker, and taking receipts and orders. I was satisfied that a hemming machine was already broken when the Claimant arrived, that the overlocker machine was fine whilst she was there and until she left, and that the iron was broken and fixed. The Claimant did not break the iron.

27. I record that I also found Mrs Humphrey's claim to have been "tricked" by the Claimant and Ms Guest to be bizarre. I am satisfied that Mrs Humphreys was looking for staff and was enthusiastic to recruit the Claimant on Ms Guest's recommendation. There was no secret that the Claimant and Ms Guest were friends, including travelling to work together.

28. At the hearing I noted that Ms Guest gave evidence that the overlocker machine broke about three months after the Claimant left, that it could not be repaired and, in the end, Mrs Humphreys had to buy a new overlocker machine. I also saw that Mrs Humphreys had provided a copy invoice relating to the overlocker machine in the sum of £269.00 but which is dated 14 September 2022. This is over three months after the date of the Claimant's employment. As it was clearly an important piece of equipment which the Respondent could not manage without. I am therefore satisfied that Mrs Humphreys bought the new Jaguar overlocker well after the Claimant had left and so I find that Mrs Humphreys dishonestly counter-claimed for damage that the Claimant had not caused.

29. Given the concessions in Mrs Humphrey's evidence about the dates and times of the Claimant's hours of work, I find that the Claimant is entitled to £680.04 for the unpaid wages claimed. The difference between the £608 offered by Mrs Humphreys and the £680.04 claims relates to the fact that Mrs Humphreys discounted the work performed by the Claimant for the Respondent on the day of her interview when she was invited to stay on to work. Mrs Humphreys has also unreasonably knocked off the equivalent of 30 mins taken by the Claimant during each day worked for lunch.

30. Having found that the Claimant's claim for unpaid wages was accurate and genuine and that she was entitled to be paid and that there was no genuine counterclaim, I considered the Claimant's claim for compensation. Whilst I have no doubt that the Claimant's finances were significantly disrupted by the lack of payment of her wages, I was not shown any evidence of additional interest or other debt-related losses that she faced. I do not have jurisdiction to award her costs/expenses claim.

31. I therefore gave Judgement in favour of the Claimant in the sum of £680.04 (net).

Decision

31. The Claimant's claim against the Respondent for unpaid wages is allowed and assessed in the sum of £680.04 (net), which sum the Respondent is Ordered to pay the Claimant.

32. The Claimant's claims for compensation (postage costs, loss of earnings and interest) are dismissed.

Tribunal Judge Holt

15 February 2023

JUDGMENT SENT TO THE PARTIES ON

20 February 2023

FOR THE TRIBUNAL OFFICE

Notes

1. Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

2. Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.