



EMPLOYMENT TRIBUNALS

Claimant

Mr Carl Harrison

v

Respondents

Luck, Lust, Liquor, & Grinds Ltd

Heard at: Watford (by CVP)

On: 22 November 2022

Before: Employment Judge Bedeau

Appearances

For the Claimant: In person

For the Respondent: Did not attend and was not represented

JUDGMENT having been sent to the parties on 29 December 2022, and the respondent having requested written reasons on 12 January 2023, reasons are hereby given.

REASONS

1. In a claim form presented to the tribunal on 21 March 2022, the claimant claims against the respondent unfair dismissal and notice pay.
2. In the response presented on 10 June 2022, the respondent avers that the claimant tendered his resignation on 5 January 2022, which was accepted, and he was paid all monies due upon leaving.
3. The claimant's unfair dismissal claim was struck out on 10 August 2022, by Employment Judge Warren, as he did not have two years' continuous with the respondent.

The issues

4. The issue before me was whether the claimant, upon leaving his employment, was entitled to one week's pay?

The evidence

5. I heard evidence from the claimant. Although the respondent was sent Notice of Hearing on 7 November 2022, no one attended to put forward its case. I considered rule 47 Employment Tribunals (Constitution and Rules of Procedure) 2013 and decided to proceed in the respondent's absence. The claimant attended and was anxious to have his case heard.

Findings of fact

6. The respondent operates a bar at Gorleston-on-Sea, Norfolk. The claimant commenced employment with the respondent on 4 July 2021, as General Manager. He worked full-time in the Coffee and Cocktail Bar, working 40 hours a week.

7. Prior to the 6 January 2022, he spoke to Ms Gail Smith, owner, and informed her that he was going to leave to take up employment elsewhere. On 6 January 2022, he duly gave his written notice to Mr Bruno Alexander, Bar Manager, who said that he would forward it on to Ms Smith. In his resignation letter he stated that he would be willing to help out with training at another venue. His last working day was to be 14 January 2022.

8. The respondent's week runs from Saturday to Sunday.

9. The claimant's gross annual salary was £24,500. He was paid monthly into his bank account.

10. A text was sent to him by Ms Smith who wrote that she would not allow him to work his notice and that he must leave on 7 January 2022. On that day, he met with Mr Alexander for a handover.

11. On 12 January 2022, the claimant was paid up to Wednesday 7 January 2022 and not to 14 January. He raised his week's underpayment with Ms Smith who responded stating that he was paid what he was owed. His response was that she had told him to leave on 7 January and as such he was entitled to a week's pay to 14 January. She replied that she would make him redundant, he said that either way he was entitled to one week's pay as he had stated previously that he was prepared to work his one week's notice.

12. Contrary to what the respondent wrote in its response to the claim, the claimant denies that he had, up to 7 May 2022, posted anything allegedly defamatory on social media about Ms Smith and her business.

The law

13. In relation to wrongful dismissal, the question a tribunal has to ask and answer, is had the employee committed a fundamental breach of the contract of employment to justify summary dismissal, Enable Home Support v Pearson UKEAT0366/09.

14. Alternatively, section 13 Employment Rights Act 1996, deals with unauthorised deduction from wages. An authorised deduction can be made from a worker's wages if it is in the contract of employment or in writing to which they have agreed to, section 13(1).

15. His gross monthly pay was £471.15. His net monthly was £370.78.

16. I considered the content of the respondent's response to the claim which denies liability.

Conclusion

17. I was satisfied, based on my findings of fact, that the claimant handed in his notice on 6 January 2022, to take effect on 14 January 2022. Ms Smith did not want him to work his one week's notice and required him to leave on 7 January. In that regard the respondent was under an obligation either to allow the claimant to work his notice or pay him in lieu of notice. Neither was done.

18. Further, I have come to the conclusion that the claimant had not breached the terms and conditions of his employment entitling the respondent not to pay him his one week's notice.

19. Alternatively, the failure to pay the claimant notice pay was an unauthorised deduction from his wages.

20. The respondent is ordered to pay him the sum of £370.78 net.

Employment Judge Bedeau

Date: 9 March 2023

Sent to the parties on: 10 March 2023

For the Tribunal Office