



EMPLOYMENT TRIBUNALS

Claimant:

Miss K. Kirtland

v

Respondent:

Maidenhead Lawn Tennis Club
Ltd

Heard at:

Reading

On: 9 June 2023

Before:

Employment Judge Chudleigh

Appearances

For the Claimant:

In person

For the Respondent:

Mr R. Hedley, Chairman

JUDGMENT

1. The respondent made an unlawful deduction from the claimant's wages by failing to pay her in respect of 72 hours for the period August to December 2022.
2. The respondent is ordered to pay the claimant wages of £1,234.08 and £148.95 by way of rolled-up holiday pay, a total of £1,383.03
3. The respondent is ordered to pay pension contributions on behalf of the claimant at the rate of 3% on the total of the figures in paragraph 2 above.

REASONS

1. The claimant was employed by the respondent as Club Administrator and Welfare Officer on 14 April 2014. She remains in the respondent's employment today.
2. The issues in the claim were identified at a preliminary hearing on 9 May 2023. The respondent accepted at the hearing before me that the claimant was entitled to an order in respect of the payment of wages for the period August to December 2022. The only issue for me to determine was what hours the claimant would have worked in that period had she not been prevented from doing so.

3. It was also agreed by the respondent that the claimant was entitled to a payment in respect of rolled up holiday pay of 12.07% of the wages due to her and that it would make pension contributions at the rate of 3% on the total of the wages and rolled up holiday pay due to the claimant.
4. It was also agreed that the claimant's hours rate of pay was £17.14 at the material time.
5. I heard evidence from the claimant and from Mr R. Hedley, the respondent's current Chairman.
6. I made the following findings of fact:

- (1) The claimant's contract of employment dated 13 April 2016 provided that her hours of work were between 16 and 20 hours per week, increasing above that in busy periods during the year. Historically, the claimant determined her own hours in accordance with that provision.
- (2) The respondent produced some figures based on the monthly hours recorded by the claimant over a 7-year period indicating the average hours worked in the months of August to December, traditionally a quieter period of the year for the claimant than earlier months. Those figures totalled 521 and were agreed by the claimant to be accurate:

| | |
|-----------|-----|
| August | 99 |
| September | 103 |
| October | 112 |
| November | 104 |
| December | 103 |

- (3) The average was around 26 hours per week.
- (4) On 8 August 2022 the then Chairperson, Sue Topchik, told the claimant that she had to cut her hours to a maximum of 20 hours per week.
- (5) The claimant was then told on 9 August 2022 that she could work up to 25 hours per week during August 2022, reducing to 20 per week from September 2022.
- (6) The claimant worked 100 hours during August 2022 but only 80 hours in September and October. Her actual hours were 100 in November 2022 and in December 2022 she worked 89 hours.
- (7) Mr Hedley was appointed as Chairman in December 2022 and at the start of January 2023 he advised the claimant to resume her previous ordinary working practice with regard to her hours.

- (8) The claimant's evidence before me was that had she been permitted to work the hours required by her workload to undertake during the disputed period, she would have worked 30 hours each week. The claimant maintained that her workload had increased because the respondent had taken on a new entry system, there was a new system called "Club Spark" that increased her work and by 2022 juniors could join the club all year round rather than at a set time.
- (9) The claimant's assertion in her evidence that she would have worked 30 hours per week contradicted both a statement made by her during her grievance that she worked 23/25+ hours during the quieter, summer and autumn periods and a statement that she made in an email dated 30 August 2022 to the effect that she worked 28 hours on average each week.
- (10) Furthermore, I accepted Mr Hedley's evidence that the ClubSpark system was designed to make the claimant's job quicker and more efficient. I also accepted his evidence that many people associated with the respondent have been surprised at the allegation that the claimant worked or needed to work up to 30 hours per week to undertake her role.
- (11) My finding was that the claimant's case as to the hours she would have worked in August to December 2022 had she been left her own devices was exaggerated. I consider that it was likely on the balance of probabilities that she would have worked hours consistent with the number of hours she worked during the 7-year period referred to in paragraph 6(2) above.
- (12) I also note that the claimant was told that as an exception she could work more than 20 hours a week with permission in the disputed period, and I consider that if there was something particularly pressing, she would have requested to work more hours.
- (13) The claimant in fact worked 449 hours in the disputed period which is 72 hours less than the 521 she would have worked had she not been told to work 20.
7. Mr Hedley made submissions with regard to a chart he produced which was at page 3 of the bundle which illustrated the figures described above and showed very clearly what he described as a "lowland" area for the months of August to December as compared to other times of the year.
8. The claimant suggested in submissions that she would have worked more hours than usual in August to December 2022 as she was busy for the reasons described above.

Conclusions

9. I accepted the respondent's case as to the disparity in hours worked in the relevant period as compared to the hours the claimant would have worked had she not been told to work no more than 20 hours a week. On the balance of probabilities, I consider the claimant would have worked a similar number of

hours to the average for that time of year. I rejected the claimant's case that she would have worked an average of 30 hours per week and she was entitled to pay in respect of 180 additional hours. The shortfall was 72 hours.

10. In the circumstances, the unlawful deduction in relation to the claimant's pay amounted to 72 hours x £17.14 = £1,234.08.
11. The shortfall in rolled-up holiday pay was £1,234.08 x 12.07% = £148.95.
12. The total unlawful deduction which the respondent is ordered to pay the claimant is £1,383.03.
13. It was agreed that respondent would make good pension contribution on the shortfall at 3%.

Employment Judge Chudleigh

Date: 9 June 2023

Sent to the parties on: 12 July 2023

For the Tribunal Office