EMPLOYMENT TRIBUNALS

Claimant: Miss L Woodburn

Respondent: GPW Leisure Limited

Heard at: Manchester (by CVP) **On:** 25 July 2023

Before: Employment Judge Phil Allen (sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Did not attend and was not represented, having provided written representations

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent breached the claimant's contract of employment by dismissing her without notice, when she was entitled to one week's notice. The respondent is ordered to pay damages to the claimant in the sum of **£170.05**.

2. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of **£88.73**.

REASONS

Introduction

1. The claimant was employed by the respondent. There was a dispute about when her employment with the respondent began. She alleged that she was dismissed on 23 September 2022 without notice by text message, after she was unable to attend work due to ill health (in accordance with food safety requirements). She claimed that the dismissal had been in breach of contract because no notice had been given. She also claimed that she had not been paid for the annual leave to which she was entitled.

2. The respondent denied that the claimant had been dismissed. It also denied that she had been employed by the respondent for one month or more (and therefore was not entitled to any notice), contending that she had previously worked for a different company. It acknowledged that it had not paid the claimant the annual leave to which she was entitled. It disputed the amount which the claimant claimed.

Procedure

3. Two preliminary hearings were previously conducted in this case, on 17 February and 1 June 2023. The case management orders made following those hearings recorded the issues to be determined and the arguments which had arisen.

4. In accordance with the case management orders, the claimant had provided a statement and some documents.

5. In advance of this hearing, the respondent's Managing Director wrote to the Tribunal to say that he would be away on holiday on the date when the hearing was arranged, but he proposed that the hearing proceed with him providing documents to be considered. He did provide a statement and some documents in advance of the hearing, which were considered. I arranged for those documents to be provided to the claimant in advance of the hearing, as the respondent appeared to have misspelt the claimant's email address.

6. The claimant represented herself at the hearing.

7. The hearing was conducted by CVP remote video technology.

8. I read the statements and documents provided by the parties in advance of the hearing.

9. The claimant confirmed the accuracy of her statement under oath, and she was asked some questions.

10. The claimant provided some further documents during the hearing, after a break to enable her to do so.

11. The claimant was given the opportunity to explain anything which she wished to during the hearing, including to explain why it was she believed that the amount of holiday she claimed was due.

12. At the end of the hearing, I told the claimant my Judgment. As the respondent had not attended, I considered it appropriate to provide my reasons in writing, so that the respondent would be aware of the reasons for the decision reached. In accordance with the overriding objective, the reasons are relatively brief.

Findings

13. The claimant worked at the Odd Frog from May 2022 (the precise date is not material to this decision).

14. Those who were employed at the Odd Frog were employed by Hummingbird Leisure Limited, at least from some point during the time the claimant worked there.

That company is a company owned by Mr Gary Wood and Companies House shows him as having been allocated 100% of the shares at incorporation.

15. The claimant also worked some shifts at the Derby. Those who worked at the Derby were employed by GPW Leisure Limited (the respondent in this case). That company is a company owned by Mr Gary Wood and Companies House shows him as having been allocated 100% of the shares at incorporation.

16. There appears to have been some lack of clarity about who the claimant was employed by on the occasions when she first worked at the Derby.

17. It was common ground that during at least the last three weeks of the claimant's time when working at the Derby, she was employed by the respondent. I was provided by the respondent with three payslips for her for weeks in which she had worked (9, 16 and 23 September 2022).

18. The claimant's evidence was that she first worked at the Derby from, at the latest, 20 August 2022 and I have seen messages which confirm that she was to work there, and had worked there, on that date. The claimant's case was that, accordingly, she had been employed by the respondent for a month or more as a result.

19. On 23 September 2022 the claimant was unwell, including vomiting. She informed the person in a management position, Mel, that she was unable to work on that day (which was, of course, in accordance with food safety guidance). Mel responded by message and said "*if you don't come in tonight don't come back at all*". The claimant believed herself to have been dismissed by someone who she understood to have held a management position.

20. I find that the claimant was dismissed by the respondent on 23 September 2022 by the text message sent by Mel. I find that what was said was clearly and unequivocally a dismissal, sent by some with the authority (or, at least, the ostensible authority) to dismiss the claimant.

21. I noted that the first payslip which I was provided by the respondent for the claimant (week 23 date 9 September 2022) could not have been a payslip for the first week of the claimant's employment with the respondent. The total gross pay to date shown on the payslip was higher than the amount paid for that week, meaning that the claimant must have been employed during a previous week or weeks by the respondent, contrary to what was said by the respondent in its written submissions.

22. In any event, what is to be considered when determining whether the claimant was continuously employed for a month or more for section 86 of the Employment Rights Act 1996 (with regards to notice) is the period of continuous employment under that Act. Section 218(6) of that Act says that if an employee of an employer is taken into the employment of another employer who at the time is an Associated Employer, the period of service with the first employer counts as employment with the second employer, and the change does not break continuity of employment. Section 231 of the Act provides that two employers are Associated where both are companies of which a third person (directly or indirectly) has control. That meant that the claimant's continuous employment with the respondent started when she first

worked at the Odd Frog, as her continuity with Hummingbird Leisure Limited counted towards her continuity with the respondent (as a result of the detailed provisions of the Act).

23. Accordingly, I found that the claimant had the continuity required to be entitled to one week's notice under section 86 of the Employment Rights Act 1996. I accepted what the claimant told me about where she worked and found that she had continuity based upon her evidence, what was said in the first payslip provided by the respondent, and (in any event) because of the provisions I have explained regarding continuity of employment and associated employers.

24. The claimant was not given any notice when she was dismissed. As she was entitled to at least one week's notice, that was a breach of her contract.

25. The claimant claimed damages based upon 17.9 hours at £9.50 per hour. I looked at the payslips which the respondent had provided, and that sum appeared to be supported by those payslips. The respondent had not explained what it thought the figure should be. I accordingly awarded the claimant, as damages, the sum claimed.

26. With regard to holiday pay, the respondent agreed that £88.73 was due to the claimant. I was provided with a (second, amended) payslip from 30 September 2022 which recorded that amount as being due to the claimant. That was based upon 9.34 hours of holiday accrued but not taken. The claimant told me that sum had not been paid to her. Accordingly, the claimant also succeeded in her claim for holiday pay as she had not been paid money which was due to her. I am mystified why it has not yet been paid in circumstances where the respondent has acknowledged that it is due. The respondent must make the payment.

27. The claimant claimed that she was due £162.36 as holiday pay, rather than the sum which the respondent agreed was due. She could not explain why the amount should be that sum. Her reason for believing that sum was due was because, in the first payslip which the respondent had issued for 30 September 2022, it had said she was due that amount, based upon 17.09 hours of holiday.

28. I was provided with a letter from the respondent's accountants explaining that the first payslip had been an error and the correct sum was that which the respondent acknowledged. The accountants did not tell me why or how it had been calculated. It would have been helpful if either they or the respondent, had explained the basis for the calculation.

29. I undertook a calculation based upon the claimant having one month's service with the respondent, applying the amount of annual leave due under the Working Time Regulations and the pay recorded for the three weeks worked shown on the payslips provided. That calculation broadly accorded with the respondent's revised figure and not the sum claimed by the claimant. As the claimant was unable to show that she was due the higher sum she claimed, I awarded only the amount the respondent acknowledged. I understood the claimant's confusion.

Employment Judge Phil Allen
25 July 2023

JUDGMENT AND REASONS
SENT TO THE PARTIES ON
1 August 2023

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
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.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990
ARTICLE 12

Case number: **2409853/2022**

Name of case: **Miss L Woodburn** v **GPW Leisure Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 1 August 2023

the calculation day in this case is: 2 August 2023

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:
   www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.