



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102817/2023 and 4103120/2023

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Held in Glasgow on 31 August 2023

Employment Judge L Wiseman

10 **Ms Kerry Miller**

**Claimant
In Person**

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Ms Megan MacKay

**Respondent
Represented by:
Ms M Mackay -
Owner**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided the claim in respect of payment of four weeks' notice is
25 successful and the respondent is ordered to pay to the claimant the sum of £187.33.

The tribunal dismissed the claim in respect of payment of statutory sick pay, and
dismissed the respondent's counter claim.

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REASONS

1. The claimant presented a claim to the Employment Tribunal on the 26 April
2023 alleging she was entitled to payment of 4 weeks' notice and one week
statutory sick pay.

2. The respondent entered a response denying the payments were due.

3. I heard evidence from Ms Miller and Ms MacKay and I was referred to a number of documents produced by Ms Miller. I, on the basis of the evidence before me, made the following material findings of fact.

Findings of fact

- 5 4. Ms MacKay was the owner of Lumins Studio. She took on the hairdressing business in July 2022 and was a sole trader.
5. Ms MacKay placed an advert for a hairstylist to work on a zero hours contract. The claimant responded to the advert and met with Ms MacKay to discuss the position. Ms MacKay sent the claimant a written contract to look over before
10 signing. The contract was signed by both parties and provided for the claimant to be employed for 29 hours per week. The parties agreed a variation to this clause which was noted on the contract and provided for hours to be variable.
6. The claimant commenced employment with the respondent. The claimant was paid monthly and earned the following amounts:
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- 28 August 2022 = £92.50
 - 28 September 2022 = £353.50
 - 28 October 2022 = £135
 - 28 November 2022 = £224.50
 - 28 December 2022 = £250

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 - 28 January 2023 = £68.50
7. The claimant had a period of sickness absence in January and provided the respondent with a Fit Note from her GP. Ms MacKay advised the claimant (by message sent on the 9 January 2023) that she was in discussions to sell the business and would pass the Fit Note to the intended new owner. (In fact the
25 business was not taken over and instead closed).
8. The landlord of the premises changed the locks of the business on the 25 January 2023 and would not allow the claimant access to the premises.

9. The claimant commenced alternative employment on the 30 January 2023.
10. The claimant relied on point 52 of the Contract which dealt with termination of employment and provided *“The employee and the employer agree that reasonable and sufficient notice of termination of employment by the employer is the greater of four weeks and any minimum notice”*.
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11. The claimant also relied on points 23 - 25 of the Contract which dealt with sickness.
12. The respondent brought a counter claim against the claimant. Ms MacKay argued that if the claimant was contracted to work 29 hours per week (which she denied), then the claimant had breached the contract by not doing so and
10 accordingly compensation should be paid.

Discussion and Decision

13. I noted the claim had been brought against Lumins Studio, the claimant's employer. The respondent was, however, owned and operated by Ms Megan MacKay: she was a sole trader. I accordingly decided the respondent should
15 be correctly designated as Ms Megan MacKay trading as Lumins Studio. This Judgment will be sent to Ms Megan MacKay at her address which is 49 Inglewood Crescent, Paisley, PA2 0PQ.
14. I next considered the claim in respect of the payment of four weeks' notice.
20 The claimant relied on the signed Contract of Employment as her entitlement to four weeks' notice pay. Ms MacKay denied the sums claimed by the claimant were due to be paid because there had been a verbal agreement to have, in effect, a zero hours contract with no obligation on the respondent to offer work and no obligation on the claimant to accept work. The claimant
25 accepted there had been agreement to make the hours of work variable and this had been noted on the Contract, but beyond that the claimant denied the contract was a zero hours contract and that there was no obligation to offer or accept work. There was no evidence to suggest the claimant had ever been offered work and refused it. The picture both parties painted was of the

claimant working flexible hours to suit when clients were booked into the salon.

15. There was no dispute regarding the fact the written Contract of Employment had been provided by Ms MacKay to the claimant, and had thereafter been signed by both parties and dated. This written contract sets out the terms of the contract between the parties. I could not accept Ms MacKay's suggestion that the written contract had been displaced by verbal discussions.
16. The Contract of Employment provides for 4 weeks' notice of termination of employment to be given by the employer. The claimant was not given any notice of the termination of her employment. I accordingly find this aspect of the claim to be successful.
17. The claimant worked variable hours and had variable earnings. In the circumstances I decided it would be appropriate to average the claimant's earnings and base an award on that average. I calculate the claimant earned an average monthly wage of £187.33.
18. I decided to award the claimant four weeks' notice of termination of employment which amounts to £187.33.
19. The claimant was, in terms of the Contract, entitled to the payment of statutory sick pay. I concluded the claimant did not earn enough to qualify for payment of statutory sick pay and accordingly I dismissed this aspect of the claim.
20. The respondent brought a counter claim in which she sought compensation for breach of contract based on the claimant not fulfilling 29 hours per week. The counter claim was premised on a finding by the tribunal that the claimant was contracted to work 29 hours per week. The tribunal concluded, above, that the parties had agreed a variation to the contract of employment which meant hours worked per week were variable. I decided, on that basis, to dismiss the counter claim.
21. The tribunal decided, in conclusion, that the respondent (Ms MacKay trading as Lumins Studio) must pay to the claimant the sum of £187.33 in respect of four weeks' notice.

22. The claim in respect of statutory sick pay, and the respondent's counter claim, are dismissed.

Employment Judge: L Wiseman
Date of Judgment: 31 August 2023
Entered in register: 05 September 2023
and copied to parties

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