



EMPLOYMENT TRIBUNALS

Claimant: Miss N Mathurin
Respondent: Eunisure Limited (In voluntary liquidation)
Heard at: East London Hearing Centre (by CVP)
On: 15 September 2023
Before: Employment Judge Mr J S Burns
Members: Mr S Woodhouse
Ms G Forrest

Representation

Claimant: in person
Respondent: no attendance

JUDGMENT

- The Respondent by 29/9/23 must pay the Claimant £5130.36 calculated as follows:

(i) Pay in lieu of accrued holidays	£1163.42
(ii) One month's notice pay	£1750.56
(iii) Unpaid wages (shortfall in commission)	<u>£2216.38</u>
Total:	£5130.36
- The direct associative disability discrimination claim is dismissed.

REASONS

- The case is summarised in the Record of a Preliminary Hearing of 17 August 2022 heard by EJ Barrett.
- The Respondent is a retail insurance broker. The Claimant was engaged by the Respondent to work as a Business Consultant from 7 May 2019 to 8 January 2020. Her role involved selling insurance policies.
- We heard evidence from oath from the Claimant and were referred by her to a

schedule of calculations, an agency agreement and other documents.

4. It was held in previous decisions that (i) the Claimant was an employee of the Respondent for purposes of the Employment Rights Act 1996 and a worker of the Respondent for purposes of the Equality Act 2010 and the Working Time Regulations (ii) that time should be extended for her claims and; (iii) (at a PH on 19/6/23) that the only claims to go forward for hearing today were as follows: (a) Associative disability discrimination because of the claimant's son's disabilities as she was refused homeworking to be close to her son to care for him; (b) Accrued unpaid holiday after working eight months; (c) Unpaid commission of £1,558.46, in total; and (d) One month's notice pay, which the Claimant asserts is the norm in the industry for someone in her position and circumstances.

Findings and conclusions:

The direct associative discrimination claim

5. The Claimant has a son who suffers from a severe disability requiring considerable care and attendance. The Claimant was told at the beginning of her employment that after an initial training period she would be able to work from home but after the training ended her managers refused to allow this, saying that regulations did not permit it. At least another 26 employees who were trained and worked for the Respondent doing similar work to her were also not permitted to work from home. The reason which the Claimant put forward in her evidence for the Respondent's refusal to allow homeworking by her and the other employees was that the Respondent wanted to maximise (i) its close control over its employees and (ii) the amount of labour it could get from the employees.
6. While it may have been a reasonable adjustment for the Claimant's son's disability for the Respondent to have allowed home-working by the Claimant, this is not the claim before us and indeed no such claim could have been made in the ET. A reasonable adjustment claim has to relate to adjustments which would have been reasonable for the claimant's own disability. The claim before us (one of direct associative discrimination) requires us to identify whether the reason for the unfavourable treatment (namely the Respondent's refusal of home-working by the Claimant) was because her son is disabled. On her own evidence, that was not the reason.

The commission claim.

7. The Claimant applied by email of 26 June 2023 to amend the quantum of her unpaid commission claim to £2289.58. She sent a further amendment of her calculation before 8 September 2023 as follows: Total due £5963.69; Total paid £3747.31; shortfall £2216.38. We allowed the amendment and accepted her evidence that her commission was unlawfully deducted in the amount claimed.

The holiday pay claim

8. The Claimant was employed by the Respondent for 8 months (from 7 May 2019 to 8 January 2020). She was paid commission only and not given paid holidays, but it has been held that she was in fact a worker and an employee of the Respondent. As such she was entitled to paid holidays under the WTRs. There was no leave year and she was not given any opportunity to take paid holiday during her employment (because the Respondent sought to treat her as self-employed). That being the case we do not limit her entitlement to pay in lieu of holiday to any particular leave year and we calculate the same based on the whole of her 8 month's period of employment. The WTR holiday entitlement for a full time worker is 28 days per year which equates to 18.66 days in 8 months.
9. The Claimant was low paid. Although no claim for any shortfall between her commission paid and the minimum wage is before us today, we agree with the Claimant's submission that her holiday pay calculation should be based on the applicable minimum wage rate at the time namely £10.42 per hour. The Claimant suggested in her evidence that she worked 13 hour days 5 days and sometimes 6 days a week. No record of these hours has been produced. We regard this evidence as exaggerated and the maximum weekly hourly rate we are willing to accept as the hours worked by the Claimant are 42 per week. The holiday pay calculation is thus $£10.42 \times 42 \times 52 / 365 \times 18.66 = £1163.42$.

Notice pay claim

10. The Claimant was given a contract (entitled "Agency Agreement") dated 7/5/2019 which provided in clause 9 that either party could terminate it by not less than 28 days notice. The Claimant stated that she was forced to terminate her employment by the Respondent without being given either notice or pay in lieu. Accordingly she is due 4 weeks notice pay.
11. Adopting the same approach as that explained previously, we calculate the sum due $£10.42 \times 42 \times 4 = £1750.56$

Employment Judge J S Burns

15 September 2023