



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000403/2023

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Held in Glasgow on 2 November 2023

Employment Judge L Wiseman

10 **Ms Lesley Eadie**

Claimant

RT Managers Ltd

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided:

- (i) to dismiss the complaint of disability discrimination;
- (ii) to find the complaints of unfair dismissal, breach of contract in respect of the payment of notice, unauthorised deduction from wages and payment of holiday well founded and
- (iii) the tribunal ordered the respondent to pay to the claimant total compensation in the sum of £5738 (being compensation for unfair dismissal in the sum of £4018; payment of notice in the sum of £951 and payment in respect of holiday pay in the sum of £769).

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REASONS

1. The claimant presented a claim to the Employment Tribunal in which she complained of unfair dismissal, disability discrimination and failure to pay notice, holiday pay and wages.
2. The respondent did not enter a Response to the claim.

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3. A case management preliminary hearing took place where the decision was made to list the case for a final hearing to determine remedy.
4. I heard evidence from the claimant and I was referred to a small number of documents produced by the claimant. I made the following material findings of fact.

Findings of fact

5. The claimant commenced employment with the respondent, as a Cashier, on 1 November 2019. The claimant was subsequently promoted to the role of Manager in 2021.
6. The claimant earned £1111.07 gross per month, giving a net monthly take home pay of £972.63.
7. The claimant, in February 2023, advised the owner of the company (Ms Sud) that her daughter was having mental health problems which had deteriorated, and that she wished to hand in her resignation. Ms Sud was keen for the claimant to stay and, following discussions, it was agreed the claimant would not resign, but would reduce her working hours to 21 hours per week over 3 days.
8. The claimant started working the reduced hours in April 2023. She worked 3 days per week from 8am to 4.30pm, which enabled her to be at home for her daughter going to, and coming back from, school.
9. In early May Ms Sud approached the claimant to advise that the reduced hours were not working. The claimant agreed to take her turn at working a Saturday.
10. The claimant took ill at work on the 1 June, and, after arranging cover for her shift and waiting for them to arrive, she left. Ms Sud contacted the claimant that evening to voice concern regarding the actions of the claimant.

11. Ms Sud contacted the claimant again the following day to ask her to attend a meeting because she doubted whether the claimant was unwell. The claimant refused to do so.
12. Ms Sud informed the claimant that working reduced hours when a manager was “unfair”. The claimant agreed to step down from being a manager and return to being a cashier. Ms Sud agreed and confirmed that as of that day the claimant would no longer be a manager.
13. The claimant obtained a Fit Note from her GP on Monday 5 June and was signed off as unfit for work for a 4 week period. The claimant had her son deliver the Fit Note to the respondent that night.
14. The claimant received an email on the 7 June (which she produced) in the following terms:
- “Further to your verbal resignation on Friday 2 June 2023, I am writing to confirm that the company acknowledges receipt of this and accepts your resignation. As per the company’s policy and employment agreement, you are required to serve a six week notice period and your final day of employment will be Friday 14th July 2023. As per your Interest Free Personal Loan, you have to this date paid £200 and have an outstanding balance of £3007.02 so please note that as per the terms of the agreement, payment will need to be made in full before your leaving date or legal action will be sought. ...”*
15. The claimant responded to this on Monday 12 June 2023 to say she had not verbally resigned, but had in fact been dismissed for handing in a 4 week Fit Note.
16. The claimant’s Fit Note ended on 3 July 2023 and she had intended to return to work on 4 July.
17. The claimant’s financial position is such that she could not have resigned from a job. The claimant accepted a loan had been given to her and that it required to be repaid before the end of her employment on the 14 July.

18. The claimant was paid monthly in arrears. The claimant produced the payslip for the month ending 30 April 2023. The pay slip confirmed a net monthly pay of £972.63. This was paid to the claimant at the end of May 2023.
19. The claimant did not receive payment of wages for the months of May, June or July (up to 14 July 2023).
20. The claimant was in receipt of Universal Credit. She produced a document showing she had been paid the sum of £1081.09 on 26 May 2023. Thereafter she was paid £1462.59. The increased amount reflected the fact the claimant was not paid wages for the months of May, June and July.

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Discussion and Decision

Unfair Dismissal

21. The claimant brought a claim that she had been unfairly dismissed by the respondent. The respondent, in the letter of the 7 June 2023, referred to the claimant having resigned. The first issue for the tribunal to determine is whether there was a dismissal.
22. I preferred the evidence of the claimant in this matter. I accepted she had not resigned. I accepted that when faced with the position that working reduced hours could not be sustained for the manager role, the claimant agreed to step down from that role and to return to the role of Cashier. This was a role the claimant had done before.
23. I acknowledged there may have been some confusion regarding the claimant stepping down from the manager role and taking up the cashier role, but I construed any confusion in favour of the claimant.
24. I accepted the claimant would not have terminated her employment because she needed to work to pay off the loan, and needed to work in order to earn money.

25. I decided the claimant was dismissed by the respondent. I must next decide whether the dismissal was unfair. I decided it was because the respondent failed to provide any reason for dismissal and failed to follow any procedure.
26. The claimant is entitled to an award of compensation. I calculate the basic award to be £1154 (being 4.5 x £256.40 gross per week).
27. I next calculated the compensatory award. The tribunal received an email dated 22 September 2023 advising the respondent had ceased trading. The email did not provide a date when the respondent ceased trading and did not provide any information regarding what had happened to the shop and the employees. The tribunal considered, that based on the information from the respondent, it would be appropriate to limit losses to the 22 September 2023.
28. The claimant should have worked a period of notice from the 7 June to the 14 July. This is dealt with below.
29. The compensatory award is calculated for the period 14 July to 22 September. I calculate the claimant lost wages of £2564 (being 10 weeks x £256.40 gross per week) in this period.
30. I also make an award of loss of statutory employment rights of £300.
31. I, in conclusion, make an award of compensation in the sum of £4018 (being £1154 + £2564 + £300).

20 *Disability Discrimination*

32. The claimant brought a complaint that she had been discriminated against because of her daughter's disability. The discrimination was said to arise from the fact the claimant could not work reduced hours in the managers role, and had to return to being a cashier.
33. I accepted the claimant's evidence that her daughter had experienced mental health issues resulting in her self-harming and being diagnosed with an eating disorder. I also accepted that the claimant required to spend more time with her daughter and to be there when she went out to, and returned from, school.

34. The complaint made by the claimant is one of direct discrimination, where it is said that the claimant was treated less favourably than others were or would have been, and the reason for the less favourable treatment was because of disability. I firstly asked whether the claimant was treated less favourably when she was told she could not work reduced hours in the manager's role.
35. There was no evidence of any other manager in the business and so I had to consider how a hypothetical comparator would have been treated. I noted there was agreement to the claimant reducing her hours as an alternative to resigning. The evidence suggested that having tried the claimant working reduced hours, Ms Sud decided it simply did not work for the manager to work reduced hours over 3 days per week.
36. A hypothetical comparator would be someone who did not have a disabled dependant and who was employed as a manager and wished to reduce their working hours. I was satisfied that the evidence supported the conclusion that the hypothetical comparator would also have been told that it was not suitable for a manager to work 21 hours per week over 3 days. The hypothetical comparator would have been treated in the same way as the claimant. The claimant was not treated less favourably than a hypothetical comparator would have been.
37. I decided there had been no less favourable treatment and I decided to dismiss this aspect of the claim for this reason.

Notice

38. The claimant was told she was required to work a 6 week period of notice. The claimant was unfit for work until the 3 July. She had intended to return to work on the 4 July but having received no response to her text of the 12 June, she did not return to work.
39. The effective date of termination of the claimant's employment was the 14 July 2023. The claimant was given 6 weeks' notice of termination and was entitled to be paid for this period. The claimant was unfit for work for the first 4 weeks of the notice period and therefore was entitled to payment of statutory

sick pay. I calculate this to be the sum of £438 (being £109.40 x 4). The claimant should have returned to work on the 4 July for two weeks. I calculate the payment for the remainder of the period of notice is £513 (being 2 x £256.40). I calculate the total to be £951 (being £438 + £513).

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Wages

40. The claimant was not paid wages for the months of May, June and 1 – 14th July. There is no explanation for the non-payment of wages and accordingly I was satisfied there had been an unauthorised deduction from wages.

10 41. The respondent is ordered to pay to the claimant the sum of £1630 net in respect of wages for the month of May (£972.63 net); £438 for the month of June and £219 for the month of July.

Holidays

15 42. The annual leave year ran from January to December. The claimant was entitled to 28 days holiday per year. The claimant had, as at the effective date of termination, accrued 12 days holiday. The claimant had used 2 days annual leave. The claimant had accrued but not been paid for 10 days annual leave. I calculate this to be the sum of £769 (being 3 x £256.40).

Outstanding Loan Repayment

20 43. The claimant accepted that she had entered into a personal loan agreement with the respondent and that she had repaid £200 of the loan, with the balance of £3000.07 to be paid before the termination of employment. The claimant accepted the balance due to the respondent should be deducted from the award made to her. The claimant did not produce a copy of the loan
25 agreement but in circumstances where (i) the loan repayments had been deducted from the claimant's wages each month, and (ii) the claimant accepted the balance due to the respondent should be deducted from any award made to her, I was satisfied that this would be appropriate.

44. The total award of wages to be paid to the claimant is £1630. This amount is reduced to nil following the deduction of the amount owed to the respondent.

Recoupment

5 45. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to recover benefits from monetary awards made by the tribunal.

46. The claimant is in receipt of Universal Credit and that is one of the benefit which may be recoverable.

47. The tribunal noted the claimant was in receipt of Universal Credit and wages whilst employed with the respondent.

10 48. The tribunal further noted that elements of the benefits making up Universal Credit are not subject to the recoupment provisions. The tribunal had no evidence before it to inform it of the benefits making up the Universal Credit paid to the claimant.

15 49. The tribunal decided that in the absence of the above information and having regard to the fact Universal Credit was paid to the claimant whilst employed, it did not have sufficient information upon which to make an order for recoupment.

Conclusion

50. The tribunal decided:

- 20 (i) to dismiss the complaint of disability discrimination;
- (ii) to find the complaints of unfair dismissal, breach of contract in respect of the payment of notice, unauthorised deduction of wages and payment in respect of holiday pay well founded and
- 25 (iii) the tribunal ordered the respondent to pay to the claimant total compensation in the sum of £5738 (being compensation for unfair dismissal in the sum of £4018; payment of notice in the sum of £951 and payment of holiday pay in the sum of £769).

5 **Employment Judge: L Wiseman**
 Date of Judgment: 6 November 2023
 Entered in register: 8 November 2023
 and copied to parties

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