



THE EMPLOYMENT TRIBUNALS

Claimant Mr A Emmerson
Respondent Riverside Beach Hotel Ltd
Heard at Newcastle upon Tyne Hearing Centre
On 5 December 2023
Before Employment Judge Langridge

Representation:

Claimant In person
Respondent Mr E Gribben, Director

JUDGMENT

Employment Tribunal Rules of Procedure 2013

- 1) The claimant's claims in respect of the provision of meals, rest breaks and minimum working hours are all dismissed on withdrawal.
- 2) The claimant's claim in respect of his notice entitlement is struck out under Rule 37(1)(a) of the Tribunal Rules of Procedure on the grounds that it has no reasonable prospect of success.
- 3) By consent, and without admission of liability, the respondent shall pay the claimant the following sums to dispose of his claims for holiday pay and tips:
 - a. £47.93 in respect of holiday pay; and
 - b. £16 in respect of tips.
- 4) Both the above payments shall be made within 14 days of today's date, and are subject to any statutory deductions the respondent is required to make.

- 5) All of the claimant's claims having been disposed of by this Judgment, there is no remaining claim under section 38 Employment Act 2002 arising from an alleged failure to provide written particulars of employment.

REASONS

1. These claims came before me for the second time, after a hearing on 20 September 2023 which the claimant did not attend. In response to the unless order made on that occasion, the claimant apologised for his non-attendance and said his phone had been faulty. Today's hearing was listed to deal with the question whether some or all the claims should be struck out.
2. The claimant represented himself with support from a friend, and Mr Gribben was assisted by his General Manager Mr McDougall. A detailed discussion took place about the issues, in which both parties took part. The claimant was given an opportunity to explain his non-compliance with orders and his non-attendance at the previous hearing. We then dealt with the merits of the claims as they appear from the pleadings and the limited documentary evidence produced by the respondent.
3. The claimant withdrew his claims for the provision of free meals, for rest breaks and for a minimum number of working hours a week, after conceding that the respondent had not breached any legal rights of his in relation to these issues. He had raised them in his claim form in an attempt to 'paint a picture' of the way the respondent conducted its business.
4. During a short break in the hearing, the parties cooperated with each other regarding the calculation of holiday pay, as there was a dispute about how the claimant's average working hours had been calculated. As a result, the respondent agreed to make a payment to the claimant based on the more generous calculation, and it further offered to make a payment in respect of tips. Both sums were offered by the respondent in the interests of bringing an end to these claims today, and the figures were agreed with the claimant.
5. The remaining issue about non-payment of the statutory notice of one week was not agreed. The question was whether the respondent had the right to terminate the claimant's employment without notice, on the grounds of his conduct. If so, the respondent was neither in breach of contract nor in breach of section 86 Employment Rights Act 1996.
6. The respondent relied on its concerns about the claimant's behaviour towards a female colleague, who had complained about unwanted attention. A statement from the female employee had been obtained by the respondent in May 2023, as well as screen shots of messages. This evidence was available at today's hearing and the claimant did not challenge the screen shots. He disputed that he had behaved inappropriately, but I was satisfied on balance that the evidence supported the respondent's position. It had acted on this evidence when it decided to dismiss the claimant without notice. It was a genuine decision based on the

impact of the behaviour on the female colleague and a desire to protect her in the workplace. For these reasons, I was satisfied that the respondent could discharge its burden to prove that it had reason to dismiss the claimant without notice. As a result, I concluded that this claim had no reasonable prospect of success at a final hearing and should be struck out.

Employment Judge Langridge

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON**

5 December 2023

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

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Recording and Transcription

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>