



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107291/2023

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Held in Edinburgh by Cloud Video Platform (CVP) on 24 April 2024

Employment Judge S MacLean

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Ms L Whitefield

Claimant

Represented by:

Mr D Reid -

TU Representative

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JS Main and Sons Limited

Respondent

No appearance and

No representation

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

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(1) the respondent unfairly dismissed the claimant and is ordered to pay to the claimant the monetary award of £3,303.02. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 do not apply.

(2) the claims for unlawful deduction from wages and holiday pay are withdrawn and dismissed under rule 52 of schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

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REASONS

Introduction

1. In the claim form sent to the Tribunal on 13 December 2023, the claimant complains of constructive unfair dismissal and unauthorised deduction of wages (holiday pay and wages due on termination). Early conciliation started

on 10 October 2023. The early conciliation certificate was issued on 6 November 2023.

2. The claim form was sent to the respondent on 19 December 2023. The response had to be received by the Tribunal by 16 January 2024. No response was received.
3. Employment Judge d'Inverno directed that the case be listed for a final hearing by cloud video platform.
4. On 15 April 2024, Mr Reid sent documents to the Tribunal to which the claimant was to be referred at the final hearing. He also prepared a schedule of loss.
5. At the final hearing conducted remotely, Mr Reid and I participated by cloud video platform. Due to technical difficulties the claimant joined the final hearing by audio only. There was no appearance by or for the respondent.
6. The claimant gave evidence following which Mr Reid made submissions.

Findings in fact

7. The respondent is a company carrying on business as a retailer. The respondent employed the claimant as a sales assistant from 2 July 2018.
8. In 2023 concerns arose about stock, customer complaints and collection agencies. The claimant and her colleagues became increasingly concerned about the lack of support from the respondent in dealing with these concerns. The claimant became aware that the respondent was not paying PAYE contribution for its employees. The claimant raised these concerns with the respondent by email and messenger. The claimant requested a meeting. The respondent did not respond.
9. On 7 August 2023, the claimant saw a letter from HMRC regarding unpaid PAYE. That along with other unpaid debts of the respondent reinforced the claimant's concerns about the respondent's management of the business.
10. On 29 August 2023, the claimant sent a grievance letter to the respondent. No reply was received. She re-sent the grievance letter on 13 September 2023,

complaining about not paying PAYE, failure to issue payslips and pay wages on time, the lack of communication with employees, and having to cancel holidays due to staff shortage.

- 5 11. The claimant received a reply on 13 September 2023 from Alison Foster, director saying that she was sure Jamie McDonald would take care of it. Mr McDonald replied that Ms Forster was responsible for the business side of the business and he worked on the shop floor.
- 10 12. The claimant was aware that Mr McDonald was leaving the business. He would not be in a position to deal with matters. The claimant considered that there was a lack of communication from the respondent. There was a failure to deal with her grievances. She was unable to obtain supplies as suppliers had not been paid. The claimant had no alternative but to resign because of the respondent's actions.
- 15 13. The claimant resigned. Her last day of employment was 22 September 2023. At the date of termination the claimant was 60 years of age. She had been continuously employed by the respondent for five years. She earned £208.40 gross per week. She received £204.86 net per week. The respondent paid £2.65 per week employer pension contributions.
- 20 14. The claimant found alternative employment on 25 September 2023. She earns £151.20 net per week. She has a weekly shortfall of £53.66 net. The claimant has not been in receipt of benefits.
15. The respondent ceased trading on 24 February 2024.

Deliberations

- 25 16. I referred to the statutory provisions in section 95(1)(c) of the Employment Rights Act 1996 which provides that there shall be a dismissal if the employee terminates the contract under which she is employed (with or without notice) in circumstances where she is entitled to terminate it without notice by reason of the employer's conduct.

17. The claimant relies upon an alleged breach of the implied term of trust and confidence. This imposes an obligation that an employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
18. The claimant relies on the lack of communication from and treatment by the respondent. The conduct must be such that an employee cannot be expected to put up with it. The employer demonstrates by its behaviour that it is abandoning altogether to perform the contract.
19. On the evidence before me I was satisfied that the claimant was left to deal with creditors, customer complaints, and staff resources. Wages were paid late. Wage slips were not provided and statutory deductions were not paid. Despite raising grievances with the respondent these were initially ignored. There was no evidence to suggest that the respondent was unaware of these concerns. When eventually a response was received there was no assurance that the concerns were being addressed and rectified. The respondent was not paying employees timeously or comply with its statutory obligations in respect of PAYE. The respondent has provided no explanation for the conduct.
20. I considered that the respondent was in fundamental breach of contract and that the claimant resigned in response to it. The claimant was dismissed. There is no evidence before me that the dismissal was for a potentially fair reason or that any procedure was followed. The claimant was unfairly dismissed.
21. I then turned to consider remedy. The claimant seeks compensation. She is entitled to a basic award. At termination of employment the claimant was 60 years of age. She had been employed for five years at £208.40 gross per week. Her basic award is 7.5 multiplied by £208.40, that is £1,563.
22. I considered that the clamant would have worked for the respondent until it ceased trading, that is 22 weeks' pay at £204.86, that is £4,506.92. She has received payment from alternative employment of £3,175.20 leaving a

balance of £1,331.72. Added to this balance is pension loss of 22 weeks' employer contribution at £2.65 per week, that is £58.30. Also added is loss of statutory rights of £350. The total compensatory award is £1,740.02 (£1,331.72 + £58.30 + £350).

- 5 23. When the basic award is added to the compensatory award, the total monetary award is £3,303.02 (£1,563 + £1,740.02). I order that this should be paid by the respondent to the claimant.
24. As the claimant was not in receipt of benefits the Employment Protection (Recoupment of Jobseekers) Allowance and Income Support Regulations
10 1996 do not apply.
25. During the final hearing the claimant advised that she had received payment of outstanding wages and holiday pay due on termination of her employment. She withdrew these claims. Accordingly, these claims are dismissed under
15 rule 52 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judge: S Maclean
Date of Judgment: 25 April 2024
Entered in register: 29 April 2024
and copied to parties