



EMPLOYMENT TRIBUNALS

Claimant: Ms K Ciesielska
Respondent: Sabio Recruitment Ltd (Company No 14556744)
Heard at: East London Hearing Centre
On: 8 July 2024
Before: Employment Judge W A Allen KC

Appearances

For the claimant: in person
For the respondent: did not attend

JUDGMENT

1. The Respondent is ordered to pay to the Claimant the total sum of **£1,255.61** gross for: unpaid wages, unpaid holiday pay, unpaid accrued holiday entitlement at termination of contract.

REASONS

1. The Claimant's claim is for unpaid wages, unpaid holiday pay, unpaid accrued holiday entitlement at termination of contract.
2. The Respondent did not attend the hearing and has not responded to the claim. The Respondent has changed its registered address twice in the last 5 months. This order will be sent to the last two addresses. The tribunal was satisfied that the Respondent had received notification of the claim and the hearing today.
3. The tribunal had the benefit of a bundle of documents prepared by the Claimant. The Claimant gave oral evidence.
4. The Claimant was engaged from 16 October 2023 under terms and conditions which stated as follows:

Pay: The Company will pay you at the rate of £10.42 per hour for those hours you work. You will be paid in arrears directly into your nominated bank account for the hours worked in the previous week.

Hours of Work: Due to the nature of your engagement, the hours of work to be offered to you are variable. Work may be offered to you on an hourly, daily, weekly or other basis. Because you are able to decline offers of work, you are not required to work on any day. Although there is no requirement for the Company to offer you work and no requirement on you to accept it when offered, we expect you to fulfil any periods of work that you have agreed to do and failure to do so may be seen by the Company as a breach of contract and render you liable to repay, by deduction from pay or other means, any additional costs incurred by the Company. Although you are free to engage in work with other organisations, if you already have or are considering any additional work, you should notify us so that we can discuss any implications arising from the current working time legislation.

Holiday Entitlement: You are entitled to 5.6 weeks of paid annual holiday per holiday year. In your first holiday year your entitlement will be proportionate to the amount of time left in the holiday year.

5. It is clear from the contract and the Claimant's evidence, that the Claimant had a contractual right to be paid weekly – which is how she was paid until February 2024.
6. The contract did not state when the 'holiday year' started. The tribunal has therefore taken the holiday year to commence on the date on which the employment commenced (16 October 2023).
7. Although the contract purports to be a zero hours contract, the Claimant gave evidence that in fact she worked a standard 37 hour week Monday to Friday. She worked at Teledyne. She was paid on a weekly basis in accordance with the contract until payment fell due for the weeks commencing 5 February and 12 February for which she was never paid. When she complained about the failure to pay her for those weeks – and for Christmas Day, Boxing Day and New Years Day (all weekdays during which she would have otherwise worked) she was told by Gerald Davies, the Director of the Respondent, that the Respondent had unilaterally moved her to a monthly payment (she did not receive any payment at the end of the month either). When she resigned on 20 February 2024, she was told by Gerald Davies that she 'did not have the contractual right to resign'; that 'there has been a dishonest approach from you on this matter' and then she was invoiced for unspecified 'fine' for 'breach of contract and costs' of £3,657.42 and told by email dated 23 February 2024 from Gerald Davies that "as of today your details will be passed to the credit referencing agency and a debt collectors. This action may cause issues for you in applying for credit. This cause of action will mean that additional charges will be added to your monies owed, and you could be taken to court and A CCJ applied, followed by bailiff action." This behaviour by Gerald Davies, taken against a minimum wage employee who had resigned following non-payment of wages is oppressive and reprehensible and is not based on any right which the Respondent possessed.

8. The Respondent had no right to unilaterally move the Claimant to monthly pay. The Respondent had breached the Claimant's contract by not paying her for the weeks commencing 5 February and 12 February. The Claimant was therefore not in breach by resigning. She did not even have to give notice given that the Respondent was in prior breach of the contract. She does not face any penalty for resigning.
9. The Claimant was paid nothing for her accrued holiday pay at the end of her employment.
10. The Claimant also asserted that she had made enquiries on the HMRC website and that the Respondent had not passed on the deductions from her wages for Income Tax and National Insurance to HMRC. I did not have sufficient information to determine that matter one way or another – and it is not necessary for me to do so in order to determine the claims before me.
11. The Claimant presented evidence in the form of weekly timesheets showing days worked and / or taken as holiday; and showing when payments stopped being made to her account.
12. I find:
 - a. that the Claimant worked for 2 days and took annual leave for 3 days (22.5 hours) during the week commencing Monday 5 February (total 37 hours) and worked for 5 days during the week commencing Monday 12 February 2024 for which she should have been paid £10.42 per hour totalling **£771.08**; and that she was not paid anything;
 - b. that the Claimant received no other holiday pay throughout her employment or at the termination of her employment and that for the 4 months of her employment, she should have received 69 hours (based on an annual entitlement 5.6 weeks at 37 hours per week – pro rata for 4 months of the year). Taking into account the 22.5 hours holiday taken in the week commencing 5 February 2024 (already included in the figure above), she should have received 46.5 hours at £10.42 equals **£484.53** upon termination of employment (this includes the three days specifically mentioned in the claim form – Christmas Day, Boxing Day and New Years Day).
13. The total owing from the Respondent to the Claimant is therefore **£1,255.61 gross**. For the avoidance of doubt, I have not seen any evidence that there is any right of set off against this amount.

Useful information

1. All judgments (apart from judgments under Rule 52) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

2. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
3. The Employment Tribunals Rules of Procedure are here:
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
4. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

Employment Judge A Allen KC
Dated: 8 July 2024