



EMPLOYMENT TRIBUNALS

Claimant: Ms Y. Liang
Respondent: Casa Design Group Ltd
Heard at: East London Hearing Centre (via CVP)
On: 22nd July 2024
Before: Employment Judge Yale
Representation:

Claimant: Mr Puah (lay representative)
Respondent: Ms Y. Zhang (lay representative)

JUDGMENT having been sent to the parties on 29 July 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

The Claims:

- 1 The claimant brought a claim for unauthorised deductions from wages, including holiday pay, overtime pay and breach of contract for failure to pay travel expenses.
- 2 The respondent brought a counterclaim for two days the claimant said she worked, and for which she had been paid, which she had, in fact, not worked.
- 3 The hearing started at 10am. The Tribunal had been copied into correspondence where the claimant said she had returned to China because of visa restrictions, that the use of foreign websites was prohibited and she proposed using a Virtual Private Network (“VPN”) to access the hearing.
- 4 At the start of the hearing, I informed the claimant that, I could not allow her to dial in to the hearing from another jurisdiction in breach of the laws of that other jurisdiction and I certainly could not hear evidence from her from that other jurisdiction. I explained that, if she was intending to give evidence from another jurisdiction, I would need her to prove she had the permission of that other jurisdiction.

5 The claimant had a lay representative, Mr Puah. She had arranged for Mr Puah to attend, so that he could carry on with the hearing on her behalf if the connection to China failed. Having explained the position, I told her that, unless she could prove she was dialling in legally from China, I would have to ask her to leave the hearing. I explained to her that the hearing could either carry on with Mr Puah representing her interests, albeit I would not then be able to hear any further evidence from her over and above what was contained in the papers. I explained this was not likely to be beneficial to her case and that I would have to take into account that she had not been cross-examined when assessing the evidence she had provided. The alternative was that she could apply for a postponement, especially if she was likely to either return to the jurisdiction or be able to give evidence from another jurisdiction with permission within a reasonable period of time.

6 I gave the claimant and Mr Puah 15 minutes to discuss the options I had explained. When Mr Puah dialled back in, he informed me that the claimant wished to proceed, he explained the claimant understood that meant I would have to take that into account when assessing the evidence she provided and she would not have the opportunity to provide any further evidence or clarification.

7 At the start of the hearing, it was agreed between the parties that the respondent had already paid her £558.22, which represented the wages the respondent accepted was outstanding.

8 The respondent sought to have the claimant's claim struck out because she had provided documentation late. It was true that the claimant had provided documentation late but the documentation, as a whole, was limited and had been provided nearly two weeks before the hearing. The case was not complicated and, in my judgment, the respondent still had ample time to prepare their case. A fair hearing was still possible. Therefore, I refused that application.

9 During the course of the hearing, I heard evidence from Ranran Li on behalf of the respondent.

Findings of Fact:

10 The claimant worked for the respondent between April 2023 and September 2023 as a Business Development Assistant. Sometimes she was required to work in excess of her contracted hours and she was also required to travel.

11 During the course of that employment, the claimant said the respondent delayed paying her twice and that she was still owed some wages. However, the respondent accepted that they had failed to pay the claimant on time. The respondent said this had been rectified with the payment of £558.22.

12 It was not clear from the complainant's evidence how she arrived at the figures for the amount she said she was underpaid. There was no clear schedule setting out what she had been paid, when she had been paid it and how what she was paid fell short of what she was owed. The burden of proof rests on the claimant on the balance of probabilities.

13 The respondent gave evidence that she had used a holiday calculator online to calculate the holiday entitlement of 12.5 days. The respondent explained how they calculated the figure of £558.22, which was set out in their ET3 response form, and the

number of days holiday roughly equates to what was claimed by the claimant. The claimant failed to prove, on the balance of probabilities, that any further money was outstanding and, therefore, with the exception of an agreed overpayment, to which I shall turn in due course, I accept the respondent has correctly calculated the outstanding amount.

14 The largest part of the claimant's claim was for overtime payments. The claimant said that she worked in excess of her hours, as required by her contract of employment. Much of this claim was in relation to overtime worked to install a bed. There was a dispute as to whether overtime was properly payable. The respondent said that, as a result of a mistake by the claimant, she was working overtime to rectify that mistake and no overtime had been officially authorised. There was, however, a message provided by the claimant in which an employee of the respondent had asked if she was going to be present on the day the bed was constructed and installed.

15 The contract of employment did make provision for the claimant working in excess of her contracted hours and, where she was required to work overtime, the contract of employment provided that she would be allowed "compensatory time off". The contract made no provision for payment to be made in the alternative to "compensatory time off", or for payment to be made should "compensatory time off" be owing when the contract of employment was terminated. There was nothing in the contract of employment or in any evidence before me that indicates it was the intention of both parties that payment in lieu of "compensatory time off" would be paid. There was no evidence that where the claimant had previously worked overtime she paid for it, rather than being given "compensatory time off". For all those reasons, in my judgment, there was no express term of the contract allowing for payment in lieu of "compensatory time off", nor was there any implied term of the contract to that effect.

16 The claimant clearly incurred costs travelling on behalf of the respondent. The contract of employment said that out-of-pocket expenses would be reimbursed but added "expect travel and communication cost". The respondent said this was a typographical error and should have read "except". Whilst, reading those words in context, I can see the force in that argument, it is difficult to imagine what other costs would be incurred and, if there are no other costs, that term of the contract would be meaningless. Travel costs, in my judgment, are exactly the sort of costs one would expect to be reimbursed where travel was necessary in the course of employment. Further, the respondent accepted paying travel costs on other occasions and therefore, in my judgment, there is an implied term of the contract, even if not an express term, that the travel costs would be reimbursed. The claimant has set out a schedule of travel costs. In my judgment, those costs are reasonable and, on the balance of probability, I find them properly incurred. The claimant and respondent agreed that some travel costs had already been reimbursed by the respondent and the outstanding amount was £54.51.

17 There was a counterclaim by the respondent, as the claimant claimed she had worked two days she had not, in fact, worked. The claimant does not accept deliberately misleading the respondent but accepts that, as a matter of fact, she did claim for two extra days and, during the course of the hearing, I was told she was willing to reimburse the respondent. It was agreed that the total amount the claimant was overpaid by the respondent was £169.23, which included an element of holiday pay.

18 Deducting the £54.51 owed by the respondent to the claimant for travel from the £169.23 owed by the claimant to the respondent for overpayments, the total amount owing on the counterclaim is £114.72.

The Law:

19 Section 13 of the Employment Rights Act 1996 states:

(1) An employer shall not make a deduction from wages of a worker employed by him unless -

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract; or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

20 The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 article 3 states:

Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
- (b) the claim is not one to which article 5 applies; and
- (c) the claim arises or is outstanding on the termination of the employee's employment.

21 Article 4 of those regulations states:

Proceedings may be brought before an employment tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—

- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
- (b) the claim is not one to which article 5 applies;
- (c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and
- (d) proceedings in respect of a claim of that employee have been brought before an employment tribunal by virtue of this Order.

22 The cases of *Ali and ors v. Christian Salvesen Food Services Ltd* [1997] ICR 25, CA and *Vision Events (UK) Ltd v. Paterson* ETS 0015/13 addressed the issue of payment in

lieu for overtime worked, where there was no express provision for payment in lieu of times off in the contract of employment and in both cases it was determined that it was not appropriate to imply such a term.

Conclusion:

23 The respondent did make unauthorised deductions from the claimant's wages. The respondent accepted they had made such a deduction and paid the claimant £558.22, which represented the outstanding wages. The claimant failed to prove on the balance of probabilities that any further money was owing.

24 The employment contract did not provide for payment in lieu of "compensatory time off" where there was still time owing for overtime worked at the point of termination of the claimant's contract of employment. The contract of employment specifically provided for time off in lieu. In my judgment, it was not appropriate to imply a term into the contract that payment would be made in such circumstances. To imply such a term was not necessary for business efficacy and was clearly not a term that both parties believed should be implied into the employment contract.

25 The claimant did travel as part of her work and legitimately incurred travel expenses. The claimant was contractually entitled to be reimbursed for those costs. Some travel costs have already been paid by the respondent. It is accepted by the claimant and respondent that, if the claimant is entitled to travel expenses, the outstanding sum is £54.51. Therefore, the respondent is ordered to pay £54.51 in travel expenses to the claimant.

26 The claimant accepts she claimed for two days she did not work and a counterclaim is brought by the respondent for the overpayment of wages. It was agreed that the claimant owed the respondent £169.23, representing the overpayment of two days' work. The claimant is therefore ordered to pay the respondent £169.23.

27 Deducting the £54.51 owed by the respondent to the claimant from the £169.23 owed by the claimant to the respondent, the claimant is ordered to pay the respondent the sum of £114.72.

Employment Judge Yale
Date: 29 July 2024