



EMPLOYMENT TRIBUNALS

Claimant
Miss L Brioueg

v

Respondent
Foundation Coffee House
Limited

Heard at: Manchester by video
Before: Employment Judge Anderson

On: 7 August 2024

Appearances

For the claimant: In person

For the respondent: J Munro (solicitor)

RESERVED JUDGMENT

1. The complaint in respect of holiday pay is well-founded. The respondent made an unauthorised deduction from the claimant's wages by failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended.
2. The respondent shall pay the claimant £1093.80 less any deductions for tax and insurance within 14 days of the date that this order is sent to the parties.

REASONS

Findings of Fact

1. The claimant was employed by the respondent from 29 September 2021 until 31 March 2022 as a barista and from 1 April 2022 until 14 January 2023 as a café manager.
2. After negotiations with Dominic Beardwell, managing director, she signed a contract commencing on 1 April 2022 on which a number of amendments to the standard terms were made by pen. The amendments by pen were written by Hannah McNicol, the respondent's then general manager, and are as follows:

- i. Under the heading of 'Probationary Period' an amendment of 6 months to 3 months.
 - ii. Under the heading of 'Pay' an amendment to the words 'per annum' to 'pro-rata day'.
 - iii. To the left of those amendments in handwriting are the words '*automatic increase to £28k on 1/6/22 Full review on goals/achievements too.'
 - iv. Under the heading 'Working Hours' an amendment from 40 hours to 32.
 - v. Under the heading 'Holidays'
 - (i) An amendment to holiday entitlement from 28 days to 30 per annum, and
 - (ii) An amendment on the amount of holiday carry over allowed from 3 days to 5.
3. The claimant kept a personal record of her holiday entitlement. She said she rarely took holiday and did not become aware that there was an issue about holiday entitlement until she checked records as she was thinking about leaving, in November 2023. While holiday was discussed with her line manager, this was in the context of ensuring her leave did not coincide with the leave of other employees, and that was the information looked at in meetings. The respondent's position was that the claimant has always known her holiday entitlement of 30 days would be pro-rated and she had worked for the respondent on that basis. Holidays were discussed regularly, and she would have seen the figures on the accruals sheet. I accept the claimant's evidence on this point. I find it credible that where an employee is nowhere near having exhausted their entitlement such a matter would not have come to their attention. The respondent has provided no evidence to show that the claimant was aware that her holiday was pro-rated during the period 1 April 2022 to 31 August 2023 before November 2023.
4. Both parties made different claims about a screen shot of a table headed 30 May 2022 and what that evidenced in terms of holiday allowance. I make no findings on that document as it is so heavily redacted that I cannot sensibly draw any conclusions from it.
5. The claimant increased her working hours to full time from 1 September 2023.
6. On 27 November 2023 the claimant realised that she had lost access to the online holiday accruals sheet and asked for access to be restored. It was restored, all staff having temporarily lost access after it was discovered that the access to an online HR folder had not been restricted and the respondent took action to correct this.
7. On 11 December the claimant contacted Mr Beardwell by email as follows:

I believe I negotiated my compensation package to include 30 days of holiday per annum - please find attached my contract. However, this doesn't

seem to have been taken into consideration when calculating my total days of holiday. Please could you investigate this for me?

8. Mr Beardwell responded on 12 December 2023 as follows:

Like your pay, holiday is pro rata when on four days a week so you would have got 80% of 30 days every 12 months but since you moved up to five days a week it will be 30 from that point (same as all managers). It's best to calculate it all based on 4 days up to when that changed and then you can do it based on the 30 days per annum starting from that point?

9. The claimant left the respondent's employment on 14 January 2024 with this matter unresolved.

Decision

10. The claimant brings a claim of unauthorised deductions from wages. S13 Employment Rights Act 1996 sets out that:

Right not to suffer unauthorised deductions.

(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.*

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

11. The parties agreed the only issue in dispute was whether the claimant was owed 9.48 days holiday (in gross pay a sum of £1093.80) which was holiday that would have accrued during the period 1 April 2022 to 31 August 2023 if she was contractually entitled to 30 days leave per annum. The respondent's position was that the entitlement was 24 days as the claimant worked 80% of full time hours.
12. The starting point is the claimant's contract. The respondent states in the grounds of response that the claimant had two contracts (a second being issued when the claimant started full time hours). Only one contract was provided in evidence, this being the contract commencing 1 April 2022. That

contract shows a number of amendments to the contract which accord with conditions that the claim says she negotiated with Mr Beardwell. These are a 3 month probationary period, a 32 hour week, a wage of £27,000 pro rata (rising to £28,000 after three months), 5 days carry over holiday and a holiday entitlement of 30 days. There is no reference on the contract to the holiday entitlement being pro rata. In its response the respondent said that it was verbally asserted to the claimant that as with her pay, her holiday entitlement would also be calculated on a pro rata basis. This is not what Mr Beardwell said in oral evidence. He said that there had been no discussion about holiday as a separate matter in the negotiations. The claimant said she had specifically negotiated 30 days holiday.

13. The claimant's contract shows her to have 30 days per annum holiday, and the holiday clause does not state that such an entitlement would be pro-rata, whereas part time status and prorating of pay are specifically set out. I have accepted the claimant's evidence as to why the matter did not come to her attention until November 2023. The parties dispute what happened in negotiations in March 2022, but I note that the assertion made by the respondent in the grounds of response was different the evidence given by Mr Beardwell today orally. There has been no inconsistency in the claimant's evidence. I have taken account of the respondent's witness evidence that they would not treat one manager differently to another, however they did not dispute that the claimant negotiated other conditions that meant the standard contract was varied.
14. For these reasons I find that the claimant was entitled to 30 days per annum leave from 1 April 2022 until 14 January 2024 and her claim of unauthorised deductions from wages (unpaid holiday) is upheld in the sum of £1093.80 gross.

Employment Judge Anderson
Date: 7 August 2024

Sent to the parties on:
9 August 2024

For the Tribunal Office