



EMPLOYMENT TRIBUNALS

Claimant: Ms Ziyang Huang

Respondent: (1) Fegacode Ltd
(2) Ms Yu Shen

Heard at: Leeds (By CVP Link) **On: 15 November 2024**
Before: Employment Judge R S Drake
Representation:

Claimant: In Person (Assisted by her friend)
Respondents: Mr I Aimufua (Litigation Consultant)

JUDGMENT

1. The Respondents' (both of them) Responses to the Claimant's claims are struck out under Rule 37 of Schedule 1 to the Employment Tribunals (Constitution and Rules etc) Regulations 2013 as having no reasonable prospect of success. Accordingly, the Claimant has established that she suffered an unlawful withholding of 6 day's pay contrary to Section 13 of the Employment Rights Act 1996 ("ERA") for the period 12 October 2023 to 25 October 2023 amounting to 24 hours worked and that, as her hourly net rate was or should have been the statutory minimum rate prevailing of £10.42, she is thus entitled to be paid and the Respondents shall pay to her the sum of £250.08. Her claim in this respect succeeds.
2. By consent, the Claimant's complaints of discrimination on grounds of marital status and/or religion/belief are dismissed upon withdrawal.

REASONS

3. At the start of what was scheduled to be a Preliminary Hearing for the purposes of case management I ascertained that the Claimant will not be pursuing her claims of discrimination on grounds of marital status nor of religion or belief. Therefore, I concluded that on her withdrawal of

such allegation, it was appropriate to dismiss those claims. The Claimant made it clear she is seeking simply to be paid for 6 days (a total of 24 hours) worked for one or other of the Respondents or both each representing each other.

4. I noted that all she need do at a full hearing was provide brief evidence of being engaged by one or other of the two respondents who appeared to her to be working in representative capacities for each other operating numerous catering establishments in Sheffield and that though she had been engaged to be trained she says she was used quite simply to operate and manage one of their branches. I recognised that she need provide very little but simple evidence to this effect and that in the absence of any argument or evidence rebutting her case then on a balance of probabilities she was more than likely to just to succeed.
5. I noted both Respondents' cases were expressed very blandly and without particularity. They simply say that they no nothing of the claimant or of any engagement by her, but they do not deny operating the business location where she worked all that she worked there. The pleading of their responses did not go anywhere near answering her case.
6. On the Respondents' cases as pleaded I saw that there was no more than fanciful a prospect that they would be able to discharge the reverse burden of proof to show that they had not engaged the claimant.
7. I concluded on the material before me including what is in the tribunal file the task facing the Claimant proving her case would be modest, whereas on the basis of their responses to the task facing the Respondents will be far greater and that it was in the interests of the overriding objective and of proportionality to recognise that simply by asserting that they knew nothing of the Claimant and have not pleaded either that their outlet was not open on the days she alleged she worked all that somebody else had worked on those days, then they have no reasonable prospect of success.
8. I found that the claimant had set out in her claim form very cogently the calculation of her entitlement to be paid for what was a total of 24 hours over six days at the prevailing statutory minimum wage rate of £10.42.

The Law and its Application

9. Rule 37(1) provides that:-

“At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –

- (a) - that or it has no reasonable prospect of success;”

10. The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 ("ERA") which provides as follows: -

“(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 workers contract, or –

(b) the worker has previously signified in writing her agreement or consent to the making of the deduction ...”

11. I award the Claimant Judgment for unpaid wages for the period of 24 hours worked between 12 and 24 October 2023 based on the prevailing minimum wage rate of £10.42 and thus a total sum of £250.08. Her claim in this respect succeeds.

Employment Judge R S Drake

Signed 18 November 2024

Note

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.

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