EMPLOYMENT TRIBUNALS

Heard at:	London South	**On:**	20 January 2025
Claimant:	Ms L Tsang		
Respondent:	Ms J Ainley		
Before:	Employment Judge Ramsden		
Representation:			
Claimant	In person		
Respondent	Non-attending		

JUDGMENT WITH REASONS

Background

1. The Claimant sought work as an after-school nanny, and the Respondent was looking for an after-school nanny to provide care for her daughter. Both parties used the platform Koru Kids - the Claimant to advertise her services, and the Respondent to provide pre-employment verification checks and to operate payroll (including ensuring that income tax and National Insurance collection and remittance services were performed).

2. Neither party says in their Claim Form or Response that the Claimant was employed by Koru Kids, and Koru Kids is not a party to nor a witness in these proceedings.

3. The Respondent and the Claimant "met" via the platform, and after an initial introduction, agreed that they would enter into a contract whereby the Claimant would work as an after-school nanny, caring for the Claimant's daughter. That agreement was reached in April 2024.

4. The Claimant was asked by the Respondent to commence work for her on 3 May 2024. That first day was to be an "induction" day, when the Respondent and her partner showed the Claimant their daughter's school and the route to their house, gave her keys to their house, and showed her what was expected of her. The Claimant also spent some time with the Respondent's daughter. The Respondent and her partner were present in the house for the duration of the time that the Claimant undertook this "induction".

5. The following day the Claimant changed her mind about undertaking the work, and gave the Respondent the required 24 hours' notice to terminate her employment on Saturday 4 May 2024. She did not attend the Respondent's house again.

6. As the Claimant had not undertaken any childcare without the Respondent or her partner present, the Respondent refused to pay the Claimant. The dispute between them culminated in a hearing before me today.

7. The parties agreed that the Claimant attended the Respondent's house on 3 May 2024, and spent some time being "shown the ropes".

8. Following a period of ACAS Early Conciliation which began on 25 June and ended on 10 July, both of 2024, the Claimant presented a claim to the Employment Tribunal on 14 July 2024. The Claimant's complaint was that she had not been paid for work performed on 3 May 2024, in breach of section 13 of the Employment Rights Act 1996 (the **1996 Act**).

9. EJ Corrigan carried out the initial consideration of this case pursuant to Rule 27 of the Employment Tribunal Procedure Rules 2024 (the **ET Rules**). EJ Corrigan wrote to the Respondent on 23 October 2024, proposing to strike-out the Respondent's Response as having no reasonable prospect of success (pursuant to Rule 38(1)(a)). The Respondent was given until 6 November 2024 to make representations on that proposal, and she did not do so.

10. On 15 December 2024 the Respondent wrote to the Tribunal saying that she had only just returned from holiday and seen the notice from EJ Corrigan, which she did not believe was genuine, given the Tribunal had listed this hearing for 20 January 2025. The Respondent objected to the strike-out.

11. EJ Burge reviewed the Respondent's representations, and wrote to the parties on 14 January 2025 that the Respondent needed to explain the basis for her objection to the strike-out before 28 January 2025. The Respondent wrote on the same day, setting out why she objected to the strike-out. The key points from that letter are:

    a) The Respondent accepts that the Claimant attended her house on 3 May 2024.

    b) The Respondent considered that the Claimant attended for a period of approximately 1 to 2 hours.

c) The Respondent says that, during that visit, the Claimant did not do any work, but was treated as a guest in her home. This was different to the tasks that the Claimant was to undertake under her contract of employment with the Respondent, and so was not work done under that contract.

d) The Claimant did not work for her on 7 May 2024 (the Monday had been a bank holiday), the date that the Respondent says that she was due to start work. The Claimant had told the Respondent in advance (on Saturday 4 May 2024) that she would not be working on 7 May 2024.

e) The Respondent has offered to pay the Claimant for some of the time she spent with the Respondent and her family on 3 May 2024, but the Claimant rejected those offers.

Hearing

12. The Claimant attended and presented her own case. The Respondent did not attend, despite having notice of this hearing (which she referenced in her correspondence to the Tribunal on 15 December 2024). I decided that it was appropriate to continue with the case: it is in the interests of justice to do so – the Respondent was well-aware of this hearing, the matter in dispute is of very low value (being £39), and the parties have waited long enough for this matter to be heard.

13. I heard evidence from the Claimant, who stated that:

a) She was engaged to work for the Respondent for three, three-hour shifts a week, a total of nine hours. Documentary evidence shown to me by her (which was sent ahead of the hearing, and the Respondent was copied on that correspondence and so has seen those documents) shows that minimum engagement of nine hours per week, but does not show the shift pattern. The Claimant said that, given the hourly rate of pay of £13, it was not worth her while travelling to and from the Respondent's house for a shift of less than three hours, so it was three, three-hour shifts that the parties agreed to;

b) She worked for just over three hours on 3 May 2024, but is claiming payment for three hours' work; and

c) She has experienced stress as a result of this case but suffered no financial loss as a consequence of the non-payment of her wages.

Findings

14. As it was accepted by the Respondent that the Claimant attended her house for the purpose of induction, I concluded that the Claimant had performed work for

the Respondent on that day and was entitled to be paid for that work. That conclusion is supported by messages on the Koru Kids platform between the Claimant and the Respondent on 29 April 2024, shown to me by the Claimant (which messages were again part of the Claimant's evidence bundle which was sent to the Respondent in advance of the hearing), in which the Respondent asked the Claimant to "*start on Friday*" – that date being 3 May 2024.

15. While there was disagreement between them about the duration of that shift, there are four pieces of evidence relevant to the duration of the work on 3 May 2024:

    a) The written evidence from the Claimant has consistently said she worked three hours on that day;

    b) In oral evidence the Claimant stated that the shift pattern agreed was three, three-hour shifts per week;

    c) The position stated by the Respondent in Box 6.1 of her Response form was also that the Claimant spent three hours with the Respondent's family on 3 May 2024. She wrote that "*Ley only came to an induction session at our house on May 3rd 2024, at 3:15pm until approximately 6pm*"; and

    d) The position as later stated by the Respondent in her correspondence with the Tribunal was, on 14 January 2025, that "*Ley Tsang attended our home for a period of approximately 1 or 2 hours on Friday 3rd May*".

16. On balance, I prefer the position that the Claimant worked for three hours on 3 May 2024. This was the Respondent's initial position, and has consistently been the Claimant's position. The Respondent was not present to explain her changed position in the course of the case.

Law

17. Section 13 of the 1996 Act provides:

    "*(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…".

18. Section 24(1) of the 1996 Act provides that, where a tribunal finds a complaint of unauthorised deduction from wages well-founded, it shall make a *declaration* to that effect and *order* the employer to pay to the worker the value of the deduction.

19. Section 24(2) further provides that:

    "*Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under*

*that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any **financial loss** sustained by him which is attributable to the matter complained of*" (emphasis added).

Application and conclusion

20. The Claimant's claim for unauthorised deductions from her wages is well-founded. The Respondent failed to pay the Claimant the sum of £39 gross in respect of work performed by the Claimant for three hours on 3 May 2024.

21. The Respondent shall pay the Claimant **£39**, which is the gross sum which she failed to pay to the Claimant.

22. The Claimant is responsible for the payment of any income tax and employee's National Insurance contributions due on any sums paid to her pursuant to this judgment.

Approved By:

Employment Judge Ramsden

Dated: 20 January 2025

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