



EMPLOYMENT TRIBUNALS

Claimant: Mrs E Moses

Respondent: Visto Help Hands Care Limited

Heard at Leeds by CVP

ON: 1 April 2025

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Ms N Mallick, Counsel

Respondent: Mr J Treston, Litigation Consultant

JUDGMENT

The respondent shall pay the claimant:

1. £7983.60 for the unfair dismissal of the claimant;
 2. The sum of £2,167.20 by way of holiday pay;
 3. The sum of £21,802.63 for unauthorised deduction of wages;
- Grand total £31953.43.

REASONS

Respondent

1. The Tribunal had to decide to what extent, if any, the respondent shall be permitted to participate in the hearing. The response had been struck out and an application by the respondent for reconsideration had been refused. In all the circumstances the respondent was not permitted to take part in the hearing by

order of the Tribunal but the respondent exercised its right to remain in the hearing and observe the same.

2. Claims

- 2.1. Unfair dismissal.
- 2.2. Breach of contract.
- 2.3. No holiday pay.
- 2.4. Unauthorised deduction of wages.

3. Issues

- 3.1. Unfair dismissal - what was the reason for the dismissal and whether dismissal was fair.
- 3.2. Breach of contract - this was a claim for notice pay and if the claimant was successful in achieving the relevant compensation for unfair dismissal her claim for breach of contract would be subsumed.
- 3.3. Holiday pay – what holiday pay was the claimant entitled to and was she paid.
- 3.4. Unauthorised deduction from wages – were there any wages outstanding to the claimant and if so had the respondent paid them?

4. Facts

The Tribunal, having carefully reviewed all the evidence, (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant is a Nigerian citizen and at all material times her visa was facilitated for her by the respondent. She worked for the respondent as an auxiliary nurse from 1 April 2022 until her dismissal on 15 April 2024.
- 4.2. By Clause 2 of the claimant's contract of employment the respondent was under a duty to pay the claimant a wage, initially, at £10.65 per hour and subsequently at £10.75 an hour. By Clause 3 of the contract the claimant's normal hours of employment were 39 hours and such additional hours as may be reasonable. By Clause 4 of the contract of employment the claimant was entitled to no more than three weeks' holiday but that of course does not comply with the Working Time Regulations 1998 whereby an employee is entitled to 28 days in a holiday year. By Clause 8 of the contract of employment the claimant was entitled to not less than one weeks' notice during the first two years of continuous service.
- 4.3. From November 2022 the respondent began to fail in providing the claimant with her contractual entitlement to work.
- 4.4. On 13 March 2024 the respondent reported to the workforce that the sponsorship licence had been suspended. This sponsorship included and was part of the claimant's visa arrangements. The respondent informed the workforce that it was appealing the suspension. The claimant asked for work as the respondent said that there would be work for everyone notwithstanding the suspension. The respondent told the claimant that this email, which included the opportunity for work, was not for the claimant.

- 4.5. On 16 March 2024 the respondent told the claimant to go and look for another sponsorship. That is tantamount to being told to look for another job. The respondent also suggested that the claimant should go to Ireland and seek asylum. The respondent stated that it had a list of people working for the respondent, which was to be submitted to the Home Office, and the claimant was not on the list. The claimant protested at the unfairness of her treatment.
- 4.6. On 21 March 2024 there was a general staff meeting called to take place on 25 March 2024. The claimant went to the meeting. She was told to leave the meeting and wait outside. She was then called into a meeting in the office and four men unknown to the claimant were present. The claimant would much have preferred a one to one conversation but she did not get it. She wanted to be treated like everyone else. The respondent said it was just doing the claimant a favour to have employed the claimant. The respondent said that it could have assigned the claimant a new client that day but would not do so. The claimant was forced to beg for work. The respondent said that it would give the claimant some jobs in Goole, but only if the claimant deleted all her emails which she had sent to the respondent asking for work, as she had hardly been given any. The claimant refused to delete the emails. The respondent said that it would be in touch about the Goole assignments and the claimant was sent home. The respondent repeated that the claimant should seek asylum in Ireland. The person who was in control throughout the claimant's difficulties was the owner Marvallas Phiri.
- 4.7. The claimant never received any work in Goole. The claimant tried to contact the respondent. The claimant was offered some shifts on 26 March 2024 but they were taken off her.
- 4.8. On 27 March 2024 the same thing happened with work being taken off the claimant.
- 4.9. On 2 April 2024 the claimant asked for work and outstanding wages.
- 4.10. On 3 April 2024 the claimant put in a grievance but received a letter of misconduct on the same date. It referred to the claimant being engaged in significant misconduct and the claimant's behaviour raised concerns amongst the management. It stated that during the staff meeting on 25 March 2024 there were several instances of misconduct by the claimant observed by the claimant's colleagues as well as "neighbouring" offices. It stated that the claimant's attention was directed to behaviours during the meeting. Amongst other things the letter asked the claimant to respond within three days and the claimant immediately responded asking about the nature of her alleged conduct, which did not happen.
- 4.11. The parties agreed the date of 11 April 2024 for the grievance but on the day of the grievance hearing the respondent cancelled it.
- 4.12. On 15 April 2024 the claimant was dismissed. The letter of dismissal stated that the respondent was having to make redundancies in the near future because the respondent had been experiencing difficult trading conditions with a large downturn in work. The claimant heard no more from the respondent and never received any monies.
- 4.13. It follows that the claimant received no notice pay and no holiday pay.

- 4.14. So far as her wages were concerned, between November 2022 and the termination of her employment, the claimant was not continuously employed in accordance with her contract. There was produced to the hearing an unpaid wages breakdown which showed, in each month, hours worked, hours not worked, relevant rates of pay and the amount the claimant received for working, together with the amount she should have received but did not do so. To this day the claimant has not received any of the unpaid wages.

5. Determination of the Issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties and made by and behalf of the claimant):

- 5.1. It is for the respondent to show the reason for the dismissal. The respondent alleged misconduct in the letter dated 3 April 2024 and never followed that through, either by way of procedure or otherwise. The termination letter referred to making redundancies, the Tribunal finds in the future. The Tribunal finds the reason for dismissal is neither misconduct nor redundancy, the respondent having failed to prove that. As the respondent has not fulfilled the requirements by way of reason (in section 98(1) Employment Rights Act 1996 (ERA)) the dismissal is unfair, without having to proceed to the question of reasonableness as prescribed by section 98(4) ERA.
- 5.2. So far as entitlement to notice pay is concerned this is subsumed in the basic award for unfair dismissal (see below).
- 5.3. The claimant did not receive her holiday pay. The Tribunal finds that she is entitled to holiday pay from 1 April 2023 to 31 March 2024.
- 5.4. So far as wages are concerned, having regard to the terms of the claimant's contract of employment, by not paying the claimant the amounts to which she was entitled under her contract the respondent made a deduction from the claimant's wages.

6. Remedy

- 6.1. The claimant has elected for compensation.
- 6.2. The Recoupment Regulations apply (see annexe for explanation of their effect).
- 6.3. The Tribunal has awarded compensation for unfair dismissal as follows.
- 6.4. Basic award. The claimant's date of birth is 12 August 1987. She commenced employment on 1 April 2022. The effective date of her termination was 15 April 2024. Gross pay was £387.00 per week gross. She had two years' continuous service and the appropriate multiplier was one week for each completed year of service. Therefore the basic award is £774.00.
- 6.5. Compensatory award. The claimant's net average pay the Tribunal finds as £387 net. The Tribunal awards immediate loss but no future loss. The claimant worked from 15 April 2024 to 1 May 2024 as a carer and this amounts to 17 days at £208.40.

- 6.6. The claimant was out of work from 2 May 2024 until 31 May 2024. Thirty days amounts to £506.11.
 - 6.7. The claimant worked from 1 June 2024 until today as a carer earning £375 net per week which amounts to 305 days or £3,060.
 - 6.8. During the period 15 April 2024 to 1 May 2024 the shortfall while the claimant was working was £43.03.
 - 6.9. In the 30 days between 2 May 2024 and 31 May 2024 when the claimant was not working the claimant is entitled for those thirty days to £1,658.57.
 - 6.10. During the period 1 June 2024 to 1 April 2025 amounting to 305 days the claimant is entitled to £12 per day or £3,060.
 - 6.11. The total of immediate loss is therefore £5,267.68.
 - 6.12. The claimant is entitled to loss of statutory employment rights in the sum of £500.00.
 - 6.13. In accordance with section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 the Tribunal has power to increase awards for compensation by up to 25% in cases where there has been an unreasonable failure by the respondent to comply with the ACAS Code of Practice on disciplinary and grievance procedures. In this case, amongst other things, the respondent failed to spell out the alleged misconduct to the claimant, cancelled a grievance hearing and dismissed the claimant without going through necessary procedures. Therefore, in this case an uplift of 25% the Tribunal finds is appropriate. This will be in the sum of £1441.92 making the total compensatory award of £7209.60.
 - 6.13.1. Total of compensation for unfair dismissal £7209.60.
 - 6.13.2. Prescribed element £6435.60.
 - 6.13.3. Period prescribed element 15 April 2024 to 1 April 2025.
 - 6.13.4. Excess of 16.1 over 16.2 £774.
- 7. Notice Pay**
- 7.1. In relation to notice pay as this amount is subsumed in the unfair dismissal compensation there is no award.
- 8. Holiday Pay**
- 8.1. The Tribunal finds that for the last holiday year 1 April 2023 to 31 March 2024 the claimant received no holiday pay. The claimant should have received 28 days pay during that period which in a 260-day turnround amounts to £77.40 per day multiplied by 28 equalling £2,167.20.
- 9. Unauthorised Deduction of Wages**
- 9.1. The Tribunal has examined with care the table "Unpaid Wages Breakdown". That table is in the hearing bundle, so it is not necessary for me to spell out each and every month from November 2022 to March 2024. The Tribunal is clear about the figures and that the unauthorised deduction amounts to £21,802.63. The claimant is awarded that sum accordingly.

Approved by Employment Judge Shulman

Date: 4 April 2025

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