



EMPLOYMENT TRIBUNALS

Claimant: Ms T Jauhal

Respondent: Aiz Consulting Limited

Heard at: London Central **On:** 3 Oct 2019

Before: Employment Judge A James

Representation

Claimant: In person

Respondent: In person

RESERVED JUDGMENT

The judgment of the Employment Tribunal is:

- (1) The respondent does not owe the claimant any wages. The unauthorised deduction of wages claim is therefore dismissed.
- (2) The claimant has been paid holiday pay at the correct rate and for the correct periods. The claim for holiday pay is therefore dismissed.

REASONS

Claims

1. The claimant Ms Talvinder Jauhal (referred to in the rest of this judgment as 'the claimant') brings a claim for unpaid wages, holiday pay and 'other payments' in her ET1 form. She was employed by the respondent AIZ Consulting Ltd (referred to in the rest of this judgement as the respondent), as an English Language Instructor. The claimant says her employment started

on 17 September; the respondent says it started on 1 October 2018. It appears she worked about 5 hours in September in total. In the end, nothing turns on the start date of employment issue. It was agreed that the last day of work of the claimant was 1 March 2019.

2. It is clear from the claim form that the claimant is arguing that she was not paid her wages correctly and that she is still owed wages. It is also clear from her claim form that she argues that she has not been paid holiday pay correctly. In the claim form she also ticked the 'other payments' box. I asked for clarification at the hearing what other payments she was asking the tribunal to deal with. She told me that this included the fact that she had to leave her flat in Italy. She told me that she had accepted lower pay to take on the new job because she hoped for more than the 20 hours stated in the contract, but those hours didn't materialise. She had to ask her supervisor Ms Walli for two advances. She'd been renting for more than a year and had to move out of her flat after she resigned and put her belongings in storage. She couldn't afford to have her belongings moved back to the UK. She had also had a hospital appointment in 2018, which she had to change to January 2019. There is also some issue about a flight which she told me had to be rearranged at the beginning of the contract.
3. I explained that Employment Tribunals only have the right to deal with those claims which Parliament has said we can deal with. I explained that the matters that the claimant was complaining about which are listed above as claims for 'other payments' were not matters which it was possible for an Employment Tribunal to deal with – we do not have what is known as 'jurisdiction' to deal with them. Similarly, we are not able to deal with the loan which we were told by Mrs Walli was made to the claimant at the beginning of her work for the respondent. It is up to the parties to seek independent advice about whether any legal claims do arise and if so how and where to enforce them. I could not assist any further than that.
4. We therefore agreed to proceed on the basis that I would deal with the wages claims and the holiday pay claim. I proceeded to do so, by asking in turn, the claimant, and Mrs Walli for the respondent, to clarify what payments had been made to the claimant and how those had been calculated.
5. The contract says that the claimant is to be paid €1200 per month. It also says that she is to work 20 hours per week, during term time. In February, where there are 28 days, so that would amount to 80 hours. But in other months, for example in January 2019, the working days available (excluding the holiday period from 1 to 6 January) were three weeks and four days, or 3.8 weeks. At the rate of four hours per day, that is 76 hours. Those were the hours she was required to work in January under the contract.
6. The case has proceeded on the basis of agreed facts. There were some areas of dispute but as will become apparent, those were not material to the decisions that I had to make, except in one area.
7. Between October, November and December 2018, I was told that the claimant did not work 20 hours per week; she was nevertheless paid the full amount due to her. If for example she just worked 15 hours in a particular

week, she would still be credited for 20 hours. However, Mrs Walli said that there were occasions when lessons were cancelled. Where that happened, which meant for example that in a particular week, instead of the 15 hours which she was scheduled to work, the claimant only worked 14 hours, she would be expected to make up those hours at a later date. The respondent was entitled to ask her to do that, under the terms of the contract – see clause 5.1.3. If the hours were not made up, the respondent was entitled to reduce her pay proportionately.

8. The claimant complains that she had not received payslips during her employment. It is the respondent's case that they were available online and that the claimant did not register in order to be able to obtain copies of her payslips. She was in any event able to provide copies to me at the hearing. Again, I note the dispute between the parties about the accessibility or not of the paylips but that was not relevant to my determination.
9. We worked through the payslips in order to determine whether or not her pay in January, February and March 2019 was less than she was contractually entitled to. It was accepted that the wages paid in October, November and December 2018 were correct. The respondent argued that as a result of the cancellation of some lessons, the claimant did owe some extra hours in 2019, which I come to below.
10. As already stated, the claimant was due to work 76 hours, or 19 working days in January. It was agreed by the claimant that she was not able to work on two days in January due to sickness and that she also did not work two days, because of a hospital appointment. It appears that she did not in the end attend that appointment but still took the days leave in any event. As stated in the contract, if leave is taken during term time, then hours must be made up, or pay will be reduced accordingly. See clause 6.3 of the contract. No pay is due for the three SSP waiting days. What should have happened in January therefore is that the two days sick should have been deducted. Instead, the claimant was wrongly credited with two days over time.
11. It would be helpful at this point to set out how the daily and hourly rate has been calculated. The contract states that the payment due, by way of salary, is €1200 per month. €1200 times 12 months divided by 52.17 weeks gives a daily rate of €55.20 per day. I note that the daily rate applied by payroll was €55.17 per day, slightly short. There is reference to overtime but there was no overtime rate as such; therefore if the claimant worked more than her contracted hours, she was entitled to be paid on the basis of the hourly/daily rate. Over the lifetime of the contract, the claimant would have been underpaid by a few euros, as a result of the difference between what I calculated as the proper daily rate, and the actual daily rate paid to her, but that would only amount to a few euros over that period. 20 hours over a week amounts to 4 hours per day, which gives an hourly rate of £13.80.
12. There was some discussion about the hours which should have been paid back in January, because of lessons being cancelled in that month, and because of other lessons being cancelled during the period October to December 2018. Mrs Walli told me that this came to 8 hours. That was disputed by the claimant. Mrs Walli also stated that even when the claimant

did not work her full hours she was still paid them and that this meant that the claimant owed further hours. Mrs Walli stated that this accounted for another 8.5 hours.

13. Prior to a short adjournment, it had been agreed that in February, the claimant worked 93.5 hours, and one day in March of 7.5 hours. After a short adjournment, the claimant states that she had worked out that she had worked 113.5 hours in February. In the time available and bearing in mind the need to deal with cases in a proportionate manner, I am prepared to give the claimant the benefit of the doubt in relation to the 16.5 hours Mrs Walli said she owed the respondent and the respondent the benefit of the doubt when it came to the days the claimant worked in February.
14. There was some discussion at this point about the contract saying that the claimant could not work for another employer whilst working for the respondent and in any event, the claimant told me that for UK tax reasons, she was not able to do so in any event. I explained to the claimant that was not something that I was able to deal with either. In relation to the matters I have to decide, nothing turns on the question whether or not the claimant could work for another employer. I was simply concerned with the number of hours that she did work.
15. In January 2019 the claimant was paid €1200 plus, in error, two days overtime. In February 2019 the claimant was paid the salary of €1200 for 80 hours work plus overtime of €67.24 less a salary adjustment €110.34, for the two days that she had been absent in January 2019. Then in March 2019, she was paid for the day she worked and the employer decided to repay her for the two days sickness absence in January 2019 and the two days that she took as leave but which she was not, the respondent says, strictly speaking entitled to. She therefore received the amount of €334.80.
16. Bearing in mind the contents of paragraph 10 above, it is apparent that the claimant was entitled to be paid for 66 hours in January, bearing in mind the sick days and holiday days and I find that she worked for 93.5 hours in February and 7.5 hours in March, a total of 167 hours. If that is multiplied by an hourly rate of €13.80, that comes to €2304.60. Adding up the amount she was paid in January February and March, it is apparent that was paid €2493.39. So the claimant was paid over and above the amount due to her for this period. So no wages are due to her.
17. The other issue I was asked to consider was the conversion rate. According to the contract, the conversion rate was to be 1.142 throughout the contract. €1200 divide by 1.142 is £1050.79. The rate shown on the payslips for €1200 is £1049.88, which is £0.91 short. Over the five months that the claimant worked that comes to less than £5. Even taking into the discrepancy in the daily rate as well of €0.03, then on the basis of the calculations above, she is not owed any wages by the respondent.
18. As for holiday pay, I explained to the parties in the hearing that where the contract stipulates the weekly contractual hours but the worker works regular overtime, the worker is entitled to be paid on the basis of the average hours worked during the previous working period. For the holiday taken in

November and December 2018 and in January 2019, the claimant had not worked more than 20 hours per week. She continued to be paid her usual salary during her period of leave. That was correct. The claimant did not take any further leave prior to her employment terminating on 1 March 2019.

19. On a proportionate basis, five months holiday, out of the 28 days the contract entitles her to take per year, amounts to 11.67 days. The claimant was allowed to take one day in November, one day on 7 December, and then the period 22 December 2018 to 6 January 2019 as holiday. This means that she took 12 days holiday during that period. She is not therefore owed any more holiday pay prior to her employment terminating. She has therefore received her holiday entitlement on a proportionate basis, for the amount of the year that she actually worked.

Conclusions

20. For the reasons set out above, the claimant's claims for unpaid wages and holiday pay do not succeed and are dismissed.

Employment Judge A James

Date: 4 October 2019

JUDGMENT SENT TO THE PARTIES ON

07/10/2019

.....
FOR THE TRIBUNAL OFFICE

Notes

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.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant (s) and respondent(s) in a case.