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EMPLOYMENT TRIBUNALS

Claimant: Mrs K Hurley

Respondent: Mr Muneeb Diwan t/a Chilton Croft Dementia & Nursing Home

Heard at: East London Hearing Centre

On: Monday 12 August 2019

Before: Employment Judge Russell (sitting alone)

Representation

Claimant: In person

Respondent: Neither present nor represented

JUDGMENT

The judgment of the Employment Tribunal is that:

1. The claim of unauthorised deduction from wages succeeds.
2. The Respondent shall pay to the Claimant the sum of £459 in respect of 27 hours work at the rate of £17 per hour.

REASONS

1 The Claimant is a qualified nurse providing her services at the relevant time through an agency.

2 Chilton Croft Dementia and Nursing Home is not a limited company and there is no paperwork to suggest employment by any other entity. In the circumstances, I am satisfied that the correct legal employer is Mr Muneeb Diwan t/a Chilton Croft Dementia and Nursing Home and I amend the name of the Respondent accordingly.

3 She attended an interview with the Respondent on the 8 February 2019. The Claimant says that at the end of that interview, Mr Diwan offered her the position of staff nurse. The Claimant's case is that in a text on 16 February 2019, she and the Respondent agreed that she would be paid £17 per hour.

4 The Claimant attended work for a three-hour training session on 7 March 2019. The Claimant worked two 12-hour shifts, on 11 and 14 March 2019. She was not paid for any of this work. The Claimant decided to accept no further work from the Respondent.

5 The Respondent presented a Response in which it asserted that the Claimant was not an employee and that the hours worked were an unpaid trial period. The Respondent relied upon a letter to the Claimant dated on 27 March 2019 which enclosed a copy of what purported to be Trial Period Terms and Conditions. The Respondent offered to pay the Claimant for one day's work at the minimum wage of £7.83 per hour.

6 The Respondent was not here today. No reason has been provided for his absence. The hearing date was included in the Tribunal's Notice of Claim which enclosed a copy of the prescribed Response form and gave the date for its submission. The Respondent presented its Response on the prescribed form and in time. Accordingly, I am satisfied that he had notice of the hearing and that it is appropriate to proceed in his absence. In deciding the case, I have taken into account the contents of the Response.

7 The Claimant confirmed her account as set out in her claim form. She also showed me a series of text messages between herself and the Respondent on 15 and 16 February 2019. In a text sent at 8:46am on 15 February 2019, the Respondent said that he would like to offer the Claimant the post and asked that she come in on Monday to shadow. A further text on 16 February 2019 confirms that the parties had reached agreement that she would be paid £17 per hour. There were further texts about uniform and start dates. There was no mention in any of the texts that the Claimant would have to work a trial period, far less that this would be unpaid. The Claimant confirmed to me today, and I accept that confirmation as true, that the first she heard of the trial period and the possibility that this would be unpaid was in the letter of 27 March 2019.

8 Having regard to the Claimant's evidence and the content of the contemporaneous text messages, I find on balance of probability that there was an oral agreement between the parties whereby she was offered and accepted the job of staff nurse with pay of £17 per hour. The Claimant was contractually entitled to be paid for the 27 hours worked for the Respondent and at £17 per hour. The Respondent has not paid this sum and her claim of unauthorised deduction from wages succeeds in the sum of £459.

9 The Claimant also sought £500 as compensation for loss of earnings due to shifts she turned down with the agency during the period of employment with the Respondent. Whilst I sympathise with the Claimant in that she turned down other work believing that she was employed and would be offered further shifts with the Respondent, this is not an unlawful deduction from wages and I decline to make such an award.

Employment Judge Russell

14 August 2019