



EMPLOYMENT TRIBUNALS

Claimant: Symond Poole

Respondent: Beverley Woolrich

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

Judgment

1. The Claimant was dismissed in breach of contract and the Respondent is ordered to pay damages to the claimant in the sum of £152 (subject to deductions in respect of tax and National Insurance, as applicable.)
2. The Respondent failed to provide the Claimant with a written statement of terms and conditions in accordance with section 1 of the Employment Rights Act 1996. The Respondent is therefore ordered to pay the Claimant a sum equivalent to four weeks' wages, namely £608. This payment is not subject to deductions for tax and National Insurance.
3. The Respondent failed to provide the Claimant with written, itemised pay slips in accordance with section 8 of the Employment Rights Act 1996, and the Tribunal makes a declaration to this effect. The Respondent is therefore ordered to pay the Claimant £50. This payment is not subject to deductions for tax and National Insurance.
4. The respondent has failed to properly calculate the claimant's holiday entitlement and is ordered to pay the claimant the sum of £93.74 (subject to deductions in respect of tax and National Insurance, as applicable).

Rule 21

1. The Claimant presented a claim form on 22 October 2021. The Respondent was due to provide a response by 7 December 2021. No response was received by this date. There has been no application by the Respondent for an extension of time to present a response.
2. I have therefore considered whether to issue a judgment under Rule 21. I considered whether, on the available material, a determination could properly be made of the Claimant's claims.

3. I have available the Claimant's claim form. The claims brought by the Claimant are determinable from her claim form.
4. The Claimant has further provided a file of ten documents together with a witness statement on her own behalf (labelled as "document 11"). These documents contain details of the Claimant's allegations together with the required information in respect of the Claimant's pay.
5. In light of this, I find that I have sufficient information to properly make a determination of the Claimant's claims.

Findings of fact

1. The Claimant was employed by the Respondent from 1 May 2021 until 4 August 2021. The Claimant worked as a personal assistant. The Claimant's normal working hours were 16 hours per week and the Claimant was paid £9.50 per hour.
2. I find that the Claimant was not provided with a written statement of terms and conditions of employment by the Respondent, and that the Respondent had still not provided any such statement as at the date of this hearing.
3. The Respondent sent a text to another employee, Neil, stating that the Claimant was "not suitable for her needs" and indicating that there would be further hours available for Neil if he wanted them.
4. The Claimant saw this text message on 4 August 2021 and left the Respondent's employment that same day.
5. I find that the notice period to which the Claimant would have been entitled was one week.
6. I find that the Claimant had normal working hours of 16 hours per week, made up of 8 hours on a Wednesday and 8 hours on a Thursday. The number of hours are set out in the Claimant's claim form and also evidenced in her documents and witness statements. The Claimant's pay slips indicate that she worked overtime in varying amounts.
7. I find that in respect of salary due in May 2021, the Claimant received payment on 11 June 2021 but did not receive a written, itemised statement in respect of this salary until 23 June 2021. No deductions were made from the Claimant's pay.
8. I find that the Claimant was paid salary on 23 June 2021, but did not receive a written, itemised statement in respect of this salary until 30 June 2021. Deductions totaling £34.20 were made from this salary payment, in respect of National Insurance.
9. I find that the Claimant was paid salary on 26 July 2021 but has never received a written, itemised statement in respect of this salary. It is unclear whether any deductions were made from this salary payment.
10. I find that the Claimant was paid salary on 17 August 2021, but that the Claimant did not receive a written, itemised statement in respect of this salary until 7 September 2021. Deductions totaling £34.20 were made from this salary payment.

11. I find that the Claimant accrued 1.48 weeks' holiday during the course of her employment. The Claimant received £131.22 from her employer in respect of accrued but untaken leave.

The relevant law

Breach of contract

1. Where an employer has committed a breach of contract so serious as to be regarded as repudiatory, an employee may choose to accept this breach by resigning. The employee will then be entitled to damages for that breach. Where an employee has resigned without notice, the damages will in part be made up of loss of earnings for that notice period.
2. Under section 86 of the Employment Rights Act 1996, employees with more than one month (but less than two years) of continuous service are entitled to a minimum notice period of one week.
3. However, where there is no express contractual agreement between the parties as to what period of notice applies, then a contract is subject to an implied term that it may be terminated on reasonable notice (*Reda v Flag Ltd [2002] IRLR 47*). The Tribunal is therefore required to consider what would amount to reasonable notice in these circumstances and not default to the statutory minimum.
4. The calculation of a weeks' pay for these purposes is governed by section 88 of the Employment Rights Act 1996.

Statement of terms and conditions

1. Workers are entitled to a written statement of terms and conditions containing the information set out in section 1 of the Employment Rights Act 1996.
2. Where an employee has also been successful in one of the claims set out in Schedule 5 to the Employment Act 2002 (which includes a claim for breach of contract), and where the employer remains in breach of its duties under section 1 of the Employment Rights Act 1996 at the time the claim was brought, the Tribunal must make an award of a minimum of two weeks' pay unless there are exceptional circumstances which would make such an award "unjust or inequitable" (section 38 of the Employment Act 2002).
3. The Tribunal may make an award of the higher amount of four weeks if it considers it "just and equitable" in the circumstances.

Itemised pay statement

1. Workers have the right to a written, itemised pay statement, as set out in section 8(1) of the Employment Rights Act 1996. This must be provided at or before the time that the payment of wages or salary is made.
2. If a Tribunal finds that any unnotified deductions have been made during the 13 weeks prior to the employee's application to the Tribunal, the Tribunal may order the employer to pay compensation up to the aggregate amount of those unrecorded deductions.

Holiday Pay

1. Workers are entitled to a minimum of 5.6 weeks holiday per year (regulation 13(1) and 13A of the Working Time Regulations 1998).
2. On termination of employment, workers are entitled to pay in lieu of accrued but untaken leave.
3. Where no leave year is specified in a contract, the leave year is deemed to begin on the date their employment commenced (Regulation 13(3) Working Time Regulations 1998).
4. During the first year of employment, Regulation 15A Working Time Regulations 1998 governs the accrual of leave. Leave accrues at a rate of 1/12 of the annual entitlement at the beginning of each calendar month.

Conclusions

1. The Respondent's conduct in discussing the termination of the Claimant's employment with other employees and offering them the Claimant's hours amounted to a repudiatory breach of the implied term of trust and confidence.
2. The Claimant was therefore dismissed in breach of contract. The Claimant is entitled to one weeks' pay in lieu of notice. This is the statutory minimum to which the Claimant is entitled. One weeks would also amount to a reasonable period of notice, given that the Claimant was in a junior position paying minimum wage and had only a few months of service.
3. I have found that the Respondent is in breach of section 1 of the Employment Rights Act 1996, in that the Claimant was not provided with any written contract of employment at all. I have decided that the Claimant should be awarded four weeks' pay in this regard. I appreciate that the Respondent is a smaller employer and is unlikely to have a dedicated HR team. However, the Respondent's conduct does not amount to a minor breach of section 1, in that the Claimant was provided with no contractual documentation at all. Further, the Claimant was employed for three months and so the Respondent has ample time in which to prepare the contract. The Respondent's failure to provide a contract impacted on the Claimant's ability to understand whether she had been properly paid on termination of employment. I have therefore found that it would be just and equitable to award four weeks' wages in the circumstances.
4. I have found that the Respondent failed to provide written, itemised statements of deductions as required by section 8 of the Employment Rights Act 1996, in that it repeatedly provided wage slips significantly after payments were made, and in one case not at all. The Respondent therefore made unnotified deductions from the Claimant's wages. I could therefore order that the Respondent pay compensation up to the aggregate amount of those deductions. However, there is no indication in this case that any of the deductions made by the Respondent were inappropriate, or that the Claimant has suffered any loss. The deductions were minimal. The lack of payslips has clearly caused some distress to the Claimant who had to make repeated requests for the documentation. I have therefore awarded the sum of £50.
5. In the absence of a written contract of employment, I have applied the statutory scheme under Regulation 15A of the Working Time Regulations 1998 in order to calculate the Claimant's accrued holiday. Under this scheme, the Claimant accrued 1.48 weeks' holiday.

6. I have found that the Claimant's "normal working hours" were 16 hours per week. However, the payslips provided by the Claimant indicate that the Claimant worked overtime in excess of this. This overtime varied, and did not appear to follow an established pattern or number of hours. It was paid only over a short period (as the Claimant's employment was only for three months). I therefore find that any overtime work was not sufficiently regular or worked over a sufficient period to amount to "normal remuneration" for the purposes of calculating holiday pay.
7. However, the pay received by the Claimant in respect of holiday was not sufficient. The Claimant received pay of £152 a week on the basis of her normal working hours. The Claimant had accrued 1.48 weeks of holiday. The Claimant should therefore have received £224.96, and so was underpaid by £93.74.

Employment Judge Routley

30 September 2022