



EMPLOYMENT TRIBUNALS

Claimant: Sameera Khan
Respondent: NRSRY Limited
Heard at: East London Hearing Centre
On: 30 January 2023
Before: Employment Judge Howden-Evans (sitting alone)

Representation

Claimant: No attendance
Respondent: In person by Mr Brady

JUDGMENT

Upon there being no attendance by or on behalf of the Claimant and having considered the documents available to me, the employment judge's decision is:

1. The correct name of the respondent is NRSRY Limited.
2. The Claimant's complaint that there were unauthorised deductions from her wages (unpaid wages) is well-founded. This means the Respondent unlawfully deducted the sum of **£5,000**.
3. The Respondent has terminated Ms Khan's employment with insufficient notice. Ms Khan is entitled to **£451.38** compensation for breach of contract for lack of notice (notice pay) as calculated at the end of this judgment.
4. The total amount owed to Ms Khan, by the Respondent is **£5,451.38**
5. As the Respondent company has ceased trading and is in financial difficulty it is likely Ms Khan will face difficulty recovering this debt from the Respondent. If she is unable to recover this debt from the Respondent, she is referred to section 166(1)a Employment Rights Act 1996, which explains her right to claim payment from the National Insurance Fund.
6. The Employment Protection (Recoupment of Jobseekers Allowance & Income Support) Regulations 1996 do not apply to this award.

REASONS

1. Whilst reasons for this judgment were provided orally at the hearing, the employment judge is mindful that the Claimant was not present at the hearing, so has provided written reasons, for their benefit.
2. This hearing was listed to be heard at noon on 30th January 2023 by telephone. When there was no attendance by the Claimant I waited until 12:15pm before commencing the hearing.
3. I checked Companies House and whilst the Respondent company has ceased trading it is not affected by a voluntary arrangement, administration order, administrative receivership, compulsory or voluntary liquidation. At the time of this hearing and judgment, the Respondent company has not been dissolved and so the Claimant is able to proceed with her claim.
4. I considered whether it was appropriate to continue with the hearing in the absence of the Claimant. Rule 47 of the Employment Tribunal Rules of Procedure 2013 provides I may continue with the hearing in the absence of a party, having considered the information available to me, after any enquiries that may be practicable.
5. Having considered the fact the Respondent company has ceased trading, I have determined it is in the interests of justice to proceed in the absence of the Claimant. If the Claimant has a good reason for their absence and are dissatisfied with the outcome of this judgment, they are able to apply for the judgment to be reconsidered under rule 70 & 71 Employment Tribunal Rules of Procedure 2013.
6. I considered the claim form. Mr Brady explained the Respondent company had not filed a response as he had not received the claim form – however he accepted there is no defence to the unlawful deductions from wages / notice pay claims.
7. Ms Khan a nursery manager, was continuously employed by the Respondent, during the period 19th April 2022 to 3rd September 2022. Her salary before tax (gross salary) was £2,500 per month; her normal take home pay (net pay) was £1,956 per month. Ms Khan was not paid for the months of July and August 2022.
8. It is clear the circumstances of Ms Khan's dismissal amount to a dismissal by reason of redundancy (see Section 139 (1)a(i) Employment Rights Act 1996). Ms Khan did not have sufficient continuous employment to be eligible for a redundancy payment; an employee needs 2 years' continuous employment to qualify.
9. Section 86 Employment Rights Act 1996 explains Ms Khan was entitled to 1 weeks' notice, having worked for the Respondent for more than 1 month.

10. Ms Khan has tried to claim compensation for stress, physical and emotional distress, but these are not claims that can be pursued in the employment tribunal.

**Employment Judge Howden-Evans
8 March 2023**

Calculations

Notice Pay

1 week of Ms Khan's net weekly pay = **£451.38** ($£1,956 \times 12 / 52$)

Outstanding Wages

2 months of Ms Khan's gross monthly pay = **£5,000** ($£2,500 \times 2$)

Total amount owed to Ms Khan = £5,451.38

Unlawful deductions from wages (outstanding wages) has been calculated using gross pay; the Claimant will be responsible for paying any personal tax and national insurance that may become due on this income.

Note

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.

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