



EMPLOYMENT TRIBUNALS

Claimant

Miss C Bomben

v

Respondent

OTT Internet Limited
t/a 123 Internet Group

Heard at: Cambridge Employment Tribunal

On: 27 August 2019

Before: Employment Judge Johnson

Appearances

For the Claimant: In person

For the Respondent: Mr S Jones, Director

DECISION ON APPLICATION

1. At the beginning of the Hearing I am considered an application from the Respondent under Rule 20 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 for an extension of time for the presenting of a Response.
2. On 23 August 2019 a copy of the form ET3 was emailed to the Tribunal by the Respondent's representative and copied by the Tribunal to the Claimant. The basis of the Respondent's application is that although the Claimant had identified the Respondent's registered address correctly as being 20 – 22 Wenlock Road, Islington, London, N1 7GU and the ET1 was sent by the Tribunal to this address, it had not actually reached the Respondent at their operating address of Upper Tilers Barn, Keller Close, Kiln Farm, Milton Keynes, Buckinghamshire, MK11 3LL.
3. Mr Jones, who is a Director with the Respondent company, explained that ordinarily documents which arrived at the London address would be copied and emailed to the Company's operating address in Milton Keynes and would also be forwarded in the post. He said he was not aware of any difficulties with the postal service at this time, but in this particular case he had not received the form ET1 and form ET2 notifying of the date that a Response should be presented.
4. Upon being questioned as to why he knew about the Hearing at all, he advised that a few weeks ago he was contacted by a company specialising in the provision of employment advice who told him about the

hearing date and asked whether he wanted representation. At this point he made enquiries with the Tribunal and contacted them on 14 August 2019 to make an application for an extension of time for the Response to be presented following the Order of Employment Judge Spencer which was sent out on 23 August 2019 to the parties explaining that any application must be copied to the Claimant and accompanied by a draft Response.

5. A copy of the form ET3 was shown to me and the Claimant confirmed that she had received this document.
6. The Respondent's case is that they had made all relevant payments to the Claimant and provided a properly particularised pay slip and therefore had complied with all obligations upon the termination of the Claimant's employment.
7. I heard from Miss Bomben and she explained that she has identified the registered office as the correct address for the Respondent and had taken advice from the Citizen's Advice Bureau and a University Telephone Legal Service before doing so. She felt that the Respondent therefore should have received the paperwork and should have been able to answer the complaint in time.
8. I noted that Acas had contacted the Respondent during Early Conciliation in October 2018 and in fact the Early Conciliation Certificate which was issued on 18 October 2018 replied to the Respondent's address in Milton Keynes and not the London registered office.
9. Under Rule 21 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, I have a wide discretion as to whether to allow an extension of time. I considered the employer's explanation as to why an extension of time was required. In my opinion, the delay in this case was serious given that an application was being made to submit a Response at the day of the Final Hearing. I find it surprising that correspondence sent to a registered office should not be forwarded to the Respondent, especially as on the Respondent's evidence this would usually be the case. However, I had no reason to disbelieve what the Respondent has said and whilst it is not satisfactory that correspondence to a registered office is not received by the business at their operating address, it would appear to be the case that for some reason the form ET1 was not received by the Respondent in Milton Keynes.
10. I also considered the balance of prejudice between the parties and in particular, would the employer in having his application for an extension refused suffer greater prejudice than the Claimant would suffer if the extension of time were to be granted. In doing this I was conscious of the overriding objective and had taken into account what is in the interests of justice in this case. I was conscious that the Respondent's defence is presented on the basis that it has paid the relevant sums being claimed by the Claimant and has indeed particularised the necessary pay slips.

Copies of relevant documentation has already been provided in this regard and it would appear to be that the Respondent has an arguable case.

11. Taking this into account, while I could not determine whether or not the Respondent will succeed with a defence of the claim, it was important to deal with this case fairly and justly and under these circumstances I decided to allow an extension of time for the Response to be presented.
12. Accordingly, the time was extended to the day of this hearing and it was noted that the Claimant has had an opportunity to consider the Response before the Hearing commenced.

JUDGMENT

The Judgment of the Tribunal is as follows:

1. The Claimant's claim that the Respondent failed to pay her salary contrary to Section 23 of the Employment Rights Act 1996 is dismissed on the basis that she received the contractual salary that she was entitled to.
2. The Claimant's claim that the Respondent failed to pay her statutory annual leave entitlement contrary to Regulation 30 of the Working Time Regulations 1998, to the extent of 3.6 days, is successful.
3. The Claimant's claim that the Respondent failed to provide a written or adequate pay statement contrary to Section 11(2) of the Employment Rights Act 1996, is successful in so far as it did not contain details of the holiday pay that the Claimant was entitled to.
4. Accordingly, the Respondent is Ordered to pay the Claimant the sum of **£221.54** in full and final settlement of her claim for statutory annual leave entitlement and this sum is **to be paid within 14 days** of the date of this Judgment.

REASONS

Facts and Evidence

1. This claim was brought by the Claimant, Miss C Bomben. She was employed as a Marketing Assistant with the Respondent company from 4 June 2018 until her date of termination of employment on 20 July 2018. She was actually given notice of termination on 13 July 2018 by her employer and this was due to it being felt that she did not fit in with the team with whom she worked.

2. The dates of employment are not disputed by either party and it is also accepted that her salary was £16,000 per annum on a gross basis and that she was paid monthly.
3. It was further not in issue that she was paid on 30 June 2018 her first month's salary and that her payment for the remaining time she worked for the Respondent was paid in the sum of £923.10 although this sum was not paid until November 2018.
4. I heard evidence from both the Claimant and the Respondent's Director Mr Jones and it became clear that while the Claimant acknowledged she had received all salary owing to her during her time that she was employed with the Respondent, the 3.6 days holiday pay remained outstanding. Mr Jones confirmed that he wanted to attend the Hearing today to be sure that he was only paying the contractual sums that he should pay to the Claimant and stressed that he placed a great deal of reliance upon his accountant as to what should be paid by him to his employees.

The Law

5. Section 13 of the Employment Rights Act 1996 provides that,

...an employer not make a deduction from a worker's wage employed by him unless the deduction is required by statute under a relevant provision in a worker's contract or the worker has previously signified her written agreement of consent to the making of the deduction.

Deficiency in the payment of wages properly payable is a deduction for the purposes of this section.

6. For holiday pay, Regulation 13 and 13A and 16 of the Working Time Regulations 1998 read together provide that,

...a worker is entitled to 5.6 weeks (up to a maximum of 28 days) paid leave in any leave year. A worker's contract may provide an entitlement in excess of this statutory minimum.

Regulation 14 provides that,

...a worker is entitled to be compensated for accrued but untaken leave upon termination of his/her employment, the leave entitlement in Regulation 13 may only be taken in the leave year in which it was due.

7. The entitlements for paid leave under the Working Time Regulations 1998,

...is the minimum entitlement that an employer must provide to a worker without prejudice to any greater contractual entitlement granted to a worker by the employer.

This is the reference to the Tribunal when there is no itemised pay statement provided.

8. Under Section 11 of the Employment Rights Act 1996 provides that,

...where an employer does not give an employee an itemised pay statement as required by Section 8, an employee may require a reference to be made to the Employment Tribunal to determine what particulars ought to have been included or referred to in the statement so as to comply with Section 8. Such references must be determined in accordance with Section 12. Section 8 requires a statement to contain particulars of: a) the gross amount of the wages or salary; b) the amounts of any variable; and (subject to s.9 – standing statement of fixed deductions) c) any fixed deductions from a gross amount and the purposes for which they are made, the net amount of wages or salary payable; and d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part payment.

9. Under Section 12 of the Employment Rights Act 1996 provides that,

...where a Tribunal finds that an employer has failed to give an employee any pay statement in accordance with Section 8, or that a pay statement was not in relation to a deduction contain the particulars required to be included in that statement, the Tribunal shall make a declaration to that effect.

10. Sub-section 12(4) of the Employment Rights Act 1996 provides that,

...if the Tribunal finds any unnotified deductions have been made (from the pay of the employee during the period of 13 weeks immediately preceding the date of the application for the reference), the Tribunal may order the employer to pay the employee the sum not exceeding the aggregate of the unnotified deductions so made.

Discussion

11. While I acknowledge that small employers often place a great deal of reliance upon accountants when they do not have their own payroll service or HR team, I do find it surprising that it took so long for the sums to be paid to the Claimant. The Hearing today has taken place more than one year after the Claimant's employment was terminated and it is unfortunate that it has taken as long as it has for this matter to be resolved.

12. However, it is clear that having considered the papers today, the Claimant has received all of the money she is entitled to apart from the 3.6 days for annual leave and has also now been given sight of a pay slip prepared by the Respondent's accountants which is correct in so far as it refers to the monies that the Claimant has actually received. However, it is not correct in that it does not include details of all sums that were due to the Claimant,

namely the additional 3.6 days holiday pay and it is therefore important that this statement is corrected and submitted to the Claimant on that basis.

My Decision

13. Accordingly, for the reasons given above I find that the Claimant's complaint of that she had not received annual leave of 3.6 days is successful and Order that the Respondent pay this sum within 14 days. I also order that the pay slip which has been produced by the Respondent is contrary to Section 11 of the Employment Rights Act 1996 in that it does not identify this holiday pay within it.

Employment Judge Johnson
3.9.19

Date:
14.9.19

Sent to the parties on:
J Moossavi

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For the Tribunal Office