



EMPLOYMENT TRIBUNALS

Claimant: Miss A. Mireuta

Respondents: Royce Mayfair Limited

London Central
Employment Judge Goodman

8 January 2020

DEFAULT JUDGMENT

The respondent is ordered to pay the claimant £5,225.48, broken down as follows:

- 1. The respondent made unlawful deductions from wages in the sum of £3,302.65 (before deduction of tax), and is ordered to pay the claimant that sum.**
- 2. The respondent made unlawful deductions from commission referable to the contract, alternatively, was in breach of contract in failing to pay letting commission of £690 before deduction of tax, and is ordered to pay the claimant that sum.**
- 3. The claim for expenses fails.**
- 4. The respondent dismissed the claimant with contractual notice, but did not pay her during the period of notice, and is ordered to pay her £1,232.83.**

REASONS

- 1. On 25 January 2019 the claimant presented a claim to the employment tribunal for unpaid wages, commission, expenses and pay in lieu of notice.**
- 2. The employment tribunal sent the claim to the respondent asking for a response in 14 days, first (10 May 2019) to the address given on the early conciliation certificate and then (31 May 2019) to the address stated on the ET1 claim form.**

3. Each letter to the respondent notified a hearing of the claim on 12 August 2019.
4. The respondent has not responded to the claim.
5. The hearing was postponed on 9 August because of a shortage of judicial resource and the parties were notified that a default judgment would be entered.
6. There has been no further communication from the respondent.
7. The claimant was asked on 28 November to supply contract documents, payslips and other evidence of loss so that remedy could be assessed. She has supplied a table of deductions, her payslips, the contract of employment, and a narrative of alterations to the contract and of how the contract of employment was terminated.
8. Rule 21 of the Employment Tribunal Rules of Procedure 2013 provides:

Effect of non-presentation or rejection of response, or case not contested

21 (1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

9. On the basis of the material provided by the claimant I have made the following determinations:

Unpaid Wages

10. The claimant was to be paid £9 per hour. Normal hours of work were not specified. She was paid by monthly bank transfer. Her complaint is that although an accurate assessment of her hours worked and gross wages was made each month from April to December 2018, and the net pay after deduction for PAYE and NI was calculated, she was not always paid the net amount in full.
11. The following shortfalls occurred: July £286.54, August £1,370.28, September £301, October £349.96. That totals £2,049.78. From that I deduct overpayments made to her by the respondent in April (£6.50) and June (£63.10), to reach a net total of £1980.18. That is an amount net of statutory deductions, which do not appear to have been paid to HMRC by the respondent. The claimant, if she receives money under

this judgment, has to pay income tax on any amount received for wages under this judgment. I have therefore grossed it up for 20% basic rate tax payable, to £2,475.23.

12. No payslip was provided in December, when she worked some hours and was off sick for some days. She was not paid £551.17 for hours worked or £276.17 for sick pay. Those are calculated before tax. Adding those amounts to the grossed up figure for the earlier months, the total in unpaid wages is £3,302.65.

Commission

13. The contract provided for the claimant to be paid £50 per successful letting. She states this was then orally varied to £30 per letting. During the contract there were 23 lettings. She did not receive commission. The amount due is £690.

Expenses

14. The claimant has added to the claim £768 plus VAT, total £921.60, for expenses, but does not say what they are or how they were incurred. The contract of employment states at paragraph 7: "you have no authority to incur expenses". Given this, and the lack of any breakdown or explanation of how she incurred expenses on her employer's behalf in the course of employment which ought to have been reimbursed, this claim is not proved. If the claimant intended by "expenses" to mean the costs of bringing a claim, that cannot be a claim in breach of contract, or a claim for unpaid wages under sections 13-27 of the Employment Rights Act 1996.

Pay During Notice

15. The claimant states she was dismissed by email of 18 December 2018 notice to expire on 18 January 2019. By contract she is entitled to one calendar month's notice of termination. Averaging gross wages for September, October and November, one month's pay is £1,232.83 gross. An order is made for payment of that sum.

Employment Judge Goodman

Date 8 January 2020

JUDGMENT SENT TO THE PARTIES ON

14 January 2020

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FOR THE TRIBUNAL OFFICE