



EMPLOYMENT TRIBUNALS

Claimant: Miss C Santos Perez

Respondent: Beaumont Juicer & Deli Limited

Heard at: London Central Employment Tribunal **On:** 8 January 2020

Before: Employment Judge Davidson

Representation

Claimant: in person

Respondent: did not attend

JUDGMENT

The respondent is ordered to pay to the claimant the following sums:

1. £306 gross as arrears of pay
2. £513 gross as holiday pay

REASONS

1. This claim was originally listed for hearing on 21 October 2019. The claimant did not attend that hearing as she was not aware of it. The respondent's representative attended by chance, having seen the claim on the cause list. At that hearing, it became apparent that the respondent had not received the claim and it was therefore re-served on the respondent at its registered office. The respondent then submitted an ET3.
2. The claim was relisted for today at 2pm. The claimant attended but the respondent did not attend. On checking with the respondent's representatives, it appeared they were not aware of today's hearing and it is not clear from the file whether a valid Notice of Hearing had been sent out.
3. I considered whether it was appropriate to proceed with the hearing in the absence of the respondent. I determined that it was appropriate to continue, in view of the overriding objective. I took into account that it would be disproportionate to list this hearing for a third time, given the amounts involved. I also considered that, if there were sums owing to the claimant, these had been outstanding for over a year.
4. I had the benefit of the respondent's pleading in its ET3 and email exchanges between the claimant and the respondent on the subject of arrears of pay.
5. It was difficult to reconcile the exact amounts of money due and money paid from the information before me but the respondent accepts that the claimant worked

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for £9.00 an hour and, during the course of her employment, she worked 482 hours. The monthly breakdown in the ET3 of hours is not consistent with the amounts the claimant was allegedly paid. On further enquiry, the amounts presented in the ET3 as gross payments were in fact the amounts received by the claimant in her bank account and were presumably therefore the net amounts. The position was not helped by the absence of proper payslips.

6. The claimant's position is that the respondent paid her for 94 hours in December but she worked for 128 hours in total. She provided a daily breakdown of the hours she worked in December. She confirmed she had no issue in relation to October and November pay.
7. The claimant told me that there was an outstanding issue regarding submissions to HMRC but I said that this was not an issue before me.
8. On reviewing the correspondence between the parties following the claimant's request for payment for her December hours, it is clear that the respondent has sought to penalise her for not giving a week's notice by deducting a week's pay and telling her that she had forfeited her right to holiday pay. On 15 January 2019, Luis Ventura of the respondent wrote to the claimant

"As per your contract you didn't resign as you should have done and the moment you leave without following your obligations you lose the holiday pay and we're deducted a week's wages".
9. I have reviewed the contract and the requisite notice was, in fact, 48 hours as the claimant had less than 3 months' service. In any event, I find that there was no provision in the contract allowing for deduction from wages in the event of failure to give notice. I also find that, if there had been such a clause, it is likely to be unenforceable as being a penalty for breach and not a genuine pre-estimate of damages flowing from the breach.
10. In the light of my comments regarding the respondent's decision not to pay arrears of pay and holiday pay due to the claimant's apparent breach, I do not need to consider whether the claimant's failure to give notice (if there was such a failure) was in response to a fundamental breach of contract by the respondent (shouting at her and throwing crockery), as alleged by the claimant.
11. I find therefore that the respondent has made an unlawful deduction from the claimant's wages of **£306**, representing 34 hours which she worked, in respect of which she received no pay.
12. I also find that the respondent is required to pay the claimant holiday pay pursuant to her contract and to the statutory provisions in the Working Time Regulations 1998 (as amended). I calculate this to be **£513** based on the proportion of the holiday year worked by the claimant and the fact that she had no holiday days within that period.

Employment Judge Davidson

Date 8 January 2020

JUDGMENT SENT TO THE PARTIES ON

13 January 2020

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FOR THE TRIBUNAL OFFICE