



EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant
MS J RYAN**

AND

**Respondent
ASDA STORES LTD**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: WREXHAM ON: 21ST JULY 2016

**EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)**

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MS E WILLIAMSON (COUNSEL)

JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim for unpaid wages is well founded.
- ii) The respondent is ordered to pay the claimant the sum of £57.64.
- iii) The respondent is directed to make any further written representations as to its liability to pay the claimant's issue and hearing fees within 14 days of promulgation of this judgment.

Reasons

1. This is the judgment of the tribunal in relation to a case that I heard as long ago as July 2016. For reasons which are not at all clear a judgment was not issued at the time, a fact of which I was unaware until relatively recently. I apologise profoundly to both parties for the delay in promulgating the judgment.
2. By her original claim form the claimant sought £253 in unpaid wages together with what she described as “compensation” for failure to pay of 20% of £253 (£33.60 for 17 weeks) and 20% of £85 (£17 for 9 weeks). The total claim was for ££977.20. Although not strictly relevant as the sum of £253 included the £*5 allegedly owed this appears to include an element of double counting.
3. On 19th June 2016 the claimant supplied further calculations of underpayment claiming an underpayment of £150.74 from pay on 9th January 2016; £83.41 underpayment for pay due on 5th March 2016 together with £30 in bank charges, and a further £31.30 in travel costs and “compensation” , at this point calculated as 10% of the sums claimed for four months.
4. During the course of the hearing the dispute was clarified and the dates of disputed underpayment are;- 6/12/15; 20/12/15; 27/12/15; 31/12/15; 1/1/16 and 6/1/16. It is now agreed that the correct payments were made for the other dates which were originally asserted by the claimant to have been underpaid.
5. Moreover it is agreed by the respondent that some sums are due to the claimant. These are :-

6/12/15 – 30 minutes at £6.76 per hour (£3.38)

20/12/15 + 27/12/15 – The claimant worked 5.5 hours each day and has been paid for 5 (taking into account 30 minutes unpaid lunch break). However on both days 14 minutes at the rate of £6.76 is owed in relation to the clocking in system rounding down the claimant’s hours. (£3.38 in total)

1/1/16 – It is accepted that the claimant worked 4 hours at £10.15 per hour (£40.60).

3/1/15 - Again due to clocking in rounding down it is accepted that the claimant is 10 minutes at £6.76 per hour. (£1.13)

Total accepted - £47.49

6. The amounts remaining in dispute are 30 minutes per day for four days (6 + 20 + 27 + 31 December 2015). This is claimed on the basis that the claimant worked through her break but she has been automatically deducted 30 minutes form her total hours for breaks which she did not in fact take. The respondent does not accept this. In essence the respondent’s position is that the most likely explanation for the actual times of the claimants break not having been recorded

on the clocking in/out system is that she simply did not clock in/out rather than not taking the break at all.

7. The narrative set out above is based upon the respondent's summary which accords with my recollection of the concession made in cross examination of the claimant. In her own written summary the claimant suggests that there was agreement not to £47.49 owing but to £81.89, which is essentially based on the proposition that there is an agreed shortfall in January 2016 of £112.91 from which subsequent deductions have been made. It is not entirely clear to me from the claimant's written submission as to what concessions made in cross examination she now resiles from. However the respondent's assertion that the dates set out above are those in respect of which there is a dispute accords with my recollection. Accordingly on the basis of the evidence given at the hearing I accept that there is a sum of £47.49 owing to the claimant.
8. That leaves the resolution of the issue as to the unpaid breaks. The claimant is nothing if not precise and I am satisfied that she was giving wholly truthful evidence which I accept. On that basis I uphold the claimant's claim, which she puts at a total of £10.15 in her written summary.
9. Accordingly I uphold the claimant's claim for unpaid wages in the sum of £57.64.
10. The claimant's further claims relate to bank charges and out of pocket expenses. Both are amounts which can in principle be recovered. In respect of the bank charges as was pointed out orally during the hearing, there was no evidence before me in support of them. In her written submission the claimant claims a total of £30. The difficulty without seeing any supporting evidence lies in knowing whether the sums would have been incurred even if the dispute payments had been made promptly. On the basis of the evidence before me it is not possible to uphold this part of the claim.
11. In respect of the costs incurred, the tribunal's specific powers only extend to a costs order or preparation time order, neither of which are in fact claimed. In any event the tribunal's powers to make costs orders are limited. Put simply in this case both parties have succeeded in part, and it could not be said to be unreasonable for either party to have brought or defended the claim. In those circumstances I would not in any event have exercised my discretion to make an award of costs.
12. That leaves the issue of the tribunal fee which ordinarily would be awarded to the claimant as she has succeeded at least in part in her claim. In its written submissions the respondent asks the tribunal not to make this order to but allow it to make representations based upon pre hearing without prejudice correspondence. In the original notes of this judgment the respondent was to be given 14 days to make further written representations as to the fees. The EJ appreciates that such an order will prolong already delayed proceedings, but in fairness to the respondent that delay has not been its fault and accordingly the order is made as originally drafted.

**Judgment sent to the parties on
3 April 2017**

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for Secretary of the Tribunals

EMPLOYMENT JUDGE
Dated: 31 March 2017