



THE EMPLOYMENT TRIBUNALS

Claimant
Ms J Cansado-Fernandez

Respondent
Mr Christopher Simpson-Daniel (trading as
“ The White Rose Hotel and Farsight Security)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT MIDDLESBROUGH **ON 6th February 2018**
EMPLOYMENT JUDGE GARNON (sitting alone)

Appearances

For Claimant: in person
For Respondent: no attendance

JUDGMENT

The Judgment of the Tribunal is :

- 1 The name of the respondent is amended to that shown above without the need for re-service
- 2 The claim for compensation for untaken annual leave is well founded and I order the respondent to pay compensation of £711.89 gross of tax and National Insurance
- 3 The claim of unlawful deduction from wages is well founded and I order the respondent to repay £685 gross of tax and National Insurance
- 4 I make an additional award under s 38 of the Employment Act 2002 (the 2002 Act) that the respondent pay to the claimant £1600.

The total payable to the claimant under this judgment is £2996.89

REASONS

1.. The claimant gave evidence and produced a small bundle of documents. Her claim form named two respondents: The White Rose Hotel and Farsight Security at the same address 12, Bedale Road, Leeming Bar, Bedale , North Yorkshire . A Companies House search shows The White Rose Hotel as having its registered office at that address but it was dissolved on 27th January 2015 so cannot have been the claimant’s employer when she started, because it did not then exist. Two companies the names of which start with Farsight Security have registered offices in Hampshire and Cambridgeshire respectively. The claimant has heard of neither.

2. The person who offered the claimant the job , and whom she understood to be the owner/ operator of The White Rose Hotel was Mr Christopher Simpson-Daniel . He also had a business called Farsight Security and sometimes, though her payslips showed only The White Rose Hotel, the payments to her came from Farsight Security which is why she named both on the claim form. I am satisfied Mr

Christopher Simpson-Daniel entered into the contract of employment with the claimant and, even if he intended to do so on behalf of some company, he did not reveal its name. He is liable as principal or agent for an undisclosed principal.

3. The amendment I make is simply to put the name of a person to the trade names he used. The claim was presented on 8th December 2017 and two notices of claim were sent to the two trade names of respondent **separately** on 11th December 2017. All letters from the Tribunal have stamped on the back the title “ Employment Tribunal “ and a return address in case of non delivery. Neither has been returned.

4 Before presenting her claim the claimant had engaged on 1st October in Early Conciliation (EC) through ACAS against both trade names. On 5th October ACAS issued two EC certificates. The claimant showed me today emails from ACAS dated 30th and 31st January showing the respondent inviting her to quantify her claim via ACAS and her doing so. The White Rose Hotel where the claimant worked is close to her home. It is still open and there is no evidence it is under different ownership. It is plain the respondent knew of these proceedings and has ignored them.

5. No response was received by the due date of 8th January 2018 The file was reviewed by Employment Judge Shepherd who felt it was not possible to issue a Rule 21 judgment without determining who was the correct employer. He ordered this hearing to remain listed to afford an opportunity to clarify that . The respondent had been given notice of the hearing may have been entitled to participate on remedy. The respondent did not attend. I am satisfied no injustice is done by amending the name of the respondent and dealing with the hearing his absence

6. Section 1 of the Employment Rights Act 1996 (the Act) requires every employee to be given within two months of starting a written statement of terms and conditions of employment, which includes the name of the employer. The claimant started on 27th April 2017 and resigned on 20th August 2017. She was never given such a statement. Section 38 of the 2002 Act applies to these claims and says:

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996,

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

7. The relevant law relating to unlawful deduction of wages is in s13 of the Act :

(1) An employer shall not make a deduction from wages of a worker employed by him unless —

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction”.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a) in one or more **written** terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in **writing**) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker **in writing** on such an occasion.

Section 23 includes

“(1) A worker may present a complaint to an Employment Tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 ...”.

The remedy should I find the complaint well founded, is set out in section 24 and includes the power to order the employer to pay the amount of any deduction made.

8. The respondent made a deduction from the claimant’s pay of £400 for failure to give notice of termination and another £285 due to the state of the kitchen . The claimant was entitled due to his conduct to terminate without notice. She had not given prior consent to either deduction and there was no relevant provision of her contract authorising them .

9. The law in relation to annual leave is contained in the Working Time Regulations 1998. Regulation 14 says:

(1) This regulation applies where -

(a) a worker's employment is terminated during the course of his leave year, and
(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be -

(a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal

to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula -

$$(A \times B) - C$$

where -

A is the period of leave to which the worker is entitled under regulation 13(1);

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

The leave year in the absence of a relevant agreement (which is defined as being an agreement **in writing**) commences on the anniversary of the start date . The claimant worked for 116 days during which she took no paid leave.

10. The amount of the claimant's week's pay calculated in accordance with Chapter 2 of Part 14 of the Act was £400 gross. There was no relevant agreement. She had worked for 116 days . 5.6 weeks pay at £400 per week divided by 365 and multiplied by 116 produces ££711.89.

11. As for the additional award under s 38 of the 2002 Act the higher amount is appropriate. Had the respondent complied with his obligations there would have been no doubt as to his proper identity, the claimant would have been saved time and expense , as would ACAS and the Tribunal service.

Employment Judge Garnon
Date signed 6th February 2018