



EMPLOYMENT TRIBUNALS

Claimant

Ms N Jones

v

Respondent

**Octmarwat Ltd T/a Gymboree
Watford**

PRELIMINARY HEARING

Heard at: Watford

On: 14 August 2018

Before: Employment Judge R Lewis

Appearances:

For the Claimant: In person

For the Respondent: No attendance or representation

JUDGMENT

1. The respondent is correctly named above.
2. The claimant's claims are upheld and the respondent is ordered to pay to the claimant the gross sums of £792.00 in respect of arrears of pay and £1,017.90 in respect of holiday pay, a total of £1,809.90 gross.
3. The respondent may comply with this order by deducting and accounting for statutory deductions (tax and national insurance) and paying the net balance to the claimant; but if it does so, it must send the claimant documentary proof of having paid the deductions to the appropriate authority, and if it fails to do so, it must pay the entire gross sum to the claimant.

REASONS

1. I give these reasons in the interests of justice, in the absence of a request for them from either side.

Procedural background

2. By a claim form presented on 15 February 2018 the claimant claimed arrears of pay and holiday pay. She had been employed by the respondent from 15 June 2017 until 16 or 17 December 2017.
3. Notice of this hearing was given when the claim was served on 27 February.
4. By its response the respondent offered to pay the claimant sums which it calculated as the net sums due in respect of 88.5 hours unpaid work, and for 10 days holiday pay.
5. The response form contained an open offer of settlement. On 27 July, and on 3 August, the respondent wrote to the tribunal to say that the claim was being settled. When telephoned by tribunal staff on 13 August to confirm today's hearing, Mr Lal reportedly said that the respondent would not attend as the case was settling. The tribunal file did not contain notification of settlement from ACAS. The claimant told me that there had been no settlement. I did not permit her to describe to me the course of the negotiations through ACAS.
6. The tribunal had no written material or submission from the respondent apart from the response form ET3.
7. The claimant presented a bundle, and briefly answered questions.

Identity of respondent

8. The claimant's written terms and conditions of employment named the employer as Octmarwat trading as Gymboree Watford.

Arrears of pay

9. The claimant said that she had not been paid for the period 1-16 December 2017 inclusive. She showed me an email from Mr Lal dated 4 January 2018, in which he gave a reason for not paying her which seemed to me to have no basis in law.
10. The claimant produced time sheets for December, which showed that she had worked 88 hours. Her rate of pay was £9.00 gross. She has therefore been underpaid by £792.00, which I award in her favour.

Holiday pay

11. The claimant worked for just over 27.5 weeks for the respondent, and her terms and conditions provided for 28 days holiday per year. She told me that she had taken no paid holiday.
12. I calculate her entitlement to holiday as rounded to 14.5 days (28 x 27.5 :- 52).

13. I accept that the claimant's usual working pattern was 6.5 hours per day, over a five day week, a week of 32.5 hours.
14. I accept the claimant's submission that due to staff shortages in her last three months of employment, she worked for six days per week rather than her usual five, a week of 39 hours. I have based my calculation on this figure, which for purposes of calculation I have taken as equivalent to a working day of 7.8 hours (39 -:5).
15. I have therefore calculated her holiday pay entitlement as 14.5 x 7.8 x 9, a total of £1,017.90). I apologise to the claimant for having miscalculated this sum at the hearing.

Gross or net payment

16. The claimant is no longer employed by the respondent. The correspondence of January 2018 indicates bad feeling between the parties. I have made provision for gross or net payment.
17. I record having told the claimant that I have ordered the option of gross payment on the understanding that if that is what happens, she will be duty bound to make appropriate arrangements with HMCTS.

Other matters

18. The claimant had raised a number of other points, matters and issues in the claim form and correspondence. I make no order about any of them.

Employment Judge R Lewis

Date: 31 August 2018

Sent to the parties on:

For the Tribunal:

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