



EMPLOYMENT TRIBUNALS

Claimant: Miss P Baker
Respondent: Richard Martin t/a Blazing Donkey
Heard at: Ashford
On: 20 February 2019
Before: Employment Judge Pritchard

Representation
Claimant: In person
Respondent: No appearance

JUDGMENT

The Respondent made unlawful deductions from the Claimant's wages and the Respondent is ordered to pay to the Claimant the sum of £1,354.59

REASONS

- 1 By way of an ET1 Claim Form presented on 25 June 2018, the Claimant claims that the Respondent has failed to pay her wages referable to work undertaken in May 2018. The Respondent did not present a response to the claim.
- 2 Judgment was not entered under Rule 21 of the Employment Tribunals Rules of Procedure 2013 (a default judgment). Rather, a final hearing was listed to take place on 23 August 2018. That hearing was postponed because the Claimant had broken her wrist and was unable to attend.
- 3 By letter dated 1 November 2018, the parties were informed that an Employment Judge would conduct a preliminary hearing today, 20 February 2019 at 10.00 am, to identify the issues and make case management orders. The case came before me this morning.
- 4 It was clear that the notice sent to the parties informing them of a preliminary hearing was sent in error: the parties should have been informed them that the hearing today would be a final hearing.

- 5 The Claimant attended the Tribunal but the Respondent failed to do so.
- 6 I was minded to convert the hearing from a preliminary hearing to final hearing under Rule 48. This would have been in accordance with the overriding objective contained in Rule 2. I was mindful that if I was to convert the hearing to a final hearing the Respondent was entitled to take part in the proceedings as recently stated in Office Equipment Systems v Hughes 2018 EWCA Civ 1842 CA. Therefore, in accordance with Rule 47, I instructed the clerk to make telephone enquiries of the Respondent about the reasons for his non-attendance. The Respondent told the clerk that he was nearby and would attend but was not sure what time he would arrive because he had car problems. The clerk asked the Respondent if he wanted the Tribunal hearing to await his attendance but the Respondent told the clerk that the hearing should commence and that it was “ok” if the hearing finished by the time he arrived. I delayed commencing the hearing until 10.30 am but the Respondent failed to attend.
- 7 The Claimant was happy for the preliminary hearing to be converted to a final hearing. I was satisfied that, in the circumstances, the Respondent would not be materially prejudiced by the change: he had failed to present a response; he had been given the opportunity to attend the hearing today but failed to do so despite the delay in the start time of the hearing; he had indicated that it was “ok” if the hearing had concluded by the time he arrived at the Tribunal. Accordingly, I converted the preliminary hearing to a final hearing.
- 8 The issue for my consideration was whether the Respondent had made unlawful/unauthorised deductions from the Claimant’s wages.
- 9 I heard wholly credible evidence from the Claimant under oath. I accept without hesitation what she told me. I make the following findings of fact.
- 10 The Respondent owns and operates a venue and bed and breakfast. The Claimant commenced employment for the Respondent on 5 April 2018 as a Catering Assistant. The Respondent did not provide the Claimant with a written statement of employment particulars or any other written documentation setting out the terms of her employment. It was agreed that she would be paid for the hours she worked at the rate of £7.83 per hour. For work undertaken in April 2018, the Claimant was paid in mid-May 2018.
- 11 The Respondent suffered a rapid staff turnover. According to the Claimant this was because they were unpaid by the Respondent. The Respondent demanded that the Claimant carry out more and more hours and required her to undertake bed-making duties and breakfast cooking duties in addition to her catering assistant duties. Matters reached a head when, on 26 May 2018 after the Claimant had worked long hours over the previous days, the Respondent told the Claimant she was required to return to work to carry out an evening shift. The Claimant refused to do so. Although the Claimant worked a shift the following day, Sunday 27 May 2017, her employment terminated that day. The Respondent told the Claimant “Fuck off I am not paying you. You can take me to the tribunal so fuck off”. The Respondent failed to pay the Claimant for the work she had undertaken in

May 2018 and the wages remain unpaid.

- 12 Section 13 of the Employment Rights Act 1996 provides that an employer must not make a deduction from a worker's wages employed by him unless the deduction is required by statute, under a relevant provision in a worker's contract, or the worker has previously signified her written agreement or consent to the making of the deduction. A deficiency in the payment of wages properly payable is a deduction for the purposes of this section.
- 13 The Claimant worked 173 hours in May 2018. Wages were properly payable to her in the sum of £1,354.59 and judgment is entered accordingly.

Employment Judge Pritchard

Date: 20 February 2019