



EMPLOYMENT TRIBUNALS

Claimant: Mr Bina Rana Magar
Respondent: Pillbox Chemists Limited
Heard at: Reading **On: 31 January 2019**
Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: In Person
For the Respondent: Not attending and not represented

JUDGMENT

1. The correct title of the respondent is Pillbox Chemists Limited. Pillbox Chemists Limited is substituted for Davinder Virdee as respondent to the proceedings pursuant to rule 34 of the Employment Tribunals Rules of Procedure 2013.
2. The respondent made an unlawful deduction from the claimant's wages. The respondent is ordered to the claimant the sum of £1786.25.

REASONS

The parties

1. In a claim form presented on the 1 March 2018 the claimant made a complaint against Davinder Virdee. The claimant claimed unpaid wages and notice pay. In response dated 12 April 2018 the respondent denied the claimant's claims and purported to make an employer's contract claim. In the response section 2.1 was completed in the following way: "Davinder Virdee C/O Pillbox Chemists Ltd." The claimant's contract of employment does not state explicitly who the employer is, however, the only sensible reading of the contract having regard to the whole document is that it is a contract between the claimant and Pillbox Chemists Ltd. In the way that the response has been completed I am satisfied that the correct respondent in this case is Pillbox Chemists Ltd. I am further satisfied that the response sent to the employment tribunal on the 12 April 2018 was intended as a response from Pillbox Chemists Ltd.
2. I have considered the provisions of rule 34 of the Employment Tribunals Rules of Procedure 2013 (the rules) which provides: "The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice

to have determined in the proceedings; and may remove any party apparently wrongly included.”

3. I have therefore substituted Pillbox Chemists Limited for Davinder Virdee as a respondent to the proceedings.

The claimant’s claims

4. The claimant’s contract of employment requires the employer and employee to give four weeks’ notice of termination of the employment. The claimant gave the respondent the appropriate notice and worked until 22 December 2017 when her employment came to an end.
5. The claimant received her pay slip for the month of December which showed the claimant’s basic pay as £1,123.66. The claimant states that this figure is wrong and in fact should have been £1583.33. The claimant told me that the reason that the figure is wrong is because the respondent has made a deduction for ‘training costs’ in the sum of £459.67. I accept the claimant’s evidence on this.
6. The claimant was not paid her December salary which should have been £1583.33 before deductions.
7. The claimant also states that in April 2017 the respondent made a deduction from her salary in the sum of £192.92. The claimant says that this deduction was made in respect of training. I accept the claimant’s evidence.
8. The claimant has further stated that she was never provided with any training by the respondent during her employment. I accept the claimant’s evidence.
9. The claimant produced a copy of her contract of employment. The contract provides at Clause 11 the following:

“Other Staff Training courses

If Pillbox Chemists enrolls you on to a course other than the above during your employment the following will apply:

To be specific, the requirements are as follows:

You will be required to complete a training agreement form which will be supplied Head Office.

If you leave your employment during the training or within one year of completing the course, Pillbox Chemists Limited will require you to pay back the entire costs of the course.”

10. The claimant stated that she was never provided with any training as described in the above clause that would have required the claimant to pay back any training costs. It is to be noted that the clause did not permit the respondent to charge the claimant for training. It only allowed recovery

if the claimant left employment “during the training or within one year of completing the training”. This does not apply in the claimant’s case.

11. The claimant is therefore entitled to recover £1583.33 for December 2017 salary and a further £459.67 in respect of the underpayment of her April 2017 salary.

Employers Contract Claim

12. The employer’s contract claim purports to make three claims; (i) a claim for training costs, (ii) expenses incurred in respect of the claimant’s breach of notice requirement of her contract and (iii) damages for an information governance breach. The employers contract claim was not accepted by the employment tribunal or the claimant required to respond to the claim. Had the claim been accepted the claimant would in any event have been dismissed.
13. The reasons why the employer’s contract claim would have been dismissed can be shortly stated. For the reasons set out above the respondent was not entitled to recover any training costs. As set out above the claimant gave the appropriate notice period required by the contract.
14. The respondent has merely stated that it has a claim for damages for an information governance breach. There is no explanation of how the claim arises in fact and on what legal basis the claim has been brought. On the information before me the claim does not appear to be within the jurisdiction of the employment tribunal due to the nature of the complaint. If the claim is within the jurisdiction of the employment tribunal it is unparticularised and therefore could not sensibly be responded to and so would have been rejected.

Respondent’s failure to attend

15. Where a party fails to attend a hearing the rule provide that: “ If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence.” The respondent has failed to contact the employment to explain why it is not present. I decided that the appropriate course was to proceed with the hearing as the claimant was present and ready to go ahead.

Employment Judge Gumbiti-Zimuto
Date: 31 January 2019
Sent to the parties on:
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For the Tribunals Office