



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs D Rae

v Alexander Fisher Recruitment Limited

Heard at: Watford

On: 23 January 2020

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant:

Not present or represented

For the respondent:

Mr J Fisher, Director, and Mrs H Fisher, Director

JUDGMENT

The claims of unlawful deduction from wages, for unpaid holiday pay and for damages for breach of contract are not well-founded and are therefore dismissed.

REASONS

- 1 The claimant did not attend the hearing of 23 January 2020. When asked by the clerk who called her about 20 minutes after the scheduled start time of 2:00pm whether she was going to attend, she said (as reported by the clerk to me) that she had received a telephone call from her doctor requiring her to go and take a blood test.

2 In the circumstances, rule 47 of the Employment Tribunal Rules of Procedure 2013 applied. That provides:

“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.”

3 The respondent is a small employer. It attended through its two directors, Mr and Mrs Fisher. The amount of money claimed by the claimant was apparently small, and it appeared to me to be in the interests of justice to hear what the respondent’s evidence on the claim was and to be prepared to give judgment on the basis of what I heard and the balance of probabilities: whether for or against the claimant. I therefore proceeded with the hearing.

4 The respondent put before me copies of pay slips and a bank statement in the form of a print-out of the results of a search online of its bank account, showing payments made to the claimant.

5 After hearing from Mr and Mrs Fisher, I concluded that the respondent had deducted from the claimant’s pay for January 2019 a sum in respect of sick pay which had been paid to the claimant in 2018 to which the claimant had not been entitled. That was a deduction falling within section 14 of the Employment Rights Act 1996, and was therefore not a breach of section 13 of that Act. It involved the recovery of an overpayment, which was clearly lawful as far as the law of restitution was concerned and therefore it was not a breach of the claimant’s contract of employment. (I noted that the claimant was not given written terms of employment, and that the respondent had erroneously believed that it was not necessary to give an employee who is in his or her probation period such written terms. As I said at the hearing, there was nevertheless a contract of employment in place.)

6 The pay slips and bank statement showed that the claimant had been paid the other payments which she claimed had not been paid, except for the claimed fuel expenses in the sum of £27.35. That sum, Mrs Fisher told me, had not been claimed by the claimant in the manner required by the respondent, namely via an expenses claim form, in which the claimant would have had to state the purpose of the journey and with which the claimant would have had to furnish any applicable receipt. In the light of that evidence, I concluded that the claimant’s entitlement to expenses was conditional on her making a claim via the respondent’s expenses claim form. Since she had not made a claim in that way, the sum of £27.35 was not owed by the respondent to the claimant.

7 For all of the above reasons, the claimant's claims did not succeed.

Employment Judge Hyams

Date: 23 January 2020

JUDGMENT SENT TO THE PARTIES ON

.....

06/02/2020
FOR THE TRIBUNAL OFFICE