



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Miss D Covaciu

Mini Market Oltenia Limited

HELD AT Birmingham by CVP

ON 22nd February 2021

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: No appearance

For the respondent: Mrs Daniela Dumitrascu

JUDGMENT

The claimant's claim for unpaid wages is not well founded and is dismissed.

REASONS

Background

1. By a claim form presented to the Tribunal on 20th August 2020 the claimant brought a claim for two months' unpaid wages in the sum of £1,422. The respondent was named as Mrs Daniela Dumitrascu.
2. The Response was filed by Mrs Dumitrascu in the name of Mini Market Oltenia Limited. It was disputed that the claimant is entitled to any monies on the basis that when she was asked to return to work following a period of furlough she refused to do so.

3. On 5th December 2020 the Tribunal issued case management orders. This included requiring the claimant to provide a Schedule of Loss by 31st December 2020 and witness statements being exchanged by 18th January 2021. The claimant failed to provide a Schedule of Loss.
4. On the same day the Tribunal, by way of a separate letter, asked the claimant to make comments in relation to the correct name of the respondent. The claimant did not respond.
5. The “Code V” in the heading indicates that this has been a remote hearing which has not been objected to by the parties. The form of remote hearing was via CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
6. The claimant did not attend. The clerk emailed and called the claimant but was unable to make any contact with her. After waiting half an hour I decided to commence the hearing.

Evidence and document

7. I heard evidence from the Mrs Dumitrascu.
8. As well as considering the pleadings I considered some 15 pages of additional documents produced by the respondent.

Issues

9. The issue for the Tribunal to consider was whether the claimant was entitled to a further two months’ pay?

Facts

10. I make the following findings of fact:
 11. The claimant commenced his employment with the respondent on 10th January 2020. She was employed as a Sales Assistant undertaking 20 hours per week earning £8.21 per hour. The claimant’s contract of employment stated that her employer was Mini Market Oltenia Limited. The claimant’s contract was silent on the point of notice.
 12. In January and February 2020 the claimant earned the sum of £711.56 gross per month. In March 2020 the claimant earned £569.20. From 1st April 2020 the claimant was placed on furlough and earned £455.46 per month for April, May and June 2020. The claimant’s wage slips showed that her employer was Mini Market Oltenia Limited.
 13. On 21st June 2020 Mrs Dumistrascu asked the claimant to return to work however the claimant refused to do so. The evidence of Mrs Dumistrascu was that the claimant preferred to remain at home looking

after her children as she was in receipt of Universal Credit and was financially better off staying at home rather than returning to work.

14. Mrs Dumitrascu denied the allegation made in the Claim Form by the claimant that she refused to return to work as she was being to sell products that were out of day. Indeed, Mrs Dumitrascu asserted that the Health and Safety Executive inspectors came to her Mini Market and that they were satisfied that there had been no breaches of health and safety regulations.
15. The claimant was given an opportunity to return to work but she failed to do so. Her employment came to an end on 1st July 2020.

Applicable law

16. Article 3 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, SI 1994/1623 provides:

“Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or a sum due, in respect of personal injury) if –

- (a) the claim is one to which section 13(1) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force would have jurisdiction to hear and determine;*
- (b) the claim is not one to which article 5 applies;*
- (c) the claim arises or is outstanding on the termination of the employee’s employment.”*

17. The exclusions set out in article 5 are not applicable to these circumstances. As such, I am satisfied that the Tribunal has jurisdiction to hear the claimant’s claim.
18. The maximum amount of damages that may be awarded under the Order is £25,000.

Submissions

19. Mrs Dumitrascu asserts that the claimant was asked to return to work but refused to do so. Notwithstanding this she was paid until the end of June 2020. As such she is not entitled to receive any further monies let alone a further 2 months’ pay.

Conclusions

20. In reaching my conclusions I have considered all the evidence I have heard and considered documents to which I have been referred. I have also considered the oral submissions made by Mrs Dumitrascu.

21. I am satisfied from the evidence before me that the correct name of the respondent is Mini Market Oltenia Limited and not Mrs Dumistrascu. The claimant's contract, wages slips and P45 were issued by Mini Market Oltenia Limited and not Mrs Dumistrascu. As such, I am satisfied that Mini Market Oltenia Limited is the correct employer. I am also satisfied that the claimant has no entitlement to a further 2 months' pay and given that she was paid for the whole of June 2020 she has received her statutory notice of 1 week.

22. As such the claimant's claim fails and is dismissed.

Employment Judge Choudry
22 February 2021