Case Number 1303600/2021
Type V

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Miss L Thompson		**Mrs Parker's Sandwich Shop**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham **ON** **4 February 2022**

EMPLOYMENT JUDGE CLARKE

Representation
For the Claimant: **No appearance**
For the Respondent: **Vicky Hilton**

The judgment of the tribunal is that:

1 The name of the Respondent is amended to Vicky Hilton trading as Mrs Parker's Sandwich Shop.

2 The claim for unlawful deduction of wages is dismissed.

3 For the avoidance of doubt, any claim for breach of contract is dismissed.

REASONS

(*Judgment with full reasons was delivered orally on 4 February 2022 and the Respondent requested written reasons at the conclusion of the hearing.*)

Preliminary matters

1 The Claimant did not attend today's hearing.

2 The Claim was received on 23 August 2021, and the parties were sent a Notice of Hearing in respect of today's hearing and a Case Management Order on 27 August 2021. The Claimant's address on the Notice and Order matches that on the ET1 and the Respondent confirmed that she had received the Notice and Order.

3 The Tribunal sent the Claimant joining details for the hearing by email on 2 February 2022 and the Claimant replied, "I am at work on Friday what do I do?"

4 The Tribunal staff made a number of attempts to contact the Claimant today by telephone, but there was no answer.

5 I considered the non-attendance of the Claimant under Rule 47 of the Employment Tribunal Rules 2013, which gives me the power to dismiss the claim or to proceed in the Claimant's absence. I decided to proceed in her absence because:

a) The Claimant had notice of the hearing from 27 August 2021.
b) The Claimant received joining details for the hearing on 2 February 2021.
c) The Claimant indicated that she would be at work today, but had not applied to postpone the hearing. In the circumstances she ought to have taken time off work to attend the hearing.
d) The Claimant did not make any further contact with the Tribunal and did not answer her telephone today.
e) The Respondent attended and wished to proceed today.
f) Neither party had complied with an order to produce witness statements or documents and so they were on an equal footing in that respect.

6 I did not consider that it would be consistent with the Overriding Objective to adjourn the hearing. The Claimant knew about the hearing and had not applied to adjourn. The claim is of relatively modest value and it would be fair and just to proceed today so as to avoid delay and to save expense.

The Claim

7 The ET1 states that the Claimant was employed by the Respondent from 23 April 2018 to 14 May 2021. The Claimant has ticked "I am owed notice pay" as the type of claim. At box 8 the Claimant states:

"So I started at Mrs parkers April 23rd 2018 and didn't get payed till the end off June, I done a month in hand and I never got this back when I left may 2021 this is what I'm claiming for, I have proof when I started, but they are saying I started in June 2018 it wasn't it was April 2018."

8 At box 9.2, the Claimant states:

"I just want my month in hand that I'm owed for £950"

The Response

9 The ET3 states that the Claimant has been paid for the month in hand, and appended a schedule of payments (the "Schedule") that shows the pay period, net pay and pay date. The schedule on the Tribunal file was missing the first page, but I was shown that page at the hearing and a copy was sent to the Tribunal by the Respondent.

The Evidence

10 Dean Hilton gave evidence for the Respondent. He is the Respondent's wife and assists her with the administration of her business.

11 He stated that the Claimant had been employed by the Respondent from 27 April 2018. On 5 May 2021 she gave notice by telephone, because she had found a new job, and then sent in a letter of resignation indicating that she had given notice on 5 May 2021 that it would expire on 15 May 2021. The Respondent accepted that notice.

12 Mr Hilton stated that the Schedule had been produced by the Respondent's payroll provider for the Respondent's use and that he believed it to be true. He agreed that the Claimant was paid "a month in hand".

13 The Schedule shows that the Claimant was paid for the whole period of her employment, including the notice period.

The Facts

14 I find as follows.

15 The Claimant commenced employment at the end of April 2018 and gave notice to terminate her employment on 5 May 2021.

16 The Claimant's employment with the Respondent ended on 15 May 2021.

17 The Claimant was paid for the whole period of her employment as set out in the Schedule.

The law

18 An employee can bring a claim under section 23 Employment Rights Act 1996 ("ERA 1996") that her employer has made a deduction from her wages contrary to section 13.

19 An employee can also claim that her employer has failed to pay wages in breach of contract, and bring a claim where such a claim is outstanding on termination of her employment under section 3 of the Employment Tribunals Act 1996 and the Employment Tribunals Extension of Jurisdiction 9England and Wales) order 1994.

20 In either case, the employee has the burden of proving such a claim on the balance of probabilities.

Discussion & Conclusions

21 The Claimant claims to have been employed by the Respondent from 23 April 2018. Her claim is based on the assertion that the Respondent claims that she, "started in June 2018 it wasn't it was April 2018."

22 Neither party had produced any documentary evidence or witness statements. I heard oral evidence on oath from Dean Hilton, who said that the Claimant commenced work on 27 April 2018. The parties therefore agree that the commencement date was in April. There is a four-day discrepancy between them. To the extent it is material, I accept that the relevant date was 27 April, on the basis that it is the best evidence before me.

23 It is agreed between the parties that the Claimant was paid "a month in hand". The effect of that scheme was that for a monthly period ending on, say, 26 July, she would be paid on 26 August.

24 I accept, again on the basis that the oral evidence of the Respondent was the best I had, that the Claimant resigned on 5 May 2021. The ET1 (Box 5.1) says that the Claimant's employment ended on 14 May 2021. Again, there is not much between the parties, with the Respondent suggesting that the resignation letter gave the last day of employment as 15 May 2021. I accept 15 May as the last date of employment on the basis that this was the best evidence before me.

25 The Claimant produced no evidence of any deductions of wages or any failure to pay wages by the Respondent.

26 I accept the contents of the Schedule, on the basis of the evidence of the Respondent's witness, namely that it had been produced by the payroll service and he believed it to be true. The Schedule shows:

a. Payments according to the "month in hand" scheme I have described. By way of example, it shows a payment of £889.73 being made on 26 April 2019 in respect of the period 27 February to 26 March 2019.
b. Pay periods (in other words, period when the Claimant was working) in respect of the period 27 April 2018 to 17 May 2021.
c. Pay dates from the period 26 June 2018 to 26 June 2021.

27 It follows that the Claimant has failed to establish, on the balance of probabilities, that she suffered any deduction from her wages or that she was not paid for any period of employment. Further, the evidence contained the Schedule demonstrates that she was paid in respect of the whole period of her employment.

28 The claim for unlawful deduction of wages, and any claim for breach of contract for failure to pay wages, therefore fails and is dismissed.

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Employment Judge Clarke
15 February 2022
Judgment sent to Parties on 03/02/2022