



THE EMPLOYMENT TRIBUNAL

Claimant: Mr G. Guerrero

Respondent: Holiday Estates Limited t/a New Cross Inn Hostel

Heard at: London South Employment Tribunal

On: 23 – 24 February 2022

Before: Employment Judge A. Beale
Mr B. Dixon
Mrs F. Whiting

Representation
Claimant: In person
Respondent: Did not attend

JUDGMENT

1. It is noted that the Respondent, in a letter dated 10 February 2022, stated that its name should be simply “Holiday Estates Limited”. This is recorded and it is noted that, should the Claimant need to make any application to amend the Respondent’s name to “Holiday Estates Limited” to enforce this Judgment, such an application does not appear to be opposed by the Respondent.
2. The Claimant was an employee of the Respondent from 17 February 2019 – 30 September 2019.
3. The Claimant was unfairly dismissed for asserting a statutory right, contrary to s. 104 Employment Rights Act 1996. The Claimant’s claim for unfair dismissal for making a protected disclosure (s. 103A ERA 1996) fails and is dismissed.
4. The Claimant’s claim for detriment for making a protected disclosure (s. 47B ERA 1996) fails and is dismissed.
5. The Claimant’s claims of race and sexual orientation discrimination under s. 13 and s. 39 Equality Act 2010 fail and are dismissed.

6. The Claimant's claim of harassment related to sexual orientation succeeds and his claim of harassment related to race succeed in part.
7. The Claimant's claim of unauthorised deductions from wages succeeds. The Claimant was not paid the national minimum wage in respect of the hours he worked. The Claimant was not paid in respect of his accrued and untaken holiday.
8. The Claimant's complaint of wrongful dismissal succeeds.
9. The Respondent failed to comply with the applicable ACAS Codes of Practice, and an uplift of 20% is applied to all awards made.
10. At the date when proceedings were begun, the Respondent was in breach of its duty under s. 1(1) ERA 1996 to give a written statement of initial employment particulars in respect of the Claimant's role as a receptionist.
11. The Respondent shall pay the Claimant the total gross sum of £16,446.77 comprising of the following:
 - 11.1 In respect of unfair dismissal:
 - A. no basic award (as the Claimant had insufficient service for such an award);
 - B. a compensatory award of £1,407.78.
 - 11.2 In respect of harassment related to sexual orientation and race:
 - A. the sum of £5,000.00 in respect of injury to feelings;
 - B. a 20% uplift on that sum for failure to comply with relevant ACAS procedures, namely £1,000;
 - C. interest on the sum of £6,000 from 10 July 2019 to date, totalling £1,262.47.
 - 11.3 In respect of unauthorised deductions from wages:
 - A. the sum of £4,431.90, comprising the minimum wage payable to the Claimant in respect of the hours worked, determined at the currently applicable rate, minus the currently applicable accommodation offset;
 - B. the sum of £622.38 in respect of accrued but untaken holiday pay.
 - 11.4 No separate award is made in respect of wrongful dismissal as this is encompassed within the compensatory award for unfair dismissal.
 - 11.5 An award of 4 weeks' pay, or £1,191.52, is made in respect of the Respondent's failure to comply with s. 1(1) ERA 1996.

- 11.6 An uplift of 20% is applied to all awards (save the award for harassment, to which it has already been applied at 11.2 above), totalling £1,530.72.**
- 12. There is no Prescribed Element for the purposes of regulation 4 of the Employment Protection (Recoupment of Benefits) Regulations 1996.**

Employment Judge A. Beale
Date: 24 February 2022

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.