



EMPLOYMENT TRIBUNALS

Claimant

Mrs M Preda

v

Respondent

Gemini Exclusive Care Limited

RECORD OF HEARING

Heard at:

Cambridge (CVP)

On: 17 June 2022

Before:

Employment Judge R Wood

Appearances

For the Claimant:

In Person

For the Respondent:

Mr Kularatne (director of the company)

JUDGMENT

The claim is for unpaid work, unpaid travel expenses and unpaid holiday entitlement. The claim for unpaid holiday entitlement is allowed in the sum of **£295.02**. The respondent is to pay this amount to the claimant. It is a net amount.

SHORT REASONS

1. In brief, the Claimant was engaged by the respondent as a care assistant from November 2018 to 23 March 2021. She makes claims for unpaid wages, failure to pay travel expenses, and unpaid accrued holiday entitlement. Unusually, these claims go back many years, to the financial year 2018-19. There is a table to the sums she seeks to recover, which was attached to the ET1. It helpfully itemises each sum claimed, under three separate heads of claim [21-25]. The final claim is for unpaid holiday pay in April 2021, just prior to her resigning in March 2021. The total claim is for £4351.31. This is made up of £557.10 re unpaid hours worked; £900.52 for travel expenses; and £2,893.69 in respect of the holiday pay. The respondent submits that no sums are due. I will return to its arguments

shortly.

2. The claim was listed for final hearing on 14 June 2022. I heard from the claimant, who adopted the contents of her claim form in the absence of a witness statement. I also heard from Mr Budasca, who is the development manager of the respondent company, and had responsibility for the payroll at the relevant times. He had provided a witness statement in the day of the hearing. However, I allowed him to be called as a witness and rely on the witness statement in the light of the latitude I had extended to the claimant on this subject. I also had the benefit of a bundle of documents which comprises 184 pages. Both parties agreed that I had all of the relevant documents before me.

FINDINGS OF FACT

3. The claimant resigned her post of care assistant with the respondent with effect from 23 March 2020. At the time she was earning £2600 per month gross, and £2100 net of tax. The claimant was put onto a 45-hour week from 1 April 2020 [89]. From 16 November 2020, the respondent provided the claimant with company fuel cards. Prior to this staff had been required to claim back their fuel costs associated with moving from one client to another. The company took into account the claimant's travel time to and from work at each end of the working day when calculating hours worked and holiday entitlement.
4. Mr Budasca accepted that there had been an error in the calculation of the claimant's holiday pay as it appeared on payslip 49 [170]. It should read 32 not 36. This meant that she had been overpaid 4 hours of holiday pay.
5. The claimant accepted that she had been overpaid on her actual hours worked on four occasions, which are noted at [22 & 24]. In total these overpayments come to £393.88. The claimant also accepted that these should be deducted from her claim for unpaid hours, which reduced her potential claim in this regard to £163.22.
6. The claimant accepted that her final claim for unpaid hours on the schedule was in relation to pay period 31/2020, which related to 6 November 2020. She also agreed that the entry in respect of 37/2020 for travel expenses was an error. It postdated the receipt of the fuel card, and the requirement for her to claim mileage in this way. She accepted it was added in error. The claimant again agreed that the last relevant mileage claim was in November 2020, and that she was not owed money under the fuel card scheme.
7. In terms of the holiday pay, the claimant agreed that there was a break in her claim for holiday pay between September 2020 and January 2021 i.e. 23/2020 and 37/2020. This was equivalent to a period of 14 weeks. The claimant also accepted that she had received a payment from the respondent in July 2021 in the sum of £299.09 [169] in respect of unpaid holiday entitlement which needed to be deducted from her claim under that head of loss.

DECISION & REASONS

8. I agree with Mrs Letts that there are significant limits placed on this claim as a matter of law. Under the relevant regulations (the Deduction from Wages (Limitation) Regulations 2014, a claim for deductions from wages can only predate the claim by a maximum period of 2 years. Therefore, the claim for unlawful deductions can go no further back than 24 March 2019. This is not the only difficulty faced by the claimant.
9. The limitation period for claiming deductions for wages is a period of three months from the date of the relevant deduction. If there are a series of deductions from wages, then the limitation period runs from the final deduction in the series. Such a series will be broken if there is a period of more than 3 months between any two payments. I find that this is the case here. The claimant admits that in relation to her claim for unpaid holiday pay, that there was a break in the series of payments between September 2020 and January 2021 which was in excess of 3 months. Therefore, on this basis the claim can only be made for the period 30/09/2020 onwards i.e. January 2021. This is a sum of £594.11
10. It is also admitted by the respondent that she received a payment in respect of unpaid holiday pay in July 2021 in the sum of 299.09. This was in respect of 27.19 hours of holiday entitlement which had not been paid. This leaves a difference of £295.02. I have not been able to find any basis upon which the respondent asserts that the claimant is not entitled to this balance. By making the payment of £299.09, it accepted that there had been errors in the way it calculated and/or paid the claimant in respect of her holiday entitlement. I also note that Mr Budasca admitted that there had been an error in the way that the claimant's holiday pay in payslip 49, albeit on that occasion to the claimant's benefit. I find that on balance, the claimant has made out this aspect of the claim. I accept her calculations within her schedule, the mathematics of which were not challenged by Mrs Letts during the hearing.
11. I turn then to the question of unpaid hours. The claimant admitted that the last claim in time related to payslip 31/2020, which is dated 6 November 2020. The three-month limitation period means that any claim, or at least the commencement of early conciliation with ACAS, must have begun no later than 5 February 2021. In my judgment, it was reasonably practicable for the claimant to have brought her claim within this time. She provided no explanation as to why she did not bring her claim in time. She must have been aware of the deductions at the time. I can see no reason why she could not have taken advice about them and brought any claim within the three-month time limit.
12. In any event, I accept the respondent's analysis of this aspect of the claim, namely that it appeared the claimant had been the subject of an overpayment of 55 hours over the full period of her employment with the respondent. I accept that this appears to have been the result of the

respondent rounding up shifts to 10 hours when a lower number of hours had been recorded. Therefore, for all the reasons highlighted, I refuse the claim in so far as it relates to unpaid hours.

13. In relation to the claimant's mileage claim, I also refuse this. On this aspect of her claim, I found the claimant's evidence to be less reliable. She admitted that her schedule contained errors i.e. 37/2020 (and possibly others). She also admitted that her last relevant claim for unpaid travel expenses related to period 37/2020 i.e. 20 November 2020. All of the alleged unpaid expenses following this were after she had been issued with a fuel card, when she was no longer reimbursed for her expenses after the event. Applying the three-month limitation period, a claim must have been initiated by 19 February 2021. She did not refer to ACAS until May 2021. Again, I can see no reason why it was not reasonably practicable to have brought this aspect of the claim within time. No explanation was put forward by the claimant at the hearing. I therefore dismiss this aspect of the claim.

Employment Judge R Wood

7 July 2022

Sent to the parties on:

15/7/2022

For the Tribunal Office:

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