



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000714/2024

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Held in Glasgow on 11 November 2024

**Employment Judge A Jones
Tribunal Member L Millar
Tribunal Member W Muir**

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Ms K Hornal

**Claimant
In Person**

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Legends Bar – Yules Bar Ltd

**Respondent
Represented by:
Mr G Clark -
Manager**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the unanimous judgment of the Tribunal that:

1. The claimant was wrongfully dismissed and the respondent is ordered to pay to the claimant the sum of £220 gross in terms of the notice pay of to which she was entitled.
- 25 2. The respondent failed to provide the claimant with a statement of terms and conditions of employment in accordance with section 1 Employment Rights Act 1996 and the respondent is ordered to pay to the claimant compensation of £1,760 gross in that regard.
3. The respondent failed to pay the claimant in lieu of accrued holiday entitlement and is ordered to pay to the claimant the sum of £803 gross.
- 30 4. The respondent is not liable for the sexual harassment to which the claimant was subjected by a third party and neither does its failure to address the conduct nor the claimant's dismissal amount to harassment related to sex.

REASONS

Introduction

1. A preliminary hearing had taken place in this case on 5 September at which the nature of the claimant's claims were clarified. The claimant continued to represent herself and the respondent continued to be represented by Mr Clark who although previously designed as a director of the respondent indicated that his application for directorship has been held up and that his current role is that of Manager. Both the claimant and Mr Clark gave evidence and while a bundle of documents was lodged, reference was only made to one document which set out a text exchange between the parties. Parties made very brief submissions on the conclusion of the evidence. Mr Clark wished to make an application for expenses but was informed that any such application should be submitted once a judgment on the merits had been promulgated.

Findings in fact

2. Having listened to the evidence, the Tribunal found the following material facts to have been established.
3. The respondent operated three bars during the period of the claimant's employment and employed around 15 staff. One bar has since closed.
4. The claimant worked in one of the bars called Legends Bar, from September 2023 until her employment was terminated by the respondent without notice on 19 May 2024.
5. The claimant was not issued with a contract of employment, statement of terms and conditions or any other written document setting out the basis of her employment. The claimant was never given any information in relation to her entitlement to annual leave.
6. The claimant worked an average of 20 hours per week and was paid £11 per hour. The claimant was out of work between 19 May and 16 August 2024. The claimant has been in receipt of universal credit during her employment with the respondent and subsequently.

7. The claimant initially very much enjoyed working in her role with the respondent. She got on well with Mr Clark and the owner, Mr Yuill. However, the claimant had been ill in early May and had been required to take time off work. Mr Clark informed the claimant that she wouldn't be offered shifts if she couldn't work over the weekends. The claimant was aggrieved at this approach by Mr Clark and informed him that she would be looking for alternative employment.
8. The claimant had in the past raised with Mr Clark concerns regarding the inappropriate conduct of a customer towards her who was also the husband of another member of staff. The customer made lewd comments to the claimant and asked her for a kiss on occasion. The claimant informed Mr Clark of this and he told her to stay away from the customer. Given that the claimant was required to serve drinks to the customer that was not a satisfactory solution to the issue.
9. The claimant raised concerns with Mr Clark about the customer's conduct on more than one occasion. On the second occasion, Mr Clark asked the claimant whether she wanted him to speak to the member of staff who was married to the customer. The claimant already had a difficult relationship with that member of staff and declined the offer. Mr Clark took no action of his own initiative to bring to the customer's attention that his conduct was unacceptable or to raise the issue with the customer's wife. The customer had previously been banned from the pub for a period because of fighting.
10. The claimant had asked if she could be transferred to another pub to get away from the customer. Her request was refused.
11. The claimant informed Mr Clark in early May 2024 that she was taking a week's holiday on 22 May and would work another week as notice on her return from leave. The claimant had not taken any annual leave during her employment.
12. The claimant was working on 18 May. On or around that day, the customer about whom the claimant had previously complained slapped her backside while she was working. The claimant was very upset regarding this but kept

working. When the bar was closing there was a problem with the shutter outside. The customer tried to pull the shutter down. The claimant's partner who was present in the bar told him to leave it and 'let Kayleigh do it'. The customer responded by saying 'fuck Kayleigh' and an altercation between the two men developed outside the pub. The claimant sought to contact Mr Clark regarding this. Ms Washington who is a manager for the respondent attended the premises and was aware of the altercation. The claimant said she wanted a meeting with Mr Clark.

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13. The following day following an exchange of texts between the claimant and Mr Clark, the claimant attended a meeting with Mr Clark. Mr Yuill and Ms Washington were also present. The claimant understood the purpose of the meeting was to discuss what had happened the previous evening. The claimant informed Mr Clark of the customer having slapped her backside. Mr Clark said that she should call the police. The claimant said she didn't feel she could work with the customer's wife any more. Mr Clark said that it was not for her to decide who was on a rota and refused to move the claimant to work in another bar. He informed the claimant that she was being dismissed. The claimant was not paid notice pay or in respect of accrued holiday entitlement. She was not given a reason for her dismissal and there was nothing provided to her in writing.

14. The claimant has since tried to contact customers of the respondent with whom she had built up relationships, but they have refused to speak to her because they had been warned by the respondent that she might make allegations of sexual assault against them.

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15. The customer concerned has since been barred from entering the pub in which the claimant worked.

Observations on the evidence

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16. The Tribunal found the claimant's evidence hard to follow at times. She became very distressed, particularly when she gave evidence (which was not challenged) about Mr Clark telling customers that the claimant might make allegations of sexual assault against them if her Tribunal case was not

successful. The Tribunal found the claimant to be a generally credible witness. She made concessions in her evidence in cross examination and while she was often very upset, the Tribunal was satisfied that she was doing her best to tell the truth.

5 17. Mr Clark's evidence was also difficult to follow at times. The Tribunal did not find him to be credible in relation to a number of matters. Mr Clark suggested that he had given the claimant verbal warnings on various occasions (the number of such warnings varied during the course of his evidence). However, he also accepted that he did not tell the claimant at any stage that she was
10 being given a verbal (or indeed any kind of informal or formal warning). He did accept that the issue of warnings was not raised with the claimant on 19 May. However he suggested that the claimant was dismissed without notice on 19 May because of various matters which were not raised with her at that time. The Tribunal did not find that evidence to be at all credible. The Tribunal
15 concluded that the claimant was dismissed without notice because the respondent did not wish to move her as requested and found the allegations she had made against the husband of another (more long standing) member of staff difficult to deal with. In effect the respondent preferred to dismiss the claimant who had already said that she was leaving. However, no
20 consideration was given to what entitlements she might have on termination of her employment.

18. In addition, the Tribunal did not accept Mr Clark's evidence that the claimant was informed that the leave year commenced in April. The Tribunal's position was that the question of holidays was never raised with the claimant.

25 19. Therefore, while the Tribunal is not entirely satisfied that it was able to understand the full picture of the events about which evidence was given, it was able to identify the key issues. Where there was conflict on the evidence, the Tribunal preferred the evidence of the claimant.

Discussion and decision

30 20. In terms of holiday pay, an employer will make an unlawful deduction from an employee's wages if they fail to pay them in respect of accrued but untaken

annual leave on termination of employment. The will amount to an unlawful deduction from wages for the purposes of section 23 Employment Rights Act 1996 ('ERA').

21. The claimant was not issued with a statement of terms and conditions of
5 employment or indeed anything in writing in relation to her employment. Under
the Working Time Regulations 1998, all workers are entitled to a minimum of
5.6 weeks' paid holiday a year. The claimant worked 20 hours per week. She
did not take any annual leave during her employment with the respondent. As
there was no clarity on the exact date the claimant commenced employment,
10 the Tribunal has proceeded on the basis that the claimant commenced on 18
September in which case she worked for 8 months. The claimant's annual
entitlement to leave was 20 hours x 5.6 which amounts to 112 hours per year.
The claimant worked for 8 months of the year and is therefore entitled to 8/12
of that amount which is 84 hours. Mr Clark had paid the claimant for 11 hours
15 and therefore there is a total amount of 73 hours outstanding, which amounts
to £803 gross.

22. The claimant was not paid for any notice period. There was no basis on which
the respondent was entitled to summarily dismiss the claimant and therefore
she is entitled to a week's notice pay of £220 gross.

20 23. The respondent accepted that it had not complied with section 1 ERA. Where
a successful claim is brought within the jurisdictions set out in Schedule 5 of
the Employment Act 2002 (which includes a claim in terms of an unlawful
deduction from wages) and it is apparent that an employer was in breach of
the duty in terms of section 1 ERA, a Tribunal must award compensation to
25 an employee. A Tribunal must award the minimum amount of two weeks' pay
but may, if it considers it just and equitable in the circumstances, award the
higher amount of 4 weeks' pay (section 38(2)-(5) Employment Act 2002). The
Tribunal was of the view that it would be just and equitable to award the higher
amount in this case. It came to this view as no documentation had been
30 provided to the claimant whatsoever regarding the terms of her employment
and therefore it was difficult to establish what dates the claimant was
employed, what her pay or hours were and what entitlements she might have.

In addition, the Tribunal noted that the respondent sought to argue (without producing any evidence to support the position) that the claimant was aware that the holiday year commenced at the same time as the tax year and that any leave she may have accrued in the previous tax year had been lost. The Tribunal was of the view that the respondent had simply made up this suggestion in order to attempt to avoid paying the claimant the holiday pay to which she was entitled. While the respondent was a small employer, nonetheless it did operate three different bars and had around 15 staff at the time of the claimant's employment. The Tribunal was also mindful that the failure to provide any statement of terms and conditions also meant that the claimant was not provided with any information about how to raise any concerns or grievances she might have about her employment.

24. The claimant also alleged that she had been sexually harassed. The Tribunal was satisfied that the claimant had been sexually harassed by a customer on at least three occasions. Nothing was done by the respondent to prevent the harassment reoccurring. The respondent did not dispute that the claimant had been subjected to sexual harassment by the customer. However the Equality Act 2010 does not provide for liability of an employer in relation to the actions of a third party. Therefore, the respondent is not liable for the sexual harassment to which the claimant was subjected.

25. The claimant's claim was only in relation to sexual harassment and therefore the Tribunal's considerations were limited to whether the failure of the respondent to do anything to prevent the continued sexual harassment of the claimant could itself amount to sexual harassment. There was no basis on which the Tribunal could make such a finding. Had the claimant's case been argued in a different manner, the Tribunal may well have found the respondent to have contravened the provisions of the Equality Act. While the Tribunal was mindful that the claimant was representing herself, the Tribunal could not put forward to the claimant another way of arguing her case. That was a matter for her. Therefore, while the Tribunal accepted that the claimant had been sexually harassed by a customer of the respondent and that the respondent did not take any steps to prevent the harassment reoccurring,

there was no basis on which the Tribunal could find that the respondent had contravened the provisions of section 26 of the Equality Act. In addition, the Tribunal considered whether the dismissal of the claimant could amount to sexual harassment or harassment related to sex. The Tribunal was of the view that the claimant was dismissed because she had already given notice and that the respondent viewed the situation where the claimant did not want to continue working with the wife of someone who had sexually harassed her as difficult to deal with. Therefore it decided that to dismiss her on 19 May was the easiest option for them, albeit they did not at that stage given any consideration to what rights the claimant may have in that regard. While that is not the conduct which might reasonably be expected of an employer, it does not amount to harassment. The Tribunal was of the view that a man would likely have been treated in the same manner.

26. The claimant's claim in that regard therefore fails.

27. The claimant is therefore entitled to the following payments from the respondent:

Notice pay	£220
Holiday pay	£803
Failure to provide terms and conditions of employment	£1760
Total sum	£2783

A Jones

Employment Judge

18 November 2024

Date of Judgment

Date sent to parties

20 November 2024