



EMPLOYMENT TRIBUNALS

Claimant: Ms Dawn Clyne

Respondent R1: Lymes Limited

Respondent R2: Lymes PFM Limited

Heard at: Nottingham

On: 5th January 2018

Before: Employment Judge Macmillan

Representation:

Claimant: In person

Respondent: No Appearance

JUDGMENT

1. Lymes PFM Limited is joined as second respondent.
2. The respondents will pay the claimant a basic award of compensation for unfair dismissal in the sum of £3,750.00.
3. The respondents will pay the claimant damages for breach of contract (notice pay) in the sum of £1,560.00.
4. The claims in respect of unauthorised deduction from wages and failure to pay holiday pay, are dismissed.

REASONS

Background and facts

1. This is a remedy hearing following a judgement under rule 21 of the Employment Tribunals Rules of Procedure dated 26th September 2017. The respondent, currently identified as Lymes Ltd, has not attended the hearing and is not represented. Ms Clyne has represented herself with the assistance of her mother and a friend. Ms Clyne, who has rather severe learning difficulties, has no documentation to support her claim, and is no longer in touch with her former representative, Mr Darren Martin, to whom she had previously given such paperwork as she had. Ms Clyne has elected to continue with the remedy hearing today on the basis of the very limited

information available, rather than attempt to retrieve her paperwork from Mr Martin.

2. This matter has a very unfortunate history. Although the claim has been issued against Lymes Limited, there is correspondence on the Tribunal file from that company's previous representative, describing it as Lymes PFM Limited. A Companies House search discloses the existence of the latter company at the address at which the proceedings in this case have been served but no company with the name simply of Lymes Limited appears to exist. I therefore order that Lymes PFM Limited be joined as an additional respondent to these proceedings, although it seems more likely than not that Lymes PFM Limited is just the correct name of the company previously described as Lymes Limited. In any event, Ms Clyne believes that the owner of the respondent business has either closed it, or allowed it to become dormant, and may now be trading under a new company style.
3. This claim first came before the Employment Tribunal on the 8th December 2016 when terms of settlement were agreed between the parties. Those terms were not reduced into a judgment of the Tribunal, and the order adjourning the hearing did not formally compromise the proceedings. The respondent failed to comply with the terms of the agreed settlement, resulting in the rule 21 judgement of 26 September 2017.
4. The claim form includes complaints of unfair dismissal, for notice pay (breach of contract), for non-payment of holiday pay, and for unauthorised deductions from wages. None of the claims are quantified in the claim form and there is no documentation on the Tribunal file which gives a clue as to how much, if anything, might be owing to Ms Clyne in respect of either of the last two claims. Ms Clyne believes that she is owed wages and believes that she is owed holiday pay, but is quite unable to quantify the amount owing.
5. Ms Clyne commenced employment in September 1987 for the National Coal Board, as a cleaner of certain premises in Burton-on-Trent. The Coal Board contracted out the cleaning work and Ms Clyne has worked continuously in the same occupation at the same premises but under the employment of a series of different employers to whom her employment transferred under the Transfer of Undertakings (Protection of Employment) Regulations (in its various iterations) until she was finally dismissed by the respondent to these proceedings on the 13th August 2015. She was dismissed without notice and it seems likely that the respondent was unaware that she had joined them as a result of the latest TUPE transfer, as she was on sick leave at the time the transfer took place. She was given no notice pay.
6. The only information that I have about Ms Clyne's earnings is the contract she was given when she joined the respondent. She was entitled to the national minimum wage which, at the time of her dismissal was £6.50 an hour, and she was contracted to work for 20 hours a week. She did not work any overtime. Her gross week's wage was therefore £150. She paid some National Insurance contributions, and apparently a very small amount of Income Tax, but has only a very vague recollection of the amount of her net pay. She was not paid weekly, but monthly, and so the amount of her net pay varied according to the number of weeks in the month. I therefore have to estimate her net pay as best I can, taking judicial notice of the rates of income

tax and NIC for low earners and I do so at what I suspect is the rather conservative figure of £130 a week, which Ms Clyne says is about right.

Unfair Dismissal

- Ms Clyne has not been fit to work since the date of her dismissal, and so her compensatory award is confined to the basic award of compensation under sec 119 of the Employment Rights Act 1996. At the date of her dismissal she was 51 years of age, and she had about 28 years of continuous employment. However, the maximum number of weeks which can count for the purposes of the basic award calculation is 20. Because of her age and length of service, her basic award is $25 \times £150 = \mathbf{£3,750}$, and the respondents are ordered to pay that sum to her as compensation for unfair dismissal. I make no other awards because of Ms Clyne's continuous inability to work since the date of her dismissal.

Breach of contract (notice pay)

- As an employee with more than 12 years' continuous service, Ms Clyne was entitled to 12 weeks' notice of the termination of her employment or payment of a sum of money in lieu. She received neither. The respondents are therefore in breach of contract in dismissing her without notice (wrongful dismissal). The damages to which she is entitled for this breach of contract are $12 \times £130 = \mathbf{£1,560}$.

Holiday pay and unpaid wages

- I am satisfied, having heard Ms Clyne's evidence, that she was due some holiday pay from the respondent, and on the basis of the respondent's own response form, it seems likely that she was owed some wages when she was dismissed. It is however impossible to quantify either claim. I note that the respondent appears to have made one payment, and one payment only, under the terms of the settlement agreed on 8th December 2016, in the sum of £600. In my judgement, the justice of this case would be met by treating that £600 as a payment in satisfaction of both the unpaid wages and the unpaid holiday pay claims. That being so, those claims are dismissed as they appear to have been settled by the respondent to the extent that it is possible to quantify them.

Employment Judge Macmillan

Date 19th February 2018

JUDGMENT SENT TO THE PARTIES ON

24 February 2018

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FOR THE TRIBUNAL OFFICE