



EMPLOYMENT TRIBUNALS

Claimant

Mrs I Canoo

v

Respondent

**Jones+Jones Fashion.com
Limited**

Heard at: Watford

On: 25 October 2017

Before: Employment Judge Wyeth

Appearances

For the Claimant: In person (Mr N Ragnuth attending as a friend)

For the Respondent: Did not attend

JUDGMENT

1. The claimant was unfairly dismissed by the respondent and the respondent is ordered to pay the claimant the sum of £5,026.27 calculated as follows:

Basic Award

2 weeks' pay @ £320 x 1.5 £960

Compensatory Award

Loss of net pay
from 20 October 2016 to 27 January 2017,
14.4 weeks @ £282.38 net per week £4,066.27

2. For the purposes of the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, the tribunal declares that:-

- 2.1. The monetary award grand total for unfair dismissal is £5,026.27;
- 2.2. The prescribed element is £4,066.27;
- 2.3. The prescribed period is 6 October 2016 to 27 January 2017; and
- 2.4. The excess of the monetary award grand total over the prescribed element is £960.

3. The respondent was in breach of the claimant's contract by failing to give the claimant two weeks' notice to terminate. Accordingly, the respondent is ordered to pay the claimant the sum of £640 for two weeks' gross pay in lieu of notice.

4. The respondent failed to pay the claimant her contractual entitlement for September 2016. Accordingly, the respondent is ordered to pay one month's arrears of gross pay to the claimant totalling £1,386.67.
5. The respondent is ordered to pay the sum of £2,944 being 9.2 weeks gross pay for outstanding accrued holiday entitlement.
6. In accordance with the orders above, the respondent must pay to the claimant a grand total of **£9,996.94**.
7. For the avoidance of doubt:
 - 7.1. recoupment applies to the compensatory element of the amount referred to in paragraph 2.2 above;
 - 7.2. the claimant will be liable to account for tax on the sums referred to in paragraphs 3, 4 and 5 above.

REASONS

8. At the outset of the Hearing I heard evidence from the claimant who had produced a witness statement and short bundle of documents in support of her claims.
9. The claimant confirmed that she was bringing a claim for unfair dismissal, breach of contract (failure to give contractual notice to terminate), unauthorised deduction of wages for September 2016 and failure to pay accrued and untaken holiday pay for the period from 6 October 2014 to the date of her dismissal on 5 October 2016.
10. According to a search at Companies House, the respondent entered creditors voluntary liquidation on 27 January 2017. No one was in attendance at the Hearing on behalf of the respondent.
11. The claimant commenced employed with the respondent on 25 June 2014 as a Group Supervisor of around 8 machinists. At the material times she was working 40 hours per week at a rate of £8 per hour.
12. The claimant was not provided with a written contract of employment or statement of terms.
13. Throughout her employment, up until September 2016 the respondent did not permit the claimant to take any paid leave in breach of the Working Time Regulations 1998.
14. In August 2016, the respondent permitted the claimant to take two weeks' holiday in September 2016. The claimant returned from that leave on or around Monday 18 September 2016. Upon her return, the joint owner of the respondent employer, Teresa, told her that she was no longer to be a

supervisor and demoted her to a machinist role. The respondent had no contractual entitlement to demote the claimant. The claimant was extremely upset by this decision such that she went off sick on 28 September 2016.

15. On 5 October 2016 the claimant attended the respondent's premises to collect her wages for September 2016. Upon her arrival she was told by Teresa that she was not to return to work and that the claimant would be sent her P45 and previous month's wages in due course. Neither of those were ever forthcoming.
16. On the evidence before me, I was satisfied that the claimant was unfairly dismissed by the respondent but that, applying *Polkey* principles her losses should be limited to the period from 6 October 2016 to 27 January 2017 (the date the respondent went into liquidation). The claimant was entitled to two weeks' notice to terminate her contract of employment in accordance with s86 of the Employment Rights Act 1996, which she did not receive from the respondent. Accordingly I have awarded two weeks' gross pay for breach of contract. To avoid double recovery, the claimant's compensatory award for unfair dismissal does not include sums for loss of earnings for this initial two week period.
17. I accept the claimant's evidence that she was not paid for the entirety of September 2016. On the basis that the claimant was contractually entitled to £8 per hour and worked 40 hours per week, her annual gross wage was £16,640. Therefore, the gross sum due to the claimant for September 2016 was £1,386.67.
18. I am satisfied that the respondent failed to allow the claimant to take her paid statutory holiday entitlement throughout the entirety of her employment. Any claim for holiday pay is limited to two years by the Deduction from Wages (Limitation) Regulations 2014. As such the claimant would ordinarily be entitled to 11.2 weeks' pay in lieu of untaken holiday. That said, part of the award for unpaid wages for September 2016 included two weeks leave. Again, to avoid double recovery, the claimant is entitled to recover 9.2 weeks for pay in lieu of untaken holiday.
19. The claimant produced a pay slip for May 2016 which showed that her net hourly rate of pay amounted to £7.06. It is on this basis that any net sum ordered has been calculated.

Employment Judge Wyeth
Date: 6 November 2017

Sent to the parties on:

.....6 November 2017.....

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For the Secretary to the Tribunal