



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108899/2018

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Held in Glasgow on 23 November 2018

Employment Judge: Peter O'Donnell

10 **Mrs J Stoddart**

Claimant
Represented by:
Ms Linda Dickson -
Solicitor

15 **Garrion Bridges Garden Centre Ltd**

Respondent
Represented by:
Mr G Keys -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal, issued at the hearing, is that the claimant's complaint of unlawful deduction of wages was not well-founded and is hereby dismissed.

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REASONS

Introduction

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1. The claimant has brought a complaint for unlawful deduction of wages in respect of 2 days' pay which she alleges she is owed in respect of 28 February and 1 March 2018.
2. The claim is resisted by the respondent on the basis that their business was closed on those dates due to inclement weather and that the terms of the claimant's contract of employment allows them to lay her off without pay due to inclement weather.

E.T. Z4 (WR)

Evidence

3. The Tribunal heard evidence from the claimant. The respondent did not lead any evidence.

5 4. There was also referred to documents produced in a bundle by the respondent and documents provided by the claimant.

Findings in Fact

5. The Tribunal makes the following relevant findings in fact:-

10 a. The claimant was employed by the respondent from 26 October 2017 to 29 March 2018. Her job title was Coffee Shop & Sales Assistant.

15 b. The claimant's working pattern varied over the period of her employment. At the time relevant to this case, she worked Wednesday and Thursday, 9.30am to 5pm.

c. At the outset of her employment, the claimant was issued with a statement of terms and conditions of employment which was item 1 in the respondent's productions.

20 d. This statement incorporated the Employee Handbook and expressly stated that the statement and the handbook form the claimant's contract of employment.

25 e. The claimant was issued with a copy of the handbook at outset of her employment with the respondent. A copy of the handbook which applied at the time is item 5 of the respondent's productions.

30 f. Clause 21 of Appendix 1 of the handbook expressly states that the respondent can lay off employees where inclement weather prevents the respondent from trading. Such periods of temporary lay-off will be unpaid.

- 5 g. On 28 February 2018, the storm known as “The Beast from the East” affected the country. At 7.50am, the claimant was contacted by the centre manager, Alison Douglas, who advised her not to attend work due to the weather. The claimant indicated that she had made arrangements to attend (she had arranged the use of a 4x4 vehicle). Ms Douglas advised the claimant that the centre would be closed.
- 10 h. The claimant subsequently received a FaceBook message from a colleague that another manage, Violet, had told the colleague that the centre would also be closed on 1 March 2018 but did not have the claimant’s phone number to inform her directly.
- 15 i. The claimant returned to work on the following Wednesday. She was approached by Alison Douglas who asked if the claimant was taking 2 days’ unpaid leave or 2 days’ holiday in respect of the previous week. The claimant replied that she was taking neither as she had been willing to work on the days in question.
- 20 j. The claimant discovered that she had not been paid for 28 February and 1 March when she received her payslip and saw 2 days’ payd had been deducted.
- 25 k. The respondent had not described the days in question as a period of lay off at the time that the inclement weather occurred.

Relevant law

6. **Section 13 of the Employment Rights Act 1996 (ERA)** provides that an employer shall not make a deduction from a worker’s wages unless certain conditions are met.

7. For the purposes of this case, the relevant conditions are that there is a relevant provision in the worker's contract allowing for the deduction to be made.

Claimant's submissions

- 5 8. Ms Dickson made the following submissions on behalf of the claimant:-
- a. No notice of the lay-off was given and there was no downturn in work. It was the respondent's decision to close.
 - 10 b. There was no mention of lay-off at the time.
 - c. The claimant was not given an opportunity to read the handbook
 - d. The circumstances of the case did not meet the ACAS Code of
15 Practice on lay-off.

Respondent's submissions

9. Mr Keys made the following submissions on behalf of the respondent:-
- a. He made reference to the wording of s13 ERA, particularly sub-
20 sections (1) and (2)(a).
 - b. He submitted that Clause 21 of Appendix 1 of the handbook was incorporated into the claimant's contract and this was accepted by the claimant.
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 - c. Clause 21 allows for lay-off in inclement weather and so the deduction of 2 days' pay was a lawful deduction. Therefore, the claim must fail.
 - d. He made reference to *Sunderland Polytechnic v Evans* UKEAT/334/92
30 as authority that it was not for the Tribunal to determine if it was appropriate for the respondent to have closed the garden centre.

Decision

10. In the Tribunal's view, this case turned on a single issue; was the respondent entitled to lay the claimant off on 28 February and 1 March 2018?
- 5 11. The respondent was plainly entitled to do so; there was no dispute that the staff handbook formed part of the claimant's contract of employment and, in any event, this is the plain reading of the statement of terms and conditions signed by the claimant; clause 21 of Appendix 1 of the handbook contains a clear and unambiguous provision allowing for the respondent to lay off
10 employees in the event of inclement weather preventing the respondent from trading.
12. Whilst the respondent could have expressed this in clearer terms to the claimant on her return to work, this does not mean that the provision could not
15 be exercised by them or that they did not do so.
13. Neither does the fact that the claimant had not read the handbook; it says what it says regardless of whether the claimant had read it.
- 20 14. Similarly, the fact that the claimant was given the option to take annual leave does not prevent the respondent from exercising the provision or that they did not do so. This is nothing more than good industrial practice in giving employees the option to retain their pay by using annual leave.
- 25 15. In these circumstances, the Tribunal finds that the respondent was entitled to lay off the claimant without pay on the days in question and so the deduction of 2 days' pay made from the claimant's wage was not contrary to **section 13 of the Employment Rights Act 1996.**

16. The claim is, therefore, dismissed.

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Employment Judge: P O'Donnell
Date of Judgment: 12 December 2018
Entered in register : 13 December 2018
and copied to parties

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