



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

Claimant
Mr S Nastas

Respondent
Durga's Global Hotel Industries Ltd

V

HELD AT: London Central ON: 20 November 2019
Employment Judge: Mr J Burns

Appearances

For Claimant: in person
For Respondents Mrs G Bahl (MD of Respondent)

JUDGMENT

1. The Respondent breached its duty under section 1 of the ERA 1996 to provide the Claimant with a statement of initial employment particulars and was in breach when the Claimant issued his claim for unfair dismissal 2200226 2019.
2. The Respondent shall pay the Claimant £563.76 as compensation under section 38 EA 2020.
3. The Claimant was unfairly dismissed on 8 January 2019 .
4. The Respondent shall pay Claimant £1691.28 as compensation for unfair dismissal
5. The total amount is £2255.04 payable within 14 days.

REASONS

6. I heard evidence on oath from the Claimant and from Mrs Bahl, neither of whom had prepared witness statements. I was handed the following documents which I have retained on the file: emails from C to Navgeet Sumnat dated 16/11/2018 and 11/1/2019 and copy draft contract dated 20/12/2018. I was shown copies of C's payslips for October to December 2018 and returned them to Mrs Bahl.
7. I preferred the Claimant's evidence to Mrs Bahl's. The Claimant's evidence was consistent and corroborated by the contemporary documents. Mrs Bahl was inconsistent and vague.
8. I find that on 6/10/2018 the Claimant started work as a receptionist in the Respondent's hotel. He worked on average 36 hours per week at the rate of £7.83 per hour, and earned about £281.88 per week.

9. He was not provided with an initial statement of terms and conditions as required by section 1 ERA 1996. He complained about this by email dated 18/11/2018. There was no response so he lodged an application for early conciliation with ACAS. Having still not received any written terms or contract, he issued his first claim 2207224 2018 on 24/12/2018. On a proper construction that claim was a reference to the Tribunal under section 11 ERA 1996.
10. In its ET3 response to this claim the Respondent stated “*after receiving an email from ACAS we provided a contract on 20/12/2019¹, (sic) which he never signed and is still in office*”
11. In response to the ACAS contact the Respondent did generate a draft contract on 20/12/2018 but did not give it to the Claimant.
12. After contacting ACAS and issuing his first claim the Claimant noticed that the Respondent’s managers were treating him differently, cancelling his shifts and after 30 December 2018 failing to allocate shifts to him. He queried this by email dated 11/1/2019. He was fobbed-off and never received any more work from the Respondent and assumed that he had been dismissed. He issued an unfair dismissal claim under 2200226 2019 on 22/1/2019 and in its ET3 response to that the Respondent confirmed it had dismissed the Claimant on 8/1/2019, giving as reasons alleged misconduct by the Claimant. I find however that at the time no such alleged misconduct was mentioned to the Claimant, and his email dated 11/1/2019 does not read as if that was the situation at the time.
13. The Respondent breached its duty under section 1 of the ERA 1996 to provide the Claimant with a statement of initial employment particulars and was in breach when the Claimant issued his claim for unfair dismissal 2200226 2019. I regard it as appropriate to award the minimum compensation for this under section 38, namely 2 weeks pay – the sum being £563.76.
14. The reason for the Claimant’s dismissal was his assertion of a statutory right (namely that he should be given a contract and his contacting ACAS about this), as contemplated by section 104(4)(a) ERA 1996, and hence the dismissal was automatically unfair.
15. It took the Claimant 6 weeks to mitigate his loss of earnings at the rate of £281.88 per week caused by the withholding of work and his dismissal. I regard it as just and equitable to order the Respondent to compensate him for this loss – ie in the sum of £1691.28

¹ This should have read 20/12/2018

Case Numbers: 2207224 2018 and 2200226 2019

Employment Judge - Burns

Date and place of Judgment :
20/11/2019

For Secretary of the Tribunals

Date sent to the Parties
21/11/2019