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EMPLOYMENT TRIBUNALS

Claimant: Mr Oliver Clothier
Respondent: Athena Recruiting Services Limited
Heard at: East London Hearing Centre
On: 2 June 2017
Before: Employment Judge Hallen

Representation

Claimant: In person
Respondent: No appearance

JUDGMENT

The judgment of the Tribunal is that the Claimant is awarded £1,542.50 in respect of unpaid wages in December 2016 and January 2017 as well as his Employment Tribunal fees of £390. The Respondent is ordered to pay a total of £1,932.50.

REASONS

Background

1 The Claimant in his Claim Form received by the Tribunal on 16 March 2017 made a claim for breach of contract in respect of unpaid wages in December 2016 and January 2017. The Respondent was given an opportunity to file a Response Form within the specified 28 days under the Employment Tribunal rules but failed to respond. On 30 May 2017 the Respondent through its representative made an email application for a postponement on the basis that the Respondent's Director was on holiday until 8 June 2017. The Claimant objected to such postponement by email of the same date. The Regional Employment Judge refused the application for a postponement and noted that the Respondent had failed to respond by way of a Response Form under the Tribunal rules in the time allowed for. However, the Regional Employment Judge gave the Respondent an opportunity to make written representations.

2 At the outset of the hearing, the Tribunal noted that the Respondent made written representations which were copied and provided to the Claimant. In essence, the Respondent confirmed that the Claimant was not owed any monies and that the Respondent was not in breach of a contract. Attached to the written representations were wage slips for the period 2 December 2016 to 27 January 2017. The Tribunal reviewed the Respondent's representations even though the Respondent had not lodged a Response Form. The Tribunal also gave the Claimant an opportunity to review the written representations and respond to those representations during his evidence. The Claimant also produced a bundle of documents being a transcript of text messages between the Respondent and the Claimant, an email dated 30 January 2017 which the Claimant confirmed related to a time sheet delivered to the Respondents for three days at the end of January for which he was not paid. These dates were 23, 26 and 27 January at which time he worked at the Crown Plaza Hotel. He also produced an email exchange between the Claimant and Respondent dated 6 January 2017 along with time sheets submitted for the period 16 December 2016 to 2 January 2017.

Facts

3 The Claimant worked as an agency Sous Chef being employed by the Respondent for the period 19 July 2016 until 26 January 2017. During his service with the Respondent, the Claimant undertook various assignments at the delegation of the Respondent to various clients of the Respondent including the Crown Plaza Hotel. The Respondent was responsible for the payment of the Claimant's salary based upon the hours undertaken for the Respondent on various assignments. The Claimant confirmed that his hourly rate was £15 per hour.

4 The Claimant gave evidence which was accepted by the Tribunal that he agreed with the Director of the company, Ms Denise Gillmore that for the period 16 December 2016 until 2 January 2017 he would be paid double pay for the hours undertaken at the Crown Plaza Hotel. The Claimant confirmed that for this period, the Respondent did pay the Claimant at his normal rate of pay and this is showed in the payslips submitted by the Respondent in its written submissions. However, the Claimant stated that he was owed the sum of £1,162.00 in respect of the hours that he had undertaken at the Crown Plaza Hotel at the agreed double pay rate. The Claimant took the Tribunal to an email from Ms Gillmore dated 6 January 2017 in which she confirmed that the monies were due and owing. The email states:

"Good morning Oliver,

Hope you are well. Thank you for your email. We have looked into the payments/text, ... please see below £1,162.00 before tax and national insurance and this will be paid to you through Maxi pay as normal breakdown ... overtime of £78.00

Christmas adjustments £1,084.00."

5 The Claimant confirmed that he was not paid this amount of money and the timesheets submitted by the Respondent show that he only received his single rate of pay not the double rate that was agreed between the parties.

6 The Claimant confirmed that for the days 23 January, 26 January and 27 January he worked at the Crown Plaza Hotel for the Respondent and produced a timesheet dated 29 January 2017 which he submitted to the Respondent by an email dated 30 January 2017. He confirmed that he was not paid for the total hours of 25.5 being a total sum of £380.50. The final payslip produced by the Respondent in its written submissions was for the week ending 22 January 2017 and not for the subsequent week. Accordingly, the Tribunal noted that there was no evidence to show payment for this period of time and the Tribunal accepted the evidence of the Claimant that he was owed unpaid wages for 25.5 hours that he undertook on 23, 26 and 27 January 2017.

Tribunal's Conclusion

7 The Tribunal was satisfied that the parties had agreed that for the period 16 December 2016 until 2 January 2017, the Claimant would be paid at his double rate of pay for work undertaken during this period of time. After reviewing the timesheets produced by the Claimant for this period, the Tribunal was satisfied that he completed 114 hours work. The Tribunal was also satisfied that the Respondent had agreed to pay the Claimant double time but in its wages slips produced as part of its written representations only paid the Claimant at a single rate of pay. The Respondent's email to the Claimant dated 6 January 2017 confirmed that for this period he was owed £1,162.00 and the Tribunal was satisfied that he did not receive this payment. Accordingly, the Tribunal awarded the Claimant £1,162.00 for his December pay. In respect of three days undertaken by the Claimant on 23, 26 and 27 January 2017, the Tribunal was satisfied that the Claimant undertook 25.5 hours work for the Respondent at its client site at the Crown Plaza Hotel. Accordingly, the Claimant was awarded £380.50 in respect of unpaid wages. As the Claimant had made out his claim the Tribunal also ordered the Respondent to pay the Claimant's Tribunal fees of £390. The total amount awarded to the Claimant was £1,932.50.

Employment Judge Hallen

5 June 2017