



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 25/8/2021

Claimant: Ms Graca de Freitas

Respondent: Principle Cleaning Services Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: Ms M Thomas-Davis (TU Rep)

Respondent: Ms C Goodman (Counsel)

JUDGMENT

1. The claim for notice pay succeeds
2. The other claims are dismissed
3. The Respondent is liable to pay the Claimant an additional 4 weeks pay under section 38 Employment Rights Act 2002
4. The Respondent must pay the Claimant £1450.57 by 8/9/2021

REASONS

1. The Claimant claimed a redundancy payment, alternatively notice pay/arrears of pay. The documents were in a joint bundle. I heard evidence from the Claimant via a Portuguese interpreter Ms A Probert and with the assistance of the Claimant's son Mr H Medonza and then from the Respondent's witness Ms L Lamberto.

Findings of Fact

2. The Claimant is a cleaner who does not speak or read English. She was employed by the Respondent since May 2013 when she started work on a Waverton Investment Management contract working 10 hours a week.
3. A 2013 document she signed stated above the Claimant's signature "*I understand that I will be sent an Employee handbook by email/post and it is also available to me on the Company website or upon request*". However, there is no proper evidence that the said document was ever sent to her and, even if it was, it would have been written in English and the Claimant would not have understood it.
4. In the bundle appears a document entitled "*Principle Cleaning Services Limited Contract of Employment for Operatives and Staff Handbook ...Amended August 2019*" which contains inter alia the following provisions:

"Hours

3.2 Your hours of work are set out in the Starter Form or Letter of Appointment.

3.3 The Company reserves the right to vary your start and finish times and to increase or decrease your total hours of work provided you have been given reasonable notice.

3.4 You will not be paid for time you have not worked which you are required to work by virtue of this contract of employment unless such time off has been authorised by your Manager as holiday or sick leave. In either of these cases you are referred to the relevant provisions for rules as to payment.

Lay Off and Short Time Working

3.6 During periods of work shortage, or other circumstances beyond the control of the Company which prevent normal working, the Company reserves the right to require you to work shorter hours or, on other occasions, to lay you off work. Alternatively, the Company may require you to undertake alternative work, with different duties or at another location. Your entitlement to salary during lay-off periods will cease and during short time working be at the discretion of the Company, with the Company reserving the right to reduce pay commensurate with shorter working hours save that your rights to a statutory guarantee payment pursuant to your statutory rights are not affected."

26. Changes to your terms of employment

We reserve the right to make reasonable changes to any of your terms of employment. You will be notified in writing of any change as soon as possible and in any event within one month of the change.'

5. Ms Lamberto stated that the 2019 terms were the same as the 2013 terms but the latter have not been produced and on her own evidence she has not carried out a line-by-line comparison and does not have specific knowledge of particular provisions. Ms Lamberto agreed that the Respondent cannot locate a copy of the August 2019 terms signed by the Claimant and I find that she never signed them.
6. Ms Lamberto also states "*I am aware that this document and the company handbook was emailed to the Claimant in 2020 and she opened this email*". The Claimant denied this and the email was not produced. In any event, even if she had opened an email or attachment, she would not have understood them and in the circumstances the Respondent was not entitled to assume she had accepted the contents.
7. The Claimant increased her hours subsequently to 12.5 hours a week and then in August 2016 took on another assignment. From then on, she worked a morning shift from 05.00 to 08.00 at Global Investors, as well as later shift from 19.00 to 21.30 at Waverton.
8. The Claimant worked both shifts Monday to Friday, totalling 27.5 hours per week. The Claimant was paid £12 for her shift at Global Investors and £10.55 per hour for her shift at Waverton. No updated documentation was produced in evidence to show these increases.
9. There were consultation meetings starting in July 2020, between the Claimant and an HR co-ordinator, Ms Inez Carreto, who no longer works for the Respondent. On 22/7/2020 she met with the Claimant and told her that the 5am to 8am shift at Global Investors was to be moved to 9-12 pm. This however clashed with the Claimant's 19.00 to 21.30 shift at Waverton so the Claimant said she could not do both unless the Global Investors shift started at 21.30 or the Waverton shift was ended early at 21.00.
10. Ms Carreto on behalf of the Respondent offered to pay the Claimant one week's pay for each year she had worked if she lost one of her assignments as a result of a clash and alternative suitable work could not be found for her. Notwithstanding this promise, and the fact that alternative suitable work was not found for the Claimant, no such payment has ever been made.

11. The consultation process was superficial and did not get to the heart of the problems caused to the Claimant by the change in the Global Investments cleaning assignment. The problems were that the Claimant could not do both the existing Waverton shift and the new shift for Global Investments, unless the Waverton shift could be moved to start and end at least half an hour earlier, which in the event proved not to be possible. The second problem was that if the Claimant was to start working in the evening to midnight rather than ending her work at 7.30pm, (as she had done up to then) she would no longer be able to work in the mornings starting at 5 am.
12. On 31/7/2020 Ms Carreto met again with the Claimant and offered her an alternative cleaning role from 5-8 am near Bank Station. The Claimant declined this – referring to her need to rest and preserve her health.
13. The obvious solution to the problem would have been providing the Claimant with alternative work in the early evening which she could do instead of the Waverton work and before the Global Investments shift, but this was not considered or apparently even looked for by Ms Carreto.
14. A further meeting took place on 6/8/2020 when the Claimant said she would do the evening shift at Global Investors, starting at 9pm, but that did not want to work in the early morning. The Claimant was forced by the overlap to give up the Waverton contract and told Ms Carreto about this on 10/8/2020.
15. From then on the Claimant worked for the Respondent only on the Global investors contract. Hence her working hours and pay were reduced. She was paid for the Global Investors work only and lost her Waverton work which she had done previously at the rate of £10.55 per hour x 12.5 hours per week earning her £131.87 per week.
16. The Claimant was dissatisfied with the situation as she made known to the Ms Carreto at the time, for example by text messages dated between 3rd and 13 August 2020. She applied to ACAS on 26 October 2020 and received her certificate on 26/11/2020 and she presented her ET1 on 18/12/2020
17. At the end of July 21 the Claimants work at Global Investments was TUPE transferred from the Respondent to a third party and the Claimant thereby ceased to be an employee of the Respondent altogether.
18. Ms Lamberto explained to me, and I accept, that in the case of employees who worked for the Respondent at different client sites (such as the Claimant), it did not operate the employment as a single contract in practice. For example, different rates of pay applied for different assignments. If one client with whom the employee did most of her work transferred its business to a third party, the Respondent would not transfer all of its relationship with that employee across all assignments to the transferee, but would retain the employee in respect of her assignment to the clients whose business the Respondent retained.
19. The Claimant did not receive a statement of employment particulars as required by sections 1 and 4 ERA 1996.

Conclusions

20. On a proper construction the Claimant had two employment contracts at the same time with the Respondent,- one pertaining to the Waverton work and the second pertaining to the Global Investors work. It was an implied term of both these contracts that the Claimant would not be required to perform them both during the same hours because the Claimant could not be in two different places at once.
21. The Respondent has failed to prove that the Claimant accepted terms allowing the Respondent to unilaterally reduce or vary her hours or places of work. The fact that she agreed with the Respondent to increase hours previously does not show that the Respondent had the power to unilaterally reduce hours and pay.

22. The Respondent repudiated the Waverton contract by unilaterally moving the Global Investors contract hours so they overlapped with the Waverton hours.
23. The Claimant accepted the breach by terminating the Waverton contract on 10 August 2020.
24. The separate Global Investors employment contract then continued between the parties with no breach until it was TUPE transferred in July 2021.
25. The Claimant is entitled to damages for breach and wrongful dismissal from the Waverton contract, such damages limited to her notice pay (see section 86 ERA 1996) namely one week's pay per year of employment ie $7 \times \text{£}131.87 = \text{£}923.09$
26. Had I found that there was a single indivisible employment contract covering both the Waverton and the Global Investments work, then I would have found that the Claimant by continuing doing the Global Investments work from August 2020 onwards, had not accepted the repudiation and that the contract continued on a "stand and sue basis", thus entitling the Claimant to unauthorized deductions in the period to July 2021 in the sum of $\text{£}6803.63$ as per the Claimant's schedule of loss. However, given the manner in which the employment relationship of the Claimant and others in her position was conducted, that is not my finding.
27. I reject the claim for a redundancy payment as the Claimant was not made redundant and the Respondent's need for a cleaner to do the Waverton cleaning was undiminished.
28. As the Respondent failed to provide the Claimant with a statement of employment particulars and updated particulars in relation to the Waverton contract as required by sections 1 and 4 ERA 1996, it is appropriate that the Respondent should pay the Claimant an additional 4 week's pay (per the Waverton contract) under section 38 Employment Rights Act 2002. $4 \times \text{£}131.87 = \text{£}527.48$
29. The total amount due is $\text{£}1450.57$

J S Burns Employment Judge
London Central
26/8/2021
For Secretary of the Tribunals
Date sent to parties : 26/08/2021
