

JERSEY / JUDGMENT

Claire Hunter-Jones v Quayside Cafe

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL IN THE MATTER BETWEEN
CLAIRE HUNTER-JONES CLAIMANT AND QUAYSIDE CAFE RESPONDENT FINAL JUDGMENT
Date of Case Management Hearing: 19 March 2025 Before: Hannah Westmacott For the Claimant:
In person For the Respondent: Stephen Drakes DECISION The Respondent shall pay £4,955.55 to
the Claimant in respect of the claims for holiday pay and failure to provide a written statement of
terms and itemised pay statements. The Claimant's claim for failure to provide rest breaks fails
and is dismissed.

REASONS

1. The Claimant was employed by the Respondent from June 2021 to work in the Quayside Café (the “Café”). The Claimant last worked for the Respondent in July 2023. The Claimant considers that she resigned from her employment in mid-January when she told Mr Drakes she could not return to work.
2. The Claimant has brought the following complaints in relation to that employment:
 - (a) unpaid holiday pay;
 - (b) failure to allow rest breaks;
 - (c) failure to provide a written statement of terms; and
 - (d) failure to provide itemised pay statements.
3. A case management meeting was held on 20 January 2025 and this case was listed for a final hearing on 19 March 2025 (the “Hearing”). This judgment records my decision on those claims following that Hearing, together with the reasons for it.
4. A further claim for unlawful deduction from wages was also brought in relation to unpaid Social Security contributions, but the Claimant received confirmation during the Hearing that all of the Social Security contributions had now been paid and this claim was withdrawn at the Hearing.
5. In advance of the Hearing, the Respondent helpfully provided a file which included the documents on which both parties sought to rely in support of the claim and the response (the “File”).

6. The File contained witness statements from the Claimant and, on behalf of the Respondent, from Mr Drakes, Ms P Warren and Ms K Jagla. All of those witnesses attended the Hearing to give their evidence and answer questions on it. Holiday Pay
7. In 2021, the Claimant worked part time for the Respondent, with differing hours each week.
8. The Respondent has calculated that the Claimant earned £10,544.99 in 2021 and took no paid holiday. Accordingly, the Respondent has calculated the amount owed for her holiday entitlement at 4% of this amount, being £421.80. This is a practical and fair way to calculate the amount owed for this period and 4% reflects the 2 weeks' annual leave entitlement provided for under the Jersey (Employment) Law 2003 (the "Law") as it was in force in 2021.
9. The Claimant has calculated her holiday pay for this period at a higher amount, but she did not account for the fact that she only worked part time during that period or that the Law in force in 2021 only allowed for 2 weeks' annual leave rather than 3 weeks', as it did from 1 January 2022 onwards.
10. Accordingly, the tribunal accepts the figure provided by the Respondent in relation to this period.
11. The parties agree that from January 2022 onwards the Claimant's weekly wage was £585 and that she took 1 week's paid holiday in December 2022. Accordingly, the parties agree the Claimant was entitled to 2 weeks' annual leave that she did not take in 2022 and the pay for this would equate to £1,170.00.
12. While we note that, in accordance with the Law, the Claimant's leave year would run from the date that her employment commenced to the anniversary of that date, as the statutory entitlement for annual leave changed on 1 January 2022 and the Claimant went from working part time to full time shortly after this date, for ease, we have calculated the Claimant's annual leave entitlement by calendar year. This will not affect the total amount of annual leave she would be entitled to over the full period of her employment.
13. The parties agree that the Claimant took no paid annual leave in 2023 and the Claimant is only claiming annual leave entitlement up to July 2023, which was the last month in which she undertook work for the Respondent. She is, therefore, claiming holiday pay for 7 months in 2023.
14. As the Claimant would have been entitled to 3 week's annual leave in accordance with the Law in force in 2023 and the Claimant worked 5 days per week that year, she would be entitled to 15 days for 12 months or, pro rata, 8.75 days for 7 months. As the Claimant's daily rate of pay was £117.00 (585/5), pay for 8.75 days would equate to £1,023.75.

15. There is no requirement under the Law for employers to allow employees to roll over their holiday from one year into the next if they do not take it. The Law provides for an entitlement for employees to take leave, not for pay in lieu of leave, save for in an employee's final year of employment if they do not use all their annual leave entitlement prior to their employment terminating. This is to encourage employees to take breaks from their work.
16. That said, there are situations where rolled up holiday pay is used instead of paid annual leave, for example when employees work irregular part time hours, as the Claimant did in 2021. In that situation it is not anticipated that the employee will take annual leave, as, in most cases, due to the irregular nature of the hours, they will have breaks from their work from time to time in any event. Instead, they will be paid in lieu of it.
17. Rolled up holiday pay is usually paid together with wages. As the Claimant was not paid her rolled up holiday pay with her wages in 2021, the tribunal find that this amount is owed to her and the Respondent shall pay £421.80 to the Claimant in respect of holiday pay for 2021.
18. With regard to the Claimant's 2022 annual leave, for most of 2022, the Claimant was working 5 days per week and the parties have agreed a weekly wage for this period. Neither party have suggested rolled up holiday pay was applicable in this year. While the tribunal note that the onus was on the Claimant to take her annual leave in the relevant leave year, as much as it is on the Respondent to allow her to do so, we also note that Mr Drakes in his witness statement said that he allows "staff to take days left over to the following year if they so wish". Accordingly, the Respondent shall pay £1,170 to the Claimant in respect of holiday pay for 2023.
19. In accordance with article 13 of the Law, an employee is entitled to be paid in lieu of any annual leave that they accrued but did not take in their final leave year. The tribunal has determined above that the Claimant would have been entitled to 8.75 days' annual leave in her final leave year and pay in respect of this amounts to £1,023.75. Accordingly, the Respondent shall pay £1,023.75 to the Claimant in respect of holiday pay for 2023. Rest Breaks 20. At the Hearing, the parties agreed that, while the Claimant's hours varied, she usually worked a 9-hour shift from 5.30am to 2.30pm. Occasionally there were three people working in the Café at one time, but usually there were only two. Most of the work involved serving customers, preparing and cooking food and making drinks. 21. In the Claimant's witness statement she explains that she rarely took rest breaks during her shift as the Café was so busy. She said that if one member of staff left the Café, it would leave the other member of staff on their own to cook, which required constant attention, and with a queue of customers to serve. She said there was rarely time for her to eat a meal and sometimes it was so busy it was difficult to find time to go to the bathroom. She said that often she had to reheat coffee she made as it would go cold before she had the chance to drink it and, if she did take a cigarette break, she would often have to put her cigarette out to go and serve someone before she finished it. 22. The parties agreed that times for designated rest breaks were not specified, but Mr Drakes said in his witness statement that all staff are entitled to a 30 minute rest break during their shift and he left it up to them to work out amongst

themselves when they took their breaks. He only asked that they try not to take their breaks during busy periods. 23. In Ms Jagla's witness statement she confirmed that there were no designated times for breaks as the staff were allowed to take breaks when they needed. At the Hearing, she said that staff just had to talk to one another and use their common sense. 24. Ms Jagla also said that Mr Drakes was a supportive boss who understands his employees need a break and ensures they take them. The Claimant stated that Mr Drakes did sometimes suggest she took a break for a coffee and a cigarette in quieter periods, but she also said that there was often no time for this. 25. Both Mr Drakes and Ms Jagla worked regularly with the Claimant and said that she had breaks at both quiet and busy times, outside smoking and chatting to customers and frequently spending time on her personal phone while at work. The Claimant accepted she did take some short breaks, but said that she did not take breaks of 20 minutes, uninterrupted. 26. At the Hearing Mr Drakes and Ms Jagla both said that there were busy and quiet times in the Café. There was usually a busy period when the Café opened in the morning, then it quietened down before getting busy again around 9 to 10am, then there was another quiet period before the busy lunch period from around midday. They both said that it would be possible for one person to take an uninterrupted 20-minute break and the other person could manage on their own in the quieter periods. 27. The Claimant accepted that she did not raise the issue of rest breaks with Mr Drakes during her employment. At the Hearing she said the reasons she did not do so was because she found him confrontational.

28. Article 10(1)(a) of the Law provides that an employee is entitled to an uninterrupted rest period of no less than 20 minutes in each continuous period of no less than 6 hours of work. Article 10(2A)(a) of the Law provides that a rest period shall be uninterrupted if the employer does not require the employee to be available to work during that period. Article 10(2C) of the Law provides that a claim can be presented to the tribunal if the employer prevents the employee (whether by refusal or otherwise) from taking the rest breaks provided for under article 10(1) of the Law, 29. This provision came into force on 1 January 2022 and, accordingly, a claim in respect of this provision can only relate to the Claimant's employment from this date onwards.
30. The Tribunal considered the meaning of article 10 of the Law in the case of *Sandu v Courtyard Holdings Limited* [2022] TRE 101. In paragraph 86 the tribunal in that case said: "The Tribunal finds that the words "prevents" and "whether by refusal or otherwise" in article 10 of the [Law] should be given their natural and ordinary meaning given their context in the [Law]. The context is that employees are entitled to, but do not have to, take statutory rest breaks. Some employees chose to work without statutory rest breaks for economic or other reasons. The important thing is that working without a rest day is a genuine choice on the part of the employee and not something that is imposed on them by the employer."

31. While I accept that the Claimant may not have taken 20-minute uninterrupted rest breaks, based on the evidence before me, and applying the considerations from the Sandu case above, I am not satisfied that the Respondent 'prevented' the Claimant from taking the rest breaks she was entitled to. There is no assertion that Mr Drakes said at any stage that breaks could not be taken and, while the Claimant has said that the Café was too busy to take breaks, Mr Drakes and Ms Jagla both said there were quieter periods in which 20-minute breaks could be taken, uninterrupted, if needed. I prefer the Respondent's evidence on this point.
32. The Claimant may have found it difficult to take breaks due to wanting to assist the other member of staff she was working with, but I do not accept that this constitutes the Respondent preventing the Claimant from taking the breaks she was entitled to. Had the Claimant found it difficult to take the breaks she was entitled to she should, at least, have raised this with Mr Drakes to give him the opportunity to do something about this. Had she done so and had Mr Drakes not considered her concerns, this may have gone some way towards supporting her position on this claim. However, as she did not do so, and there is no other evidence to demonstrate she was prevented from taking rest breaks, I find that there was no failing of the Respondent in this regard and the claim for failure to provide rest breaks fails and is dismissed. Itemised Pay Statements
33. The Claimant states that, throughout her employment, the only pay statements she received were for January to March 2023 and she did not receive these until April 2023.
34. The Claimant states in her witness statement that she requested end of year figures in June/ July 2023, to assist with her tax return, but Mr Drakes told her to add up the amounts she had been paid from her bank statements. She also states that she requested pay statements in March 2024, after her employment ended, so that she had them as proof of work and social security contributions that should have been paid, but they were not provided at this time. She accepts that she did not request pay statements at any other time.
35. At the Hearing the parties agreed that the Claimant first received the typed pay statements that are included in the File (the "Payslips") in February 2025, when the Respondent provided them in accordance with the tribunal's case management orders in relation to this claim. At the Hearing the Claimant also noted that there appeared to be some errors in the amounts on some of the Payslips and Ms Warren, who had prepared the Payslips for the Respondent, confirmed that these were typographical errors.
36. At the Hearing Mr Drakes explained that each employee had a timesheet on the wall in the Café (the "Timesheets"), where they would enter the hours they worked each month. At the end of each month, he would add up the hours, usually in front of the employee, then calculate their gross pay, tax deductions, social security contributions and net pay for that month. He would write these amounts in the spaces provided for them on the Timesheets. He suggested the employee took a photograph of the completed Timesheet and then they were all put in a drawer in the Café.

37. The Claimant agrees that the Timesheets were on the wall in the Café and that she entered the hours she worked on them. She recalls taking photographs of some, before the calculations had been done, and said she did not always see Mr Drakes do the calculations. The File contains photographs of some of the Timesheets without the calculations completed. The Claimant was not aware of where the Timesheets were put after the calculations had been done. I found the evidence of the Claimant to be more convincing on this point.
38. The File contained copies of the Timesheets for all the months that the Claimant worked, apart from four. At least two of the Timesheets that were provided did not include any wage calculations and several had parts of the calculations missing or it was not clear what the relevant calculation were.
39. The Claimant also made reference in her witness statement to issues she experienced in relation to unpaid Social Security contributions. Despite making the relevant deduction from the Claimant's wages, the Respondent did not pay the Claimant's Social Security contributions for 8 months from June 2021 to January
2022. This appeared to be an administrative error.
40. The Claimant explained in her witness statement that this caused her issues in June 2023 when she was unable to obtain a valid registration card. The File includes emails between the Claimant and the Social Security Department in relation to this in June 2023. The Claimant said she was very distraught by this and spoke to Mr Drakes about it the next day. At the Hearing Mr Drakes denied that the Claimant raised this with him. I found the evidence of the Claimant to be more convincing on this point.
41. In September 2024, the Claimant issued her claim for unlawful deductions from wages in respect of the Social Security contributions that were not paid. At the Hearing, Mr Drakes confirmed that he had paid the Social Security contributions around the end of February 2025. However, I note that this was over 6 months after the claim had been raised and only shortly prior to the Hearing. While Ms Warren gave evidence that there were some technical issues encountered when attempting to make the payments, it is not clear why it took 6 months to make them, particularly when some of the payments were over 3 years overdue.
42. In accordance with article 51 of the Law the Respondent was required to provide the Claimant with a pay statement, on or before the time at which her wages were paid, setting out her gross wages, the amounts and purpose of any deductions and her net wages.
43. The Timesheets that included all of the relevant calculations may have been sufficient to constitute pay statements. However, simply showing these to the Claimant would not constitute provision of these documents. The Claimant would have to either have been given hard or electronic copies, or given access to copies that she could take away with her or copy and told where and how she could access them. She would need to have been given the copies or advised of how she could access them on or before her wages were paid.

44. While some Timesheets may have been left in a draw, I am not satisfied that the Claimant was ever told this. While she may have been able to take photographs of them, I am not satisfied that the Respondent showed the Claimant all the completed Timesheets and ensured she had taken a photograph of them. The Respondent has not even included copies of Timesheets for every month in the File and some that are provided are incomplete or unclear.
45. While the Claimant accepts she did receive pay statements for January to March 2023, these were provided after she was paid.
46. Accordingly, I find that the Respondent is in breach of article 51 of the Law in respect of every month of the Claimant's employment, which lasted over 2 years.
47. In accordance with article 54(1A) of the Law I can order the Respondent to pay up to 4 weeks' wages to the Claimant as compensation for failure to provide itemised pay statements. When determining how much compensation to award I considered the following:
- (a) The File includes Payslips for every month, but these were only provided after the Respondent was ordered by the tribunal to provide them and some of them are inaccurate.
 - (b) The Respondent is a small business with few employees and does not have a dedicated human resources function.
 - (c) The Claimant did not request pay statements during her employment and on only one occasion did she request end of year figures.
 - (d) The Respondent did have a system in place for calculating the Claimant's wages and deductions and some form of record does appear to have been kept, but it is not always clear or complete.
 - (e) The breach is in respect of over 2 years' pay and was only attempted to be rectified after being ordered to do so by the tribunal.
 - (f) Had the Claimant had copies of her pay statements this may have assisted in dealing with the issues she experienced in relation to her missing Social Security contributions.
48. As this was a prolonged failure by the Respondent which was only rectified after the tribunal ordered the Respondent to do so, I consider that 3 weeks' wages would be an appropriate level of compensation in this case. The maximum amount of 4 weeks' wages is not awarded on the basis that the Claimant made limited requests for pay statements and due to the size and resources of the Respondent. Accordingly, the Respondent shall pay £1,755.00 to the Claimant in respect of failure to provide itemised pay statements. Written Statement of Terms

49. The File contains a copy of a written statement of terms of employment (the “Contract”), which Mr Drakes explained at the Hearing he prepared soon after the Claimant’s employment commenced,
50. Mr Drakes accepts that this was not provided to the Claimant prior to her claims being issued. In his witness statement he states that whenever he raised the issue of a contract with the Claimant she said she had things on her mind and could not deal with this at that point. He said that the Café then got busy and he forgot about the Claimant’s contract. He said that the Claimant did not ask him for a contract but had she done so he would have provided one.
51. At the Hearing Mr Drakes said he left a copy of the Contract in the drawer with the Payslips, until the drawer became full and was cleared out. I am not persuaded by this evidence and, in any event, Mr Drakes did not give evidence that he told the Claimant that he left the Contract in a drawer for her.
52. I note that the Contract states that the Claimant was entitled to a 30-minute lunch break to be taken at a time that is suitable for the Respondent.
53. The Claimant recalls talking about a contract with the Respondent in or around April 2023 and at one other time during her employment, although she could not recall when. She accepts that she did not request for a written statement of terms at any stage. 54. In accordance with article 3 of the Law, the Respondent is required to provide the Claimant with a written statement of terms within 4 weeks of her employment commencing. 55. Even if the Claimant had said she was not in a position to discuss the contract, the Respondent should still have complied with the statutory requirement to provide a written statement of terms. If the Claimant refused to accept a copy (which it is not asserted she did) Mr Drakes could have sent it to the Claimant by email or told her that he had left it somewhere for her to consider at a later date. 56. As the Respondent did not provide the Claimant with a written statement of terms within 4 weeks of her employment commencing, I find that the Respondent is in breach of article 3 of the Law.
57. In accordance with article 8(1)(b) of the Law I can order the Respondent to pay up to 4 weeks’ wages to the Claimant as compensation for failure to provide a written statement of terms. When determining how much compensation to award I considered the following:
- (a) The Respondent is a small business with few employees and does not have a dedicated human resources function.
 - (b) The Claimant did not request a written statement of terms during her employment.
 - (c) The Claimant was employed for over 2 years without a written statement of terms.
 - (d) The Claimant has raised difficulties with taking rest breaks and having a written statement of terms may have assisted to alleviate those difficulties.

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58. I consider that 1 week's wages would be an appropriate level of compensation in this case on the basis that the Claimant did not request a written statement of terms and due to the size and resources of the Respondent. Accordingly, the Respondent shall pay £585.00 to the Claimant in respect of failure to provide a written statement of terms. Summary of Award
59. The Claimant is responsible for paying any tax or social security contributions due on the total damages awarded. Damages Totals 2021 holiday pay £421.80 2022 holiday pay £1,170.00 2023 holiday pay £1,023.75 £2,615.55 Compensation Failure to provide itemised pay statements £1,755.00 Failure to provide a written statement of terms £585.00 £2,340.00 Total payable by Respondent to Claimant £4,955.55 Mrs H Westmacott, Deputy Chairman Sent to the parties on: 20 March 2025
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