

JERSEY / JUDGMENT

Lili Huckson v The Vault

COURT

IN THE EMPLOYMENT AND DISCRIMINATION
TRIBUNAL

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IN THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

IN THE MATTER: BETWEEN
 LILI HUCKSON
 CLAIMANT
 AND
 THE VAULT
 RESPONDENT
 ARTICLE 12 JUDGMENT
 Before: Mr.
 M. Salter, Deputy Chairman

JUDGMENT

- (1) As a result of no Response Form having been presented on the expiry of the time limit in Article 8(1) of the Employment and Discrimination Tribunal (Procedure) Order 2016, the Claimant's claims for unpaid wages and a failure to provide wage slips are successful. (2) The tribunal shall convene a Case Management Meeting to consider the issues in the claim for Rest Periods and to give directions for the remedy for non-provision of payslips. This hearing will be held on 22nd August 2019 at 11:30am. (3) The Respondent shall pay to the Claimant £259 for unpaid wages. **THE REASONS** The Claim (1) On 1st July 2019, the Claimant presented a Claim Form with the Tribunal complaining she was owed £259 for unpaid wages, had never received any payslips and that her rest periods were not in accordance the Employment Law. (2) On 2nd July 2019, the Tribunal wrote to the Respondent enclosing a copy of the Claimant's Claim Form. The letter contained the following statement in bold: **IMPORTANT DOCUMENT PLEASE NOTE THAT IF YOU FAIL TO RESPOND TO THIS NOTIFICATION WITHIN THE APPROPRIATE TIME LIMIT THIS CLAIM WILL BE CONSIDERED WITHOUT YOUR PARTICIPATION AND A MONETARY JUDGMENT MAY BE MADE AGAINST YOU** (3) It required a response by 23rd July 2019; that is 21 days after the date the letter was sent to the Respondent and so the date set by Article 8 of the Employment and Discrimination Tribunal (Procedure) Order 2016 ("Procedure Order"). No Response (4)

No Response was received from the Respondents by 23rd July 2019. The Procedure Order (5) So far as is relevant Article 12 of the Procedure Order says: 12 Effect of non-presentation or rejection of response, or case not contested

- (1) This Article applies if –
 - (a) no response has been presented on the expiry of the time limit in Article 8..
- (2) The Chairman or a Deputy Chairman must decide whether on the available material (which may include further information which the parties are required to provide), a determination can properly be made of the claim, or part of it and if so the Chairman or Deputy Chairman must issue a judgment accordingly; otherwise, a hearing must be fixed before a single tribunal member.
- (3) The respondent is entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, is entitled to participate in any hearing only to the extent permitted by the Chairman or Deputy Chairman.

Determination

- (6) No response having been received by 23rd July 2019, Article 12(1)(a) has been satisfied. Decision on Liability (7) I decided that a determination on liability in the wages claim and for non-provision of pay slips could be properly made. Article 12 of the Procedure Order provides I must therefore issue a judgment accordingly. I therefore make made the judgment set out above. (8) The Claimant's claims for non-payment of wages and for failure to provide payslips are successful against the Respondent. (9) I have no information regarding the claim for rest periods and so am unable to properly make a determination of that claim. Decision on Remedy (10) Having made the determination above I went on to consider whether I could make a determination of remedy on the material I have before me. (11) I have decided that I can properly make a determination of remedy in this matter for the underpayment of wages as the Claimant is seeking a liquidated sum and has fully set out the amounts she is claiming in her Claim Form with a rationale of this. (12) I accordingly make an Order that the Respondent pay the Claimant £259 for unpaid wages as set out in the Claim Form. (13) I am, however, unable to make a determination of remedy in the matter of non-provision of payslips claim without a hearing as Art 54 of the Employment (Jersey) Law 2003 provides the tribunal with a discretion as to the level of compensation to be awarded. Further Hearings (14) Art 12(3) states: The respondent is entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, is entitled to participate in any hearing only to the extent permitted by the Chairman or Deputy Chairman. (15) In accordance with Regulation 12 of the Procedure Order, a Case Management Meeting shall now be convened before a Chair, sitting alone, at 11.30am on 22nd August 2019 ("Hearing") for the purposes of identifying the issues in the rest periods claim and for case management of that matter and the remedies hearing for the pay-slips claim. Respondent's Involvement (16) I considered the English Court of Appeal's decision in

Office Equipment Systems v Hughes [2018] EWCA Civ 1842 for guidance on the extent to which the Respondents should be entitled to participate in proceedings, having failed to file a Response Form. Hughes provides the following guidance: “There is no absolute rule that a respondent who has been debarred from defending an employment tribunal claim on liability is always entitled to participate in the determination of remedy. At the lower end of the scale of cases employment tribunals routinely deal with claims for small liquidated sums, such as under Part 2 of the Employment Rights Act 1996 (still commonly called the “Wages Act” jurisdiction) where liability and remedy are dealt with in a single hearing. In such a case, a respondent who has been debarred from defending under Rule 21 could have no legitimate complaint if the employment tribunal proceeds to hear the case on the scheduled date, determines liability and makes an award. Even in that type of case it would generally be wrong for the tribunal to refuse to read any written representations or submissions as regards remedy sent to it by the defaulting respondent in good time, but proportionality and the overriding objective do not entitle the respondent to a further hearing. But in a case which is sufficiently substantial or complex to require the separate assessment of remedy after judgment has been given on liability, only an exceptional case would justify excluding the respondent from participating in any oral hearing; and it should be rarer still for a tribunal to refuse to allow the respondent to make written representations on remedy.” (17) In this case, I am satisfied that it is not possible to determine the remedy for non-provision of payslips without hearing submissions from the parties, as the Employment (Jersey) Law provides the tribunal with a discretion as to the amount to award. It would, in light of Hughes, be inequitable to exclude the Respondents from such a remedies hearing if they wished to be heard as to the level of the award. (18) However, in accordance with Regulation 12(3) of the Procedure Order, the Respondent may only participate in the hearing with the express permission of the Chairman or a Deputy Chairman. Therefore, should the Respondent wish to participate in any capacity, it must request to do so in writing to the Tribunal.

Conclusion

- (19) The Claimant shall promptly inform the Tribunal Registrar if any of the outstanding claims are settled or withdrawn prior to the Hearing. (20) The parties are advised that: a. free legal advice may be obtained from the Jersey Advisory and Conciliation Service (JACS) and the Citizens Advice Jersey (CAJ); b. they may access previous Tribunal judgments on the Jersey Legal Information Board website (jerseylaw.je); and c. they should check their household or car insurance policies to establish whether there is any provision in the policies for assistance with legal fees. Mr. M. Salter, Deputy Chairman Date: 29 July 2019

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