

JERSEY / JUDGMENT

Mr M Zdzienicki v Sarum Hotel Limited

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Jersey Employment Tribunal This award, (subject to the right of appeal to the Royal Court, as set out in the Law) is legally binding and is the final decision of the Tribunal. Each party, if applicable, is responsible for establishing their liabilities with regard to Social Security and Income Tax payments. Case Number: 1112-151/09 Applicant: Mr M Zdzienicki Respondent: Sarum Hotel Limited Hearing on 16th July 2009 Before: Mr D Le Quesne, Chairman, Mr S Mourant and Mr S Le Breton, Panel Members Representation: For Applicant: Mr M Zdzienicki represented himself For Respondent: Mr Robert Weston, Director, Sarum Hotel

1. The narrow issue in this case is whether the employer was entitled to deduct from the employee's wages sums in respect of:-
 - (a) board and lodging whilst he stayed in the hotel with his girlfriend, who also was an employee and who, unlike the applicant, had a room in the hotel allotted to her; (b) the cost incurred by the employer in remedying alleged defects in the work done at the hotel by the employee, who was employed as a handyman.
2. We heard, as the first issue for determination, evidence and submissions on the question of whether the contract between employer and employee permitted the deductions. An employer may not make deductions for board, lodging or the cost of remedying what the employee has done badly unless there is a term in the contract of employment which allows this. For the purpose of the first issue, we heard the evidence of Mr Z and, for the employer, of Miss Christina Mira, who is the hotel manager, and we heard submissions from Mr Weston, who presented the Respondent's case, as a director. 3 There was no dispute that in the short time the employee was employed, between 20th October and 7th November 2008, he was not provided with written terms of employment. This is not an offence, for the Employment Law requires the statement of terms of employment to be provided within 4 weeks of the employment commencing. Nonetheless, the failure to provide written terms to an employee, particularly if those terms are long and detailed as in this case, makes it harder for the employer to satisfy us that the terms were known to, understood and agreed by the employee. 4 We have described the employer's written terms as long and detailed, and this is no criticism; quite the contrary. The standard document consists of 8 pages, of which the first 3 are details which have to be completed by one or other of the parties, specific to the particular employee. Pages 4 to 8 are the "Standard Terms and Conditions of Employment"; there are 48 separate numbered paragraphs and further sub-paragraphs, all quite closely typed. Quite a formidable document by any standards, and certainly by the standards of most manual workers, let alone, as in this case, a Polish employee faced with an

English document. 5 In considering this first issue, we decided to take the employer's evidence at its best, which meant that we did not have to assess the credibility of the employee's evidence that he did not read a copy of the document, and it was not explained to him. The employer's evidence came from Miss Mira, and it differed to some extent from what was in her statement. We prefer the sworn oral evidence of Miss Mira, simply because it was sworn and live. Miss Mira's evidence was that she sat in her bedroom in the hotel with Mr Z, she with her own contract and Mr Z with his girlfriend's contract (we accept that the standard part of the hotel contracts was the same). She said that Mr Z was reading it to himself and he asked her questions about it; she did not read it aloud and did not go through every paragraph. For the purpose of this first issue, we accept that evidence on behalf of the employer. 6 There was some evidence and submissions that the employee had access to and read on another or other occasions his girlfriend's contract. We have no hesitation in rejection the proposition that this was sufficient to persuade us that the written terms were agreed by the employee. 7 The question for us is whether what happened in Miss Mira's room was sufficient to bring to the employee's knowledge and understanding, and thus into the contractual terms between employer and employee, the terms of the standard written contract of the employer. For the reasons which follow, we find that it was not sufficient, that Mr Z did not know the written terms and they were not incorporated in the unwritten agreement by virtue of which the employee worked for the employer. 8 Our reasons are as follows: a). Mr Z is Polish. Although he spoke quite good English, and his understanding was sufficient for every day purposes, there were during the course of the hearing words and phrases which he did not understand. We have no doubt that Mr Z could not have understood, and thus probably could not have read, much of the standard terms. b). The contract is long and detailed. Even for a person with English as a first language, it is a formidable document, which would not easily be understood by a manual worker or someone unused to such documents. Such a person would be very unlikely to manage to plough his way through the document without assistance. c). The circumstances in which Mr Z was said to have been taken through the document (he and Miss Mira were seated in her bedroom) were not appropriate for explaining to an employee the meaning of a long contract. d). Miss Mira said that she did not take him through the document. This is significant in the light of its length and complexity, and also in the light of the fact that he was not given his own contract and told to take it home and study it. Had he been given a copy of his own contract, it might have been arguable that if he did not know its terms, that was his own fault. We do not accept that such an argument can be based upon the fact that he had access to his girlfriend's contract. 9 The consequence of our decision is that the employer did not have any contractual right to make the deductions referred to in paragraph 1 above from Mr Z's wages. Looking at the employer's wage slip for the employee for November 2008, we see that Z was entitled to: £350.00 basic pay, and £34.64 holiday pay = £394.64 (amounts shown relating to a loyalty bonus and holiday pay do not apply for this period of employment). In his evidence, however, Z only claimed that he was entitled to payment for 37 hours work at the hourly rate of £7.00 = £259.00 The payslip also shows that the deduction for remedial works amounted to £490.60 and the deduction for live-in

allowance amounted to £150.00, giving a total deduction of £640.60. The employer, in order to recover what it claimed was due to it, deducted £394.64 from Z's final wage, which meant that he was paid nothing. We were told that the employer is seeking to recover the outstanding balance of £255.95 from Z in civil proceedings. 10 The employer therefore now must repay to Z the sum of £394.64, and it follows from our decision that the employer is not entitled to claim from Mr Z the outstanding balance of £255.95. David Le Quesne, Chairman 29th July 2009.

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