



Case Number: 2302767.2016

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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr G J W Child

and

**Respondent**

Super Leisure Store Ltd

Held at Ashford on 3 February 2017

**Representation**

**Claimant:**

In Person

**Respondent:**

Did not attend

**Employment Judge** Kurrein

## JUDGMENT

- 1 The Respondent has made unauthorised deductions from the Claimant and is ordered to compensate him in the net sum of £862.92 without deductions.
- 2 The Respondent has failed to pay the Claimant for accrued but untaken holiday and is ordered to pay him the net sum of £221.10 without deduction.
- 3 The Respondent is Ordered to pay the Claimant's costs in respect of fees incurred in the sum of £230.00.

## REASONS

- 1 The Claimant presented his claim on 20 October 2016 having completed early conciliation.
- 2 The Respondent presented its response on 15 December 2016.
- 3 A notice of hearing for today's date was sent to the parties on 2 December 2016, together with limited directions.
- 4 On 22 January 2017 the Respondent sent an email seeking to have the Claimant's claim dismissed. On 27 January the parties were informed by letter that the application had been rejected, but could be raised anew at today's hearing.
- 5 The Respondent did not attend today. A clerk telephoned and was told that the Respondent could not attend as the shop would be unoccupied. She was also told that the letter of 27 January had not been received and that the Respondent had recently telephoned to enquire why it had not received a response to its application.
- 6 I concluded, on balance:-

- 6.1 The letter of 27 January had been delivered to the correct address for the Respondent.
- 6.2 It was unlikely the Respondent had telephoned the Tribunal because, if it had:-
- 6.2.1 there would be a note to that effect on the file, but there was none; and
- 6.2.2 the Respondent would have been informed of the content of the letter of 27 January 2017 and that the hearing would proceed.
- 7 In addition, and contrary to what was alleged to the Clerk, the Respondent had not indicated in its email application that it was unable to attend the hearing and, in any event, it should have attended the hearing.
- 8 I heard the Claimant's evidence and considered the pleadings and the documents I was referred to. I make the following findings of fact:-
- 8.1 The Claimant agreed to work for the Respondent, initially for a three day trial period, as a workshop technician subject to a six month probationary period at a rate of £7.90 per hour. He was handed a piece of headed paper with some of these terms typed on it.
- 8.2 The pay date was specified as "monthly in lieu"
- 8.3 He started work on 23 May 2016. After three days he was told his work was acceptable and he then worked full time, generally 7 hours a day 5 days a week. He was given an unsigned contract of employment.
- 8.4 I accepted his evidence of the hours he worked as set out in a spreadsheet as being
- 8.4.1 May 35 hours
- 8.4.2 June 138 hours
- 8.4.3 July 77 hours
- 8.5 The Claimant was not paid at the end of May, the Respondent apparently believing that "one month in lieu" meant two months in arrears. The contract clearly provided for payment "monthly in arrears".
- 8.6 On 28 June 2016 the Claimant was given a payslip for 12 hours work in May for which he was paid.
- 8.7 It appears the Respondent took the view that the Claimant working 10:00 to 17:00 without a break equated to 6 hours work.
- 8.8 Following a dispute as to what the Claimant should have been paid and when the Claimant gave two weeks oral notice the next day.
- 8.9 On 12 July 2016 the Claimant emailed the Respondent to state he was ceasing work on 14 July 2016 as he could no longer afford to travel to work while saving for a wedding.
- 8.10 On 28 July 2016 the Claimant was given a payslip showing he had worked 130 hours in June, for which he was paid.

- 8.11 The Claimant has not been paid for any hours for July 2016 and has not been provided with a P45.
- 8.12 The Respondent has sought to rely on Clause 11.3 of a contract to justify the non-payment.
- 8.13 It is clear the Respondent does not understand the term “in lieu”, or that clause. It is a standard provision entitling an employer to pay an employee in lieu (instead) of giving the required notice. It clearly does not confer on the Respondent, as it contends, the right to withhold pay in the event, as occurred here, an employee does not give the requisite one month’s notice.
- 8.14 The Claimant is owed pay for 108 hours of work at a rate of £7.90.
- 8.15 The Claimant is entitled to be paid for the equivalent of 4 days holiday he accrued during his employment at a daily rate of £55.30. The contractual terms seeking to exclude holiday rights during the probationary period are void and of no effect.
- 9 I give Judgment for the Claimant in the above sums, together with his partly-remitted fees of £230.00.

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Employment Judge Kurrein

3 February 2017