



## EMPLOYMENT TRIBUNALS

**Claimant**

Mr S Panagiotou

v

**Respondent**

Robert Newmark Restaurants

**Heard at: London Central Employment Tribunal**

**On: 27 March 2017**

**Before: Employment Judge Norris**

**Appearances**

**For the Claimant:**

Ms E Tsoli (Partner)

**For the Respondent:**

Did not appear and was not represented (no response entered)

## JUDGMENT

1. The Claimant's claims for unlawful deduction from wages are well-founded and succeed. The Respondent having failed to submit a response, Judgment in default is entered in the Claimant's favour.
2. The Respondent is ordered to pay to the Claimant the net sum of £2,802.75, being £2,752.75 in wages due but unpaid and the sum of £50 pursuant to section 24 Employment Rights Act 1996.
3. The Respondent is further ordered to reimburse the Claimant for all his Tribunal fees in the sum of £390 pursuant to Rule 78(1)(c) Schedule 1, Employment Tribunals (Constitution and Rules of Procedure Regulations 2013).

## REASONS

**Background and Hearing**

1. The Claimant submitted a claim form (ET1) on 15 January 2017, complaining of notice pay and arrears of pay. The Respondent did not submit a response (ET3). On 24 February 2017, the Employment Tribunal wrote to the Respondent explaining that a default judgment would be issued if it did not provide a reply. However, once more no response was received.
2. On 10 March the Employment Tribunal emailed the Claimant asking him to provide a breakdown of the money sought, including calculations. He did not reply, but he attended the Hearing on 27 March with a signed witness statement

and a bundle of documents, including correspondence between him and Mr Newmark, of Robert Newmark Restaurants, a rota, payslips and bank statements. The Respondent did not attend and was not represented. The Claimant was represented by Ms E Tsoi, his partner, and gave evidence on oath in which he relied on the contents of his written statement .

**Default Judgment and findings of fact**

3. In the circumstances, a default liability Judgment was issued for the unpaid wages. The Tribunal then calculated the sums owing by way of remedy. Findings of fact are as follows:

- a. The Claimant was employed under terms and conditions set out in an email, namely (so far as is relevant for these purposes) he would work for £11 an hour (£9 basic plus £2 as his share of the service charge levied) for 50 hours per week, commencing on 31 August 2016.
- b. He did work on 31 August, 1 and 2 September, completing a total of 19.5 hours, but was unable to swipe in by way of fingerprint technology until Saturday 3 September. He was never paid for these 19.5 hours, although he emailed the Respondent's accounts department and Mr Newmark himself, giving them the correct details for what he was owed.
- c. His first payslip was for £635.10. However, he was not paid £635.10. Instead he was paid £317.55, being half of what he was owed.
- d. Thereafter the Claimant was issued with further payslips for £851.90, £880.27, £748.96 and £331.53. All these figures are net. The payslip for £331.53 purported to be for holiday pay. The Claimant did not receive any of these sums. He did receive just over half of the £880.27 payment, i.e. he was paid £440.25. The remainder of the amounts were not paid at all.
- e. On 17 October 2016, the Claimant's bank statements show he received a payment of £119.00. His evidence, which the Tribunal accepts, was that this was a tip and was not on account of any wages. The Claimant was entitled to additional "tronc" payments as part of his terms and conditions.
- f. The Claimant became unhappy with working for the Respondent and towards the middle of October, said that he was taking a job elsewhere. He worked on 25, 26 and 28 October 2016 (nine, seven and seven hours respectively according to the rota which was before the Tribunal), earning the gross sum of £253.00 (23 hours at £11.00 per hour). He was not paid this sum and no payslip was issued for that week. He was off sick on 29 and 30 October and so was not entitled to any salary for those two days, and started a new job on 31 October.

**Conclusions**

4. The Claimant is entitled to the following sums under sections 13, 18(2) and 23 Employment Rights Act 1996:
  - a. £2,376.41 being the total net payments for which payslips have been issued but no payments made; and
  - b. £467.50 gross being the total for the first three and last three days on which the Claimant worked but was not paid. The Tribunal calculates tax and National Insurance deductions at the rate of 19.5%, which is an

average taken from the payslips in the bundle. Accordingly, the net sum payable for these six days is £376.34; and

- c. £50 under section 24 Employment Rights Act 1996 because the Tribunal has found the complaint under section 23 well-founded and as an amount which is attributable to the matter complained of (the Claimant has had to take time off work from his new job to attend the Hearing);
- d. £390 in fees under Rule 78(1)(c) Schedule 1, Employment Tribunals (Constitution and Rules of Procedure Regulations 2013, being the issue fee and Hearing fee, since the Claimant does not qualify for remission, having secured a new role.

**Employment Judge Norris**

27 March 2017