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EMPLOYMENT TRIBUNALS

Claimant

Mr J Fernandes

Respondents

Kiru Events Ltd

AND

Heard at: London Central

On: 28 July 2017

Before: Employment Judge Palca (Sitting alone)

Representation

For the Claimant: In person

For the Respondent: Did not appear and was not represented

JUDGMENT

The Judgment of the Tribunal is that:

1 The Tribunal grants the Claimant an extension of time in relation to the presentation of his ET1 on the basis that it was not reasonably practicable for him to have presented it within the relevant period.

2 The Respondent is ordered to pay the Claimant the sum of £2,589 being: unlawful deduction from wages of £2,044; being money in lieu of untaken holiday entitlement pursuant to the Working Time Regulations 1998 of £545.

REASONS

The Parties

1. The Claimant was a chef employed by the Respondent company. His original employment was with Niku Trading Ltd but on 18 October 2016 the establishment in which the Claimant work was transferred to the Respondent who therefore assumed all responsibilities in relation to the Claimant pursuant to the Transfer of Undertaking (Protection of Employment) Regulations 2006.

Evidence

2. The Claimant produced a witness statement, gave evidence in person and provided the Tribunal with a copy of a letter from the liquidator of Niku Trading Ltd dated 21 February 2017. The Respondent did not appear and was not represented.

3. The Respondent has been served with proceedings and has been reminded on 13 July 2017 that its Response had been due on 23 June 2017 but had not been received. The Respondent had also been sent a copy of the Claimant's witness statement.

Issue

4. The issue before the Tribunal is whether judgment in default of Response should be issued, and if so, the proper determination of the claim.

Facts

5. The Claimant was employed by the predecessor company of the Respondent as a pastry chef until end October 2016. He was still in employment when his employment transferred to the Respondent. He was not paid one month's salary, amounting, gross to £2,044, and one week one day's holiday entitlement, amounting in total to £545. He was normally paid one week to one fortnight after the end of the relevant monthly period.

6. After the end of his employment, the Claimant went immediately to Goa where he remained until January 2017, when he got married.

7. In February 2017, after he had returned from holiday, the Claimant discovered that there had been a transfer of undertaking in relation to his original employer. On 13 April 2017, the Claimant applied to ACAS and an EC certificate was issued on 18 April 2017. His ET1 was filed with the Tribunal on 19 May 2017.

8. The Claimant is from Goa, and English is not his first language. He was on holiday and preparing for his wedding for the period from November 2016 to January 2017. He did not act with undue delay following his return. The Tribunal therefore determined that it had not been reasonably practicable for him to have filed his ET1 within the three months from 15 November in which it should have been filed, and grants an extension of time for the service of the claim until the date it was filed with the tribunal, ie until 19 May 2017.

9. Section 13 of the Employment Rights Act 1996 requires employers not to make unlawful deductions from wages from an employee. An unlawful deduction includes the making of no payment at all. The Tribunal finds that the Claimant is

due one month's payment of wages, representing the sums due in October 2016, totalling £2,044.

10. Upon the conclusion of a person's employment, they are entitled to a payment in lieu of untaken holiday entitlement pursuant to Regulation 14 of the Working Time Regulations 2008. On his departure, the Claimant had one week and one day's untaken holiday entitlement. This amount is calculated at £545.

11. The Tribunal therefore orders that the Respondent pay the Claimant the sum of £545 in relation to his untaken holiday entitlement.

12. In total, therefore, the Respondent is ordered to pay the Claimant forthwith the sum of £2,589.

13. The Claimant has paid fees in connection with this claim. In R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51 the Supreme Court decided that it was unlawful for Her Majesty's Courts and Tribunals Service (HMCTS) to charge fees of this nature. HMCTS has undertaken to repay such fees. In these circumstances I shall draw to the attention of HMCTS that this is a case in which fees have been paid and are therefore to be refunded to the Claimant. The details of the repayment scheme are a matter for HMCTS.

Employment Judge Palca

28 September 2017