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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Miranda  
**Respondent:** Navana Limited  
**Heard at:** East London Hearing Centre  
**On:** 2 July 2018  
**Before:** Employment Judge J Brown  
**Representation:**  
**Claimant:** In Person  
**Respondent:** Mrs Rebecca Towill, Consultant

## JUDGMENT

The Judgment of the Tribunal is that:

1. The Respondent breached the Claimant's contract when it failed to pay him for December 2017.
2. The Respondent shall pay the Claimant 1 month's net pay, in the sum of £3,064.00.
3. The Respondent failed to pay the Claimant for his accrued but untaken holiday pay at termination of his employment.
4. The Respondent shall pay the Claimant £1,159.61 holiday pay.

## REASONS

1. The Claimant brings complaints of breach of contract, unlawful deductions from wages and a failure to pay holiday pay against the Respondent, his former employer. His claims are for his December 2017 pay and for holiday pay which he had accrued up to the termination of his employment.

2. The parties agreed that the Claimant was employed by the Respondent as a Chef from 15 August 2017 to 30 November 2017. They agreed that he was paid £50,000 gross per year, or £3,064.00 net per month.
3. The Respondent had not presented a Response to the claim. It attended today and was represented and said, through representatives, that it did not receive a Notice of Claim or Notice of Hearing until Tuesday last week. The Respondent said that the relevant documents had been misdirected, in that they had been posted to a flat in the same building as the Respondent restaurant, but not to the restaurant itself.
4. The Respondent did not ask for time to submit a written Response and did not seek to postpone or adjourn the Hearing, but asked to be able to participate in this Hearing. The Claimant did not object to the Respondent participating in the Hearing. I permitted the Respondent to participate in the Hearing. I considered that a Response would have been very brief and that there was very little disadvantage to the Claimant in not having had prior notice of a brief denial of the claims. I considered that both parties were at the Hearing to give evidence. I accepted the Respondent's submission that it had a potential defence on the merits, in that it said that the Claimant had taken some holiday and that the Claimant had left by mutual consent, rather than being dismissed with pay in lieu of notice. I considered that it was in the interests of justice to allow the Respondent's Director, Mr Fenner, to give evidence at the Hearing and to decide the case on the merits. Mr Fenner gave evidence and the Claimant gave evidence.
5. At the start of the Hearing, the Respondent said that the Claimant had left his employment by mutual consent. The Claimant said that he was dismissed. The Respondent said that the Claimant had taken 2 to 3 days holiday. The Claimant said that he had taken none. However, in evidence later, it was apparent that the Respondent's Director, Mr Fenner, had sent the Claimant an email on 30 November 2017, setting out what he said were issues with the Claimant's conduct and saying that the Respondent was going to appoint an emergency Head Chef, to take over the kitchen, until the Respondent found a replacement. In the email, Mr Fenner said that, while there were grounds for dismissal, he was not that way inclined and said, "*..I will make sure you are paid your November salary tomorrow. I will also make sure you are paid a full month's salary again at the end of December to ensure you have ample time to find another position. I am also willing to give you a glowing reference whenever you require one. There is no need for you to attend work tomorrow other than to collect your belongings. Once you have done this, can you please return your apartment keys and uniform to Matt, myself or the host stand whilst emptying it of your personal possessions.....we wish you the very best of luck moving forward in your career.*" The Claimant replied later that day saying, "*.....I feel this is the right decision to make, as mentioned before, we have a very different vision on business. Best of Luck....*"
6. At the Tribunal, Mr Fenner said that, a few days later, he had asked the Claimant for the Claimant's recipe cards and costings, but that the Claimant refused to give them. Mr Fenner had then decided not to pay the Claimant his December salary.
7. Mr Fenner said that the Claimant had taken 2 to 3 days of holiday during his employment, but no records have been kept of these, as the Respondent was a family run, friendly business, which was being run, at that time, on a relaxed basis.
8. In evidence at the Tribunal, the Claimant confirmed the email chain and said that Mr

Fenner had agreed to pay the Claimant his December pay when he dismissed him. He said that there was no property in recipe cards.

9. I decided, on the evidence that I heard, that there was a concluded contract between the Respondent and the Claimant on 30 November 2017, that the Respondent would pay the Claimant one month's pay to terminate his employment. The Claimant agreed to leave on that basis. After the contract was concluded, a few days later, the Respondent's Mr Fenner asked the Claimant to provide recipe cards and decided not to honour the contract when the Claimant refused.

10. I have not seen the original employment contract. I have not seen any contractual provisions with regard to intellectual property. However, certainly, on the basis of the contract that was concluded on 30 November 2017, there was no provision, or term in that contract, that the payment of December pay would be conditional on the Claimant providing recipe cards or costings.

11. Accordingly, the Claimant was not in breach of contract when he failed to do so and the Respondent was not entitled to terminate, or to breach, the contract itself, by failing to pay the Claimant for December. The Respondent was contractually obliged to pay the Claimant for December, but failed to do so. I concluded that the Respondent was in breach of the contract that it made at the termination of the Claimant's employment.

12. As a result, I ordered the Respondent to pay the Claimant his agreed net pay of £3,064.00 for the month of December, as a remedy for its breach of contract.

13. With regard to holiday pay, the Respondent did not keep holiday records. I have not seen any records of the Claimant having taken holiday. I must conclude, on the evidence, that the Claimant did not take any holiday which was required to be deducted from his holiday entitlement under the Working Time Regulations.

14. The Respondent did not pay the Claimant holiday pay on termination of his employment. The Claimant claimed for accrued holidays for four and a half months of work. On the evidence, he only worked for three and a half months, or 107 days. The calculation therefore is

$107 / 365 \times (\text{Claimant's net annual pay} - \text{£}36,768.00 \text{ net, or } \text{£}707.00 \text{ net per week}) \times 5.6 \text{ weeks} = 1.64 \text{ weeks pay. } 1.64 \times \text{£}707.00 = \text{£}1,159.61.$

That is the amount of holiday pay which the Respondent shall pay to the Claimant.

Employment Judge Brown

10 July 2018