



EMPLOYMENT TRIBUNALS

Claimant: Michael David Hine

Respondent: Stuart and Donna Armstrong T/A The Waves Bar and Restaurant

Heard at: Plymouth **On:** 12 October 2018

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Was not represented and did not attend

JUDGMENT

1. The respondent made deductions from the wages due to the claimant of £461.97, contrary to S13 of the Employment Rights Act 1996.
2. The respondent is ordered to pay **£461.97** to the claimant in respect of the claim under S13 of the Employment Rights Act 1996.
3. The claim is amended to include a failure by the respondent to provide a statement of employment particulars, or itemised payslips, as required by S1 and S8 of the Employment Rights Act 1996.
4. The respondent failed to provide such a statement to the claimant, and failed to provide him with itemised payslips.
5. The respondent is ordered to pay to the claimant **£939.60** (being 4 weeks' pay) in respect of the failure to provide a S1 statement (Section 38 of the Employment Act 2002).
6. The total the respondent is to pay to the claimant is **£1401.57**.

REASONS

1. The respondents run a bar and restaurant. The claimant worked there from 30 April 2018 to 18 May 2018. He was to be hourly paid. In the claim form and response the claimant and the respondent agree that the hourly rate was £7.83.
2. The claimant attended the hearing and gave evidence. His evidence was that the time he worked was 59 hours. The respondent stated in the response form that it was 44 hours, but provided no detail. I accept the evidence of the claimant, given on oath, as to the number of hours worked by him. His explanation of the difference is that he worked shifts of 6 hours without a break, but the respondents have deducted time for breaks he did not (and was not able) to take.
3. In a response form filed on 02 August 2018 the respondent stated:

"I am not wasting any more time on this individual, hes a disgusting person has been told pick his wages up. I will not jump to his say so hes a story teller and lies never gave notice demands and threatens the business and staff he needs help, I will not waste my time attending has been told to pick his wages up end of. If he wants me attend its £100 an hour my costs, he wasting your time he should be billed for the time." [sic]
4. The claimant claims that he suffered unlawful deductions from his wages as he has not been paid at all for that work. I so find. Not only is there the evidence of the claimant but it is as good as admitted in the response filed by the respondents.
5. By a letter to the Tribunal of 19 August 2018 the claimant wrote to the Tribunal stating that he had not received any statement of terms and conditions of employment or itemised payslips. He sent a copy of that letter to the respondents, who did not respond. I take this as an unopposed application to amend to include these as additional claims.
6. The respondent's response clearly accepts that the claimant has not been paid for his work. It is not appropriate for the employer to demand that the claimant attend in person to collect the money. The respondent could have posted him a cheque, or used the BACS system. I accept the evidence of the claimant that the only paperwork in respect of this employment was a form which he filled in with his address, next of kin and bank details.
7. It is the more egregious because I accept the evidence of the claimant that the first respondent physically threatened the claimant when he went to the business premises to ask for the money he was owed. The claimant's evidence is that the first respondent told him that he knew where he lived and would slit his throat, whereupon another person twisted his arm and physically removed him from the premises. The claimant tells me that he had recorded this on his phone, and complained to the police, who visited the respondents to caution them against making such threats. It is wholly inappropriate for the respondents to state that the claimant should attend to pick up his wages.
8. The attitude of the respondent shown in the response towards the Tribunal as well as to the claimant is of evidential value in accepting the evidence of the claimant, and the assertions of the respondents do not address the issue of non payment of wages.

9. I have ordered payment gross, as I have no confidence that the respondents would deal with deductions appropriately. I accept the evidence of the claimant that he has checked with HMRC which has no record of the claimant being employed by the respondents. The claimant will need to make the appropriate returns to HMRC on receipt of the wages unpaid.

Employment Judge Housego

Date 12 October 2018