



EMPLOYMENT TRIBUNALS

Claimant: Mr J Cameron

Respondent: Farmhouse Foods Ltd

Heard at: London Central

On: 20 November 2018

Before: Employment Judge Baty

Representation

Claimant: In person

Respondent: No attendance or representation

JUDGMENT

1. The claimant's complaints of unlawful deduction from wages succeed.
2. The tribunal makes a total award of **£550** (net), payable by the respondent to the claimant. This comprises:
 - a. £475 (unpaid holiday pay); and
 - b. £75 (unpaid tronc payments).

REASONS

Today's hearing

1. The respondent had previously submitted a response to the claim, indicating that it was defending the claim. However, the respondent did not attend for today's hearing. The tribunal clerk ran the respondent to find out why. She managed to speak to Mr Teejay Asciak (Mr Asciak is listed as a director of the respondent when one does an internet search of the company). Whilst he did not have the papers in front of him, he acknowledged that he had received the notice of claim (had he not received it, he would not have known to submit a response to the claim) but said that he was not aware of the date of the hearing. He said he would like to be able to attend a hearing on a different date. The clerk relayed this information to me.

2. I noted that the date of this hearing was set out on the notice of claim, which Mr Asciak had acknowledged that he had received. Whilst he may not have noted it, I was satisfied that the respondent had received notice of the date of this hearing. Furthermore, the claimant was here and the matter was relatively self-contained. I decided, therefore, that, the respondent having had the chance to attend, it would not be in the interests of justice to postpone the hearing and I decided to proceed with the hearing in the respondent's absence; to do otherwise would be to cause unacceptable prejudice to the claimant, who had attended today, and to other tribunal users who would be impacted upon by the tribunal having unnecessarily to devote more of its time to hear this claim on a future date.

Correct name of respondent

3. The claim had been brought against "the Farmhouse". "The Farmhouse" was the name of the restaurant at which the claimant worked. However, in the response form, the respondent had described itself as "Farmhouse Foods Ltd". Furthermore, the claimant showed me copies of his pay slips on his mobile phone; these indicated that his employer was "Farmhouse Foods Ltd". The claimant accepted that Farmhouse Foods Ltd was therefore likely to be his employer. Furthermore, on the basis of the evidence before me, I considered that Farmhouse Foods Ltd was the claimant's employer and accordingly adjusted the name of the respondent on the claim to reflect this.

The complaints

4. By a claim form presented to the employment tribunal on 21 July 2018, the claimant brought complaints of unlawful deduction from wages. The respondent defended the complaints.

5. The respondent also purported to submit an employer's contract claim (counterclaim); however, this was not accepted by the tribunal because the claimant had not brought a breach of contract claim, which is a prerequisite to an employer being able to bring an employer's contract claim in the employment tribunal.

The law

6. Under Part II of the Employment Rights Act 1996 ("ERA"), an employer is not entitled to make deductions from wages properly payable to an employee, except in certain circumstances, none of which are relevant to the facts of this claim. "Wages" includes holiday pay for these purposes.

Issues, findings of fact and conclusions

7. The precise amounts which the claimant claimed to be owed were not set out in the claim form and I therefore took further evidence from him to ascertain what these sums were and whether they were indeed properly payable to him but had not been paid.

8. The claimant was employed by the respondent from 20 February 2018 until 26 May 2018 (at which point he resigned).

9. First, the claimant said that he was owed £475 (net) by way of accrued but unpaid holiday pay. He explained that, whilst he did not have a calculation of this, there had been email correspondence between him and the respondent in relation to his final pay. In that, the respondent had confirmed that he was owed £475 in respect of holiday pay but had decided, because of the claimant's alleged sudden resignation and the consequent alleged need for the respondent to bring in agency staff to cover, that this sum would be deducted from the claimant's final wages and was not therefore paid to the claimant. The respondent's response form, whilst not going into details, also indicates that the respondent informed the claimant that it would deduct "costs incurred as a result of his sudden departure".

10. In the light of this, I find that the claimant was indeed owed £475 (net) by way of accrued but unpaid holiday pay and that the respondent did not pay it.

11. As noted in my summary of the law, an employer is not ordinarily entitled to make such deductions. This is regardless of whether or not the employer suffered losses as a result of the employee's sudden resignation. The respondent was not, therefore, entitled to make these deductions. This part of the claimant's complaint therefore succeeds.

12. The claimant informed me that, at the start of his employment, the respondent agreed with him that a tronc system would operate which would guarantee payments of £1 per hour worked to him (and payments in excess of this if the restaurant was busy). However, he was never paid any sum in this respect. In the absence of any evidence to the contrary, I accept the claimant's evidence that such a system was agreed between him and the respondent and that he was due such payments. The claimant estimated that, over the course of his employment, the total of these payments, based on a rate of £1 per hour worked, was about £75. Again, in the absence of any evidence to the contrary, I accept this. I therefore find that wages in relation to this tronc system of £75 were properly payable to the claimant by the respondent but were not paid. This part of the claimant's complaint therefore also succeeds.

13. The total of these awards is set out in the judgment above.

Employment Judge Baty

Date 20 November 2018

JUDGMENT SENT TO THE PARTIES ON

22 November 2018

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FOR THE TRIBUNAL OFFICE