



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr M White

AND

Bargains Are Here Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields

On: 29 November 2017

Before: Employment Judge Speker OBE DL

Appearances

For the Claimant: In person, represented by his father Mr W White

For the Respondent: No attendance

JUDGMENT

- 1 The respondent has not paid to the claimant the wages to which he is entitled under the National Minimum Wage Regulations. The respondent shall pay to the claimant the sum of £1,615.39.
- 2 The respondent shall pay to the claimant the further sum of £450, two weeks' wages for failure to provide a written statement of terms and conditions.
- 3 The total sum to be paid by the respondent to the claimant is £2,065.39.

REASONS

- 1 This was a claim made on the basis that the respondent had failed to pay to the claimant the appropriate wages justified by the circumstances of his employment.
- 2 The respondent had not entered an appearance in time namely within the 28 day period provided by the rules. The respondent was notified of this by letter of the

Tribunal dated 1 November 2017. Mr Khan on behalf of the respondent requested a postponement and then filed a response form in which it was stated that Mr Khan was out of the country. The form ET3 response was acknowledged by the Tribunal but the respondent was told that it was not accepted and would not be accepted unless by 21 November 2017 the respondent explained in writing the reasons for delay and requested an extension to 15 November 2017. Nothing further was heard from the respondent and no one attended the Tribunal hearing on behalf of the respondent.

3 The claimant's father advanced the circumstances on behalf of his son as the claimant was not able to do so. The facts found were as follows on the basis of the documentary evidence provided:

3.1 The claimant was engaged to commence work with the respondent company as an "apprentice" from 21 March 2017. The engagement was by a small piece of paper with handwriting merely telling the claimant that he was to start as an apprentice and given a commencement date with a stated minimum wage of £3.50 per hour.

3.2 No other documentation was proffered by way of an agreement or apprenticeship contract. No training was provided and there was no agreement to provide the claimant with 30 hours work per week and in fact he did not receive 30 hours week on any day apart from one.

3.3 The claimant commenced work and was given some hours of work each week on an irregular basis. These hours were paid at the rate of £3.50 per hour. On some occasions no payslips were provided.

3.4 The claimant's father approached the respondent a number of times to try to regularise the position but received no response.

3.5 In view of the fact that the claimant was not given a formal apprenticeship agreement and was not earning the wages it had been expected he would on the basis of an apprenticeship agreement, the claimant's father sought to recover the appropriate earnings based upon the national minimum wage applicable to the claimant's age namely £7.50 per hour.

4 The claims advanced on behalf of the claimant calculated by his father were as follows:

Date	Hours	Apprentice Rate @ £3.50 hr	NMW Rate @ £7.50 hr	Difference @3.55 hr
21/3	8.5	29.75	59.90	30.15
28/3	7.5	26.25	52.87	26.62
29/3	7.5	26.25	52.87	26.62
30/3	7.5	26.25	52.87	26.62
31/3	5	17.50	35.25	17.75
4/4	7.5	26.25	52.87	26.62
5/4	7.5	26.25	52.87	26.62
6/4	7.5	26.25	52.87	26.62

7/4	5	17.50	35.25	17.75
10/4	7.5	26.25	52.87	26.62
17/4	7.5	26.25	52.87	26.62
25/4	5.5	19.25	38.77	19.52
26/4	5.5	19.25	38.77	19.52
27/4	5.5	19.25	38.77	19.52
29/4	7	24.50	49.35	24.85
2/5	4	14.00	28.20	14.20
3/5	4	14.00	28.20	14.20
4/5	4.5	15.75	31.72	15.97
5/5	5	17.50	35.25	17.75
6/5	7	24.50	49.35	24.85
9/5	8.5	29.75	59.90	30.15
TOTAL	135 hrs	£472.50	£951.75	£479.25

- 5 Next there was a period during which the claimant was not provided with payslips. The Tribunal has averaged this out as:

4 weeks @ 20 hours per week producing a shortfall of £72.75 per week -

4 x £72.75 = £291.00

- 6 From 4 June 2017 to 20 August 2017 further figures were provided as below:

Date	Hours	Apprentice Rate @ £3.50 hr	NMW Rate @ £7.50 hr	Difference @3.55 hr
4/6	18.59	65.00	130.90	65.90
7/6	14.5	50.75	102.22	51.45
18/6	18	63.00	126.90	63.90
25/6	15.5	54.25	109.20	54.95
2/7	29	101.50	204.45	102.95
9/7	17.5	61.25	123.30	62.05
16/7	21	73.50	148.05	74.55
23/7	20.5	71.75	144.50	72.75
30/7	15.5	54.25	109.20	54.95
6/8	25	87.50	176.25	88.75
13/8	15	52.50	105.75	53.25
20/8	28	98.00	197.40	99.40
TOTAL	238.07 hrs	£833.25	£1678.38	£845.14

- 7 The Tribunal notes that in order for the apprentice rate under the National Minimum Wage Regulations to apply, a person must be employed under a contract of apprenticeship or an apprenticeship agreement or engaged under UK Government Apprenticeship Arrangements.

- 8 The National Minimum Wage Regulations 2015, regulation 5 states as follows:-
- “(1) The apprenticeship rate applies to a worker –
- (a) who is employed under a contract of apprenticeship, apprenticeship agreement (within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009) or Approved English Apprenticeship Agreement or is treated as employed under a contract of apprenticeship, and
 - (b) who is within the first 12 months after the commencement of that employment or under 19 years of age”.
- 9 The Tribunal does not accept that in the circumstances presented that the claimant was indeed employed in circumstances to which the apprenticeship rate applies. Accordingly being of the age of 23 years the claimant was entitled to be paid the national minimum wage applicable to his age namely £7.05 per hour. The figures stated earlier in this decision are calculations of the shortfall due to the claimant using that wage.
- 10 Accordingly the respondent shall pay to the claimant the shortfall which is the sum of the three sets of figures set out above namely:-
- (1) £479.25.
 - (2) £291.00.
 - (3) £845.14
- TOTAL = £1,615.39.
- 11 On the evidence produced I do not find that a claim for written pay statements is made out and I dismiss that claim.
- 12 The respondent failed to provide a written statement of the terms and conditions of employment as required by ss1-7B of the Employment Rights Act 1996 and I award two weeks' pay on the basis of 30 hours per week at £7.50 per hour which is an award of 2 x £225 = £450.00.

EMPLOYMENT JUDGE SPEKER OBE DL

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
18 December 2017**