



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE ANDREWS  
sitting alone

**BETWEEN:**

**Mrs E Betsa**

**Claimant**

and

**Cinq Sandwiches and Patisseries**

**Respondent**

**ON:** 15 January 2019

**Appearances:**

**For the Claimant:** In person, assisted by her daughter Ms Kyrtsia

**For the Respondent:** Mr M Gabriele, Director

## **JUDGMENT**

The respondent did not make an unlawful deduction of wages from the claimant and the claim is dismissed.

## **REASONS**

1. In this matter the claimant complains that she was employed by the respondent in July 2017 and is owed £408 in respect of unpaid wages.
2. I heard evidence from the claimant and Mr Gabriele for the respondent. An interpreter should have been available for the claimant at today's hearing but was not. At the claimant's request the hearing was not postponed and she proceeded with the assistance of her daughter who confirmed that that assistance would be limited to a strict translation of anything the claimant did not understand with no additional comment or embellishment. Mr Gabriele confirmed that he was happy to proceed on that basis. Given the value of the claim and the delays already in getting to this hearing (see below), this seemed a proportionate way forward. In the event, it appeared

that the claimant understood the vast majority of the hearing and Ms Kyrtsia had to assist her infrequently.

3. The parties' witness statements, which had been exchanged prior to the hearing, both had documents attached to them. Where the other party had not yet seen those documents, I ensured that they were shown to them and they had the opportunity to comment on them.
4. This matter has had a very unfortunate procedural history which has resulted in this being the fourth hearing in respect of a low value claim. Neither party was particularly to blame for the delays and indeed it is clear that it was the Tribunal's error in using the respondent's incorrect email address that led to one wasted hearing.

### **Relevant Law**

5. If a worker suffers an unauthorised deduction from his or her wages he or she may make a complaint to the Tribunal (section 23 of the Employment Rights Act 1996). The burden is on the claimant to persuade the Tribunal that it is more likely than not that they have suffered such a deduction.

### **Findings of Fact**

6. Having assessed all the evidence, both oral and written, I find on the balance of probabilities the following to be the relevant facts.
7. The claimant is a Greek national who has extensive experience of working in restaurants/cafes both in Greece and this country. At the time of the events in question she was working in London in other similar jobs. Mr Gabriele is the owner of the respondent - a well-established sandwich shop that has been trading for over 33 years in various sites and has some very long serving employees.
8. The parties agree that on 24 July 2017 the claimant attended at the respondent and asked Mr Gabriele if there was any work available. Their accounts as to what then happened fundamentally and markedly differ.
9. In summary the claimant says:
  - a. she carried out one two-hour trial shift on 25 July 2017 for which she was not to be paid;
  - b. she then commenced paid employment on 26 July at an agreed rate of £8.50 per hour (which she specifically checked with Mr Gabriele as she had an alternative job offer at £8ph);
  - c. over the next week she worked 48 hours;
  - d. she was not asked to complete any forms and was not asked to produce any identification documents;
  - e. the respondent refused to pay her what she was due for the hours worked;
  - f. she was told by other employees that they did not have contracts of employment, were only paid cash in hand and at various rate.

10. In summary the respondent says:
- a. it was agreed the claimant would work three, two-hour unpaid trial shifts which she did and this was the only work she did;
  - b. she was asked to complete an application form and to produce documents proving her right to work in the UK which she did not do;
  - c. she did not attend on Saturday 29 July when she was asked to;
  - d. if she had started work she would have been paid £7.50 per hour which was the then minimum wage which all new employees are paid.
11. It is clear that both the claimant and Mr Gabriele feel very strongly that their account is the correct one. Both gave their evidence convincingly and both appear to be honest. The claimant in particular has incurred considerable expense in attending the various Tribunal hearings from her home in Greece. The accounts are so fundamentally different that this does not seem to be, as we often see in Tribunal, that the truth lies 'somewhere in the middle'.
12. When there is such a dispute between the parties we look to documents from the time to help assess which account seems the more likely to be true. Unfortunately there are no contemporaneous documents that directly go to what was agreed between the parties and what hours the claimant did or did not work. There is a letter that the claimant says she sent to the respondent on 5 August 2017 setting out her request to be paid for 48 hours at £8.50 per hour totalling £408. I have also seen a copy Royal Mail certificate of posting which indicates that a letter was sent to the correct address for the respondent on the same day. The claimant says that she checked the online tracking system which said the letter was returned to sender. Mr Gabriele says that no such letter was received nor returned and that they receive post from Royal Mail every day.
13. Mr Gabriele referred me to examples of documents that he says show that he runs his business quite properly and not as described by the claimant. In particular, a standard letter of engagement and contract of employment that he says would have been entered into with the claimant had she commenced work together with an example of the application form that he says she was given. Also, documents that show that he engaged Sussex Payroll Services Ltd to operate his payroll and PAYE scheme together with example payslips showing that employees were paid by bank transfer rather than cash and an email in July 2017 that shows employees at that time were paid £7.50 per hour. The claimant says that these documents do not prove how all the employees of the respondent were treated.

### **Conclusion**

14. In deciding whether the respondent owes unpaid wages to the claimant, I have to decide on the balance of probabilities, i.e. what is more likely than not, to be the correct position. As stated above the burden of proof is on the claimant.

15. Despite the claimant's obvious very strong feelings about this matter and the fact that she has made great efforts to attend the Tribunal and to pursue her claim, I do not conclude that she has met that burden of proof. I have a situation where both parties appear to be telling me the truth but the documentary evidence such as I have in general terms supports the respondent's account of how he does business and to that extent is consistent with his account of what happened. It shows that he was paying employees £7.50 an hour, operated PAYE and has well-organised employee recruitment paperwork. The claimant's letter dated 5 August 2017 does not, in my view, outweigh that evidence.
16. Accordingly I conclude that the claim is not proved and it is dismissed.
17. This decision and the reasons for it were given orally to the parties at the hearing. The claimant's daughter was very upset by the outcome and wished to revisit the arguments. I assured her that I had given very careful consideration to her mother's claim but I had made my decision. I explained the process should she wish to appeal and the grounds of appeal available. She requested these written reasons.

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Employment Judge Andrews  
Date: 15 January 2019