



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr Fathi Zaoui

AND

**Respondent**  
Seaside Food Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Bodmin

**ON**

30 May 2019

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person

**For the Respondent:** Mrs Sheffield-Dunstan, Director

### JUDGMENT

The judgment of the tribunal is that:

1. The claimant succeeds in his claim for unlawful deduction from wages and the respondent is ordered to pay the claimant the sum of £1,363.50; and
2. The claimant succeeds in his claim for breach of contract in respect of one week's notice and the respondent is ordered to pay the claimant the sum of £500.00; and
3. The claimant succeeds in his claim for accrued but unpaid holiday pay and the respondent is ordered to pay the claimant four days' pay in the sum of £400.00.

### RESERVED REASONS

1. In this case the claimant Mr Fathi Zaoui brings monetary claims for breach of contract, for accrued but unpaid holiday pay, and for unlawful deduction from wages against his ex-employer Seaside Food Ltd. The respondent denies the claims.
2. I have heard from the claimant. I have heard from Mrs Sheffield-Dunstan for the respondent company.
3. This is a case which appears to have taken a disproportionate amount of time in attempts at efficient case management to little avail. The parties did not comply with case management orders which were clear and oft repeated to the effect that they were to exchange written statements of witness evidence and to agree a common bundle of

relevant documents. There was a significant degree of conflict on the evidence. I have heard the claimant and Mrs Sheffield-Dunstan give their evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence (such as it was), both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

4. The respondent company owns and operates a restaurant in Porthleven in Cornwall trading as Amelie's ("the Restaurant"). The claimant was engaged as Head Chef from 15 November 2018 until his summary dismissal on 2 January 2019. The claimant's claims before me today are limited to his claim for underpayment of wages during this period; for wrongful dismissal being his lost notice pay in breach of contract; and for accrued but unpaid holiday pay.
5. The claimant is a French national, and answered an advertisement placed by an intermediary to work as Head Chef at the Restaurant. The parties exchanged emails during November 2018. The claimant originally asked for payment at the rate of £150 per day plus accommodation. After negotiations and a meeting between the parties on 11 November 2018, the respondent sent an email to the claimant dated 12 November 2018 which stated as follows: "So to confirm your start date is Thursday 15 November at 10 am; daily rate, self-employed fee of £100 which we will discuss in a month; accommodation paid for until Thursday, 15 November 2018, thereafter £70 per week plus kitty confirmed with Chris Sheffield; self-employed contract with the option to have a full-time contract with Seaside Food Ltd (Amelie's) in one month".
6. The claimant asserted today that he did not agree these terms, and in particular he did not agree to be self-employed and always wished to be an employee and "on the books" not least to avoid disruption of his tax position in France. He also asserts that he only agreed to work for £120 per day plus accommodation.
7. I find on the balance of probabilities that the claimant commenced work with the respondent on 15 November 2018 at an agreed rate of £100 per day, plus accommodation where this could be provided. This was on some form of trial period at the end of which the respondent might have been prepared to offer a more permanent contract of employment.
8. The claimant continued to work a five-day week and usually had Mondays and Tuesdays off. The claimant was paid £900 for the first nine days which he worked up until the commencement of the respondent's next pay period which began on 27 November 2018. Although the claimant claims to have worked 26 days between then and his dismissal on 2 January 2019, I find in fact that the claimant worked 25 days. He was therefore due payment of £2,500.00
9. Unfortunately, the respondent became ever more dissatisfied with the claimant's capabilities and attitude. This culminated in a number of complaints from customers at the restaurant on New Year's Eve. The respondent also claims that the claimant sought to damage its reputation by comments made on public media, although no evidence was adduced of the same. I did see evidence of customer complaints.
10. The respondent terminated the relationship immediately on 2 January 2019 and no notice period was offered or paid. Instead of paying the sum of £2,500.00 which was due, the respondent also deducted the sum of £1,136.00 in respect of days which the respondent alleged the claimant had claimed to have worked but had not, and for compensation and refunds paid to customers of £876.50.
11. Having established the above facts, I now apply the law.
12. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
13. The claimant also claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
14. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he

- has taken is different from the amount of leave to which he is entitled in that leave year. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3). In the absence of any relevant agreement which provides for payment of accrued leave, then the sum is calculated according to the formula  $(A \times B) - C$ . For the purposes of this formula A is the period of leave to which the worker is entitled under Regulations 13 and 13A; B is the proportion of the worker's leave year which expired before the termination date; and C is the period of leave taken by the worker between the start of the leave year and the termination date.
15. Under section 86(1)(a) of the Employment Rights Act 1996 where an employee has been continuously employed for one month or more he or she is entitled to not less than one week's notice of the termination of that employment.
  16. In the first place I find that the claimant was an employee of the respondent from the commencement of the relationship. It cannot be said that the claimant was in business on his own account, and as Head Chef of the Restaurant he was under the direct control and supervision of the managers and owners of the respondent's business.
  17. On balance I also find that there was no gross misconduct which entitled the respondent to terminate the employment relationship summarily. There may well have been considerable dissatisfaction as to the claimant's capabilities, but I have seen no evidence to suggest that there was conduct on part of the claimant which amounted to gross misconduct.
  18. I deal first with the claim for unlawful deduction from the claimant's wages. There was no contract of employment in place and neither was there any written provision by which the claimant authorised the respondent to make deductions from pay otherwise due to him. For this reason, the deductions made were unlawful. The claimant therefore succeeds in his claim for unlawful deduction from wages in the sum of £1,363.50
  19. Secondly, with regard to the wrongful dismissal/breach of contract claim, I find that the claimant was entitled to one week's notice and in the absence of any clear finding of gross misconduct the respondent terminated the claimant's employment in breach of that one week's notice period. The claimant therefore succeeds in this claim and the respondent is ordered to pay the claimant one week's pay in the sum of £500.00.
  20. Thirdly and finally I turn to the claim for accrued but unpaid holiday pay. The claimant did not take any paid leave during his period of employment which is nearly 7 weeks. In the absence of any written contractual provision to the contrary he was entitled to 4 weeks leave together with the eight days of bank holidays, in other words 28 days annually. Applying the relevant formula, the claimant was entitled to 28 days; the proportion of the worker's leave year which had expired before the termination date is just under one seventh; no leave was taken by the claimant; and rounding up to whole days, I therefore calculate that the claimant is due four days of accrued but unpaid holiday pay. The respondent is therefore ordered to pay the claimant four days' pay in the sum of £400.00

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Employment Judge N J Roper  
Dated 30 May 2019