



EMPLOYMENT TRIBUNALS

Claimant: Mr J Patton-Hill

Respondent: Dione Blackshaw t/a Jackson's Boat

Heard at: Manchester

On:

3 June 2019

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance – no response submitted

JUDGMENT ON REMEDY

It is the judgment of the Tribunal that:

1. The claimant was at all material times employed by the first respondent, and the claims against the second respondent are hereby dismissed.
2. The claimant was dismissed by the first respondent for the automatically unfair reason of having asserted his statutory rights to receive payslips and/or a written statement of particulars of employment, contrary to section 104 of the Employment Rights Act 1996.
3. The claimant is entitled to compensation. The claimant was employed for less than one year, and therefore is not entitled to any basic award. He was out of work for eight days following his dismissal and suffered loss of earnings in the net sum of **£466.67**. The Tribunal awards the said sum by way of compensatory award.
4. Whilst the claimant was dismissed without notice, as his notice period would be one week, and he has received a compensatory award in respect of the same period, the Tribunal makes no further award in respect of his breach of contract claim.
5. The respondent made unauthorised deductions from wages due to the claimant. The respondent deducted firstly the total the net sum of **£1,000.00** from the claimant's wages, which sum the respondent is ordered to pay to the claimant,

and to account to HMRC for any tax and national insurance due upon the grossed up sum.

6. Further, the respondent made unauthorised deductions from the claimant's wages in the total sum of **£1,533.48** in respect of purported attachment of earnings deductions in respect of fines enforcement which sums were not passed on to the collecting Authority. The respondent is accordingly ordered to pay the claimant the net sum of £1,533.48 and to account to HMRC for any tax or national insurance due thereon.

7. The claimant was entitled to payment in lieu of untaken holiday at the date of the termination of his employment. He had taken three days' holiday, and was entitled to pay in lieu in respect of 255 hours at £8.50 per hour, a total of **£2,167.50**, which sum the respondent is ordered to pay him. This is a gross sum, and the claimant is to account to HMRC for any tax and national insurance due upon it.

8. At the time of the matters giving rise to these claims, and before the proceedings were issued, no written particulars of employment had been provided to the claimant complying with section 1 of the Employment Rights Act 1996, and consequently, pursuant to section 38 of the Employment Act 2002 the Tribunal makes an additional award of four weeks' pay, being 4 x £425.00, a total of **£1,700.00** by way of additional award.

9. The recoupment regulations do not apply.

REASONS

1. The Tribunal this morning has convened to hear the claims by Mr Patton-Hill against his former employer, in respect of a complaint of unfair dismissal and for unlawful deduction from wages, unpaid holiday pay and breach of contract. The remaining respondents are Ms Dione Blackshaw t/a Jackson's Boat and D S Jackson Limited. The claims originally were brought against some five respondents, the claimant being unclear as to who his employer was, and originally there was to have been a final hearing on 6 February 2019. That, however, was converted into a preliminary hearing at which the claimant attended, as did Ms Blackshaw, the first respondent. On that occasion Employment Judge Howard made a number of Case Management Orders and went through the claims that the claimant was making. The orders she made included orders for the parties to produce documents, to make witness statements and indeed to prepare for what was then an adjourned final hearing. The final hearing was then to have taken place on 24 April 2014. Whilst other respondents had entered responses Ms Blackshaw and D S Jackson Limited in fact had not done so and one of the orders made on the previous occasion was that there was an extension of time for those respondents to make responses to the claims. They never in fact did so.

2. Consequently the claimant did indeed comply with the Case Management Orders, and prepared for the final hearing, but unfortunately on 24 April 2019 when the final hearing was to have taken place the claimant did not attend; neither, it seems, did either of the two remaining respondents, but the claimant did attend the

Tribunal on 25 April 2019, there having been a mix up about the dates. Once that was dealt with the Regional Employment Judge did re-list the claims, and did not strike out the claims. He also did point out to the respondents that they had failed to provide responses in accordance with the Case Management Orders that had previously been made, and they were informed by a letter of 1 May 2019 that they would only be permitted to participate in this hearing to the extent that the Tribunal allowed them to do so.

3. The respondents have not attended , nor have they been represented before the Tribunal today. Indeed neither the Tribunal nor the claimant has heard anything from them since the previous hearing on 6 February 2019. Consequently the claimant invited the Tribunal to proceed to hear the claims, and in the absence of any explanation by the respondents as to why they have not attended , or indeed why they have not complied with any of the previous Case Management Orders, the Tribunal has acceded to his request and has considered his claims.

4. The claimant has given evidence, having prepared as required a bundle of documents containing the various documents that had been provided, mainly by the respondent in the February hearing, but he has also made a witness statement which he has confirmed on affirmation before the Tribunal today in which he sets out the history of his employment . He has added to that evidence in response to questions from the Tribunal.

5. In terms of the issues and the claims that were identified on the last occasion helpfully by Employment Judge Howard, they are claims of unfair dismissal, breach of contract , for holiday pay and unpaid wages. The first issue, however, that she correctly identified was who employed the claimant ? Ms Blackshaw had apparently maintained, although she has not put in a response, that the claimant was employed through the limited company, D S Jackson Limited, which the second respondent. The claimant in his witness statement , and his evidence before the Tribunal today has dealt with the circumstances around the beginning of his employment, which were very informal, occurring as they did in early June 2017 when, having learnt of a vacancy at the Jackson's Boat Public House for a sous chef from a friend , he met Ms Blackshaw, had an interview with her and was shortly afterwards offered that employment. He sets out in his witness statement how that came about and how he started on 8 June 2017 as a sous chef at the rate of £7.60 per hour.

6. The claimant told the Tribunal in his evidence, which it accepts, that he had no indication at that time of any limited company, certainly not one called D S Jackson Limited, although he was aware Mitchell and Butler PLC (indeed he made them respondents at one point) because Ms Blackshaw had mentioned them as being effectively her "boss", so that was the only limited company he was aware of was , which, it is quite clear, did not employ him.

7. In terms of whether it was Ms Blackshaw or D S Jackson Limited that employed the claimant, as far as he was concerned it was her personally. Indeed that appears to be what she was saying at an early stage in these proceedings until the preliminary hearing on 6 February. A number of payslips have been produced in which the identity of the employer is said to be Jackson Boat (D S Jacksons) Limited. I stress the plural because that is not the name of the limited company registered at Companies House which in fact does not have the additional "s". The claimant had never seen those payslips until they were produced in February 2019. Be that as it

may, whilst Ms Blackshaw may have made this assertion in the preliminary hearing she has given no evidence to that effect before this Tribunal, and the Tribunal does not accept that this limited company employed the claimant. Indeed the claimant supports that contention by his bank statements, copies of which he has put into the bundle, in which reference is made to wages being paid to him, and in each of the entries that he has highlighted in those bank statements the entry is recorded as being from "D Blackshaw". There is no mention of D S Jackson Limited whatsoever in those bank statements. All the evidence accordingly points to Ms Blackshaw personally having employed the claimant, and in the absence of any evidence to the contrary the Tribunal accepts that and these claims are accordingly appropriately to be maintained against her personally and the other respondent, D S Jackson Limited, will be dismissed from the proceedings.

8. Turning to the claims that the claimant makes in terms of the dismissal, he accepts that he lacks the appropriate two year qualifying service necessary for a complaint of "ordinary" unfair dismissal. He has set out in his witness statement, however, and confirmed in questioning today the circumstances of 3 June 2018 which led to his dismissal. Throughout his employment he did not receive pay slips. Whilst some have now been produced by the respondent they were not produced until February 2019 and the claimant had never seen them before. This was a recurrent feature of his employment, and consequently why it was that on 3 June he raised yet again with Ms Blackshaw the question of when he was getting (or he and colleagues were getting) payslips. This did not go down well, and indeed he also made reference to getting a contract in writing. He was asked to step aside and, as he says in his witness statement, effectively he was told to "fucking get off" the respondent's premises, and not to come back, and that she would make sure no-one employed him. He indeed did so. He took it that he was dismissed and the Tribunal so finds. There is no evidence of any attempts by Mr Blackshaw to enquire where he was in the ensuing days, and the Tribunal was quite satisfied that in those circumstances, entirely verbally, of course, as indeed was the original contract of employment, he was dismissed. Further that the reason for his dismissal was that he had raised the absence of payslips, and a written contract of employment: he had thereby asserted statutory rights, and consequently his dismissal was automatically unfair pursuant to the provisions of section 104 of the Employment Rights Act 1996, and those claims succeed.

9. In terms of the other claims, and indeed the most substantial part of the claimant's claims, they relate to unlawful deductions from wages. This too was a constant feature of the claimant's employment, and he sets out in his witness statement how he was consistently underpaid during the time that he worked for the respondent. Those underpayments effectively are of two types: they were the underpayments in respect of the hours that he worked where the sums that he was paid, which he has recorded and set out in his evidence and his bank statements, did not tally with the hours that he had worked, and he has worked out how much, approximately, he has been underpaid in that respect. That is one type of deduction but there is another, and that is that the claimant was required to make some payments in respect of outstanding fines, and to that extent his employer was approached for what is known as "attachment of earnings". The claimant would have agreed to that, and indeed did agree to that, and was told by the respondent that he had to pay a minimum of 20% of his earnings, and consequently that she would be deducting some £58.98 per week from his wages. The wage slips that have

subsequently been produced, however, whilst they seek to show deductions in respect of fines enforcement, are in differing amounts and the claimant does not accept that those were actually the amounts that the respondent purported to deduct. Whatever the respondent in fact deducted the claimant subsequently discovered in July 2018 that no such payments had been passed on to the collecting Authority, because bailiffs appeared at his father's home to collect the full payment together with additional charges that had then been incurred; it then being clear that the respondent had not accounted for the deductions that she had purportedly made in respect of the "attachment of earnings" order, or such other arrangement that was come to.

10. In those circumstances the Tribunal is satisfied that those were not authorised deductions from wages, they were in fact items that the respondent withheld and withheld for other reasons, because she certainly did not account for them. Whilst they may have been potentially authorised, and lawful, the fact that they were then retained and not passed on to the collecting Authority deprives them of that status. In any event the respondent has failed to produce any written authority for those deductions, or any other lawful basis upon which she made them. For those reasons those deductions from wages claims also succeed.

11. The next head of claim is in relation to holiday pay and the claimant has calculated the holiday entitlement that he would have accrued during his period of employment with the respondent. He had taken three days' holiday and he has given credit for that amount. He has calculated that at the date of termination he was due some 255 hours untaken holiday, and has calculated the figures in relation to that.

12. The claimant's dismissal was without notice, not surprisingly in these circumstances where he was suddenly told to leave the premises, and that would give him potentially a breach of contract claim for a week's notice. However, the Tribunal will be awarding compensation for the unfair dismissal and, as discussed in the hearing, those losses will overlap and cannot be awarded twice.

13. Consequently, the claimant's claims all succeed, and the awards that the Tribunal makes are as follows.

14. For the unfair dismissal there will be no basic award given that the claimant lacks a year's service to get even a week's basic award, but he is entitled to a compensatory award in the sum of £466.67 net, which the Tribunal will make as a compensatory award.

15. In respect of the unlawful deductions from wages the Tribunal proposes to make two awards in respect of those: the first in respect of the "Type 1" deductions which were effectively simple underpayments for hours worked. The Tribunal awards the net sum of £1,000. In respect of the second type, which is the purported deduction for "attachment of earnings" which were never accounted for, the Tribunal makes a further award of £1,533.48, again net sums.

16. In terms of the holiday pay, the Tribunal accepts the claimant's calculation that he is entitled to pay in lieu of untaken holiday in respect of 255 hours at £8.50 an hour, that is a gross figure of £2,167.50.

17. In terms of the additional amount that the claimant seeks, he has sought quite properly an additional award on the basis that the respondent had not provided him with a written statement of particulars of employment as required by section 1 of the Employment Rights Act 1996. It is quite clear the claimant was never provided with such a document, indeed that is one of the things he raised prior to his dismissal. In those circumstances section 38 of the Employment Act 2002 entitles, indeed requires, a Tribunal, to make an additional award of either two or four weeks' pay: quite why it is two or four and there is no possibility of a three week award is unclear but that is what Parliament has determined. So the Tribunal in these circumstances, if satisfied that the grounds for making such an award exist, has to award either two or four weeks' pay. No mitigation has been put forward for the wholesale failure of the respondent to provide this very simple document, and indeed given the reasons why the claimant has had to bring these other claims and the absence of any other documentation being provided to him, the Tribunal sees no reason why it should not award the higher additional award of four weeks' pay. The claimant's gross weekly pay was £425. Gross weekly pay is the basis for such awards. Four times that sum is £1,700.

18. Those will be the awards of the Tribunal. The recoupment regulations do not apply, as the claimant did not receive any benefits during his period of unemployment..

Employment Judge Holmes

Dated : 5 June 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 June 2019
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2415497/2018**

Name of **Mr J Patton-Hill** v **Dione Blackshaw t/a
Jackson's Boat
& Others**
case(s):

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **19 June 2019**

"the calculation day" is: **20 June 2019**

"the stipulated rate of interest" is: **8%**

MR S ROOKE
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.