



EMPLOYMENT TRIBUNALS

Claimants: 1) Mr S Smith
2) Mr J Scott
3) Mr G Risely

Respondent: Ecofix Complete Building Solutions Ltd
(In Creditors Voluntary Liquidation)

Heard at: Leicester **On:** Friday 5 July 2019

Before: Employment Judge Ayre (sitting alone)

Representation

Claimants: In Person

Respondent: Did not attend and was not represented

JUDGMENT ON REMEDY

The respondent is ordered to pay the following sums to the claimants:-

1. Mr Smith

The total sum of £2,422 made up of:-

- a. One month's net pay of £2,179; and
- b. Late filing penalties and fees of £243.

2. Mr Scott

The total sum of £785.44 being the outstanding wages owing to him.

3. Mr Risely

The total sum of £5,882.68 made up of:-

- a. One month's net pay of £2,000;
- b. Four weeks' notice pay of £1,846.15;
- c. Holiday pay of £461.53; and
- d. An unfair dismissal basic award of £1,575

REASONS

Background and proceedings

1. The claimants brought the following claims:-
 - a. Mr Smith – by claim form presented to the Tribunal on 11 February 2019, brought a claim of unlawful deduction from wages.
 - b. Mr Scott – by claim form presented to the Tribunal on 20 March 2019 also brought a claim of unlawful deduction from wages.
 - c. Mr Risely – by claim form presented to the Tribunal on 16 April 2019 brought claims for unfair dismissal, a redundancy payment, notice pay, holiday pay and arrears of pay.
2. The respondent went into creditors voluntary liquidation and the liquidators did not present responses to any of the claims.
3. On 2 July 2019 Judgment was entered in favour of all 3 claimants against the respondent, and the hearing today was to determine remedy only.
4. Each of the claimants gave evidence during the hearing under oath. There was no documentary evidence submitted on behalf of any of the claimants.
5. Mr Smith and Mr Scott indicated that they were also seeking to recover notice pay and (in the case of Mr Smith only) holiday pay, and had made claims to the Insolvency Service for these sums. I indicated that those claims were a matter for the claimants to pursue with the Insolvency Service, as there are no claims for holiday pay or notice pay before the Employment Tribunal in respect of either claimant.
6. Mr Smith also told me that he had heard from NEST that his employer had not paid his pension contributions, in the sum of £53.33, for the month of January 2019. He had been informed by NEST that they are pursuing that matter.

Findings of fact

Mr Smith

7. Mr Smith was employed by the respondent as a kitchen fitter from 7 July 2017 until 16 January 2019. He earned £2,179 a month net.
8. When his employment terminated he was owed a month's pay. Despite chasing his employer, he has not been paid the month he is owed.
9. After his employment came to an end he had to chase his employer for payslips and a P60.

10. As a result of the respondent not paying his wages or providing him with payslips or a P60 he incurred a penalty of £163 for filing his self assessment tax return, which was due on 31 January 2019, late. He also had to instruct an accountant to help him with the self-assessment, at a cost of £80.

Mr Scott

11. Mr Scott was employed by the respondent as a trainee kitchen fitter from 31 March 2017 to 16 January 2019. He earned £1,338.44 a month net.
12. When his employment terminated he was owed a month's pay. The respondent has since paid him £553 in respect of his outstanding wages. The balance of £785.44 has not been paid.

Mr Risely

13. Mr Risely was employed by the respondent from 18 March 2016 to 19 March 2019. He earned £2,333 a month gross and £2,000 a month net.
14. When his employment terminated he had 5 days' accrued but untaken holiday.
15. Mr Risely was dismissed on 19 March without notice or payment in lieu of notice. His contract of employment contained a four week notice period.
16. Mr Risely was aged 32 at the date his employment terminated.
17. Mr Risely found a new job a week after his employment with the respondent terminated. He said he believes he is earning less in the new role than he was in the respondent, but was unclear as to how much and there was no documentary evidence of his earnings from new employment.

The Law

Unlawful deduction from wages

18. Section 24 (1) of the Employment Rights Act 1996 ("the ERA") provides that where a Tribunal finds a complaint of unlawful deduction from wages to be well-founded it shall make a declaration to that effect and order the employer to pay to the worker the amount of any deduction made in contravention of section 13 of the ERA.
19. Section 24(2) provides that "*Where a tribunal makes a declaration under subsection (1) it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.*"

Redundancy payment

20. The law on calculating a statutory redundancy payment is set out in section 162 of the ERA.

Unfair dismissal

21. The relevant provisions for calculating unfair dismissal basic and compensatory awards are contained in sections 119 and 123 of the ERA respectively.

Conclusions

Mr Smith

22. The respondent made an unlawful deduction from Mr Smith's wages in the sum of £2,179, namely one month's net pay.
23. The respondent is ordered to pay that sum to Mr Smith.
24. In addition, it would in my view be appropriate for the respondent to be ordered to pay to Mr Smith the sum of £243, made up of £80 accountant's fees and £163 late filing penalty, as these sums were financial losses sustained by him as a result of the unlawful deduction from his wages. I therefore order the respondent to pay this additional sum of £243 to Mr Smith pursuant to section 24(2) of the ERA.
25. The respondent is therefore ordered to pay to Mr Smith the total sum of £2,422 made up of:-
 - a. One month's net pay of £2,179; and
 - b. Late filing penalties and fees of £243

Mr Scott

26. The respondent made an unlawful deduction from Mr Scott's wages in the sum of £785.44, being the outstanding balance of Mr Scott's wages in respect of his last month of employment.
27. The respondent is therefore ordered to pay to Mr Scott the sum of £785.44

Mr Risely

Wages for last month of employment

28. The respondent made an unlawful deduction from Mr Risely's wages in the sum of £2,000, namely one month's net pay in respect of the final month of his employment.

Holiday pay

29. Mr Risely had accrued but untaken holiday of 5 days at the time his employment terminated. Mr Risely's normal week's pay was £461.53 net (£2,000 a month times 12 to give an annual salary of £24,000 net, divided by 52 to give a weekly net salary of £461.53.
30. The respondent also made an unlawful deduction from Mr Risely's wages in the sum of £461.53 in respect of a week's accrued but untaken holiday pay.

Notice pay

31. Mr Risely was entitled to receive four weeks' notice of termination of his employment. He did not receive any notice or payment in lieu of notice. He is therefore entitled to four weeks' net pay in respect of his notice period - £1,846.15.
32. The respondent breached the terms of Mr Risely's contract of employment by dismissing him without notice or payment in lieu of notice and is ordered to pay the sum of £1,846.15 to Mr Risely by way of damages for breach of contract.

Unfair dismissal compensation

33. Mr Risely earned £2,333 a month gross which gives a gross weekly pay of £538

(£2,333 x 12 then divided by 52). He was aged 32 at the effective date of termination of his employment and had been employed by the respondent for three years.

34. The appropriate multiplier is therefore 3 and the maximum week's pay of £525 applies. Mr Risely is therefore entitled to a basic award of £1,575 (3x£525) and the respondent is ordered to pay this sum to him.
35. Mr Risely found another job within a week of leaving the respondent's employment. His week out of work is covered by his notice pay, and it would not be appropriate for him to get double recovery in respect of that period.
36. Mr Risely's evidence as to ongoing loss was not convincing or supported by any documentary evidence.
37. In the circumstances, it would not in my view be just and equitable to order a compensatory award.

Redundancy payment

38. As I have ordered the respondent to pay to Mr Risely an unfair dismissal basic award, no separate award will be made in respect of a statutory redundancy payment.
39. The respondent is therefore ordered to pay to Mr Risely the total sum of £5,882.68 made up of:-
 - a. One month's net pay of £2,000;
 - b. Holiday pay of £461.53;
 - c. Four weeks' notice pay of £1,846.15; and
 - d. An unfair dismissal basic award of £1,575.

Employment Judge Ayre

Date: 05 July 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE