



Case Numbers: 2300989/2019
2304095/2018

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr N Gunasena

Respondents

Shannon Corner

Limited

Bharathi Oil

and

Limited

Held at Croydon on 7 June 2019

Representation

Claimant:

In Person

Respondent:

Mr S Joshi, Solicitor

Employment Judge Harrington

REASONS

- 1 In an email received this afternoon (7 June 2019) from the Second Respondent's solicitor, Mr Joshi, the Second Respondent requests written reasons for my Judgment this morning that the Claimant has suffered an unlawful deduction from his wages and that the Second Respondent shall pay the Claimant the sum of £1390.74 (one thousand three hundred and ninety pounds and seventy four pence).
- 2 By claim forms received by the Tribunal on 13 November 2018 and 19 March 2019, the Claimant brought claims against the First and Second Respondents respectively for arrears of pay for the period 1 September 2018 - 15 October 2018. At the hearing today the Claimant represented himself and the Second Respondent was represented by Mr Joshi, a solicitor.
- 3 The Claimant produced payslips today dated 27 September 2018 and 15 October 2018, relating to that period and setting out the sums he said should have been paid to him and remain outstanding. The September payslip showed a figure of £887.98 and the October payslip a figure of £502.76.
- 4 At the start of the hearing, Mr Joshi confirmed that the Second Respondent was liable if any amount of wages remained outstanding and it was accepted

- by the Second Respondent that the TUPE provisions were straightforward in this regard.
- 5 Mr Joshi also informed me that yesterday, on 6 June 2019, he sent an email to the Claimant requesting any documentary evidence such as payslips and the Claimant's bank statements, which might assist in establishing whether any wages remained outstanding. The Claimant had brought that documentary evidence to the Tribunal but Mr Joshi had not had an opportunity to consider it in detail. Accordingly, the Tribunal adjourned to provide Mr Joshi with a full opportunity to consider this evidence.
 - 5 At the reconvened hearing, the Claimant gave oral evidence. He told me that his wages usually went into his bank account and he had always been paid in this way pre-transfer of the business save for one occasion, when he was given cash. His wages usually went into his bank account on the 26th or 28th of each month and he was paid in arrears. The Claimant told me that in August 2018 he was not paid and he eventually received his August earnings on 28 September 2018. However he had never received the earnings for September or October 2018. The Claimant said that he had obtained a letter from Mr Kootbaully from Shannon Corner Limited dated 17 October 2018 confirming that he had not received his arrears of pay.
 - 6 In answer to questions from Mr Joshi, the Claimant said that he had not been paid in cash for the September and October payments. The Claimant stated that if he had been paid in cash he wouldn't be making a '*fuss out of it*'.
 - 7 The Respondent did not seek to call any oral evidence. In his closing submissions, Mr Joshi referred me to the fact that the burden of proving his claim remains on the Claimant. He suggested that the Claimant might have received the monies in cash and described this as '*not outside the bounds of possibility*'. The Claimant did not wish to make any closing submissions.
 - 8 The issues for the Tribunal were whether the Claimant was properly owed the monies identified in the September and October 2018 payslips and then, whether those payments had been made to him.
 - 9 Having heard the evidence from the Claimant, I am entirely satisfied that the Claimant was owed those monies and that the payments remain outstanding.
 - 10 It is agreed by the parties that the Claimant worked in September and October 2018. The Second Respondent has not called any evidence to suggest that the hours recorded on the payslips are inaccurate and the Claimant tells me that he worked the hours as set out in the payslips. On the balance of probabilities, I accept that he did and that in doing so, he earned the stated sums of money.

- 11 The Claimant told me that he was, save for one occasion, always paid his wages on a monthly basis into his bank account. I am satisfied that this was the method of payment. I also accept, as does the Second Respondent, that there is no record on the Claimant's bank statements of him receiving the payments for September and October 2018.
- 12 I found the Claimant to be a compelling witness of truth. I have to consider what is more likely than not to be the case or, in other words what happened on the balance of probabilities, and I accept the Claimant's evidence that he did not receive cash payments instead of payments being made into his bank account. Accordingly the Claimant is owed the claimed sums of money, a total of £1,390.74.

Employment Judge Harrington
26 June 2019