



THE EMPLOYMENT TRIBUNALS

Claimants

Ms S. M. Ditchburn
Ms G. A. Wright
Ms M. Holmes

Respondent

Mr Michael Wardle t/a Wardles Newsagents

EMPLOYMENT JUDGE GARNON
MADE AT NORTH SHIELDS

ON 19 August 2019

JUDGMENT (Liability Only)

Employment Tribunals Rules of Procedure 2013 –Rule 21

The claims of unlawful deduction of wages are well founded. Remedy will be decided at a two hour hearing to be listed as soon as possible

REASONS

1. The claims were re-served after amendment to the respondent's name on 17 July 2019 on the respondent's place of business. A response was due by 14 August 2019 but none was received. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and, if so, obliged to issue a judgment which may determine liability only or liability and remedy. I have in the claim form sufficient to enable me to find the claims proved on a balance of probability.

2. The law of unlawful deduction of wages is in Part 2 of the Employment Rights Act 1996 ("the Act"). The claim form says the claimant's representative is Ms A Trosh-Burnett, who is herself an employee of the respondent. Neither she nor the claimants have been paid wages since 11 May. Ms A Trosh-Burnett says she is making no claim yet because she has been on the sick due to an injury. Claims for unpaid wages must be brought within three months of the date of the last non-payment. It may be difficult for her to rely upon her existing Early Conciliation certificate.

3. The text of the claims and further information sent to the tribunal describe a very unusual situation. It is said the respondent, apparently a sole trader (a company search performed by me today does not reveal the name of any limited company resembling that of his trading name), has fallen on hard times financially and apparently washed his hands of the running of the business. Out of loyalty, the claimants have tried to keep the business open but the takings are insufficient even to cover their wages. In a document in which they purport to set out the amount of their claims each gives particulars of their unpaid wages only between 11 May and 29 June and then say "*This is an ongoing*

Case Numbers 2501834/19, 2501835/19 & 2501836/19.

situation “. I cannot readily quantify their existing claims without taking some evidence from them. It would be desirable to know whether what is described as an ongoing situation, still is.

4. It appears to me Ms Trosh-Burnett and the claimants have the factual basis to treat themselves as dismissed and make a number of claims in addition to unlawful deduction of wages. These would probably have to be brought as new claims.

5. At the remedy hearing, the respondent will not be permitted to contest the claims as to liability but may be heard as to remedy. Importantly, the remedy hearing will be an occasion upon which the Employment Judge conducting it can explain to Ms Trosh-Burnett and the claimants the law in relation to this and other claims they may have together with the provisions of part 12 of the Act relating to their ability to recover sums awarded from the Secretary of State if, but only if, the respondent enters on of the prescribed types of formal insolvency proceedings such as bankruptcy. I strongly suggest the claimants take some legal advice.

TM Garnon Employment Judge
Date signed 19 August 2019 .