



EMPLOYMENT TRIBUNALS

Claimant: Miss A Soakell

Respondent: (1) Clear Finance Ltd
(2) Different Ltd

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

- 1. The claim of unlawful deduction of wages against the Second Respondent is well-founded. I order the Second Respondent to pay to the claimant the gross sum of £23,652.90.**
- 2. The claim for a statutory redundancy payment against the Second Respondent is well founded. I order the Second Respondent to pay to the claimant £2,884.55**
- 3. The Hearing listed for 02 January 2020 is cancelled**

REASONS

1. The claimant commenced employment with the First Respondent ('R1') on 30 June 2014. On 01 April 2019 her employment transferred under TUPE to the Second Respondent ('R2') by way of a relevant transfer (the 'relevant transfer'). As at the date of the relevant transfer she was owed the gross sum of £20,218.07. Her employment with R2 terminated on 17 July 2019 when the place of business in which she worked closed. By that date she had been owed a further £3,434.83 in unpaid wages by the transferee employer, R2. That left a total amount of unpaid wages of £23,652.90 (of which £20,218.07 had accrued by the date of the relevant transfer).
2. The Respondents did not present any response to the claims. R1 is in receivership. R2 is an active company, albeit the main shareholder and director, Mr K Bolton has since left the UK to return to live in Canada.
3. Under rule 21 of the Tribunal Rules of Procedure 2013, where on the expiry of the time limit in rule 16 no response as been presented and no application for a reconsideration is outstanding, an employment Judge shall decide whether on the available material, a

determination can properly be made of the claim or part of it. If there is, the judge shall issue a judgment, otherwise a hearing must be fixed before a judge alone. On 16 October 2019, Employment Judge Garnon considered that more information was needed from the Claimant. Therefore, he directed there should be a preliminary hearing for the Claimant to explain, in particular, why she was claiming against two respondents. That hearing was listed before me on 30 October 2019. The Claimant appeared and represented herself.

4. At the preliminary hearing, the Claimant explained that her unpaid wages built up over a period of time and that they were to be paid to her each pay date. She was told that they would be paid by Mr Bolton. They never were. Her claim for the whole amount of the unlawful deductions is against R2 by virtue of regulation 4(2) Transfer of Undertaking Regulations (Protection of Employment) Regulations 2006, in that the liability of R1 for the unpaid wages as at the date of the relevant transfer transferred to R2 and each month those outstanding wages were payable to her. They continued to be payable up to the date of termination of her employment.
5. The business effectively closed on 17 July 2019 when the office closed. R2 ceased to employ the Claimant on that date and her termination was by reason of the closure of the place of business in which she worked and therefore by reason of redundancy within the meaning of section 139 Employment Rights Act 1996.
6. The Claimant was employed for 5 continuous years. At the date of termination she was aged 49. She earned £384,62 a week. For each full year of service she was over the age of 41. Her statutory redundancy payment is $£384.62 \times 1.5 \times 5 = £2,884.65$.
7. I was satisfied, following the preliminary hearing, that there was sufficient material to enable me to determine the claims as above. I see no reason to further inconvenience the Claimant, therefore I cancelled the hearing listed for 02 January 2020.

Employment Judge **Sweeney**

Date: 30 October 2019