



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr A Godani**

**v**

**Wrights of London Limited**

**Heard at:** London Central

**On:**

10 December 2019

**Before:** Employment Judge E Burns

## **Representation**

**For the Claimant:** In person

**For the Respondents:** Did not appear

## **JUDGMENT**

1. The judgement of the tribunal is that the respondent has made unlawful deductions from the claimant's wages or has failed to make payments to the claimant in breach of the claimant's employment contract.
2. The payments are as follows:
  - (a) net wages of **£200** that were deducted from the wages paid to the claimant on 14 May 2019
  - (b) net wages of **£400** that were deducted from the wages paid to the claimant on 31 May 2019
  - (c) net wages of **£483** that were deducted from wages paid to the claimant on 29 September 2018, by way of a deposit repayable on termination of employment
  - (d) holiday pay for accrued holiday from 17 September 2018 to 2 June 2019 of 10 days which comes to  $(5 \times £123.46) + (5 \times £138.46) =$  **£1,307.70 (gross)**
  - (e) deductions purporting to be for national insurance contributions for the period from 18 September 2018 to 2 June 2019 which comes to  $(11 \times £108.81) + (6 \times £127.27) + (4 \times £126.31) =$  **£2,465.77**

(f) deductions purporting to be for income tax for the period of 18 September 2018 to 2 June 2019 which comes to  $(11 \times \pounds 155) + (6 \times \pounds 185.77) + (4 \times \pounds 180.77) = \pounds 3,542.70$

3. The tribunal orders the respondent to pay **£8,399.17** to the claimant within 14 days of today's date. If the respondent can provide proof that the payments referred to at 2(e) and 2(f) have been paid on behalf of the claimant to HMRC, this will satisfy the judgment with regard to these payments.

## REASONS

1. By a claim form presented on 2 August 2019, following a period of early conciliation 27 June to 27 July 2019, the claimant brings a claim of unauthorised deductions of wages / breach of contract.
2. Although the respondent presented an ET3 it did not provide any information as to the basis on which it resisted the claims. The respondent failed to comply with an order to provide this information by 28 November 2019 and did not attend today's hearing.
3. The claimant was employed to work at the respondent's restaurant, between 18 September 2018 and 2 June 2019. He was initially employed as a Sous Chef, but was promoted to the position of Head Chef on 4 January 2019.
4. The employment was employed under a contract of employment dated 2 December 2018. It contains the following relevant terms:
  - his rate of pay was £32,000 per annum with payment being made every two weeks.
  - he was entitled to 28 days holiday each holiday year. The holiday year is the calendar year. Holiday accrues at the rate of 1/12<sup>th</sup> of the annual entitlement for each complete month of service. The contract also provides that accrued holiday entitlement is rounded up or down to the nearest half or full day.
5. The claimant and the respondent agreed an increase in his salary at the time of his promotion to Head Chef with effect from 4 January 2019. The claimant was not sure of the precise gross annual figure as this was not confirmed to him in writing. He provided a bank statement showing that his net wages increased from 4 January 2019 and were £1,066.
6. A calculation using a standard on-line salary calculator (<https://www.thesalarycalculator.co.uk/>) applying the normal tax code shows that the claimant's gross annual salary was in the region of £36,000 from 4 January 2019 onwards. I find, on the balance of probabilities, the correct figure was £36,000.

7. The claimant received a notice from HMRC dated 7 July 2019 for the tax year 2018/2019 which indicated that no tax had been paid by the respondent on his behalf for that tax year. The notice indicated that the claimant had underpaid tax by £961 despite the fact that all his due tax should have been deducted by way of PAYE.
8. The claimant wrote to the respondent several times asking for the unpaid payments. In an email of 2 August 2019, he set out the detail of the payments sought. The respondent replied by email of 4 August 2019 accepting that some payments were due, but disputing others. The claimant also requested copies of itemised pay slips as he had not received these, his P60 and P45.
9. The claimant claimed the following:
  - (a) net wages due on 29 September 2018 of £483, deducted by way of a deposit repayable on termination — this was not disputed by the respondent
  - (b) net wages due on 14 May 2019 of £200 – this was not disputed by the respondent
  - (c) net wages due on 31 May 2019 of £400 – this was not disputed by the respondent
  - (d) holiday pay for accrued holiday from 17 September 2018 to 2 June 2019 of 9.83 days – the respondent accepted that the claimant was due 4 days accrued holiday for 2019. It said that its policy, contained in the Employee Handbook, prevented employees from carrying holiday over at the end of a leave year and so disputed that any payment was due for 2018
  - (e) unpaid tax of £961 for the tax year from – the respondent asked the claimant to provide additional details of this.
10. The respondent provided the claimant with a number of itemised payslips on 21 March 2019. The payslips bear no relation to the payments received by the claimant. The payslips purport to show monthly payments from which deductions for employee NIC were made, but no income tax. The figures do not match the amounts paid to the claimant.
11. The claimant provided a printout from his bank account showing the payments received from the respondent. He was paid every two weeks (as per his contract) as follows (ignoring for now the deductions referred to at 8(a) – (c) above):
  - From 29 September 2018 to 4 January 2019 (inclusive) – 11 payments of £966
  - From 19 January 2019 to 3 April 2019 (inclusive) – 6 payments of £1,066

- From 19 April 2019 to 31 May 2019 (inclusive) – 4 payments of £1,066
12. A calculation using a standard on-line salary calculator demonstrates that the amounts received between 29 September 2018 and 4 January 2019 are the correct net amounts that should have been paid to an employee earning £32,000 and paying tax against the basic unadjusted tax code applicable for 2018/2019 and employee national insurance contributions.
  13. The respondent has presented no evidence that it has the amounts deducted from the claimant's wages to HMRC or by way of employee national insurance contributions.
  14. My finding is that the respondent has not made any payments on behalf of the claimant to HMRC for 2018/2019 and therefore any deductions made from the claimant's wages purporting to be for tax are unlawful.
  15. I also infer from my finding above, that the respondent has not made any payments:
    - by way of employee national insurance contributions on behalf of the claimant for 2018/2019; or
    - to HMRC or by way of employee national insurance contributions on behalf of the claimant for 2019/2020

and therefore any deductions made from the claimant's wages purporting to be for these are unlawful.

16. I calculate the amounts due are as follows (based on the use of a standard online salary calculator):
  - From 29 September 2018 to 4 January 2019 (inclusive) – 11 payments of tax of £155 and employee national insurance contributions of £108.81
  - From 19 January 2019 to 3 April 2019 (inclusive) – 6 payments of tax of £185.77 and employee national insurance contributions of £127.27
  - From 19 April 2019 to 31 May 2019 (inclusive) – 4 payments of tax of £180.77 and employee national insurance contributions of £126.31

I therefore order the respondent to make these payments to the claimant. If, however, the respondent can prove that it has made these payments to HMRC on behalf of the claimant, this will be taken as compliance with my order.

17. The claimant was not made aware of the respondent's policy regarding carry over of holiday as it was contained in the Employee Handbook, which he was not provided, and not the contract of employment. I therefore find the policy does not apply to the claimant and he is entitled to be paid in lieu of his accrued, but untaken holiday from 2018. In addition, I find that the claimant worked an additional day on 2 January 2019 and therefore 5

days holiday is due for 2019. When the 9.83 days are rounded up, in accordance with the claimant's contract, the final holiday entitlement is 5 days for 2018 and 5 days for 2018.

18. I have calculated his holiday pay by dividing his annual gross salary by 260 giving a figure of £138.46 before 4 January 2019 and a figure of £123.08 after 4 January 2019.

**Employment Judge E Burns  
10 December 2019**

Sent to the parties on:

11/12/2019

For the Tribunals Office