



EMPLOYMENT TRIBUNALS

Claimant: Mr C Dempster
Respondent: Welton Aggregates Ltd

Heard at: Lincoln
On: Monday 2 December 2019

Before: Employment Judge J Blackwell (sitting alone)

Representation
Claimant: Did not attend and was not represented
Respondent: Mr J Faulkner-Smith, Managing Director

JUDGMENT

1. The claim of unlawful deduction from wages in respect of arrears of pay fails and is dismissed.
2. The claim of a failure to pay notice pay also fails and is dismissed.
3. The claim of unlawful deduction from wages in respect of holiday pay also fails and is dismissed.

REASONS

1. Mr Dempster did not attend, although he made it clear that he was not proposing to attend. Mr Faulkner-Smith represented the Respondent, gave evidence on their behalf. I also heard from Mr Carl Bailey, the Head Chef.
2. Mr Dempster's claim was originally of unfair dismissal and arrears of wages. The claim of unfair dismissal was struck out because of the lack of continuous service on 15 March 2019.
3. To deal with the other matters, the first element of Mr Dempster's claim as made clear in his email to the tribunal of 1 May 2019 is that he was not paid for the week that he worked between 16 December 2018 and 21 December 2018.
4. Mr Faulkner-Smith has produced evidence of a bank payment made on 16

January 2019 in the net sum of £266 relating to a gross payment of £332.50 for that period, ie 16 to 21 December 2018. On this evidence, I am satisfied that Mr Dempster was paid for that week.

5. The second element of Mr Dempster's claim is that the Respondent failed to pay him notice pay. The Respondent's case on the evidence of Mr Bailey and Mr Faulkner-Smith is as follows.
6. On 22 December 2018, Mr Dempster contacted Mr Bailey indicating that he was having trouble with his ex-partner in relation to their child. Mr Bailey tells me, and I accept, that he told Mr Dempster to take the day off, ie 22 December 2018. Mr Bailey also contacted Mr Dempster on finishing work that evening of 22 December to ask whether he would be working on the 23rd and despite two attempts, there was no response to that request.
7. On 23 December 2018, Mr Bailey again attempted on a number of occasions to contact Mr Dempster but despite leaving messages on Mr Dempster's answerphone, there was no response.
8. Both Mr Faulkner-Smith and Mr Bailey tell me, and I accept, that they have had absolutely no contact from Mr Dempster since 22 December 2018.
9. In those circumstances, it is clear that Mr Dempster's conduct constitutes a resignation by conduct and in those circumstances Mr Dempster is not entitled to notice pay and that element of his claim is dismissed.
10. Finally, turning to the question of holiday pay, Mr Faulkner-Smith has produced the holiday schedule for Mr Dempster and it is clear from that document and from the evidence of Mr Faulkner-Smith that Mr Dempster has been paid for his full entitlement. Indeed, he has taken more days than he was entitled to having regard to his period of employment from 10 July 2018 to 23 December 2018. Therefore, that element of the claim also fails.

Employment Judge J Blackwell
Date: 3 January 2020

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.