



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100078/2019

5

Held in Glasgow on 19 August 2019

Employment Judge R Gall

10 **Mr M Aghajanpour**

**Claimant
Represented by:
Ms E Crawley -
Strathclyde Law
Clinic**

15

Darios Pizzeria Westend

**First Respondent
Not present and
Not represented**

20

Westend Pizzaplace Ltd

**Second Respondent
Not present and
Not represented**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The Judgment of the Tribunal is that the following sums are awarded and are found to be payable to the claimant by the second respondents, Westend Pizzaplace Ltd, as employers of the claimant:-

(1) Sums wrongfully deducted from wages in breach of section 23 of the Employment Rights Act 1996 comprising;

35 (a) £184.01, being 4 days wages at the national minimum wage rate;

E.T. Z4 (WR)

(b) Underpayment of £877.30 in respect of 310 hours of work, the claimant being paid at £5 per hour, the national minimum wage being £7.83 per hour;

(c) £200, being a deposit deducted from the claimant's wages,.

5 (2) £264.49 being payment for holiday leave accrued but untaken by the claimant of 36 hours and 50 minutes,.

(3) 4 weeks' pay, being £1,252.80, in respect of the failure to provide to the claimant terms and conditions of employment and the statement of main terms of employment, the sum at the higher amount in terms
10 of section 38 of the Employment Act 2002, that being considered just and equitable,.

As stated at the hearing, in terms of rule 62 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, written reasons will not be
15 provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the hearing. The following sets out what was said, after adjournment, at the conclusion of the hearing. It is provided for the convenience of parties.

20

REASONS

1. This case called for hearing at Glasgow on 19 August 2019. The claimant gave evidence and a bundle of productions was lodged. I was satisfied that
25 the claimant was credible and reliable in his evidence.

2. Although the claimant dealt with the manager of the place where he was employed, his employer was the limited company Westend Pizzaplace Ltd. Judgment is therefore awarded against that entity.

3. There were different elements to the claim. Part of the claim related to unlawful deduction of wages. The claimant was paid £5 per hour, the national minimum wage during the period in question, having regard to the claimant's age was £7.83. The shortfall was therefore £2.83 per hour. The claimant worked for 310 hours. The shortfall amounts therefore to £877.30 and Judgment for that sum is awarded.
4. The claimant worked for 4 days for which he was not paid. Those were 4, 6 and 9 August and 8 October 2018. He is due the sum of £184.01 and Judgment for that amount is awarded.
5. The claimant also had a deduction of £200 made from his wages by various deductions on a weekly basis. He has not received repayment of £200 and did not authorise its deduction. Judgment for that amount is therefore awarded.
6. In addition to those elements, the claimant was due to be paid for holiday leave. He has not received that payment. His holiday leave entitlement was 36 hours 50 minutes based on his period of employment. The sum due to him in that regard is £264.49 and Judgment for that amount is awarded.
7. The claimant did not ever receive a statement of terms and conditions of employment. He did not ever receive payslips. An award is therefore due in terms of Section 38 of the Employment Act 2002.
8. The amount awarded under that Section can be at a lower level of two weeks' pay or at a higher rate of 4 weeks' pay if that is considered by the tribunal to be just and equitable.
9. I consider it to be just and equitable to award payment at the higher rate of 4 weeks' pay. The claimant requested a statement of terms and conditions both at the outset and during the course of his employment, he did not however receive that at any stage. I accepted his evidence on that point. Had he received a statement of terms and conditions, it would have been clear to him that he was not being paid at the national minimum wage and indeed

identity of his employer would have been clear. Four weeks' pay amounts to £1252.80. Judgment for that amount is also awarded.

10. The respondents are therefore obliged to pay those amounts to the claimant.

5 **Employment Judge: R Gall**
Date of Judgment: 22 August 2019
Date sent to parties: 28 August 2019