



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

MISS A VERONA

V

WFT PUB COMPANY LIMITED

HELD AT: CARDIFF

ON: 6 MARCH 2020

BEFORE: EMPLOYMENT JUDGE S POVEY
(SITTING ALONE)

REPRESENTATION:

FOR THE CLAIMANT:

NO ATTENDANCE

FOR THE RESPONDENT:

NO ATTENDANCE

JUDGMENT

1. The Respondent made deductions from the Claimant's wages in contravention of section 13 of the Employment Rights Act 1996.
2. The Respondent failed to give to the Claimant a written statement of particulars of employment in contravention of section 1 of the Employment Rights Act 1996.
3. By reason of the above, the Respondent must pay to the Claimant the sum of £1,598, calculated as follows:

	£
3.1. Holiday Pay	1,037.00
3.2. Notice Pay	187.00
3.3. Written statement of particulars of employment	<u>374.00</u>
Total:	<u>1,598.00</u>

REASONS

1. These are claims brought by Amber Verona ('the Claimant') against her former employer, WTF Pub Company Limited ('the Respondent'). The

Claimant was employed by the Respondent as a chef from 21 August 2018 until 16 September 2019.

2. The Claimant claimed that she was owed outstanding holiday and notice pay. In addition, she claimed that the Respondent had failed to provide her with a written statement of the particulars of her employment.

Procedural History

3. Following the issue of an ACAS Early Conciliation Certificate on 9 November 2019, the Claimant presented her ET 1 claim form to the Tribunal on 5 January 2020. The Tribunal accepted the claim and sent a copy of it, with information on how to respond, notice of hearing (of 6 March 2020) and standard case management directions, to the Respondent by a letter dated 7 January 2020.
4. That letter was returned to the Tribunal, marked "*No longer at this address.*" A search of Companies House by Tribunal staff identified the Respondent's registered address and the said documents were re-served by a letter dated 2 February 2020.
5. There has been no communication received by the Tribunal from the Respondent. It had 28 days in which to respond to the claims brought by the Claimant. It has failed to do so.
6. On the morning of 6 March 2020, the Tribunal received an email from the Claimant, indicating that she would be unable to attend the hearing due to ill health. She was asked whether she wished for the hearing to be postponed (so that she could attend on a date in the future) or for it to proceed in her absence. The Claimant stated that she wished for the hearing to proceed in her absence.
7. The Respondent did not attend the hearing.
8. I concluded that it was in the interests of justice and consistent with the overriding objective to proceed with determining this case in the absence of both parties.

The Relevant Law

- 8 Section 13 of the Employment Rights Act 1996 ('ERA 1996') affords a worker the right not to suffer unauthorised deductions from her wages. This involves a consideration of what sums the worker is entitled to under her contract of employment and what sums she has been paid.
- 9 For the purpose of section 13 of the ERA 1996, the definition of "wages" includes "*any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise*" (per section 27(1)(a) of the ERA 1996).

10 By virtue of section 86(2) of the ERA 1996, the notice required by an employee who has been continuously employed for more than one month in order to terminate her contract of employment is not less than one week. The contract does not terminate until the notice takes effect and the employee remains entitled to payment of wages during the notice period. The parties can agree shorter notice and/or that the employee is paid in lieu of having to give notice (per section 86(3) of the ERA 1996)

11 Section 1 of the ERA 1996 states:

“Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.”

12 Section 1(2) of the ERA 1996 requires the statement to be given not later than two months after the beginning of employment and subsections (3) and (4) set out the content of those particulars.

13 Where no response to a claim has been received by the Tribunal within the requisite time limit, an Employment Judge must decide whether on the available material a determination of the claim can be properly made. To the extent that it can, the Judge must issue a judgment accordingly (per Rule 21 of the Employment Tribunal Rules of Procedure 2013).

14 The burden of proving her claims is on the Claimant. She must prove her case on the balance of probabilities (i.e. it is more likely than not).

Findings of Fact

9. In her ET 1 claim form, the Claimant stated that she was claiming:

...unpaid holiday pay accrued @ £1037 (was added on to my final total pay on P45 but never paid to me)...£187 for the weeks (sic) notice I gave in but not given the opportunity to work...£748 (equivalent of 4 weeks pay) for failure to provide written particulars of employment

10. Given the Respondent's failure to respond to the claims made against it, I am able to determine from the contents of the ET 1 that, on the balance of probabilities, the Claimant was not paid holiday to which she was owed, was not permitted to work during her notice period but was not paid wages in lieu of notice and was never provided with a written statement of particulars of her employment.

11. Similar, given the lack of any challenge from the Respondent, I also found on balance that the Claimant's weekly wage was £187 and that she was owed £1,087 in accrued holiday pay at the time of her resignation.

12. For the avoidance of doubt, I also found on balance that the Claimant was an employee of the Respondent's from 21 August 2018 until her resignation, effective on 16 September 2019.

Conclusions

13. I bring forward the above findings and apply the relevant law to them.
14. The failure by the Respondent to pay the Claimant her accrued holiday pay and pay her a sum equivalent to a week's wages in lieu of notice constituted unlawful deductions from the Claimant's wages (contrary to section 13 of the ERA 1996).
15. By virtue of section 24 of the ERA 1996, the Respondent is ordered to pay to the Claimant a sum equivalent to these unlawful deductions. That sum is £1,224 (£1,037 + £187).
16. The failure by the Respondent to provide the Claimant with a written statement of the particulars of her employment was a breach of it's duty under section 1 of the ERA 1996.
17. As the Claimant has succeeded in her claim under section 13 of the ERA 1996, section 38 of, and Schedule 5 to, the Employment Act 2002 ('EA 2002') requires the Tribunal to increase any award by the equivalent of at least two weeks pay. Where it is just and equitable in all the circumstances to do so, the award may be increased to a sum equivalent to four weeks pay (by reason of section 38(3) & (4) of the EA 2002).
18. The Claimant is therefore entitled to an award equivalent to two weeks pay, which is £374. However, as noted above, the Claimant in her ET 1 seeks an award equivalent to four weeks pay. As recorded earlier, the Claimant did not attend the hearing but wished the matter to proceed in her absence. As such, the only evidence before me was the ET 1 claim form. In my judgment, there was insufficient evidence to find, on balance, that it was just and equitable to increase the sum of the award from two to four weeks' pay. I therefore did not increase the award from £374.
19. For all those reasons, the Claimant made out her claims of unlawful deduction from wages and a breach of the Respondent's duty to provide her with a written statement of the particulars of employment. In consequence, the Respondent must pay to the Claimant the sum of £1,598.

Payment & Enforcement of the Judgment

20. The sum owed by the Respondent to the Claimant becomes payable immediately upon judgment (i.e. 6 March 2020). If the sum owed is not paid within a reasonable period of time (usually considered to be 28 days, unless a longer period is requested by the Respondent and agreed to by the Claimant), enforcement of this judgment is by application to the County Court, not the Employment Tribunal. The court fees associated with any such application can be added to the judgment debt.
21. In the course of considering this case, I checked the Respondent's details with Companies House (via <https://www.gov.uk/get-information-about-a->

[company](#)). As at 6 March 2020, the Respondent was still active but subject to an active proposal to strike it off the register of companies (for non-filing of accounts). Notice has been issued that the Respondent will be struck off and dissolved, unless cause not to do so is shown before 10 May 2020.

22. The Claimant is now a creditor of the Respondent (by reason of this judgment). Creditors are entitled to apply to Companies House to object to the dissolution of a company that owes them money (in order that the company can be pursued for payment of any outstanding debts). Further information can be found at <https://www.gov.uk/object-to-a-limited-company-being-struck-off>

23. Had the Claimant attended the hearing on 6 March 2020, I would have relayed the above information to her. As she was unable to attend due to illness, it was only fair that I included that same information in these reasons.

EMPLOYMENT JUDGE S POVEY

Dated: 6 March 2020

Order posted to the parties on 9 March 2020

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For Secretary of the Tribunals