EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr Nils Subnikovs	AND	Fox Undertakings Limited Trading as The Royal Oak

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 30 April 2020
Public Hearing By Telephone

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Did Not Attend
For the Respondent: Did Not Attend

JUDGMENT

The judgment of the tribunal is that:
1. The claimant's claim for breach of contract in respect of his notice pay is dismissed; and
2. The claimant succeeds in his claims for unlawful deduction from wages and for accrued but unpaid holiday pay, and the respondent is ordered to pay the claimant the gross sum of £540.00.

REASONS

1. In this case the claimant Mr Nils Subnikovs brings monetary claims for breach of contract, for unlawful deduction from wages, and for accrued but unpaid holiday pay against his ex-employer. The correct name of the respondent is Fox Undertakings Ltd trading as The Royal Oak. The claimant had also issued proceedings claiming unfair dismissal, but this claim has already been dismissed because the claimant had insufficient continuity of service to qualify for the claim. The respondent denies part of the remaining claims.
2. This has been a remote hearing on the papers to which the parties have consented and not objected. The form of remote hearing was a public hearing by way of an audio conference hearing by telephone. A face to face hearing was not held because it is in the interests of justice and in accordance with the overriding objective to minimise expenditure

on time and costs. Unfortunately, neither party attended, and they did not notify the Tribunal that they did not intend to attend. I therefore decided to determine the matter on the papers before me. If either party wishes to seek reconsideration of this judgment than they may do so provided that full written reasons are provided and the application complies with the relevant Employment Tribunal Rules. The documents which I considered are the pleadings and any subsequent orders in this case, together with any other documents specifically brought to my attention by the parties, which include the claimant's letter of engagement, the written statement of the terms and conditions of his employment, the disciplinary procedure, and an exchange of text messages.

3. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering any factual and legal submissions made by and on behalf of the respective parties.
4. The respondent company owns and operates a public house in Milborne St Andrew in Dorset namely The Royal Oak. The claimant was employed as a chef from 15 May 2019, but only until 19 May 2019 when he left. There was a dispute with another member of staff. The respondent denies dismissing the claimant, and the claimant accepts that he left the respondent's employment of his own volition.
5. The respondent has adduced a statement of the terms and conditions of the claimant's employment, but this has not been signed by the claimant. The respondent also had in place a disciplinary procedure, but this was expressly excluded for employees who had been employed for fewer than 13 weeks. The claimant was employed at a salary of £26,000 per annum gross. The contractual period of notice to be given on the termination of employment was expressed to be "one shift". The statement referred to certain deductions being authorised on the termination of employment, but the claimant had not signed his statement of terms to give his consent to this. In any event the deductions were limited to: "any outstanding loans or subs; any excess holiday pay received by you; the cost of any unreturned uniforms; the cost of repairing any damage or replacing any property belonging to the company where damage or loss is the result of any fault or carelessness on your part; any stock or cash losses due to your negligence or carelessness". The claimant had not therefore given his signed authority for the respondent to make any deductions on the termination of his employment.
6. The claimant has adduced a statement in which he confirms that he worked from 11 am to 9:50 pm on 15 May 2019; from 10 am to 10 pm on 16 May 2019; from 3 pm to 9:40 pm on 17 May 2019; from 11 am to 10 pm on 18 May 2019; and from 11 am to 4:30 pm on 19 May 2018. This is a total of 46 hours. In its response the respondent contends that the claimant worked three full shifts and three half shifts in these five days, which amounts to four shifts only, and not five as claimed by the claimant. However, the respondent gives no further explanation for this, and its terms and conditions of employment do not refer to payment for shifts or half shifts. Accordingly I find that the claimant did work five shifts between 15 and 19 May 2019, to which he is entitled to be paid.
7. The parties agree that the claimant's gross rate of pay was the pro rata equivalent of £100.00 per day, and that the claimant's outstanding accrued holiday entitlement can be quantified at £40.00. The claimant claims that he is owed five days' pay being £500.00, his holiday pay at £40.00, and his notice pay which is the equivalent of one shift, namely £100.00. This is a claim of £640.00 in total.
8. The respondent concedes that it owes pay of £440.00, consisting of three full day shifts and two half day shifts (£400.00) together with £40.00 holiday entitlement. The respondent concedes that the starting point is that it is therefore indebted to the claimant in the sum of £440.00. The respondent retained £100.00, as it says it is entitled to do under the terms and conditions of employment, and has already sent a cheque for £340.00 to the claimant under cover of a letter dated 12 June 2019. This is a gross payment because the respondent says the claimant has not been employed long enough to been entered on its PAYE payroll system. The claimant refused to accept the sum of £340.00 in settlement of his claim, and it is not clear whether or not he has encashed this cheque.
9. Having established the above facts, I now apply the law.

10. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
11. The claimant also claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
12. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations").
13. As confirmed in the findings of fact above, the claimant worked five shifts from 15 to 19 May 2019 inclusive for which his pro rata salary entitles him to payment of £500.00. His accrued holiday pay entitlement is agreed at £40.00. The claimant also claims contractual notice pay of one shift (namely £100.00), but given that the claimant left without notice in my judgment he is not entitled to this sum. The respondent has deducted £100.00 from the claimant's final salary, but the claimant had not given his written authority for any such deduction, and it is therefore unlawful.
14. In conclusion therefore, the respondent is ordered to pay the claimant the gross sum of £540.00, being £500.00 for unlawful deduction from wages and £40.00 for accrued but unpaid holiday pay.
15. By letter dated 12 June 2019 the respondent sent the claimant a cheque in the sum of £340.00. If this cheque has been encashed by the claimant then clearly the respondent can claim credit for £340.00 already paid.

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Employment Judge N J Roper
Dated: 30 April 2020
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