



# EMPLOYMENT TRIBUNALS

**Claimant: Miss L Shepherd**

**First Respondent: Leighanne Wilson**

**Second Respondent: Darren Keenan**

## JUDGMENT

### Employment Tribunals Rules of Procedure 2013 – Rule 21

The judgment of the Tribunal is that:

1. The Claim against the Second Respondent is dismissed.
2. The claim of unlawful deductions in respect of accrued but untaken holiday pay against the First Respondent is well founded and succeeds. The First Respondent is ordered to pay the Claimant the gross sum of **£561**.
3. The Tribunal makes a declaration that the First Respondent failed, throughout the course of the Claimant's employment, to give her any itemised pay statements in breach of the Claimant's right under section 8 Employment Rights Act 1996.
4. The First Respondent is further ordered to pay to the Claimant the sum of **£650** being the aggregate of the unnotified deductions in the 13 week period immediately preceding the date of the reference to the Tribunal.
5. The total amount to be paid to the Claimant is **£1,211**.

## REASONS

6. The Claimant's Claim Form was presented on 23 October 2019, naming the First Respondent as the only respondent. The Claimant sought payment in respect of unpaid holiday entitlement and also referred to the fact that she had never been provided with itemised payslips/statements. The Claim Form had been served and sent to the First Respondent. A response was due by 28 November 2019. No response was received. At a hearing on 06 January 2020 to consider issuing a judgment under rule 21 of the Tribunal Rules of Procedure, I was satisfied that the First Respondent had been properly served. However, on that occasion the Claimant

raised the prospect that another person, Mr Darren Keenan, might be her employer. Therefore, I ordered that he be added as a party to the proceedings (as the Second Respondent) and that he be served with the Claim Form and a copy of the orders and case management summary of that hearing.

7. The proceedings were duly served on Mr Keenan and a response was due from him by 05 February 2020. No response was received. I am satisfied that the proceedings were properly served on him also.
8. I am required by Rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made on the claims and, if so, obliged to issue a judgment which may determine liability and remedy.
9. At the hearing on 06 January 2020 I was able to establish the following facts:
  - 9.1 She was employed by either Leighanne Wilson or Darren Keenan from 13 October 2018 to 27 July 2019;
  - 9.2 She was paid £8.50 an hour;
  - 9.3 She had never been provided with any itemised pay statements;
  - 9.4 At the date of the termination of her employment she was entitled to payment in respect of 11 accrued but unpaid days' holiday at the rate of £51 a day;
  - 9.5 The total gross amount of pay due to her in respect of those holidays was £561
10. However, I could not be satisfied as to the identity of the Claimant's employer. Therefore, the proceedings were served of the Second Respondent and the matter was re-listed for a hearing.
11. The Claimant appeared before me again on 09 March 2020. Neither Respondent appeared. I was satisfied that they had been informed of the hearing date. The Claimant confirmed what is set out in paragraph 9 above and she gave some further details of her claim. I had, first of all, to determine who was her employer.
12. Having heard from the Claimant, I find as a fact that the First Respondent runs and operates the salon; that she offered the Claimant employment following an interview and stated the rate of pay to be £8.50 an hour; that the Claimant accepted the offer from the First Respondent; that the First Respondent retained the power of control over the Claimant and her work; that the First Respondent was responsible for paying the Claimant's wages and that she was the person who deducted the £50 from her pay every week. The Second Respondent only occasionally came to the salon to pick up his daughter; he had no role in offering the Claimant employment; he retained no control over her or her work and had no responsibility in paying her wages.
13. I was satisfied that the First Respondent was the Claimant's employer. The Claimant also told me, which I accept, that the sum of £50 was deducted from her pay every week by the First Respondent for what the First Respondent told her was tax and national insurance. This was an unnotified deduction within the meaning of section 12(4) and (5) Employment Rights Act 1996 ('ERA').

- 14.** The Claimant had made a reference under section 11(1)(b) ERA. Having heard from the Claimant today, I was satisfied that the First Respondent had never given the Claimant a pay statement in breach of section 8. I was also satisfied that, in respect of the 13 week period immediately prior to the presentation of the Claim Form, the aggregate amount of deductions in respect of tax and national insurance was £650 and that it was appropriate to make a declaration and order for payment of that amount to the Claimant in accordance with section 12(3) and (4) ERA.
- 15.** Therefore, I was satisfied that the claims have been made out and that I had sufficient information in order to make an award, the total amount of which is £1,211.

**Employment Judge Sweeney**

Signed 9 March 2020