



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Lewis Dowling

**Respondent:** Wye Coffee Shop Ltd

**Heard at:** London South by CVP **On: 7 July 2020**

**Before:** Employment Judge Khalil (sitting alone)

## Appearances

For the claimant: in person

For the respondent: no appearance

## JUDGMENT

The claimant is awarded the sum of £2178.

### Reasons

- (1) The respondent had submitted a response 3 months out of time. There was no application from the respondent under rule 20.
- (2) The Tribunal had regard to the grounds of resistance stating that the Wye Coffee Shop Ltd was incorporated on 1 August 2019 and the accompanying payslips from (September 2019 to December 2019).
- (3) Following discussion with the claimant, the Tribunal considered that there had been a business transfer under TUPE from Wye Coffee and Kitchen Limited ('the business') to Wye Coffee Shop Ltd. There appeared to be a transfer of an economic activity which retained its identity. The Tribunal was informed that at least 2 employees were transferred, all the equipment was transferred, the business was continuing doing the same activity from the same premises serving the same customers.
- (4) The Tribunal noted that Wye Coffee and Kitchen Limited went in liquidation on 19 November 2019 when there was a resolution. On 20 November 2019, a liquidator was appointed. The Tribunal considers that in these circumstances regulation 8 (7) of the TUPE Regulations is not engaged to dis-apply TUPE as

the business was transferred to Wye Coffee Shop Ltd *before* it was under the supervision of an insolvency practitioner.

- (5) The Tribunal removes Victoria Lapish as a respondent in these proceedings and substitutes Wye Coffee Shop Ltd under rule 34.
- (6) The claimant was paid in cash. He says he suffered an unauthorised deduction of **£146** in October 2019. The Tribunal noted there was no payslip for week beginning 11 October 2019. The claimant, who was paid in arrear, was also not paid **£286** for his first week of employment. He is awarded these sums.
- (7) The claimant's employment was terminated without notice on 14 December 2019. The claimant is awarded a week's notice (statutory minimum) which is **£286**.
- (8) The claimant says he received holiday pay for September to December 2019. He was not paid holiday pay accrued for 1 February to 31 August 2019. He says he was owed 118 hours in total which equates to under 3 weeks. This amounts to **£888** net (based on a weekly net figure of £286 on a 38-hour week).
- (9) The claimant did not receive a written statement of employment particulars. The claimant is awarded 2 weeks' pay pursuant to S.38 Employment Act 2002 totalling **£572**.

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**Employment Judge Khalil**

**7 July 2020**