



EMPLOYMENT TRIBUNALS

Claimant: Ms. M. Kouka

Respondents: Colonnade (Operator) Ltd

London Central

On: 22 June 2020 Employment Judge Goodman

JUDGMENT

The respondent is ordered to pay the claimant:

- 1. £1,750.05 unlawfully deducted from wages**
- 2. £1,890.57 holiday pay**

REASONS

1. The claimant was employed by the respondent at Colonnade Hotel as a kitchen porter from 30 January 2018 to 18 March 2019 at £7.83 per hour.
2. A contract of employment issued on 10 May 2018 provides at clause 7.3 that she is to be paid 20 days per annum holiday, "with no additional entitlement in respect of bank and public holidays", but there is also a clause saying that if an employee has to work a bank holiday she will get another day off, so it is not clear if staff were paid for the 8 bank holidays.
3. The claim is for unpaid wages for the months of February and March 2019, and for unpaid holiday.
4. The claim was presented to the tribunal on 6 July 2019. Having regard to the dates on the early conciliation certificate, this was in time. It was served on the respondent on 26 September 2019 with a notice of hearing on 26 November 2019. The respondent was required to respond to the claim on form ET3 by 24 October 2019. It did not.
5. As the respondent had not responded, the claimant was entitled to judgment under rule 21. It was not however clear from the claim form what sum of money was claimed. The acting regional employment judge

removed the case from the hearing list and directed the claimant to state the sum claimed, with an explanation of the figures. When this letter was sent to the parties, a Mr. Paul Fizia emailed the tribunal from an email address at Tophams hotel saying "I would like to be listed as a representative in this case so please can you add me so I can get some information". In a further email he said he had not responded because he had not dealt with such a matter before and also he had been overseas. He had called (telephoned) the tribunal "with the intention settle this matter without the need for a hearing and it is our intention to pay the claimant". He asked for an extension and a new hearing date. He has not however supplied a draft of the response to the claim to accompany his application to extend time, as required by rule 20, or communicated further about anything.

6. The tribunal then asked the claimant if she had been paid, and whether she required a judgment. She replied on 16 January that she had not, and she did.
7. I regret that this letter was not referred by the administration to any judge until today.
8. Nothing more has been heard from the respondent. A check on the Companies House register and the hotel website shows that the respondent is up to date with filing, that Mr Fizia is the sole director, and that the proceedings and correspondence were correctly addressed to the respondent hotel.
9. The claimant has provided a number of documents. These include the payslips issued by the respondent for her earnings in February and March 2019, showing statutory deductions for tax, employee national insurance, and employee NEST pension contributions. She has also sent bank statements for February and March, and letters from her bank returning cheques she had paid in which were referred to drawer (that is, bounced). The cheques were drawn on Belgravia Hotel Mews Hotel Ltd. The Companies House register shows Mr Fizia is sole director of this company too, and that it was formerly called Tophams, which may explain his email address. She has also provided a letter from NEST (23 March 2019) saying the respondent had been reported to the Pensions Regulator for non-payment of pension contributions but she did not need to take further action, and a letter from HMRC of 15 December 2019 saying she owed £2,146.20 for the tax year ending April 2019.

Unlawful Deductions

10. The February pay slip shows the claimant was due £1,534.05 for that month after deductions. The claimant states she was paid £1,000 that month, but is owed the balance, £534.05. The March payslip shows she is owed £1,216.01 after deductions, and none has been paid, as the cheque was a dud.
11. The claim is brought under section 23 of the Employment Rights Act. I order the respondent to pay the unlawful deductions (that is, the shortfall

between what is due and what is paid) from the amounts owed in February and March 2019 in the total sum of £1,750.05.

Holiday Pay

12. By the Working Time Regulations 1998 an employee is entitled to 28 days paid holiday per annum. Any holiday not taken on termination can be paid in lieu then. Holiday cannot be carried forward from year to year. I have no information on when the holiday year ran from and to, or what holiday (if any) the claimant took in the last year. She claims only 20 days, suggesting that she did in fact take as holiday, and was paid for, the 8 days of public holidays. Given the lack of response from the respondent, even after saying he intended to pay, the evidence of the returned cheques, the failure to pay the pension contributions deducted from her wages, and the indication that the respondent did not pay to HMRC the money he had deducted from wages under PAYE, I propose to give her the benefit of the doubt and order payment of 20 days (4 weeks) pay. This is a gross sum. It is liable to tax in the hands of the claimant. I do not order a net sum because (1) as she is no longer on the payroll it is not clear that payment can still be made under PAYE and (2) the strong indication from surrounding circumstances that it would not in fact be paid to HMRC.
13. I add that if the claimant has not already taken up with HMRC whether the money shown as deducted from her monthly pay under PAYE was in fact paid to HMRC, she should do so.

Employment Judge - Goodman

Date 22 June 2020

JUDGMENT SENT TO THE PARTIES ON

27/06/2020.

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FOR THE TRIBUNAL OFFICE

Note

Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless requested within 14 days of this written record of the decision being sent to the parties.