



EMPLOYMENT TRIBUNALS

Claimant: Mr K Mahmood

Respondent: Goldens (Derby) Limited

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the **gross** sum of **£33,307.60**.
2. The respondent has made a further unauthorised deduction from the claimant's wages in respect of his right to paid annual leave and is ordered to pay the claimant the **gross** sum of **£1,313.60**.
3. At the time of the presentation of the claim, the respondent was in breach of its duty under s.1(1) or 4(1) of the Employment Rights Act 1996 and the awards set out above are increased by a further 4 weeks' pay. The Respondent shall thereby pay the claimant the additional **net** sum of **£2627.20**

REASONS

1. The respondent has failed to present a response and the claimant is entitled to judgment under rule 21 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The claimant has provided details of the amount of wages properly due to him under the National Minimum Wage Act 1998 and its associated regulations during the two years immediately preceding the presentation of the claim and deducted from his wages without authority in the sum of £33,307.60.
3. The claimant has also sought the payment of accrued but untaken holiday. His claim is that he has been denied the right to take holiday throughout his employment save for two weeks taken over the 2019 Christmas period. However, the claimant also says his employment is continuing and alleges no detriments or other consequences arising from his employer's failure to permit him to exercise his right to paid annual leave under the Working Time Regulations 1998. The tribunal does not, therefore, have jurisdiction to award the sum claimed as accrued but untaken holiday. It may well be that his right to take that leave and/or his right to be paid it

on a future termination remains extant but neither is a matter presently engaging the jurisdiction of the tribunal.

4. However, the two weeks' unpaid leave taken over Christmas should have been paid at his normal rate of pay of £328.40 per week gross.
5. The respondent is also in breach of its duty to provide a written statement of main terms and conditions. The omission is directly relevant to the issues in this case and I am satisfied it is just and equitable to make an award under s.38 of the Employment Act 2002 at the higher level of 4 weeks pay.

Employment Judge **Clark**

Date: 21 May 2020