



# EMPLOYMENT TRIBUNALS

## Claimant

Mr A Memon

## Respondent

v Omega Travel Limited (Milburn Travel Limited); in liquidation and Others

**Heard at:** Cambridge

**On:** 20 March 2020

**Before:** Employment Judge Tynan

## Appearances

**For the Claimant:** In person

**For the Respondents:** Were not represented and did not attend

## JUDGMENT on REMEDY

1. The First Respondent breached the terms of the Claimant's contract of employment by failing to give him the statutory notice to which he was entitled on terminating his employment with it and the Tribunal Orders the First Respondent to pay to the Claimant the sum of **£1,318.15** as damages for breach of contract.
2. The Tribunal declares that the First Respondent made an unlawful deduction from the Claimant's wages by failing to pay the Claimant in lieu of his accrued holiday on the termination of his employment and it Orders the First Respondent to pay to the Claimant the sum of **£1,388.56** in respect of the unlawful deduction.

## REASONS

1. In view of the rapidly changing circumstances created by the Covid-19 pandemic, the Hearing previously listed at Cambridge Employment

Tribunal on 20 March 2020 was converted to a Telephone Hearing. The Respondents had failed to present a response to the Claimant's claim within the 28-day period prescribed by the Employment Tribunal's Rules of Procedure 2013. They have failed to participate in any other way in the proceedings.

2. On 17 February 2019, the Tribunal wrote to the Claimant requesting that he provide certain information to the Tribunal in order for a Judgment to be issued which would avoid the need for the Claimant to attend the Tribunal to give evidence at a Hearing. In accordance with that request, the Claimant wrote to the Tribunal on 25 February 2019 setting out how much he is claiming. I was able to explore the issues in further detail with the Claimant, who confirmed that his contract of employment was with the First Respondent, albeit in the course of his duties for the First Respondent he had also undertaken work for the benefit of the Second Respondent. However, he accepted that the First Respondent was his employer and that any wages, holiday pay or notice monies were payable by the First Respondent rather than the Second Respondent. He explained that his wife, who works as an Administrator, had assisted him in calculating his accrued but unpaid holiday entitlement. The First Respondent had accepted a claim to holiday pay by one of the Claimant's colleagues; the holiday pay calculation had been undertaken by the Claimant's wife on his behalf. Having explored the issue with the Claimant I am satisfied that he was entirely honest and truthful with the Tribunal and that his wife had correctly calculated the holiday pay due. Their calculation has not been challenged by the Respondents. Accordingly, I shall Order the First Respondent to pay him the sum of £1,388.56 in respect of this unlawful deduction from his wages. As the First Respondent is insolvent, he may be able to make a claim to the Insolvency Service in respect of these sums.
3. At the termination of his employment, the Claimant had five years' continuous service with the First Respondent. He was therefore entitled as a minimum to 5 weeks' notice from the First Respondent to terminate his employment. It has never been suggested by the First Respondent that it had grounds to terminate the Claimant's employment summarily. Instead, the Claimant was terminated without notice on 4 October 2018, evidently because the First Respondent was in financial difficulties. The Claimant was able to secure alternative employment during his contractual notice period and commenced his new job on 1 November 2018, fully mitigating his losses from that date. As the Claimant was dismissed in breach of contract, he is entitled to claim damages for breach of contract, namely in respect of the four-week period from 4 October to 1 November 2018 during which he had no income.
4. From form ET1, I calculate that the Claimant's daily rate of pay was £65.91 after deductions for Income Tax and employee National Insurance Contributions. He was without work for 20 working days of his five-week notice period and accordingly, I shall Order the First Respondent to pay

him the sum of £1,318.15 by way of damages for breach of contract (namely, twenty working days at £65.91 per day).

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Employment Judge Tynan

Date: 3 April 2020

Sent to the parties on: ....30<sup>th</sup> July 2020..

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For the Tribunal Office