



EMPLOYMENT TRIBUNALS

Claimant: Miss B Philips

Respondent: The Halsetown Inn Ltd (in Liquidation)

Heard at: Bristol

On: 21 August 2020

Before: Employment Judge Oliver

Representation

Claimant: Did not attend

Respondent: Did not attend

JUDGMENT

The Respondent made an unauthorised deduction from the Claimant's wages by failing to pay the full amount of holiday pay due to her on termination of employment. The Respondent is ordered to pay the sum of £214.92 to the Claimant.

REASONS

1. This was a claim for unpaid holiday pay on termination of employment.
2. The Respondent is now in creditors voluntary liquidation. The Liquidator was provided with information about hearing. They replied on 21 August, noting the information provided by the director of the company in the ET3, saying that they would not attend hearing, and confirming the company does not have sufficient funds to meet any amount due above that which would be met by the Secretary of State.
3. The Secretary of State was asked if they wanted to take part in the proceedings, and were sent the claim and response. The Tribunal has not received a reply.
4. The Claimant did not attend the hearing. The Tribunal had not received any direct communication from the Claimant about non-attendance. However, the Liquidator copied the Tribunal on an exchange of correspondence on 20 August,

in which the Claimant apologised for not being able to attend the hearing as she had just received confirmation of a medical appointment for a relative, having been on the waiting list for several months. This came to the Tribunal's attention after 10am on the day of the hearing.

5. I considered whether it would be appropriate to proceed with the hearing in the absence of all parties. The Claimant had a good reason for her non-attendance, and no other parties were expected to attend. I had the ET1, ET3, correspondence from the Liquidator, and the Claimant's calculation and explanation of the sums owed to her. I decided that it would be appropriate and in accordance with the overriding objective to proceed with the hearing in the absence of all parties by considering the matter on the papers, taking into account the relatively small sums involved, the information available to me, and the fact that nobody from the Respondent or Liquidator had been intending to attend the hearing in order to challenge the Claimant's version of events.

Facts

6. The Claimant worked for the Respondent from 31 March to 18 October 2019. She worked variable hours each week. Her claim is that she has not been paid all of the accrued holiday pay owing to her on termination of employment.

7. The Claimant calculated that she had worked an average of 16.45 hours a week in the 12 weeks prior to the end of her employment. She calculated that she is owed accrued holiday of 35.5 hours. She calculated this using the government's holiday pay calculator provided on its website, and provided a screenshot showing the information she had entered and the calculation.

8. The Claimant says she was paid an hourly rate of £8.50, giving a total payment due of £301.75. She says she was paid £51 of holiday pay on 11 October, and a further payment of £35.83 on 4 November. This leaves £214.92 outstanding.

9. The Respondent in its ET3 says the Claimant had an outstanding bar bill of £197.10, and this was deducted from her final payment. The C says that she made a cash payment, she has bank statements showing this payment, and a letter from the general manager confirms this. I have not seen these documents.

10. The Respondent says in its ET3 that these payments would appear in bar till receipts, and were not entered into wet sales or in the independent stock taker records. The Respondent has not disputed the Claimant's holiday pay calculation, or alleged that the Claimant had taken any paid holiday during her employment. The Respondent has not provided any evidence of a contract or other written agreement with the Claimant which authorised deduction of any sums owed to the Respondent on termination of employment.

Applicable law and conclusions

11. A worker is entitled to payment for accrued but untaken holiday on termination of employment (Regulation 14 of the Working Time Regulations 1998). Where no relevant agreement applies, the calculation is: **(A x B) - C**, where **A** is the period of leave to which the worker is entitled, **B** is the proportion

of the worker's leave year which expired before the termination date, and **C** is the period of leave taken by the worker between the start of the leave year and the termination date.

12. A worker is entitled to 5.6 weeks' leave per year, at the rate of a week's pay. For workers who do not have normal working hours, the amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending with the calculation date (section 224 Employment Rights Act 1996)

13. Failure to pay holiday pay is an unauthorised deduction from wages under section 13 of the Employment Rights Act 1996. An employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction (section 13(1)).

14. The Respondent deducted money from the Claimant's holiday payment for a debt they allege to be owed for an unpaid bar bill. The Respondent has provided no evidence that this deduction was authorised or agreed to in advance. I did not have the evidence to resolve whether or not this sum was still owed by the Claimant, or whether it had been paid in cash as she claims. But, even if this sum was still owed by the Claimant, the Respondent was not legally entitled to make this deduction because the deduction was unauthorised.

15. I therefore find that the Respondent made an unauthorised deduction from the Claimant's wages by failing to pay all of the holiday pay that was due to her on termination of employment. I accept the Claimant's calculations of what is owed to her, as she has calculated this on the correct basis using the government's calculation tool.

16. After deducting the payments already made by the Respondent, the Claimant is owed the sum of £214.92 for unpaid holiday pay. The Respondent is to pay this sum to the Claimant.

17. As the Respondent is in liquidation, the Claimant can contact the Redundancy Payments Service and may be able to recover the sum owed from the Secretary of State: <https://www.gov.uk/claim-redundancy>.

Employment Judge Oliver
Date 21 August 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
10th September 2020
By Mr J McCormick

FOR THE TRIBUNAL OFFICE