



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mr F Ahammed

v

ISA Ltd T/A Subway

Heard at: London Central

On: 18 September 2020

Before: Employment Judge Brown

Representation

For the Claimant: In person

For the Respondent: Did not attend and was not represented

JUDGMENT

The judgment of the Employment Tribunal is that:-

- 1 The Respondent made unlawful deductions from the Claimant's wages in the sum of £1,050.88 gross. The Respondent shall pay the Claimant £1,050.88 gross.
- 2 The Respondent wrongfully dismissed the Claimant and failed to pay the Claimant his 4 week's notice pay. The Respondent shall pay the Claimant £788.16 damages for breach of contract.
- 3 The Respondent failed to pay the Claimant his holiday pay accrued on termination of his contract. The Respondent shall pay the Claimant £679.03 gross for accrued holiday pay.
- 4 The Respondent shall pay the Claimant £200 for preparation time. The Respondent was unreasonable in its conduct of the proceedings and a preparation time order is appropriate.
- 5 The total sum which the Respondent shall pay to the Claimant is £2,718.07.

REASONS

Preliminary

1. The Claimant brings complaints of unlawful deductions from wages, failure to pay holiday pay and breach of contract by failure to pay notice pay.
2. The Claimant presented his claim on 19 September 2019.
3. The Respondent did not present a Response to the claim and did not attend the hearing today.
4. The Claimant gave evidence and produced his contract and payslips. I accepted the Claimant's evidence.
5. The Tribunal had the assistance of a Bengali interpreter.
6. The Claimant asked for preparation time costs.

Findings of Fact

7. The Claimant was employed by the Respondent from 1 August 2018 until 12 July 2019 as a "sandwich artist".
8. By Clause 7 of his contract of employment, the Claimant was employed to work 24 hours per week. The Claimant worked 3 days each week pursuant to this, for 8 hours each day.
9. By clause 11 of his contract, his holiday year ran from 1 January to 31 December each year.
10. The Claimant took no holiday between 1 January 2019 and 12 July 2019. He worked 3 days each and every week and had no time off.
11. The Claimant was not paid for his accrued holiday at the end of his employment.
12. The Claimant claimed holiday pay accrued 1 January 2019 to the end of his notice period.
13. The Claimant's contract specified his gross hourly rate as £7.83. The Claimant's gross hourly pay changed to £8.21 in April 2019. His net hourly pay was not significantly different because of the low rate of pay.
14. The Claimant worked 128 hours in the period June 2019 – 12 July 2019 but was not paid at all for those hours. His last pay slip recorded the Claimant having worked 120 hours, to be paid by credit transfer on 31 July 2019, but this sum was

never paid. The Claimant told me that he had actually worked 128 hours but the Respondent had taken 8 hours off incorrectly.

15. By clause 22 of the Claimant's contract of employment, he was entitled to 4 weeks notice. The Respondent dismissed him without notice and without paying him notice pay.

16. The Claimant obtained new work on 1 August 2019. He was unable to mitigate his loss during his notice period.

17. The Claimant told that he had spent 10 hours preparing his papers for the Employment Tribunal, reading relevant documents and calculating his entitlements. The Claimant does not have English as a first language and needed the assistance of a Bengali interpreter.

Relevant Law

18. *Under Regs 13 & 13A Working Time Regulations 1998* workers are entitled to take paid holidays and to be paid holiday pay. The right under *Reg 13* is 4 weeks; the right under *Reg 13A* is 1.6 weeks, meaning that a worker has a right to 5.6 weeks paid holiday. Under *Regulation 14 WTR 1998*, an employee is to be entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired but which has not been taken by the employee during that time.

19. By *reg 13(3) ERA 1996* a worker's leave year begins on the date provided for in his contract of employment, or if there is no relevant agreement, on the date when the employment begins and each anniversary of that date.

20. *Regulation 14(3)* provides for calculation of the amount of holiday pay due in these circumstances as follows: $(A \times B)$ less C, where A is the period of leave to which the worker is entitled, B is the proportion of the leave year expired and C is the period of leave taken.

21. Holiday pay is paid gross. By *Reg 30 WTR* a worker can bring a claim in Employment Tribunal in respect of unpaid holiday pay under *Regulation 14*.

22. *s13 Employment Rights Act 1996* a worker has the right not to suffer unauthorized deductions from wages. By *s27 ERA 1996* "wages" is defined. By *s27(1)*, "In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including: a) any fee, bonus, commission, holiday pay or other emolument referable to his employment whether payable under his contract or otherwise. ...".

23. Employment tribunals are entitled to make any award for unlawful deductions from wages gross, leaving it to the employer to work out exactly how much of the gross sum should be paid to the worker and how much to HMRC: see *Walters t/a Rosewood v Barik UKEAT/0053/16 (13 February 2017, unreported)*.

24. By *Employment Tribunals (Extension of Jurisdiction) England & Wales Order 1994* the Employment Tribunal has jurisdiction with regard to contractual claims arising or outstanding at the termination of the employment of an employee.

25. In awarding damages for wrongful dismissal, in order to put the employee in the position they would have been in had the contract been performed, account must be taken of the tax and National Insurance contributions that would have been paid. Tribunal awards are tax free up to £30,000. Damages for wrongful dismissal in awards made below this amount are therefore calculated on the basis of net pay.

Discussion and Decision

26. By clause 22 of the Claimant's contract of employment he was entitled to 4 weeks' notice. The Respondent breached his contract of employment when it dismissed him without notice. It failed to pay him for his notice period.

27. The Claimant is entitled to 4 weeks' pay in compensation for wrongful dismissal. His loss is 24 hours' pay for each of the 4 weeks.

28. The Claimant is entitled to $24 \text{ hours} \times \text{£}8.21 \times 4 \text{ weeks} = \text{£}788.16$ compensation for failure to pay notice pay (wrongful dismissal).

29. The Respondent failed to pay the Claimant wages for 128 hours work. It made unlawful deductions from the Claimant's wages.

30. The Claimant is entitled to $128 \times \text{£}8.21 = \text{£}1,050.88$ in compensation for unlawful deductions from wages.

31. The Respondent failed to pay the Claimant holiday pay on termination of his employment. The Claimant was entitled to be paid accrued holiday pay. He had not taken any holiday during the holiday year from 1 January 2019 and therefore was entitled to holiday pay accrued from 1 January 2019 until his the end of his notice period.

32. The calculation of holiday pay entitlement is $(32/52 \text{ weeks} \times 5.6 \text{ weeks}) \times 24 \text{ hours} \times \text{£}8.21 \text{ per hour} = \text{£}679.03$.

33. The Claimant also asked for a preparation time order. He said he had spent many hours on his Employment Tribunal claim. By *rules 75 & 76 ET Rules of Procedure 2013* "preparation time" means the time spent by the receiving party in working on the case, except for time spent at any final hearing. A preparation time order can be made, ordering a party to pay a sum of money in respect of the other party's preparation time. A Tribunal may make a preparation time order when it considers that a party has acted unreasonably in the way it has conducted proceedings.

34. I considered that the Respondent had acted unreasonably by not engaging in the proceedings at all. It had failed to pay the Claimant the money he was

entitled to and had not admitted the claim against it. It therefore unreasonably required the Claimant to pursue his entitlement through the Tribunal. The Claimant had to gather together his evidence and prepare to present his case. He had to read all the correspondence from the Tribunal.

35. I considered that it was appropriate to make a preparation time order. 5 hours preparation time was reasonable, given that the Claimant did not have English as a first language and would therefore have taken more time to do all these things. The claim was a straightforward one, however, so 5 hours was reasonable and proportionate. It was appropriate to make a preparation time order at this hearing. The Respondent had had an opportunity to attend the hearing and could have responded to the application for costs if it had attended.

36. The rate at which preparation time is currently paid is £40.

37. The Respondent shall pay the Claimant $5 \times £40 = £200$ for his preparation time.

Employment Judge Brown

Dated: ...18 September 2020.....

Judgment and Reasons sent to the parties on:

18/09/2020

For the Tribunal Office