



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Abdurahim Bushrawi

v

Lean on Me Community Care  
Services Ltd

**Heard at:** Watford

**On:** 2 September 2020

**Before:** Employment Judge Tynan

## Appearances

**For the Claimant:** Ms J Boyle, Nucleus Legal Advice Centre

**For the Respondent:** Ms F Fernandez

## JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent.
2. The Tribunal makes the following awards of compensation, to be paid by the Respondent to the Claimant:

### Basic Award

**£1,903.86**

### Compensatory Award

Loss of earnings from 2 October 2019 to 1 October 2020 (260 days @ £69.08 per day) being the 'prescribed element' for the purposes of the Employment Protection Recoupment of Benefits) Regulations 1996:

**£17,960.80**

Loss of statutory employment rights:

**£500**

3. The Employment Tribunal declares that the Respondent made unlawful deductions from the Claimant's wages and orders the Respondent to pay the Claimant the sum of **£4,304.11** in respect of those unlawful deductions.
4. Pursuant to section 38 of the Employment Act 2002, the Employment Tribunal increases the award to the Claimant by the further sum of **£690.76**.

## **REASONS**

5. By a Claim Form presented to the Employment Tribunals on 2 January 2020 the Claimant brought claims against the Respondent that he was unfairly dismissed and also that he was owed holiday pay. No response was received from the Respondent and accordingly the parties were informed by the Tribunal that a judgment would be issued and that there would be a hearing to determine remedy on 2 September 2020.
6. The Claimant was assisted at Tribunal by Ms Boyle though also spoke in support of his claims. Ms Boyle had filed a schedule of loss in advance of the hearing together various documents in support of the schedule.
7. Notice of the hearing was in a standard form and included a note to the Respondent that unless and until an extension of time was granted to present a response, the Respondent would only be entitled to participate in the hearing to any extent permitted by the Tribunal.
8. The Respondent was represented by Ms Fernandez, though Ms Rachael Baxter, a Director of the Respondent was also in attendance and spoke. There was no application by the Respondent to extend time for presenting a response to the Claim.
9. I started by asking the Ms Fernandez whether the Respondent had received Notice of the Claim or other correspondence from the Tribunal. Although she confirmed that the Respondent's address was as stated on the Claim Form, she said that the Respondent had been unaware of the Claim and had not received any correspondence from the Tribunal. When I asked how and when the Respondent had first become aware of the Claim and of this hearing, she was unable to provide any clarity on the matter. Initially, she told me that the Respondent had become aware of the hearing as a result of having spoken with ACAS. However, the position then became confused. She referred to a telephone call with ACAS the previous week, but then seemed to be saying that there was no such telephone conversation but instead an earlier conversation with ACAS in or around March this year as part of the early conciliation process. Clearly, any such call would have alerted the Respondent to the risk of a Claim but any contact with ACAS pursuant to early conciliation would have been before any Claim was issued. There was then mention of a letter from ACAS. However, when I asked Ms Fernandez to elaborate regarding the date and contents of the letter, as well as the name of the

ACAS conciliator, she then seemed to be saying there was no letter. She said that ACAS had told her they could not help with the case, or it may have been the Tribunal, she was not clear. She could not explain what had prompted the Respondent's contact with ACAS or the Tribunal in circumstances where the Respondent had apparently not received any correspondence from ACAS or the Tribunal regarding the Claim and was therefore, according to the Respondent unaware that a Claim had been brought against it. I found her comments confusing and unsatisfactory, and they raised more questions than they answered.

10. Nevertheless, and notwithstanding there was no application to extend time for filing a response and no suggestion that the Respondent might have a defence to the Claim, I concluded that I should allow the Respondent to participate in the hearing.
11. I started by working through the Claimant's schedule of loss. According to his submitted February 2019 pay slip his gross monthly salary was £1,833.33 or £22,000 per annum (as opposed to £24,000 per annum used in his Schedule of Loss), equating to £423.08 per week or £84.62 per day. From the same payslip the net amounts are £1,496.64 per month, equating to £345.38 per week or £69.08 per day. I was told that the Claimant's remuneration comprised basic salary only and that he did not receive any other benefits from his employment.
12. The Claimant was not paid from 1 August 2019 until he resigned his employment on 2 October 2019, a period of two months and two days. In withholding his wages the Respondent made an unlawful deduction of wages. He should have been paid £3,835.90. As well as awarding compensation in that sum to the Claimant, I shall uplift it by 10% to £4,219.49 to reflect the Respondent's unreasonable breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures, namely its complete failure to deal with the Claimant's grievance regarding his wages.
13. There was some discussion and disagreement between the parties at Tribunal as to the Claimant's holiday entitlement, specifically how many days' leave he had taken by the time his employment with the Respondent terminated. The Respondent had no records or other information to hand for the hearing. Pro rata to the end of September 2019 the Claimant had accrued 21 days of annual leave (from his statutory entitlement to 28 days' leave). I find that he had taken 20 days of his annual leave. The available copy of his annual leave request form suggested that he had requested 25 days' leave. However, the period in question, 5 to 30 August 2019 comprised 20 working days including the August bank holiday, meaning that he is owed one day's wages in lieu of holiday on the termination of his employment, namely the gross sum of £84.62.
14. In the course of exploring the Claimant's holiday entitlement I began to be interrupted by both Miss Fernandez and Ms Baxter. I requested a number of times that they did not interrupt me and explained that the Respondent

would be allowed a reasonable opportunity to make representations on the issues. However, they continued to interrupt me and Ms Boyle, when she was speaking. At one point it was necessary for me to mute Ms Fernandez and Ms Baxter in order to take control of the hearing as they were unresponsive to my requests that they allow Ms Boyle to speak. I gave warning that the hearing could not continue, or at least that the Respondent might not be permitted to continue to participate in the hearing if such conduct continued. For a few minutes it was possible to proceed with the hearing, but when I moved on to explore the issue of a potential compensatory award for unfair dismissal and asked the Claimant to explain what state benefits he has received since leaving the Respondent's employment, they interrupted the proceedings again. Ms Baxter, in particular, became aggressively animated and talked over both me, the Claimant and Ms Boyle. She brought her face close to her computer screen and lost control of her temper. She shouted that the Claimant was deceiving me again, and she accused him of stealing her paperwork and her staff and of "milking the welfare state". She also made reference to a "co-conspirator". During this outburst I asked her to refrain from shouting and acting disruptively. However, she would not listen or moderate her behaviour. I gave warning that I would not allow the Respondent to participate further in the hearing if such conduct continued but my warning went unheeded. She continued to speak in an angry raised voice and I therefore informed her that I would not permit the Respondent to participate further in the hearing and disconnected her and Ms Fernandez from the hearing (they were on screen together).

15. On the termination of his employment the Claimant had been continuously employed for three years. He was aged over 41 throughout his employment. He is therefore entitled to a basic award of £1,903.86 ( $£423.08 \times 3 \times 1.5$ ) rather than £2,076.93 claimed.
16. As regards the compensatory award, I shall award the claimant £500 in respect of the loss of his statutory employment. Otherwise, he remains unemployed and is in receipt of Universal Credit. He is a director and shareholder of three companies though is not deriving any income from these, either by way of salary or dividends. Disregarding sums received by way of Universal Credit, the Claimant's loss of earnings from 2 October 2019 to 1 October 2020 (the date of my decision) are £17,960.80. There is no claim to future loss of income.
17. Throughout his employment with the Respondent and as at the date these proceedings were begun, the Claimant had not been issued with a written statement of particulars of employment in compliance with the requirements of the Employment Rights Act 1996. In all the circumstances, pursuant to section 38(3) of the Employment Act 2002, I consider that it would be just and equitable to increase the award in this case by two weeks' pay, namely by £690.76.
18. As the Claimant is in receipt of Universal Credit the Recoupment Regulations will apply. The sum to be paid immediately by the

Respondent is the total of the award in respect of the unlawful deductions from wages (£4,304.11); Basic Award (£1,903.86); loss of statutory rights (£500); and the award under the 2002 Act (£690.76). This totals £7,398.73.

19. The amount to be retained by the Respondent, pending the relevant government department confirming the amount of Universal Credit to be re-paid, is £17,960.80. Upon notification by the relevant government department, any balance will be payable to the Claimant.

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Employment Judge Tynan

Date: ...5<sup>th</sup> Oct 2020.....

Sent to the parties on: ....19/10/2020.....

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For the Tribunal Office