EMPLOYMENT TRIBUNALS

Claimant: Mr G Hatton

Respondent: NWMS Southern Division Ltd (formerly NWMS Facilities Services Ltd)

FINAL HEARING

Heard at: Liverpool (remote hearing in public by video CVP)

On: 10 December 2020

Before: Judge Brian Doyle (sitting alone)

Representatives
For the claimant: Mrs H Hatton (the claimant's wife)
For the respondent: Not in attendance or represented (response not presented)

JUDGMENT

The claimant's complaints of unauthorised deductions from wages and non-payment of holiday pay and notice pay are well-founded. The respondent is ordered to pay to the claimant the total sum of £2,885.57 gross.

REASONS

1. This is the final hearing of the claimant's claim presented by form ET1 on 4 March 2020.

2. The claim contains complaints of: (1) unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996; (2) non-payment of accrued holiday pay entitlement contrary to the Working Time Regulations 1998; and (3) non-payment of notice pay in breach of contract of employment.

3. The claimant was employed by the respondent company as a maintenance worker between 1 October 2019 and 16 January 2020.

4. The sums that the claimant claims are owed to him are set out in an attachment to the ET1 form and cross-referenced from section 8.2 of that form. At no stage has the respondent disputed those sums as being due or as calculated.

5. When the Tribunal originally served the claim upon the respondent company it did not appear to defend the claim by presenting a timely response on form ET3. Accordingly, on 27 May 2020, the then Regional Employment Judge (Judge Jonathan Parkin) promulgated a summary judgment under rule 21 of the Employment Tribunal Rules of Procedure 2013, for the sums claimed, as he was entitled to do. That judgment was sent to the parties on 2 June 2020.

6. That appeared to prompt a reaction from the respondent company. On 17 June 2020 the respondent company sought to have the rule 21 judgment set aside. It asserted that it had not been trading during the Covid-19 pandemic and that it had not received notice of the claim or a hearing.

7. The present Regional Employment Judge (Judge David Franey) treated that as an application for reconsideration under rule 70. He did so on the basis that the company's registered office address had changed in August 2019 and that its company name had changed in January 2020. Judge Franey issued a judgment revoking Judge Parkin's judgment of 27 May 2020 and he ordered an amendment to the respondent's title to NWMS Southern Division Ltd. The claimant had been invited to object to this proposed course of action and quite properly did not do so.

8. Judge Franey's revocation judgment was signed by him on 8 September 2020 and sent to the parties on 29 September 2020. It was correctly addressed to the respondent company in its amended title and at its present registered office. A copy sent to the company's HR department email address was responded to by what appeared to be a standard message indicating that due to staff being furloughed the email address was not being monitored. The Tribunal then sent a copy of the judgment by post.

9. On 29 September 2020 the Tribunal also sent to both parties a notice of final hearing. It was sent by both post and email. That communication was addressed directly to the respondent company's director, Mr Christopher Douglas, as well as to its HR department. A revised notice of hearing was sent on 2 December 2020.

10. The revised notice of hearing triggered almost immediately an email from the respondent's HR department in curious terms: "Dear Courts, This hearing has been cancelled by the claimant and received notification from the courts of the cancellation (*thus*)." The Tribunal had not cancelled the hearing and, upon contacting the claimant, it was also apparent that the claimant had also not cancelled the hearing.

11. On 8 December 2020 the parties were informed that the hearing would proceed on 10 December 2020.

12. On 9 December 2020 the Tribunal informed both parties that the timing of the hearing had been moved from 10.00am to 2.15pm. That resulted in an email that evening from Mr Douglas: "I am unable to attend tomorrow meeting (*thus*) due to

being off with serious health problems. Please find attached sick note. Please do NOT share my personal information to the claimant." The attached sick note from Mr Douglas's GP practice recorded that he had been assessed on 7 December 2020 and that because of a named condition (which I do not repeat here at Mr Douglas's request) he had been advised that he was "not fit for work" from 20 September 2020 to 4 January 2021.

13. The respondent company has not been present at this afternoon's final hearing of the claim. It has not been represented at the hearing, either by its director or by another agent or representative. I am satisfied that the respondent company and its director have had notice of this claim and notice of this hearing. It does not suggest that it is unaware of the claim or of its particulars. It does not suggest that it wishes to defend the claim or that there are reasons thus far that have prevented it from doing so. It is clearly aware of the final hearing. It does not plead the Covid-19 pandemic in its aid. Despite that, the respondent company has still not presented a response to the claim. I would be entitled to issue a summary judgment under rule 21, but instead I have issued the present judgment at a final hearing.

14. Before doing so, I considered whether I should postpone the hearing in the light of Mr Douglas's sick note. I declined to do so.

15. The following factors weighed against the postponement: (1) the respondent company has not entered a response to the claim; (2) it would not be entitled to take part in the hearing save to the extent, if any, that I permitted; (3) it has already been the subject of a rule 21 judgment; (4) that judgment was revoked in circumstances that gave the respondent a fresh opportunity to defend the claim and/or to appear at the final hearing for the purpose of making any application, including to present a late response; (5) it appears to have a HR department that could act on its behalf; (6) it has not been suggested that relevant staff are presently furloughed or that the company remains in lockdown; (7) it has not been suggested that only Mr Douglas can deal with the claim, either as a witness or as a representative of the company; (8) Mr Douglas is unwilling for the Tribunal to share personal information with the claimant, contrary to the usual expectation that communications with and applications to the Tribunal must be copied to the other party; and (9) it has long been the case, established by appellate case law, that unfitness for work is not the same as unfitness to attend a hearing.

16. In all these circumstances, I proceeded to the final determination of the claim. It is undefended. I see no reason not to accept the particulars of the claim, just as Judge Parkin did in his judgment of 27 May 2020.

17. The unpaid or reduced wages (wages and overtime for the periods 1-15 November 2019; 16 November to 15 December 2019; and 16 December 2019 to 16 January 2020) total £1,978.01 gross. The claimant gives credit for a payment made of 231.60 net (after appropriately retaining a tax rebate). That leaves £1,746.41 gross owed.

18. The claimant was dismissed in breach of contract of employment and without being given notice or payment of notice pay in lieu of notice. Damages are assessed in

the gross sum of £500.00, upon which income tax and national insurance are likely to be payable (as Judge Parkin explained in his rule 21 judgment).

19. There has also been a failure to pay for accrued holiday entitlement. The sum assessed is £639.16 gross.

20. Accordingly, the claimant's complaints of unauthorised deductions from wages and non-payment of holiday pay and notice pay are well-founded. The respondent is ordered to pay to the claimant the total sum of £2,885.57 gross.

_____

Judge Brian Doyle
DATE 10 December 2020

JUDGMENT SENT TO THE PARTIES ON

5 January 2021

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2401708/2020**

Name of case: **Mr G Hatton** v **NWMS Southern Division Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding discrimination or equal pay awards or sums representing costs or expenses), shall carry interest where the sum remains unpaid on a day ("*the calculation day*") 42 days after the day ("*the relevant judgment day*") that the document containing the tribunal's judgment is recorded as having been sent to the parties.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant judgment day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant judgment day" is: **5 January 2021**

"the calculation day" is: **6 January 2021**

"the stipulated rate of interest" is: **8%**

For and on Behalf of the Secretary of the Tribunals