



EMPLOYMENT TRIBUNALS

Claimant: Mr F Venosi

Respondent: UKRO Ltd

Heard at: London Central Employment Tribunal **On:** 7th December 2020 at 10am

Before: Employment Judge Hopton

Appearances (by video):

For the Claimant: Mr Sinclair-Thomson

For the Respondent: Did not attend

JUDGMENT

The judgement of the tribunal is that:

1. The claimant's application to amend his claim for holiday pay is allowed.
2. The respondent made an authorised deduction from wages by failing to pay the claimant four furlough payments and is ordered to pay to the claimant the sum of **£2,067.48** gross, being the total amount of payments due to him.
3. The respondent made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken annual leave on termination of employment and is ordered to pay to the claimant the sum of **£1,189.80** being the net sum due.
4. The respondent was in breach of contract by dismissing the claimant without notice and the respondent is ordered to pay to the claimant damages of **£378.71** net for that breach.

REASONS

1. This was a remote hearing to which the parties did not object. The form of remote hearing was V, video, by Cloud Video Platform. A face to face hearing was not held because it was not practicable due to the coronavirus pandemic and the number of hearing rooms available at Victory House.

2. I was referred to the claimant's documents in an unpaginated zip file, and the claimant's witness statement. The Respondent did not appear at the hearing to defend the claim, and has not served a response. The ET1 was served on what appears to be the correct address, the company is still active and there was no good reason why the respondent did not attend.
3. The claimant gave sworn witness evidence.
4. Mr Sinclair-Thomson confirmed that the claim for unfair dismissal is not pursued.
5. The ET1 did not include a claim for holiday pay and Mr Sinclair-Thomson made an application to amend at the hearing. I applied the principles in *Selkent Bus Company Limited v Moore* [1996] ICR 836 in deciding whether to allow the amendment. I took into account all the circumstances and balanced the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The respondent has not responded to the claim or engaged with the process. The claimant was unrepresented when he filed his claim. I concluded that adding an additional unlawful deductions from wages claim would not cause hardship or injustice to the respondent, whereas if the amendment was not allowed, the claimant would lose the opportunity to pursue his claims and, if successful, be given a remedy. I considered that the balance of injustice and hardship lay in favour of allowing the amendment and the claim for holiday pay could therefore proceed.
6. The issues to be decided were:
 - 6.1. What was the Claimant's rate of pay?
 - 6.2. Did the Claimant receive all the furlough payments to which he was entitled?
 - 6.3. Is the Claimant owed holiday pay and if so on what hours should this be calculated?
 - 6.4. Is the Claimant owed notice pay and if so, what was the notice period?
7. The claimant was a member of bar staff employed by the respondent. He claims that he was not paid three furlough payments to which he was entitled. He also claims notice pay and holiday pay.
8. The claimant has six months' service. His employment started on the 20th December 2019 and was terminated on the 11th July 2020. There was no express termination. The claimant explained that he believed that his employment had been terminated because he was removed from the workplace WhatsApp group and when he tried to contact the respondent they did not reply. The claimant attempted to contact a number of individuals at the respondent company. He received either no, or inadequate responses from them. He was issued with his P45 on 6th August 2020. The P45 states the termination date was 11 July 2020. The Claimant told me that when he saw the P45 he believed that 11 July 2020 was the date his employment ended. He says in his witness statement that no notice was given. I accept that the termination date was 11th of July 2020. I also find that no notice period was served or payment made and that the Claimant is entitled to a statutory notice period of one week.

9. The Claimant referred me to his offer letter from the respondent, which he also referred to as his employment contract, which I accept is the only employment document he has from the respondent. This confirms his employment as a full-time bartender and states he will be “earning on average £10.50 per hour on a 45 hours per week contract.” The claimant’s hours of work were variable, but were generally close to 45 hours per week. Over the Christmas period for example, he worked around 50 hours per week but in February it was less busy and he worked around 40 hours.
10. I was referred to a letter which the claimant said he received from the Respondent, indicating that the claimant had been furloughed from work. Although there was no name or any dates or signature on the first part of the letter, and it appeared to be a precedent letter, the claimant’s name was filled in on the ‘acknowledgement’ section at the bottom of the letter and the claimant confirmed it was his signature on that letter and that he signed it on the 7th of April 2020. I therefore accept that the claimant was furloughed from 7 April 2020.
11. I was referred to a printout from the HMRC website. This shows eight furlough payments to the claimant between 18th April 2020 and 25th July 2020. However, one of these appears to be a duplicate as two payments are dated 30 May 2020 and the total number of payments adds up to seven payments. From the HMRC document it therefore appears that seven payments of £689.16 gross should have been paid to the claimant which amounts to £4824.12 gross or £4242.12 net.
12. The claimant states in his witness statement that he was paid four payments of £605.94 (net). He gave evidence that he had been in contact with three different individuals at the respondent company chasing these additional three furlough payments. I was referred to contemporaneous correspondence between the claimant and: Mr Malan, the general manager, Mr Matskovski, the Buddha Bar bar manager and Ms Stefanov in HR. These included both whatsapp messages and emails dated between 18th June 2020 and 6th August 2020. The claimant’s solicitors also wrote a letter to the respondent about the payments on 19th October 2020.
13. The claimant provided copies of his bank statements which show the payments made to him. Although the bank statements were heavily redacted, they demonstrate that the four payments were made. The statements were too redacted to establish that any payments were not made. However, I accept that the contemporaneous correspondence demonstrates that the further three furlough payments of £689.16 gross (£605.94 net) were not made to the claimant and that the respondent was unwilling to engage with the claimant to investigate or resolve this issue.
14. The claimant told me in evidence that he had taken no holiday since he started working for the respondent. He is therefore owed an amount for holiday accrued between his start date and his end date. Mr Sinclair-Thomson confirmed that he had worked out the holiday due using the furlough rate of pay, grossed up to 100% and the government calculator, based on a 45 hour working week. The claimant only had four (fortnightly) payslips available and I accept that 45 hours a week is

the appropriate calculation as it is the amount referred to in the employment contract and given the evidence available it is proportionate to the complexity of the case and in accordance with the overriding objective and in the interest of justice to use these figures.

15. Mr Sinclair-Thomson confirmed that the claimant's calculations of what is owed regarding notice pay are based on the net rate of pay used for the furlough payments, grossed up to 100%. He has taken this approach in order to follow the government guidance for how notice pay should be calculated in the claimant's circumstances.

Employment Judge Hopton

_____ 11 December 2020 _____

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

12/12/2020

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FOR THE TRIBUNAL OFFICE