



EMPLOYMENT TRIBUNALS

Claimant:
Mr Wayne Maguire

Respondent:
**Emerald Property
Group Ltd**

Heard at: Leeds (By Video Link) **On:** 7 April 2021

Before: Employment Judge R S Drake
Representation:

Claimant: In Person
Respondent: No Attendance/Appearance

JUDGMENT

1. The Claimant has established that he is entitled to £507.69 in respect of unpaid holiday pay pursuant to Reg 16 of the Working Time Regulations 1998 - ("WTR").
2. He has also established that he is entitled to £479.00 in respect of unpaid wages pursuant to Section 13 Employment Rights Act 1996 ("ERA")
3. He has also established that he is entitled to consequential losses for breach of contract in the total sum of £2,369.59 at common law.
4. He has also established he is entitled to an award of £2,030.76 (being 4 weeks' pay) and a 25% uplift of £507.69 totalling £2538.36 for the Respondents failure to provide written particulars of Employment pursuant to sections 1 and 11 ERA.
5. The total sum awarded to the Claimant which the Respondents shall pay is therefore £5,874.73 and I declare below my findings as to the terms of his contract which relate to and dictate the calculations of the sums set out above.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals. This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

REASONS

6. The Claimant attended in person but despite my ascertaining that the Respondents were notified of today's hearing and its mode (by video link) and were provided with the means of access and could not be contacted to find out why they were not attending, they made no appearance nor any representations in any form. Thus, I had to rely solely on the testimony of the Claimant and the documents he provided all of which I accepted without challenge or demur. I accepted in particular the calculations he set out in a thorough and comprehensive Schedule of Loss which I will not explain in further detail as it stands for itself.

7. My findings of fact are as follows: -

7.1 the Claimant was engaged by the Respondent as a Joiner from 1 September 2019 to 31 July 2020; the respondents did not provide to the claimant a contract a written statement of particulars of employment, so I had to make findings which I declare below as to the terms relevant to his entitlements the subject of the judgement set out above;

7.2 the claimants holiday pay rate was £507.69 per week and over the course of his employment he sustained a deduction from his pay by reference to holiday allegedly taken in excess of entitlement but to which I find he was entitled amounting to five days and therefore the sum of £507.00 ;

7.3 through the months of March April and May 2020 the Claimant sustained withholding from his pay of his wages which was calculated at a gross rate per month of £2,200 and a net rate of £1,745 pounds; taking into account the value of sums he did receive for this. There remains a shortfall of £479.00 due to him;

7.4 the Claimant had to take out a loan to cover nonreceipt of wages for March to April in the sum of £594.00 which he now has to repay, and this was a direct consequence of the respondents failure to pay him in breach of contract; by way of further consequential losses the claimant has been unable to pay his personal contributions to the Claimant's NEST pension in the sum of £670.55 and the Respondent has failed to pay its contributions of £1,100;

7.5 the Respondent's failure to provide written particulars of employment remains totally inexplicable but it is clearly deliberate and merits consideration of the statutory uplift under Section 38 of the Employment Act 2002

8 I apply the law accordingly as follows:-

8.1 Under Regulation 16 WTR the Claimant is entitled to be paid the sum of £507.69 for five days holiday pay unlawfully deducted contrary to Section 13 ERA;

8.2 Under Section 13 ERA, the claimant is entitled to be paid by the respondent the total sum of £479.00 in respect of wages not paid for the months of March to May inclusive of 2020;

8.3 At common law, the Claimant is entitled to claim as consequential losses for breach of contract the following: -

	£
4.3.1 loan repayment -	594.00;
4.3.2 employer's pension contributions unpaid -	1,100.00;
4.3.3 employee's pension contributions unpaid -	675.55
Total	- 2,369.59

8.4 Under sections 1 and 11 ERA (in respect of failure to provide written particulars of employment) four weeks' pay at the rate of £507.69 and thus the total sum of £2,030.76 to which is to be added a 25% uplift in the sum of £507.69 pursuant to section 38 Employment Act 2002.

Employment Judge R S Drake

Signed 07 April 2021