



EMPLOYMENT TRIBUNALS

Claimant:
Mr Samir Ayadi

Respondent:
Jonathan Bruce &
Daniel O'Brien
(formerly t/a
Sunny Diva's)

Heard at: Leeds (By CVP Link)

On: 07 May 2021

Before: Employment Judge R S Drake

Representation:

Claimant: In Person (Assisted by his Mother)

Respondent: No Response filed and no attendance/appearance today

JUDGMENT

1. The Claimant has established that he suffered an unlawful withholding of three day's pay contrary to Section 13 of the Employment Rights Act 1996 ("ERA") for the period 3 August to 5 August 2020 amounting to 15 hours worked and that as his hourly net rate was £6.45 he is thus entitled to be paid and the Respondents shall pay to him on a joint and several liability basis the sum of £96.75. His claim in this respect succeeds.
2. The Claimant has established that he was entitled to a minimum of one week notice which he was not given and that as he was not paid in lieu thereof, he is his claim for 25 hours work he would have done during notice on the above mentioned rate he is thus entitled to be paid and the Respondents shall pay to him on a joint and several liability basis the sum of £153.75. His claim in this respect of notice pay not paid to him on breach of contract therefore succeeds.

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

3. The Claimant attended in person and was assisted by his Mother, but the Respondent have not responded to the claim and nor have they made any appearances before me today. I heard evidence and argument via the mother.

Findings of Fact

4. I was able to accept the claimants unchallenged evidence as it was persuasive and cogent. Therefore I found that he had worked a total of 14 days between 13 July 2020 and five August 2020 when he was dismissed and that he was contracted to work at least five hours per day at a rate of £6.45 per hour.
5. I found that he was paid for all of the days he worked save for the last three which therefore meant that he had not been paid for 15 hours of work and that he was therefore entitled to be paid the pay withheld from him as at the effective date of termination of his employment and thus the sum of £96.75.
6. I found that when he was dismissed on 5 August 2020, he was told nothing at all by the Respondents about dismissal save for the fact that he noted that the cafe premises in which he worked in Sheffield were abruptly closed by the Respondents and he was not offered employment elsewhere at their other premises in Barnsley. Having been employed for less than a year he is entitled to a minimum period of notice of one week but not did not receive such notice and was not paid in lieu thereof for the 25 hours he would have worked.

The Law and its Application

- 7 The Claimant's withheld pay complaint is framed under Section 13 of the Employment Rights Act 1996 ("ERA") which provides as follows: -

"(1) An employer shall not make a deduction from wages of a "worker" employed by him unless –

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or –
- (b) the worker has previously signified in writing her agreement or consent to the making of the deduction ...”

8. I award the Claimant Judgment for unpaid wages for the period of 3 to 5 August 2020 in the sum of £96.75 to which extent his claim in this respect succeeds.

15. Further, I find that he was entitled to one week’s notice or pay in lieu but received neither, so he is entitled to Judgment on this head and he is awarded and the Respondents shall pay to him the value of 25 hours pay he would have worked for the week, and thus the sum of £153.75.

Employment Judge R S Drake

Signed 07 May 2021

Date _____

JUDGMENT SENT TO THE PARTIES ON

.....12 May
2021.....

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FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employmenttribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.