



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Miss G Hugill  
(2) Mrs E Argiolas

**Respondents:** (1) Miss Jade E Smith  
(2) AHL Cleethorpes Limited

## AT A FINAL HEARING

**In:** The Midlands (East) Region, nominally sitting at Lincoln

**Heard:** Remotely, by CVP      **On:** 19 May 2021,

**Before:** Employment Judge Clark (Sitting Alone)

### Representation

For the first claimant:	Did not attend .
For the second claimant:	Mrs A Cook, lay representative.
For the first respondent:	Did not attend.
For the second respondent:	Did not attend .

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## JUDGMENT

1. The first claimant's claims are **dismissed**.
2. The second claimant's claims against the second respondent are **dismissed**.
3. The second claimant's claims against the first respondent **succeed**. The first respondent shall pay the second claimant the following sums: -
  - a. In respect of the claim of unlawful deduction from wages, the sum of **£743.43** NET
  - b. In respect of the claim of breach of contract (Notice), the sum of **£318.75**.
  - c. In respect of the claim of accrued but outstanding holiday, the sum of **£510.00**
  - d. A further sum of **£1,275** awarded under s.38 of the Employment Act 2002 in respect of the second respondent's failure to provide a written statement of main terms of employment.

## REASONS

- 1.1 Miss Hugill, the first claimant, did not attend and was not represented. She had not responded to recent requests for information concerning the format of today's hearing, she has not provided any documentation. Because of the particular issues in this case, I have been unable to determine her claim and have therefore dismissed it.
- 1.2 Mrs Argiolas, the second claimant, attended represented by her friend Mrs Cook.
- 1.3 Neither respondent has presented an ET3 response. No application has been made to participate further in the remedy matters nor has either responded to the recent pre hearing correspondence. That is consistent with the manner in which both have conducted the matter throughout although Miss Smith, the first respondent, has on one occasion contacted the tribunal and I am therefore satisfied that she is aware of the proceedings against her.
- 1.4 Today's hearing is essentially a final hearing to determine the issues necessary to give a rule 21 judgment. I have heard evidence from Mrs Argiolas and considered a small bundle.
- 1.5 The central issue in the matter is to determine the correct employer as between the two respondents. It is important to note that the first respondent was the respondent against whom both claimant's sought to bring their claims. That is important because it reflects the state of Mrs Argiola's knowledge at all material times (and I suspect also that of the first claimant). It is only by the intervention of the Employment Tribunal acting on its own motion that the second respondent was added and given an opportunity to serve a response. Its existence only came to light as a result of Mrs Cook taking the initiative to obtain an HMRC PAYE record for the claimant soon after she had belatedly received the payslips from Miss Smith. That company has since been dissolved. Mrs Cook did not want me to order a stay for the purposes of applying to restore the company in view of her principal case on the true identity of the employer, which she has maintained throughout.
- 1.6 Having considered the evidence, I find the following facts on the balance of probabilities: -

- a) Miss Jade E Smith traded under the name of Assisi Hair at a salon in Cleethorpes and Assisi at the Spa at a hotel in Barnby Moor, Nottinghamshire.
- b) Mrs Argiola initially responded to an advert for a hair stylist at "Assisi at the Spa". There was no mention of AHL Cleethorpes Limited in that advert.
- c) Mrs Argiolas was in contact with, and recruited by, the first respondent in person.
- d) There was no mention of any separate legal entity.
- e) I find Miss Smith was in day to day control of the business. The first respondent reasonably gave Mrs Argiolas the impression she was the employer.
- f) Mrs Argiolas did not receive confirmation of her employment in writing as is required by section 1 of the Employment Rights Act 1996. Nor was it confirmed in writing any other informal way.
- g) Nothing said or done during the course of the 5½ months' employment identified any other legal entity as being, or even potentially being, the employer.
- h) Significantly, no payslips were issued to Mrs Argiolas during her employment. Mrs Argiolas' pay was paid to her weekly by electronic transfer from an account named, or referenced on her own bank statements, as "SMITH J E".
- i) Before and during the course of the employment, there was no other incidental correspondence related to the business that might have given any indication that the legal entity employing the second claimant was not Miss Smith. However, after the employment ended two matters came to light related to the tribunal's request for details of the respondent's legal identity. First, Mrs Cook checked an old receipt for a visit she had paid to the salon and found that her card payment made at the time had been credited to a limited company called BSLUK Ltd. She now understands that to be a company operated by Miss Smith's partner, Daniel Burton. Secondly, she had demanded and was belatedly provided with payslips for her work. These do not explicitly identify the name of the employer but do state that the sums were "paid by" AHL Cleethorpes Limited. She also subsequently obtained HMRC records again showing AHL Cleethorpes Limited.

1.7 Against that background I have no doubt a contract of employment was formed in fact between Mrs Argiolas and Miss Smith. The issue is whether at any time prior to the formation (or even during its existence) she disclosed to Mrs Argiolas that she was not in fact the principal but an agent of another, in particular a limited liability company such as the second respondent. I am satisfied that she did not do so either directly or indirectly. I am also satisfied that there was never anything said to Mrs Argiolas or given to her in writing which could reasonably had the effect of even putting her on notice that her employer might be anyone other than Miss Smith. The first opportunity for such suspicion to arise would have

been within the first couple of weeks of employment when she began being paid. Had there been a payslip issued, or even a bank transfer reference, identifying a different entity there may have been notice things were not as they seemed. I would then have had to unpick any legal consequences of that later disclosure. However, that did not happen. There were no payslips issued at the time and the payments themselves made to Mrs Argiolas simply confirmed Miss Smith as the employer. Any legal complexities that might then follow from a disclosure after the formation of a contract do not arise.

1.8 Throughout the employment everything remained consistent with Miss Smith being the employer. The fact that Miss Smith was connected to AHL Cleethorpes Limited and secretly used that as a vehicle to account for the claimant's earnings does not have any effect on the formation of that contract as between these two natural persons. The law relating to undisclosed principals goes to the rights of the principal to enforce against the third party, it does not alter the fundamentals of the parties to a contract as between "agent" and third party and there is no right of an agent of an undisclosed principal to relieve themselves if the personal liability they attract in the formation of the contract simply by performing a secret and unilateral administrative act of placing that third party on the payroll of another legal entity.

1.9 I am therefore satisfied that the correct parties to the contract of employment were Mrs Argiolas and Miss Jade E Smith.

1.10 As to the claim, there is sufficient before me to be satisfied that the sums claimed are due. The claims of unlawful deduction from wages are in respect of two separate weeks in which no payment was paid at all for the work done in the net sum of £228.30 each and in respect of hours worked but not paid in the net sum of £286.83. The claim of breach of contract is for one week gross in the sum of £318.75. The claimant had accrued a little over 12 days annual leave during her employment. She accepted taking 4 days during that period meaning she was entitled to the remaining 8 days at the date of termination. In her case that is  $1.6 \text{ weeks} \times £318.75 = £510$ .

1.11 A significant issue in this case, not to mention the substantial delay, has arisen only because of the employer's failure to issue a statement of main terms of employment. Section 1(3)(a) of the 1996 Act requires that statement to contain the name of the employer. That failure remained the case at the time the claim was presented and I therefore make an award under s.38 of the Employment Act 2002 and, because of its direct relevance to the issues in

the case, I consider it just and equitable in these circumstances to set that at the higher statutory rate. I award £1,275.00 (£318.75 x 4).

1.12 The total sum due to Mrs Argiola is therefore £2,847.18

EMPLOYMENT JUDGE R Clark  
DATE 19 May 2021

JUDGMENT SENT TO THE PARTIES ON

20 May 2021  
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AND ENTERED IN THE REGISTER  
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FOR SECRETARY OF THE TRIBUNALS