



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Currie

**Respondent:** Park House 20 Ltd

**Heard at:** Cardiff (by video)

**On:** 26 April 2021

**Before:** Employment Judge G Cawthray

## Representation

Claimant: In person

Respondent: Mr Pledger (Managing Director of the Respondent)

# RESERVED JUDGMENT

1. The judgment of the Tribunal is that:

- a. The Respondent has made an unauthorised deduction from the Claimant's wages by failing to pay the Claimant the full amount of wages due between March 2020 and 14 May 2020 and is ordered to pay to the Claimant the gross sum of £4,226.93 in respect of the amount unlawfully deducted.
- b. The Respondent has 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 gross sum of £171.23, in respect of the amount unlawfully deducted.
- c. The Respondent failed to give to the Claimant any itemised pay statements in accordance with section 8 of the Employment Rights Act 1996. The Respondent is ordered to pay to the Claimant the sum of £287.27 by way of unnotified deductions from the Claimant's pay.

# REASONS

## Introduction/Issues

### Application to adjourn

1. At the start of the hearing the Respondent made an application to postpone the hearing.
2. The Respondent, Mr Pledger, explained that he had a county court hearing at 12.00pm today in relation to payment of monies owed to a supplier. The county court hearing was listed in February 2021, following previous hearings. The county court hearing is a video hearing, listed for one hour, that the Respondent is undertaking from his accountant's office.
3. The Respondent made an application to postpone this hearing on 21 April 2021 and had made no application for postponement of the county court hearing.
4. Regional Employment Judge S Davies reviewed the file, and an email was sent to the parties on 23 April 2021 refusing the application and directing the Respondent to provide witness statements and any documents they wished to rely on that same day, 23 April 2021. The Respondent did not provide any documents or witness statement.
5. The Respondent stated he had not received any correspondence on the claim, from either the Tribunal or the Claimant, since 9 August 2020. As set out in the email from the Tribunal dated 23 April 2021, the correspondence from the Tribunal has been sent to the email address that the Respondent has used throughout the cause of proceedings, including that used to make the application on 21 April 2021.
6. The Notice of Hearing was sent to the parties, by email, on 31 October 2020. In addition, in relation to case management directions and preparations for a final hearing the Tribunal emailed the parties on 2 September 2020, 19 October 2020 and 10 April 2021. I also noted that the Claimant copied the Respondent into emails on 18 and 20 April 2021.
7. During discussion with the Respondent, Mr Pledger stated he had started drafting a witness statement that was largely a repetition of the ET3. He stated his accountant had financial information that may be necessary for the claim. The Claimant stated if it wasn't for the county court hearing he considered he would be able to do the hearing.

8. Mr Pledger stated that he was travelling to his accountant's office, approximately 30 minutes' drive, to conduct the county court hearing.
9. The Respondent had been properly communicated with by the Tribunal and the Respondent had only made an application to adjourn very late in the proceedings. The subject of the hearing relates to matters relating to March 2020.
10. After discussion with the parties, I rejected the application to postpone the hearing until a different date but determined that we would break to enable the Respondent to conduct the county court hearing and return at 2.00pm.
11. I explained that the shortened hearing time available with reconvening at 2.00pm meant that careful time management would be needed and that the time would focus on both parties giving evidence, cross examination and questioning by myself and then each party would have the opportunity to summarise their position. I explained that the delayed start time may mean there may not be time for me to reach and deliver judgment orally and therefore if it was not possible to deliver an oral judgment, the judgment would be provided with written reasons, and both the written reasons and the judgment would be placed on the public register.
12. I directed the Respondent to send any documents to the Tribunal and copied to the Claimant by 1.30pm but explained that he if he did not do so, he could expand upon the ET3 and give oral evidence.
13. The hearing reconvened at 2.00pm.

### Issues

14. The Claimant claims unauthorised deductions from wages in relation to basic pay and a failure to make him a payment in lieu of accrued but untaken holiday. The Claimant also claims he was not paid for any notice.
15. The issues for consideration were discussed and agreed at the outset of the hearing, the issues to be determined were:
  - a. Is the claim in time?
  - b. In relation to the alleged deduction of basic pay, is the claim in respect of wages?
  - c. Has the Respondent made a deduction?
    - i. In relation to basic pay, the Claimant alleges he is owed wages for March 2020 until 14 May 2020.
    - ii. In relation to holiday pay, did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when the employment ended? The Claimant specified that he was only seeking payment for 2.2 days of accrued but unused annual leave.

- d. Was any deduction authorised by statutory provision or relevant contractual provision or agreed to in writing by the Claimant before deduction?
- e. How much, if anything, is the Claimant owed?
- f. In relation to notice pay, was the Claimant entitled to payment for any notice period? What was the Claimant's notice period? The Claimant claims it was 2 weeks.
- g. Did the Respondent fail to provide the Claimant with properly itemised payslips? Should any payment for unnotified deductions be made?

### **Procedure and Evidence**

- 16. I was provided with the following documents: ET1, ET3, pay slips, Claimant's email to the Tribunal dated 20 August 2020, a witness statement from the Claimant, the Claimant's Schedule of Loss, the Claimant's bank statements from 21 February 2020 to 21 May 2020 and the Claimant's contract of employment.
- 17. The Claimant gave evidence, having affirmed, by reference to a written witness statement which I read and considered.
- 18. I heard oral evidence from Mr Pledger on behalf of the Respondent. Mr Pledger confirmed that his evidence was as set out the ET3 and expanded on some points verbally.
- 19. Both parties summarised their positions after the completion of evidence.

### **Findings of Fact**

- 20. I have set out below my general findings.
- 21. The Claimant started employment on 6 February 2020 as an Assistant Manager.
- 22. In the ET3 the Respondent asserted that the Claimant was not employed by the Respondent and was employed by a different entity, Batonnage Wines Limited. This was not advanced further. I find the Claimant was employed by the Respondent.
- 23. The Claimant was provided with a written contract of employment shortly after commencing employment. I am unable to determine the precise date that the contract was provided, but find it was given to the Claimant either at the end of February or early March 2020. The Claimant did not sign the contract immediately but signed and returned it on 18 March 2020. The reason for the delay was that he had commenced discussions with Mr Pledger, Managing Director of the Respondent, about the level of his salary.

24. Mr Pledger explained that he considered there to be no valid contract of employment between the Respondent and the Claimant since the Claimant had not signed the contract until 18 March 2020. Mr Pledger's evidence was that he considered none of the Respondent's staff to have a valid employment contract due to non-signature, which he explained was commonplace in the industry, and that Paulo Guiati, General Manager, was aware there was no contractual relationship between the staff and the Respondent. The Claimant had been working under the terms of the written contract.
25. The Claimant last attended work on 17 March 2020, and upon arrival was told by Mr Pledger that the restaurant would not be opening due to cancelled bookings and he was sent home.
26. On 18 March 2020, whilst the Claimant was travelling to work, Mr Pledger telephoned the Claimant and said the restaurant would be closed for the following week.
27. The Claimant was due to be paid on 21 March 2020. The Respondent was in financial difficulties and unable to pay staff on 21 March 2020, and a payment was made to the Claimant on 31 March 2020.
28. On 25 March 2020 Mr Pledger emailed the Claimant with regard to arrangements during the first stage of lockdown. The email is important and is copied below for completeness:

*“ Dear Shaun*

*I just wanted to contact everyone to update you regarding your employment at Park House and the payment of monies owed.*

*This is an incredibly challenging period for everyone with not a lot of firm details on how the government schemes are going to run.*

*The business is waiting for the Government grant details to be released and when we receive these monies all payments to staff will be made.*

*The latest information this morning is that by the end of this week firm details of the grant scheme will be released.*

*In regards to the government covering 80% of peoples wages, the latest update from the governments website is that they are working on how the scheme is going to work and that this will be in place by the beginning of April and be backdated to the 1<sup>st</sup> of March.*

*The situation is about Part time staff is currently unknown as they are casual members of staffs that have paid no tax or NI because of the low number of hours worked. This may change and is probably likely to change but we have to wait for the government to announce the scheme.*

*My intention is to reopen Park House as soon as we can, keep every ones jobs open and try and get back to normal.*

*If you have any questions please email me back and I will do my best to answer them.”*

29. Whilst questioning the Claimant, Mr Pledger stated that he considered the email made it clear that furlough was not being offered. Although this was during cross examination of the Claimant, Mr Pledger wished to emphasize the point that no furlough was offered. I do not agree with Mr Pledger's interpretation of the email, and find that the email, on plain reading, explained that staff would be paid on receipt of monies from the government scheme, thus inferring staff would be furloughed (as it is now widely known).
30. Mr Pledger's evidence was that at the end of March 2020 he had a discussion with Paulo Guiati, General Manager, and directed him to inform staff that there would be no ongoing employment, having formed the view that furloughing staff would not be an option for the Respondent. Mr Pledger stated that Mr Guiati knew the staff did not have employment contracts and that the business would not be carried on.
31. There were no written communications between the Claimant and Mr Guiati. There was no written communication from the Respondent following the email dated 25 March 2020.
32. On 1 April 2020 a telephone conversation took place between the Claimant and Mr Pledger. During this conversation Mr Pledger explained to the Claimant that the money paid to the Claimant on 31 March 2020 related to the days worked in February 2020 and indicated he was waiting for sums to be received from the furlough scheme. I accept the Claimant's account of the conversation as set on 1 April 2020. Mr Pledger did not explain to the Claimant that his employment had been terminated or that the furlough scheme had not been accessed. I also find that Mr Pledger informed the Claimant that another employee had been dismissed for not turning up at work.
33. The Claimant did not consider his employment to have been terminated following his conversation with Mr Pledger on 1 April 2020. The Claimant believed he remained employed, and unable to work due to the furlough rules.
34. At some time in early April Mr Guiati in early April 2020, after the conversation between the Claimant and Mr Pledger, the Claimant had a conversation with Mr Guiati, he says in a personal capacity, and that Mr Guiati was angry. The Claimant's evidence, which I accept, is that Mr Guiati did not inform him that he had been laid off or that there were any issues with accessing the furlough scheme. The Claimant's evidence is that this discussion took place after the conversation with Mr Pledger on 1 April 2020 and that Mr Guiati reported his unhappiness but did not inform the Claimant that his employment had ended. I accept the Claimant's evidence on this point.
35. Mr Pledger explained that all staff were considered to only work up to 14 March 2020, and it was determined that, as a gesture of goodwill they would be paid up to the end of March to include two weeks' notice. There is no

corroborative evidence, and I find that this position was not communicated to the Claimant.

36. The Respondent did not make any application and did not receive any funds from the Coronavirus Job Retention Scheme. After making enquires it determined that the Claimant was not eligible for furlough due to the date of his first pay and the rule schemes and that the scheme was not going to be workable due to the need for employers to pay NI contributions.
37. The Claimant's bank statements from 24 February to 21 May 2020 show a payment in from the Respondent of £1,402.75 on 31 March 2020. This payment relates to the hours worked in February 2020.
38. The Respondent provided pay slips, appended to the ET3, which provide the following information:

Pay slip dated 21 March 2020 – gross pay £1,487.50 net pay £1,306.28 - pay period 1 February 2020 to 29 February 2020.

This pay slip records the following deductions: PAYE - £89.00, employee national insurance contributions £92.22 and employer national insurance contributions of £106.05.

Pay slip dated 21 April 2020 – gross pay £445.45 - pay period 1 March to 31 March 2020.

These pay slips were not provided to the Claimant in March and April 2020, they were only provided post ET1. Mr Pledger did not receive these pay slips from his accountant.

The pay slips provided by the Respondent do not accord with the information set out in the Claimant's bank statements. I find that the pay slips are not a clear and contemporaneous document. The only payment received by the Claimant from the Respondent was the sum on £1,402.75 on 31 March 2020, as explained by the Claimant in his witness statement and corroborated by the bank statements. Mr Pledger could not explain the amounts on the either of the pay slips. The pay slips also contained further errors, namely, the name of the employer was incorrect, and the Claimant's address was incorrect (it was the address for the Claimant's bank).

39. Mr Pledger explained that he had recently discovered that the Claimant had not been paid up to the end of March 2020, that this was an error, and it would be rectified. Mr Pledger stated that the intention was to pay all staff up to 14 March 2020 and then a further two weeks, rounded up to end of March 2020, as notice and as a gesture of goodwill. This is not documented in any contemporaneous documents and is not in the ET3.
40. The Claimant attempted to contact Mr Pledger in early May 2020, by text message and telephone. Mr Pledger did not respond.

41. The Claimant submitted a grievance on 11 May 2020 raising concerns about the non-payment of wages. The Respondent did not reply.
42. The Claimant contacted ACAS for the purposes of Early Conciliation on 14 May 2020. The Claimant considered this to be his last date of employment, due to the breakdown of the relationship with the Respondent. The Claimant did not provide any notice of his resignation.
43. The Claimant had not pursued other employment prior to 14 May 2020 because he believed he remained employed by the Respondent and would be receiving payment.
44. I find that the Claimant's last date of employment was 14 May 2020.
45. With regard to holiday pay, the contract of employment specifies that the leave year commences on 1 July. The Claimant was entitled to 20 days holiday plus 8 bank holidays, the statutory minimum. The Claimant did not take any annual leave. The Claimant was very clear he only wished to claim for 2.12 days holiday (that accrued for the days he worked between 6 February and 14 March 2020).

## **Law**

### Unlawful deductions from wages

46. Section 13(1) of the Employment Rights Act 1996 (ERA) provides an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.
47. An employee has the right to complain to an Employment Tribunal of an unauthorised deduction from wages pursuant to section 23 ERA.
48. A claim about an unauthorised deduction from wages must be presented to an Employment Tribunal within three months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.
49. Late payment will still count as a deduction. A deduction occurs if "the wages paid on any occasion" are less than the amount properly payable "to the



worker **on that occasion**" (section 13(3), ERA 1996). In *Delaney v Staples* [1991] IRLR 112 (CA), Nicholls LJ held that the object of the deductions from wages provisions, broadly speaking, was "to see that workers receive their wages in full **at the time they are due**" (emphasis added). It has therefore been held that a failure to pay all or any part of the wages on time amounts to an unlawful deduction (*Elizabeth Claire Care Management Ltd v Francis* [2005] IRLR 858 (EAT)). In that case, an employee was dismissed for complaining about late payment of wages. The EAT held that late payment would amount to an unlawful deduction.

50. If the employer subsequently pays the wages in full, albeit late, then a tribunal would not order the sum to be paid again. Section 25(3) of the ERA 1996 provides that a tribunal shall not make an order for payment "in so far as it appears to the tribunal that [the employer] has already paid or repaid any such amount to the worker." However, the tribunal may order the employer to compensate the worker for consequential loss, such as bank overdraft charges caused by the late payment.
51. Section 26 ERA 1996 provides that where awards are made under both sections 12 and 24 ERA 1996 in respect of a particular deduction, the amount shall not exceed the amount of the deduction.
52. There will be an unauthorised deduction from wages if the employer fails to pay the Claimant on termination of employment in lieu of any accrued but untaken leave.
53. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 of ERA, with some modifications.

#### Coronavirus Job Retention Scheme

54. In order to address the economic impact of the COVID-19 pandemic in the UK, the Chancellor of the Exchequer announced on 20 March 2020 that the Government would implement a Coronavirus Job Retention Scheme (CJRS). Under the scheme, employers were initially able to claim back 80 per cent of the wages (up to £2,500 per month) of employees who had been 'furloughed' (i.e. put on a leave of absence) in response to the COVID-19 pandemic.
55. Under the original CJRS, in March to June 2020, the Government paid 80 per cent of wages for hours not worked by furloughed employees, up to £2,500 per month, as well as employer National Insurance contributions (NICs) and pension contributions. There was a minimum furlough period of 21 calendar days. Employees could be furloughed multiple times but each separate instance had to be for a minimum period of three consecutive weeks. Employers could make claims backdated to 1 March but only in respect of employees on the payroll by 19 March (although employees whose employment terminated between 29 February and 18 March could also be

furloughed if they were rehired, provided they were on the payroll as at 28 February). The employee's furlough had to be the subject of an agreement between the employer and employee, of which the employer kept a written record. Furthermore, it was a condition of the CJRS at this time that the employee did not work for the employer at all.

Failure to provide pay slips

56. Under section 8 of the Employment Rights Act 1996 ("ERA"), an employee has the right to be given by his/her employer, "at or before the time at which any payment of salary or wages is made to him, a written itemised pay statement". This statement should include particulars of any variable and fixed deductions, and the purposes for which they are made.
57. Under section 11 of the ERA, where an employer does not give an employee a statement as required by section 8, an employee may make a reference to an employment tribunal to determine what particulars ought to have been included.
58. Under section 12(3) of the ERA, where an employment tribunal finds that an employer has failed to give an employee any pay statement, it shall make a declaration to that effect.
59. Under section 12(4), where a tribunal finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference, the tribunal may order the employer to pay a sum not exceeding the aggregate of the unnotified deductions. A deduction is an unnotified deduction where it is made without the employer giving the employee particulars of the deduction in a pay statement.

**Conclusions**

60. I have summarised the issues to consider, my findings of fact and the relevant law, and have considered all of these when reaching my conclusions.
61. I will now give my conclusions with reference to the issues and legal questions.
62. The Claimant brought his claim in time.
63. I appreciate that the pandemic resulted in a difficult period for the Respondent, and indeed many businesses. However, it was apparent that the Respondent is lacking in awareness of employment obligations and good employment practice. The fact the Claimant did not sign the contract

immediately upon receipt does not mean that there was no valid contractual employment relationship between the Claimant and the Respondent. The parties were clearly working under the terms of the written contract.

64. As salaried employee, the Claimant was entitled to be paid his full wages throughout the period of employment unless agreed otherwise. There is no evidence that any agreement was made to vary this basic position.
65. Although the pandemic created unprecedented challenges, I conclude that the Claimant was not dismissed by the Respondent with effect from 31 March 2020. There was no notification of termination of employment from the Respondent to the Claimant. In addition, the contractual relationship between the parties was not varied by a furlough agreement.
66. The Claimant was entitled to be paid until the employment ended, and I have concluded that the employment ended on 14 May 2020, when the Claimant considered the relationship to have broken down.
67. The Claimant was not paid wages at all for March and April 2020 and until 14 May 2020.
68. The Claimant's gross annual salary was £21,000, his gross monthly salary of £1,750.00, his gross weekly pay being £403.85. I concluded that the Claimant was owed £1,750.00 in March, £1,750.00 in April and £726.93 (calculated as £403.85 plus 4 x daily rate of £80.77) for payment due between 1 May and 14 May 2020. This amounts to a total of £4,226.93.
69. In relation to basic pay, I conclude that the Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay to the Claimant the gross sum of £4,226.93, in respect of the amount unlawfully deducted. The Respondent is entitled to make any deductions which are due for tax and national insurance purposes before the payment is made to the Claimant.
70. In relation to accrued but unused holiday pay, I conclude that the Claimant would have accrued holiday throughout the full period of his employment. However, the Claimant clearly specified that he was only claiming for holiday accrued but untaken and unpaid up to 14 March 2020. In relation to this period, the Claimant would have accrued 2.12 days ( $£80.77 \times 2.12 = £171.23$ ).
71. In relation to holiday pay, I conclude that the Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay to the Claimant the gross sum of £171.23, in respect of the amount unlawfully deducted. The Respondent is entitled to make any deductions which are due for tax and national insurance purposes before the payment is made to the Claimant.

72. In relation to notice of termination, I conclude that the Claimant was not dismissed from employment, but rather he treated the employment as having ended. He did not provide any notice of resignation. Accordingly, no payment for notice is due.
73. I have also considered the respondent's failure to provide itemised pay statements. Section 8 ERA requires a written itemised pay statement to be provided at or before the time at which any payment of wages or salary is made to an employee. The Respondent clearly failed to do this. The Respondent did not provide the Claimant with any itemised pay statement throughout his employment with them. I make a declaration that the Respondent failed to give to the Claimant any pay statements in accordance with section 8 ERA.
74. As no payment was made to the Claimant at all between March and 14 May 2020 the Claimant has recovered sums due under the provisions set out in sections 13 to 27 of the Employment Rights Act 1996.
75. I acknowledge there is a separate discretionary remedy available under section 12(4) in relation to unnotified deductions. Section 26 ERA sets out that where a deduction is both unauthorised and unnotified, the aggregate of the awards paid under the two sets of provisions must not exceed the amount of the deduction.
76. I have considered the fact that the Claimant has recovered sums that were unlawfully deducted between March and 14 May 2020. I also note that as the ET1 was submitted on 21 May 2020 the 13-week period under rule 12(4) ERA commences on 20 February 2020. The Claimant was paid for hours worked in February but was not provided with a payslip, and therefore the deductions were unnotified. The late payslip sets out information on purported deductions as above. The Respondent gave no satisfactory explanation for its failure to provide payslips on time. The payslips do not accord with the Claimant's bank statement and it is by no means clear that the monies deducted (purportedly for tax and National Insurance) have actually found their way to HMRC. Accordingly, under the discretion set out in section 12(4) ERA 1996 the Respondent is ordered to pay the sum of £287.27 (comprising £89 for PAYE, £92.22 for employee NICs and £106.05 for employer NICs) to the Claimant.

Employment Judge G Cawthray  
Date: 27 May 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 27 MAY 2021