

Case No: 1806404/2020(V)
1806405/2020
1806406/2020
1806407/2020
1806408/2020
1806409/2020
1806410/2020
1806411/2020



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Harris
Miss L Harris
Miss L Wadsworth
Mrs P Shores
Mrs S Ayliffe
Mrs J Mallory
Mrs J Jackson
Mrs I Taylor

Respondent: A.K. Hull Ltd

HELD BY CVP **ON:** 7 June 2021

BEFORE: Employment Judge Rogerson (sitting alone)

REPRESENTATION:

Claimants: Mrs Shannon, lay representative
Respondent: No attendance

JUDGMENT

1. The respondent has made unlawful deductions from the claimants' wages from 1st August 2020 to 31 May 2021 when they were furloughed. The claims made pursuant to section 13 of the Employment Rights Act 1996 succeed and the respondent is ordered to pay each claimant the wages properly payable in the furlough period in the amount set out in the table below. The total gross sum of unpaid wages is £60,574.78.
2. Pursuant to section 12A of the Employment Tribunals Act 2016, the respondent is also ordered to pay a financial penalty of £20,000 to the Secretary of State. Further information about the financial penalty is annexed to this judgment.

Claimant	Gross sum
Gail Harris	£15,961.85
Lauren Harris	£4,799.75
Lisa Wadsworth	£9,398.89
Pauline Shores	£5,440.88
Susan Ayliffe	£10,888.20
Janet Mallory	£2,468.21
Janice Jackson	£8,664.27
Ilene Taylor	£2,948.73

REASONS

1. By a claim form presented on 15 October 2020, the 8 claimants brought complaints of unpaid wages and outstanding holiday pay against four named respondents A.K. Hull Ltd (R1); Mr A. Thangarajah (R2); Mr A. Kalamohan (R3) and Mr V. Paskar (R4). At a preliminary hearing on 2 February 2021 the claimants agreed the 'employer' A.K. Hull Ltd was the correct respondent to the claim the legal entity liable to pay unpaid wages and holiday pay to the claimants. By consent the claim made against the individual named respondents was dismissed leaving Ak Hull Ltd as the sole respondent.
2. The individual named respondents (R2 R3 R4) had at different times during the claimants' employment been the sole directors and shareholders of AK Hull Ltd a limited company operating general convenience shops in Hull.
3. R2 was the sole director from 2018 until 20 March 2020. R4 was appointed as director on 20 March 2020 and resigned the same day. R3 was appointed as sole director on 21 March 2020 and resigned on 1 September 2020. Mr Paskar (R4) became the sole director on 1 September 2020 and continues to be the director with significant control of the company and the sole shareholder. The last set of company accounts filed for AK Hull Ltd were filed on 30 April 2021 for the financial year ending 31 July 2020. They were prepared by Amity Accountants and were signed by Mr Paskar. The next accounts are due in April 2022.
4. By a claim form presented on 15 October 2020, the 8 claimants brought complaints of unpaid wages having been furloughed by AK Hull Ltd in April

2020. The claimants had been paid 80% of their wages under the scheme from April 2020 up to June 2020. However, from 1st August 2020, the claimants were not paid any wages by the respondent even though HMRC continued to pay the respondent the furlough payments during this period. The respondent unlawfully and without good reason withheld their wages and has made for 10 months causing them to suffer severe financial hardship, worry and stress. Additionally, for the leave years ending 31 March 2020 and 31 March 2021 the claimants had not been paid holiday pay. Mrs Harris also claimed the respondent had made unlawful deductions by failing to pay the employer pension contributions from April 2020. All the claimants continue to be employed by the respondent. If their wages are not paid correctly in June 2021, a further claim will be made.

5. On 12 November 2020, Mr Paskar submitted an ET3 response on behalf of the respondent accepting responsibility for the payment of claimants' unpaid wages. Mr Paskar asserted facts that "*furlough had been applied for and upon receiving the funds the wages will be transferred*". This was untrue. HMRC publish records which show the respondent had received furlough grants from HMRC from April 2020 to 31 March 2021 for the payment of the claimants' wages which the respondent should have promptly transferred to the claimants' bank accounts under the Coronavirus Job Retention Scheme (CJRS).
6. Mr Paskar was the sole director of the respondent and had significant control of the company finances. When he submitted the response in November 2020 he knew or ought to have known 'funds' had already been received from HMRC and those funds had not been transferred to the claimants August 2020. The ET3 response he completed on behalf of the respondent was deliberately misleading.
7. At a telephone preliminary hearing on 2 February 2021, the claimants' confirmed to the Employment Judge that HMRC records showed the respondent had received payments from HMRC under the CJRS. At that hearing Mr Paskar admitted HMRC payments had been received and the excuse he gave for not paying the claimants was that he was having difficulty transferring the money from the company bank account. Mr Paskar used this as an excuse to stall for time and to avoid taking any responsibility for the actions.
8. After that hearing Mr Paskar has continued to fail to rectify the situation by making payment to the claimants. He has not taken these proceedings or his responsibility (as the director with significant control of the respondent) to ensure the claimants wages were paid knowing the impact this would have on them.
9. On 8 April 2021, these claims were listed for a final hearing remotely by CVP on 7 June 2021. The record of the preliminary hearing sent to the parties sets out the summary of the discussion, the issues for each claim and the steps the parties were required to take prepare before the final hearing including

disclosure of documents by 22 April 2021 and witness statements by 13 May 2021. A separate notice of hearing and guidance notes for remote hearings was sent to the parties on 9 April 2021 using the email addresses provided.

10. At this hearing, the claimants attended and were represented by Mrs Shannon who is a lay representative and the sister of one of the claimants. Mr Paskar did not attend. The Tribunal clerk contacted Mr Paskar by email and telephone. During the first telephone call Mr Paskar said he was not aware of the hearing. After checking the file, the clerk confirmed that the correct email address had been used to send the notice of hearing. In addition, Ms Shannon confirmed she had sent Mr Paskar a copy of the claimant's bundle of documents including witness statements in April 2021. She had a proof of posting confirming the bundle had been received.
11. The Tribunal sent an email to Mr Paskar confirming that the notice of hearing had been correctly sent to the email address he had provided that had been previously used without issue. He was informed the start time of the hearing would be delayed until 11.30am to allow him time to attend. Mr Paskar was warned that if he did not attend, the hearing would proceed in his absence and the claims would be determined on the available evidence. He was also informed that adverse findings of fact may be made which could have serious consequences for the respondent.
12. After sending that email the Tribunal clerk contacted Mr Paskar to ask him if he would be attending the delayed hearing, his response was non-committal. He would '*neither confirm his attendance nor state he would not be attending*'. Mr Paskar did not attend the hearing. I was satisfied the notice of hearing had been properly sent, the respondent had been provided with all the documentary evidence and statements that the claimants relied upon, and that a further opportunity to participate in the hearing had been given to the respondent by delaying the start time of the hearing.
13. I heard evidence for each of the claimants and saw the bundle of documents Mrs Shannon has meticulously and conscientiously prepared for this hearing. The claimants have complied with all the case management orders made and have patiently waited for their claims to be decided at this hearing when they have suffered severe financial hardship for 10 months through no fault of their own. In contrast Mr Paskar has failed to comply with any of the orders made, he has misrepresented the facts in the ET3 response he drafted, he has been untruthful, he has given false excuses for not paying to stall for time. He has chosen not to attend this hearing to explain what has happened to the HMRC grant received and to participate in this hearing to assist the Tribunal with its fact finding.
14. I found all the claimants were credible witnesses who gave their evidence honestly and openly. The claimants' roles, normal working hours and start dates are as set out in the table below.

Case No: 1806404/2020(V)
 1806405/2020
 1806406/2020
 1806407/2020
 1806408/2020
 1806409/2020
 1806410/2020
 1806411/2020

Claimant	Position	Contracted Hours	Date of commencement
Gail Harris	Store Manager	35 hours	07/11/05
Lauren Harris	Store Assistant	14 hours	02/03/18
Lisa Wadsworth	Store Assistant	28 hours	03/01/06
Pauline Shores	Store Assistant	17 hours	28/03/97
Susan Ayliffe	Store Assistant	33 hours	28/04/03
Janet Mallory	Store Assistant	3.5 hours	02/05/06
Janice Jackson	Store Assistant	25.5	22/10/13
Ilene Taylor	Store Assistant	10 hours	25/03/96

15. The claimants were all employed at the respondent's Church Street convenience store. Ownership of the shop transferred to Mr A. Kalamohan on 1 March 2018. He was director of "Mohan Retail Limited" and added this shop to the portfolio of shops owned by that company.
16. On 6 April 2019, the claimants were informed by Mr Kalamohan that he was restructuring his companies based on the location of the shops. As a result, the claimants' contracts of employment transferred from 'Mohan Retail Limited' to 'A.K. Hull Ltd' for "*convenience and financial accounting purposes*". The letter confirms that other than the change of name of the company employing the claimants all their other terms and conditions remained the same.
17. On 29 February 2020, without warning the claimants were informed that the Church Street convenience store was closing that day. Although ownership of that shop would be transferred to a new owner their contracts would remain with 'AK Hull Ltd' and they would be required to work at a different shop owned by the respondent located in Paragon Street when the sale of the company to Mr Paskar was completed.
18. By letter dated 17 March 2020, Mr Kalamohan confirmed the new company director would be Mr V. Paskar and assured the claimants their employment would transfer under TUPE and that he expected to complete the sale of 'AK Hull Ltd' to Mr Paskar on 20 March 2020. Mr Kalamohan confirmed that until completion the claimants would continue to be paid their wages and that any outstanding holiday pay would also be paid. It was agreed the claimants would be paid for their normal working hours but would not be required to work.
19. Something must have gone wrong with that sale because Company House records show that Mr Paskar was appointed as director on 20 March 2020 and resigned the same day. On 21 March, Mr A. Thangarajah was appointed director of 'AK Hull Ltd'. The claimants were unaware of this at the time.

20. On 31 March 2020, Mr Kalamohan informed the claimants that the outstanding holiday pay up to 31 March 2020 which had been promised and had originally been included in the claimants' wage slips would not be paid. New payslips were issued to the claimants which did not include any holiday pay leaving the holiday pay accrued but unpaid as at 31 March 2020. The holiday pay entitlement for each employee for the year ending 31 March 2020 is as follows:

Claimant	Hours	Rate	Amount
Gail Harris	70	£9.38	£656.60
Lauren Harris	19	£7.70	£146.30
Lisa Wadsworth	72	£8.21	£591.12
Pauline Shores	14	£8.21	£114.94
Susan Ayliffe	33	£8.71	£287.43
Ilene Taylor	21	£8.21	£209.36

21. The claimants believed that the reason why the holiday pay was not paid was the change of ownership of the business at a time when the Coronavirus pandemic had just become a concern for retail businesses generally.
22. As at March 2020 the position was that the transferor had accepted liability to pay holiday pay accrued for that leave year which was still outstanding and that the leave/pay would be carried over to the next leave year or would be paid by transferee as part of the transfer. Either the transferee or the transferor would be liable under the TUPE Regulations 2006. If there was any omission by the transferor in relation to its liability to pay holiday pay liability would transfer to the transferee as a result of the transfer.
23. In Mr Kalamohan's letter of 31 March 2020 he notifies the claimants of the transfer he recommended that the claimants discuss their situation with Mr Paskar. The claimants tried to do this but described how they were passed from 'pillar to post' between Mr Kalamohan and Mr Paskar.
24. The next communication was an email on 30 April 2020 sent by Mr Kalamohan confirming that there was a delay in the changeover of the company to the new owners because of "*the refit of the Paragon Street and the pandemic*". He confirmed that the company's new accountants "Amity Accountants" would be dealing with the payroll for 'A.K. Hull Ltd' and had "*placed A.K. Hull Ltd payroll on HM government furlough scheme for 80% of the wages for the time being*" until the Paragon Street shop was ready for the claimants to return to indicating that the shop was closed.
25. Before this email the claimants were never consulted about being furloughed but accepted that they had been furloughed from April 2020. All the claimants were paid 80% of their wages from April 2020 to 1 August 2020 which is when

Case No: 1806404/2020(V)
 1806405/2020
 1806406/2020
 1806407/2020
 1806408/2020
 1806409/2020
 1806410/2020
 1806411/2020

the payments stopped. During that period the claimants only received one payslip which confirmed the pay was a furlough payment for April 2020. The payslip identifies the employer as 'A.K. Hull Ltd', the date of payment as 30 April 2020 and the payment received was 'furlough salary'.

26. Most of the claimants were paid gross without any deduction for tax and national insurance. Miss Harris and Mrs Ayliffe had some deductions made because of their earnings. None of the claimants received payslips after April 2020 and had to check the HMRC website to see how much the respondent had claimed from HMRC in respect of their wages from April 2020 to 31 March 2021.
27. I saw records for each of the claimants except for Miss Harris who was only able to provide a screenshot from the website and Mrs Mallory who could not locate her details from the HMRC website. Both had received furlough payments from April to June 2020 and it was reasonable to infer that they were in the same position as the other claimants who had been able to provide their records from HMRC. Additionally, if Mr Paskar wanted to dispute that evidence, he could have provided the records the respondent is required to keep for each employee to properly account for the grant received from HMRC.
28. Pausing there the amount of the grant claimed by A.K. Hull Ltd from HMRC for furlough payments exceeds £60,000. The respondent has received over £60,000 in payment for the claimants' wages which it has unlawfully withheld and failed to transfer to the claimants' bank accounts for 10 months. The inference that can reasonably be made is that by continuing to withhold the claimant wages the grant received has fraudulently been obtained and retained from HMRC for an improper purpose, as it has not been used for the intended proper purpose of paying the claimants' wages.
29. The table below shows how that £60,574.78 has been calculated and I accepted that calculation accurately reflects the grant received from HMRC for those months in which A.K. Hull Ltd has been paid to the end of March 2021. The HMRC records end at that date and I have assumed that the furlough payments would have continued until May 2021. I have also assumed that if any taper applies under CJRS in August to October 2020, the respondent was required to make up the payments to 80% of the normal wage. I have used the previous payment record as an indicator of the payments made by HMRC.

Claimant	Rate	Number of Months	Total
Furlough owed 1 August 2020 to 31 May 2021			
Gail Harris	1306.20	10	£13,062.10
Lauren Harris	396.98	10	£3,969.80
Lisa Wadsworth	744.03	10	£7,440.30

Pauline Shores	449.98	10	£4,499.80
Susan Ayliffe	886.18	10	£8,861.80
Janet Mallory	229.73	10	£2,297.30
Janice Jackson	720.97	10	£7,209.70
Ilene Taylor	228.80	10	£2,288.00
Total:			£60,574.78

30. The Coronavirus Job Retention Scheme (CJRS) allows employers to claim 80% of the wages (up to £2,500 per month) for employee’s wages if they have been furloughed (i.e. put on leave of absence) in response to the COVID pandemic. The legislation for CJRS is contained in section 76 of the Coronavirus Act 2020 which came into force on 25 March 2020. It confers on HMRC ‘such functions as the Treasury may direct in relation to the coronavirus’. Treasury directions have been issued setting out details of the scheme updates, the latest one issued on 21 April 2021.
31. Importantly paragraph 2.1 of the CJRS direction provides that “***The purpose of CJRS is to provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of employees who are within the scope of CJRS***”. That is the proper purpose of the grants made to employers under the CJRS. Paragraph 2.3 provides that “***integral to the purpose of CJRS is that the amounts paid to the employer pursuant to a CJRS claim are only made by way of reimbursement of the expenditure incurred or to be incurred by the employer in respect of the employee to which the claim relates whose employment activities have been adversely affected by the coronavirus or measures taken to prevent or limit its future transmission***”
32. The scheme recognises that transfers of employment may occur and provides that the new employer can continue to make a CJRS claim if the former employer made a payment to the employee and the former employer had not reported to HMRC a cessation of employment.
33. HMRC publish guidance for employees and employers and are required under the scheme to publish information about an employer who has received a payment pursuant to a CJRS claim to give a reasonable indication of the claim made. The HMRC guidance for employers makes it clear what they are required to do:

“Once you’ve claimed, you’ll get a claim reference number. HMRC will then check that your claim is correct and pay the claim amount by BACs into your bank account within 6 working days. You must:

keep a copy of all records for 6 years, including:

- a. *the amount claimed and claim period for each employee*
- b. *the claim reference number for your records*
- c. *your calculations in case HMRC need more information about your claim*
- d. *for employees you flexibly furloughed, usual hours worked including any calculations that were required*
- e. *for employees you flexibly furloughed, actual hours worked*

tell your employees that you have made a claim and that they do not need to take any more action

pay your employee their wages, if you have not already

You must pay the full amount you are claiming for your employee's wages to your employee. You must also pay the associated employee tax and National Insurance contributions to HMRC, even if your company is in administration. If you're not able to do that, you'll need to repay the money back to HMRC.

You must also pay to HMRC the employer National Insurance contributions on the full amount that you pay the employee. If you have submitted a claim for the employer National Insurance contributions and pension contributions, then the full amount you claim in respect of these must be paid or you will need to repay the money back to HMRC.

Employers cannot enter into any transaction with the worker which reduces the wages below the amount claimed. This includes any administration charge, fees or other costs in connection with the employment. Where an employee had authorised their employer to make deductions from their salary, these deductions can continue while the employee is furloughed provided that these deductions are not administration charges, fees or other costs in connection with the employment.

HMRC will check claims, and payments may be withheld or need to be paid back if a claim is found to be fraudulent or based on incorrect information."

34. The claimants confirmed to me that they have reported their concerns of potential fraud to HMRC and have been told to report back to HMRC after a decision has been made by the Employment Tribunal.
35. In accordance with the HMRC guidance, the respondent would have received the grant payment from HMRC within 6 days of the processed claim **by way of reimbursement of the expenditure incurred or to be incurred by the employer in respect of the employee**. The expenditure has not been incurred and the claimants have received no wages for 10 months since 1 August 2020.
36. If this expenditure in relation to the claimants' wages has been incurred it would have been very easy for Mr Paskar to provide evidence of the transfer of funds from the respondent's bank account to the claimant's bank account to show the

expenditure. The respondent must keep records for 6 years. As the sole director and only shareholder of the company Mr Paskar has not bothered to attend/provide evidence or explain what steps he has taken to rectify this situation on behalf of the respondent. I found that no wages had been paid to the claimants by the respondent from 1 August 2020.

37. The respondent has made unlawful deductions of wages in the amounts claimed in the table provided at paragraph 29 contrary to section 13 Employment Rights Act 1996. Section 13 provides that workers have the right not to suffer unauthorised deduction. Section 13(3) provides that “*where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable to the worker on that occasion (after deductions) the amount of the deficiency, shall be treated for the purposes of this part as a deduction made by the employer from the worker’s wages on that occasion*”. The claimants have not received any wages since 1 August 2020. The amounts of wages ‘properly payable’ to each claimant in the period of furlough from 1 August to 31 May 2021 is 80% of the normal wages in the amounts claimed as set out in the Table.

Annual Leave and Furlough

38. On 17 April 2020, the government’s guidance was updated to confirm that workers continue to accrue annual leave while they are on furlough. The government passed emergency legislation relaxing the restrictions in Regulation 13(A) on carrying over the four weeks statutory leave derived from the Working Time Directive.
39. The Working Time (Coronavirus) (Amendment) Regulations 2020 Statutory Instrument 2020/365 came into effect on 26 March 2020. This makes Regulation 13(A) (that the leave may only be taken in the leave year in respect of which it is due) subject to the exceptions set out in two new paragraphs of the Working Time Regulations 1998 regulations 13(10) and 13(11).
40. Under Regulation 13(10) where it was not reasonably practicable for the worker to take some/or all her Regulation 13 leave in the relevant leave year, as a result of the effects of Covid-19, the worker will carry forward such untaken leave. Under Regulation 13(11) the carry forward of leave may be taken in the two leave years immediately following the leave year in respect of which it was due.
41. These amendment regulations may assist the claimants who have not taken any annual leave during furlough and are left with unused holiday entitlement at the end of the relevant year. As I explained to the claimants Regulation 14 Working Time Regulations 1998 deals with the right to compensation for untaken leave under regulation 13 only applies where the employment is terminated. As the claimants have not terminated the contracts and the employer has not terminated the contract the outstanding leave cannot be compensated for under regulation 14 but could arguably be carried over.

42. If the contract of employment is terminated, the claimants might rely on the amendment regulations to argue that they are entitled to carry over leave from 2020 for two years up to 2022. If so for the leave year ending in 2021 they can carry the leave forward to 2023. I have not made any determination in relation to their rights for annual leave other than to record the entitlements that they have calculated have accrued using the government website for the 2021 leave year when no leave has been taken.
43. For the leave year ending 31 March 2020 the claimants have used the calculation from the original April 2020 pay slip issued by Mr Kalamohan which was then reissued without holiday pay (see paragraph 21). The claimants have been very honest and have taken off any leave incorrectly included in that calculation to provide an accurate claim for that leave year. Again, it goes to the claimants' credit that they checked the accuracy of the pay slips provided for March 2020 and the holiday pay calculations in their claims to be truthful rather than try to benefit from any error made.
44. For the 2021 leave year the claimants have calculated their entitlement under the Working Time Regulations as follows:

Claimant	Hours	Rate	Total
Gail Harris	196	£9.88	£1,936.48
Lauren Harris	78.4	£8.72	£683.65
Lisa Wadsworth	156.82	£8.72	£1,367.47
Pauline Shores	95.2	£8.72	£830.14
Susan Ayliffe	184.80	£9.41	£1,738.97
Janet Mallory	19.6	£8.72	£170.91
Janice Jackson	142.80	£8.72	£1,245.22`
Ilene Taylor	56	£8.72	£488.32

Employer Pension Contributions Claim: Mrs Harris

45. Mrs Harris includes a claim for the non-payment of employer pension contributions at a rate of £23.59 for 13 months in the sum of £306.67 from the date of the last payment made in April 2020. The pension that she refers to is an occupational pension which was provided to her as the Manager of the shop by the previous owner Mr Kalamohan under a pension scheme operated by "Mohan Retail Limited".
46. The rights to an occupational pension scheme and the contributions under that scheme do not pass to the transferee upon a relevant transfer. The difficulty for Mrs Harris is that Regulation 10(1) TUPE 1998 applies and excludes occupational pension schemes from the scope of TUPE. When the ownership

of the company transferred Mrs. Harris she was not entitled to rights to an occupational pension scheme comparable to the one she enjoyed with the transferor prior to the transfer. Additionally statutory time limits apply to a claim made under section 13 ERA 1996 and any claim must be made within 3 months of the last deduction of 14 April 2020 which means any claim is now out of time For those reasons Mrs Harris cannot complain the pension is an unlawful deduction of wages as these sums were not properly payable as 'wages' under section 13 ERA 1996.

Financial Penalty.

47. I considered whether it was appropriate to make a financial penalty award against the respondent under Section 12(A) of the Employment Tribunal's Act 1996. Section 12(A) provides that:

"Where an Employment Tribunal determining a claim involving an employer and a worker:

(a) concludes that the employer has breached any of the worker's rights to which the claim relates and;

(b) is of the opinion that the breach has one or more aggravating features the Tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).

Subsection 12(A)(2) provides that the Tribunal shall have regard to an employer's ability to pay:

(a) in deciding whether to order the employer to pay a penalty under this section and;

(b) (subject to subsections (3) and (7) in deciding the amount of a penalty.

Subsection 3 provides that the amount of penalty under this section shall be:

(a) at least £100 and

(b) not more than £20,000.

Subsection 5(a) provides that if the amount of the financial award is more than £40,000 the amount of the penalty shall be £20,000.

Subsection 10 provides that an employer's liability to pay a penalty is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer."

48. I was satisfied that section 12 A(1)(a) and (b) apply to the facts of this case. The claimants right not to suffer an unlawful deduction of wages has been breached in respect of all 8 claimants over 10 months during which the

claimants were furloughed and owed wages in the total amount of £60,574.78. I was satisfied that the breach has aggravating features supporting the exercise of my discretion to make an order that the respondent pay a financial penalty to the Secretary of State in the amount fixed by section 12(5)(a) of £20,000.

49. It was clear that the claimants had trusted their employer to fulfil its fundamental duty and basic obligations to pay their wages on time. Unfortunately, that trust has been misplaced and abused by the respondent. This is not a case where the employer was unable to pay the claimants wages because of a lack of funds. The respondent had received grants from HMRC under the CJRS for that specific purpose. This was an employer who was unwilling to pay the claimants' wages knowing this would have a devastating impact on their lives. As well as the financial hardship the claimants have suffered unnecessary, anguish, worry, upset and stress. Some of the claimants borrowed money from family and friends, some tried to claim Universal Credit. Unfortunately, benefits were refused because the claimants were unable to explain why the HMRC records showed payments were made to the employer in respect of their wages when they were claiming the wages had not been paid. The claimants' honesty was questioned when it was clear that it is the honesty of the respondent's sole director that should be questioned in these claims.
50. In this case the employer had the benefit of promptly receiving grant payments from HMRC (within 6 days of the claim being processed) while the claimants have received no wages since 1 August 2020. For 10 months the claimants were unlawfully deprived of any income while the respondent received grants of £60,574.78. A substantial amount of money has been received by the respondent on the basis that it has claimed an employment expense has been incurred or to be incurred for paying the claimants wages. *"The purpose of CJRS is to provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of employees"* to help businesses like the respondent survive and to try to retain the staff employed by helping with the employment costs not to make unlawful deductions from the claimants wages. It was not clear to me what has happened to the £60,574.78 the respondent has received.
51. Another aggravating feature has been Mr Paskar's conduct of these proceedings. He has failed to comply with any of the orders made, he has misrepresented the facts in the ET3 response he drafted, he has been untruthful, he has given false excuses for not paying to stall for time. He has chosen not to attend this hearing to explain what has happened to the HMRC grant received and to participate in this hearing to assist the Tribunal with its fact finding. As the sole director and shareholder/owner he has not taken any responsibility to rectify the situation. He has not shown any regard for the claimants or the predicament they have been placed in through no fault of their own.
52. I had regard to the respondent's ability to pay. Again, had Mr Paskar attended this hearing he could have provided me with that information. The claimants tell

Case No: 1806404/2020(V)
1806405/2020
1806406/2020
1806407/2020
1806408/2020
1806409/2020
1806410/2020
1806411/2020

me the shops are open and trading. I have considered the available information. It is appropriate in my view to exercise my discretion to order the respondent to pay the Secretary of State a financial penalty in the sum of £20,000.

Employment Judge Rogerson
15 June 2021

Date: 19 June 2021