



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Haron Abdirahman Hara

v Lean on Me Community Care Services Ltd

**Heard at:** Watford by CVP

**On:** 21 May 2021

**Before:** Employment Judge de Silva QC

## Appearances

**For the Claimant:** In person

**For the Respondent:** Gregory Hine, Solicitor

## COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

## JUDGMENT

1. The Claimant's claims of unlawful deductions from wages and breach of contract in relation to notice are well-founded.
2. The Claimant is entitled to be paid the following sums by the Respondent:
  - a. One week's notice pay of £188.39 net;
  - b. £1,248 for net arrears of pay for May to June 2020;
  - c. £283.05 net for accrued but untaken holiday;
  - d. £376.78 net for the Respondent's failure to provide a written statement of particulars.

## REASONS

### The Proceedings

1. By Claim Form issued on 25 August 2020, the Claimant brought a claim for unpaid notice pay (a claim for breach of contract) and other payments (claims for unlawful deductions from wages) against Lean on Me Community Care Services.
2. In its Response, the Respondent denied that any pay was due to the Claimant.
3. The Claimant did not serve or file a witness statement for the final hearing or provide disclosure. These failure were part of the basis of a separate strike out application from the Respondent. When dismissing the application, I ruled that the contents of box 8.2 of the Claim Form could stand as the evidence-in-chief of the Claimant and that the Claimant would not be able to rely on documents that he had not disclosed.
4. At the final hearing, I heard evidence from the Claimant who was cross-examined by Mr Hine and from Racheal Baxter, manager and director of the Respondent, who was cross-examined by the Claimant. The Respondent and the Claimant also made oral closing submissions.
5. The Respondent admitted (in my view correctly) at the hearing that the Claimant was entitled to one week's notice pay, two weeks' pay for failure to provide a written statement of terms and conditions and some holiday pay.

### Findings of Fact

6. I make the following findings of fact.

#### Commencement of Employment and Terms and Conditions

7. The Claimant commenced employment with the Respondent on 10 January 2020 to assist with office administration. He was not given a written statement of terms and conditions.
8. According to his payslips, he was paid:
  - a. Net pay of £611.84 for 80 hours from 10 to 31 January 2020; and
  - b. Net pay of £753.56 for 100 hours in the month of February 2020.
9. The Claimant asserted in the Claim Form that he was entitled to be paid £1,500 per month after tax and in his Schedule of Loss that he was entitled to be paid £1,250 per month after tax. He further asserted at the hearing that

the payslips disclosed by the Respondent were forged in some way, although he did not disclose what he alleged to be the true payslips. In the circumstances and in any event, I accept that the payslips referred to above were genuine. In the light of the hours stated on the payslips, I also accept that it was agreed that the Claimant would be paid for 25 hours of work a week.

Meeting of 13 March 2020

10. A meeting took place between Ms Baxter and the Claimant on 13 March 2020. I do not accept that the Claimant was dismissed at this meeting for the reasons set out below.
11. Although the Grounds of Resistance state *“The Claimant was informed that his employment will cease to continue from the 13<sup>th</sup> March 2020”*, in her evidence before the Tribunal, in particular her account of that meeting at paragraph 7 to 10 of her witness statement, Ms Baxter mentions discussing with the Claimant improving his writing skills but does not say that she told the Claimant at the meeting that his employment would end, or anything of that kind. She concludes at paragraph 11 of her statement that the Claimant’s employment ended on 13 March 2020 and refers at paragraph 12 to some kind of agreement having taken place (*“shortly after we mutually agreed that his employment had ended on the 13<sup>th</sup> March 2020...”*) but her account of the meeting itself does not support the Respondent’s case that the Claimant was dismissed, still less that there was mutual agreement to end the employment.

Later Events

12. The Claimant was off sick from 16 March 2020 to 4 April 2020. It is apparent from the payslip for March 2020, which only includes 50 hours of work, that he was not paid for this period.
13. Some time after this, the Claimant and Ms Baxter had a discussion about the Claimant going on to the furlough scheme.
14. The Schedule of Loss refers to a grievance on 23 April 2020 and a reminder on 12 May 2020 but there was no evidence of either of these events.
15. Ms Baxter arranged for the Claimant to be paid £1,030.32 on 6 July 2020 as instructed by the payroll officer. She alleges that she did the because the Claimant had said that he was entitled to furlough pay as he was employed in March 2020 and became very aggressive, insulting her and accusing her of refusing to give him furlough money. She says that he harassed her and that she paid him this money to keep him calm. I do not accept that the Claimant was aggressive to her or harassed her or that his behaviour was the reason that he was paid furlough money. The allegations of aggression and harassment are vague and unparticularised and I conclude that the Claimant simply asked about being paid furlough pay, as he asserts.

16. The fact that the Claimant was paid furlough monies is consistent with Ms Baxter not having dismissed the Claimant and believing him still to be employed. It was not logical for her to have paid him furlough pay if she believed that he was not employed.
17. The Claimant asserts that his employment ended on 10 July 2020 following payment of the furlough monies and I accept that this was the date on which his employment ended.
18. Ms Baxter later returned £3,724.98 in furlough money to HMRC which had previously been claimed. She says that did this because she had come to the conclusion that the Claimant was not entitled to furlough as his employment ended.

### **Conclusions**

19. For the purposes of the calculations below, based on the payslip for February 2020 (the only full month for which the Claimant was paid), I conclude that the Claimant's net weekly pay was £188.39.

#### Notice Pay

20. The Claimant was entitled to statutory notice of one week. The Respondent admits that no notice was given and that the Claimant is entitled to one week's net notice pay. This amounts to £188.39.

#### Arrears of Pay

21. As the Claimant was not dismissed on 13 March 2020, he was entitled to pay following this date. In his Schedule of Loss, he claims furlough pay for the months of May and June 2020, i.e. 80% of his net monthly salary of £1,250, being £1,000.
22. Based on the payslips I have seen, I conclude that his full net monthly salary for each of those months was £780 per month.
23. 80% of £780 is £624 and I accordingly conclude that the Claimant is owed pay of £624 for each of the months of May and June 2020, totalling £1,248.

#### Holiday Pay

24. The Claimant was entitled to 28 days of statutory holiday per year under the Working Time Regulations 1998. The Claimant alleges that he had accrued 13.7 days of holiday pay from 1 April 2020. However, as his own case is that the employment ended on 10 July 2020, he had only accrued 7.5 days of leave when his employment ended. Based on daily net pay of £37.74, he is accordingly entitled to £283.05 for accrued but untaken holiday pay (7.5 x £37.74). He is not entitled to any uplift on this given the absence of evidence of a grievance about this.

*Failure to Provide Written Statement of Particulars*

25. The Claimant claims two week's pay pursuant to section 38 of the Employment Act 2002 as a result of the Respondent's failure to provide a statement of employment particulars. The Respondent admits that the Claimant is entitled to two weeks' net pay for this. This amounts to £376.78.

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**Employment Judge de Silva QC**

Date: 29 June 2021

Sent to the parties on: 6 July 2021

S. Bhudia

For the Tribunal Office