



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case Number: 4101352/2020 (A)

Preliminary Hearing held remotely at Glasgow on 16 October 2020

Employment Judge Hoey

10

Mr Juan Jose Martin Ripoll

**1st Named Claimant
Represented by:-
Ms M del Valle
(Adviser)**

15

Ms Mercedes Marcos Rodriguez

**2nd Named Claimant
Represented by:-
Ms M del Valle
(Adviser)**

20

**La Casa Leith Limited
trading as La Casa Leith**

**Respondent
(No appearance)**

25

**Hearing conducted with the assistance of Spanish Language Interpreter
Mr Oya**

30

JUDGMENT

(1) the Tribunal declares that the respondent made an unlawful deduction from the first claimant's wages in terms of section 13 of the Employment Rights Act 1996 in respect of 8 hours work.

35

(2) The respondent shall pay to the first claimant the gross sum of £65.68, with such deductions as required by law, in respect of the unlawful deduction of the first claimant's wage.

(3) The Tribunal declares that the respondent failed to pay the first claimant the sum due to him under regulation 14(2) of the Working Time Regulations 1998, namely a sum in respect of 108.2 hours of

accrued but, outstanding annual leave entitlement, at the gross rate of £8.21 per hour.

5 (4) The respondent shall pay to the first claimant the gross sum of £888.33 in respect of unpaid but accrued annual leave, subject to such deductions as required by law.

(5) The Tribunal declares that the respondent made an unlawful deduction from the second claimant's wages in terms of section 13 of the Employment Rights Act 1996 amounting to a sum equivalent to 95 hours worked by her.

10 (6) The respondent shall pay to the second claimant the gross sum of £1,472.50, subject to such deductions required by law, in respect of the unlawful deduction from her wage.

(7) The Tribunal declares that the respondent failed to pay the second claimant the sum due to her under regulation 14(2) of the Working Time Regulations 1998, namely a sum in respect of 41.3 hours of accrued but outstanding annual leave entitlement at the gross rate of £15.50 gross per hour.

15 (8) The respondent shall pay to the second claimant the gross sum of £640.14 in respect of unpaid but accrued annual leave.

20

REASONS

1. This hearing was fixed in respect of both claimants following 2 preliminary hearings. The claimants were seeking payment of wages they asserted were due to them in respect of work done for which no payment had been made and in respect of unpaid holidays.

25 2. Following the first preliminary hearing the claimants' agent had set out in writing a response to the order which clearly set out the sums being claimed together with the reasons and calculation. The respondent had been given time to contest the sums or calculations. The respondent did not challenge either the sums or the calculations.

30

3. The respondent did not attend the hearing. Both claimants attended together with their representative. An interpreter provided the Tribunal with assistance.

5 4. The hearing was conducted remotely. Although there was some interference on the line, the parties were able to hear and be heard and communicate effectively. The Tribunal was satisfied that the arrangements for that hearing had been conducted in accordance with the Practice Direction dated 11 June 2020, and ascertained that the appropriate notice as to that hearing was on the cause list. It was satisfied that the hearing had been conducted in a fair and appropriate manner such that a decision could be made on the basis of
10 the evidence before me.

15 5. Both claimants were able to confirm that the sums claimed were accurate and that they had worked on the relevant days in question for the respondent and had accrued the relevant holiday entitlement. The respondent had chosen not to challenge these entitlements, despite suggesting in the ET3 that some of the claims appeared to be disputed. Subsequent to the ET3 the claimants both set out in detailed terms the sums claimed together with calculations. Both claimants sought unpaid pay and accrued holiday pay. The respondent
20 had been given time to consider and reply to such sums and calculations if they were disputed. No such response was received by the respondent in respect of any of the sums claimed by any of the claimants.

25 **Issues**

30 6. The issues to be determined were whether the claimants were entitled to a sum in respect of unpaid wages (unlawful deduction of their wage) and whether they were entitled to a sum in respect of accrued but untaken holiday pay.

Facts

7. From the information before the Tribunal, which is not disputed, it is possible to make the following findings of fact, which are facts relevant to determining of the issues.

8. Both claimants worked for the respondent.

9. The first claimant was to be paid the gross sum of £8.21 per hour worked.

10. The second claimant was to be paid the sum of £15.50 gross per hour worked, (yielding a net sum of £12 an hour).

Sums due – first claimant

11. The first claimant was not paid in respect of his final day of work, namely, 16 December 2019. He worked for 8 hours which were unpaid. The gross sum due in respect of those 8 hours is £65.68, with a net sum due of £60.32.

12. The first claimant had not taken any annual leave during the period of his employment. In terms of the hours worked by the first claimant during his employment he had accrued 108.2 hours of annual leave. The gross sum due in respect of this leave was £888.33.

Sums due – second claimant

13. From 29 July 2019 to 25 August 2019 the second claimant worked 253.5 hours. The sum due was £3,042 net. She was paid £1,900 net. The sum outstanding is therefore £1,142 net.

14. The second claimant had been paid the net hourly rate of £12. The equivalent gross sum to yield that rate would be £15.50. As £1,142 equates to around

95 hours of work, the gross sum due to the claimant is therefore 95 times £15.50 which is £1,472.50.

5 15. The second claimant had not taken any annual leave during the period of her employment. In terms of the hours by the second claimant, she had accrued 41.3 hours of annual leave. The gross sum due in respect of this leave is 41.3 x £15.50 which is £640.14.

The law

10

Unlawful deduction of a wage

15 16. In terms of section 13 of the Employment Rights Act 1996, it is unlawful to pay to an employee, by way of wages, a sum less than that which is properly payable in terms of the contract of employment (an unlawful deduction deduction). The Tribunal can make a declaration as to what the unlawful deduction was and order the respondent to pay to the claimant an amount equivalent to the deduction.

Holiday pay

20 17. The law in this area stems from the Working Time Directive and is found in the Working Time Regulations 1998. Regulation 13 sets out the entitlement to annual leave, namely 4 weeks per year. Regulation 13A sets out the
25 entitlement to the additional leave period of 1.6 weeks a year. Thus all workers are entitled to 5.6 weeks leave per year.

30 18. Regulation 14 deals with the calculation of pay where holidays have accrued and remain untaken as at the end of employment. It contains a formula to calculate what is due as at the end of employment (essentially the proportion of untaken leave that has accrued to the relevant date) and requires the employer to pay to the employee a payment in lieu of the leave that has accrued (where the amount of accrued leave is more than the amount taken).

Decision – first claimant

5 19. The first claimant was not paid in respect of his final day of work, 16 December 2019. He worked for 8 hours which were unpaid. The respondent failed to pay the claimant the sum due for those 8 hours, which is an unlawful deduction of his wages. The gross sum due in respect of those 8 hours is £65.68.

10 20. As the first claimant had not taken any annual leave during the period of his employment and he had accrued 108.2 hours of accrued annual leave, he is entitled to payment in respect of this in terms of regulation 14 of the Working Time Regulations 1998. The gross sum due in respect of this leave is £888.33.

15

Decision - second claimant

20 21. The sum properly payable to the second claimant in respect of the period she worked from 29 July 2019 to 25 August 2019 was £3,042 net. She was in fact paid £1,900 net. The net sum outstanding is £1,142 which is an unlawful deduction of the claimant's wage. The gross sum due to be paid by the respondent to the second claimant in this regard is £1,472.50.

25 22. As the second claimant had not taken any annual leave during the period of her employment and given she had accrued 41.3 hours of accrued annual leave, she is due to be paid the gross sum of £640.14 by the respondent.

No jurisdiction to consider damages for injury to feelings

30 23. At the hearing the claimants indicated that they sought "damages" in respect of the respondent's failure to pay them the sums to compensate them for the

emotional upset. The Tribunal has no jurisdiction or power to award such sums.

Summary

5

24. In summary the respondent shall pay to the first claimant:

- a. the gross sum of £65.68 in respect of the unlawful deduction of the first claimant's wage subject to such deductions as required by law.
- 10 b. the gross sum of £888.33 in respect of unpaid but accrued annual leave, subject to such deductions as required by law.

25. In summary the respondent shall pay to the second claimant

- 15 a. the gross sum of £1,472.50, subject to such deductions required by law, in respect of the unlawful deduction from her wage; and
- b. the gross sum of £640.14 in respect of unpaid but accrued annual leave, subject to such deduction as required by law.

20

Employment Judge: David Hoey
Date of Judgment: 16 October 2020
Entered in register: 21 October 2020
and copied to parties

25