



# THE EMPLOYMENT TRIBUNALS

**BETWEEN**

**Miss Nadine Thompson**

*Claimant*

and

**Belly's Taste of Jamaica Ltd**

*Respondent*

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Region:** London Central

**ON:** 19 August 2021

**Before:** Employment Judge Paul Stewart

**MEMBERS:** sitting alone

### ***Appearances:***

**For Claimant:** In person

**For Respondent:** Mr Vincent Onuegbu, Solicitor

## JUDGMENT

The claim for money owed to the Claimant at the conclusion of her contract of employment succeeds and the Respondent is ordered to pay to the Claimant the sum of £1,926.06.

## REASONS

1. The Respondent is a limited company run by two brothers who are directors, Messrs Norman and Anthony Reid. The nature of the Respondent's business is stated in the Companies House website as "Take-away food shops and mobile food stands".
2. The Claimant began part-time work, some 16 hours per week, in the kitchen of the Respondent's take-away food shop in Hoxton on 1 January 2017. She ceased working there on 28 February 2018 when, as she puts it in her ET1, she was sacked for being late. She found a new job in April 2019 but, later in 2019, after the Respondent had gone out of its way to recruit her, she started to work for the Respondent again.
3. On or about 28 February 2020, she told one of the Directors that she would not be coming back to work because she assessed herself to be particularly vulnerable in the pandemic as she suffered from diabetes and was insulin

dependent. She received on 2 March 2020 her pay for February - £566.49 - but, thereafter, she both ceased to attend the Respondent's premises to work and to receive any money from the Respondent save that, on 18 August 2020 and then on 1 September 2020, she received two sums, respectively £453.19 and £517.23.

4. The payment of these two sums is explained by the Claimant in this manner. During the period after she had ceased to attend the Respondent's kitchen to work, she applied for, and received, Universal Credit. However, in April she realised that the amount she received as Universal Credit was reduced on the basis that she was in receipt of wages. She enquired of the Respondent as to whether they had reported to HM Revenue and Customs [HMRC] that she was being paid but was assured this was not the case.
5. However, the reduction in the Universal Credit continued so the Claimant called HMRC and was told that her employer was reporting that it was making payments to her. She was advised that she should ask for payslips. She did so and, as a result, in or about July 2020, she received payslips that included three dated 30 April, 30 May and 30 June 2021. In the payslips, the payments each for the sum of £453.19 were described as "Furloughed Pay". £453.19 is 80% of £566.49, that being the sum the Claimant had received into her bank account on 2 March and, previously, on 2 December 2019, 30 December 2019 and 31 January 2020.
6. The Claimant was paid in arrears at the end of each month, sometimes at the start of the next month, so the amounts of £566.49 received on 2 December 2019, 30 December 2019, 31 January 2020 and 2 March 2020 related to work done in the months of November and December 2019 and January and February 2020.
7. In a letter she wrote on 14 June 2021 that served as the first of two witness statements from the Claimant before this Tribunal, the Claimant set out her reaction to the information on the payslips:

When I asked for my payslips, they sent me 3 payslips when I looked at them all 3 has furlough and that's when I realise, they furlough me, even when I saw it, there were still denning it saying what I'm talking about and that they didn't get any furlough.

I then send them a clip from google that was talking about furlough scam, and told them I am going to report them, that's when they decided to send me a total of £970.42

8. Mr Norman Reid signed a witness statement on a day in July 2021. He said the following:
  2. The Claimant was employed by the respondent as a kitchen/ sales assistant at the company's premises on 1st November 2019 until she left her job / resigned on 31st August 2020.
  3. The company pay the claimant all wages during her period of employment follow skiing payment. The payslips and bank statement are contained in the bundle including the copies of the P45 issued to the claimant at the end of her employment with the company.
  4. The company's finances are handled by the Respondent's Accountant, Charles Luff and will provide details of all the furlough wages claim.

5. At the height of the pandemic the Claimant demanded that all wages are paid to her in cash. The first time Miss Thompson asked for the wages to be paid out cash, she called my brother Anthony. Because at that time I had been taken ill with COVID and was at home (end of March, beginning of April). She told my brother she will send John, her Partner who she lived with at that time to pick up the money in a sealed envelope.
  6. My brother confirmed with me, and we did not hesitate to give the money to John, as we knew him very well too. Miss Thompson also sent a text message to my brother before she called. The content is as follows "Hi, Anthony good evening. can you pls ask Norman pls not to pay through MRC as they didn't pay me this month plus my pay will be less this Month, thank you." This text is also in the hearing bundle.
  7. I advised my brother to let Miss Thompson know that we can pay cash, but this would not change anything in her payslip. Therefore, the next 3 payments after that (April, May, and June), she received her wages from me in cash.
  8. Following this she had a conversation with me, telling me she intended to go self-employed so she could apply for a bounce back loan. This sounded suspicious to me, so the following two payments (July and August) I paid her through bank transfer.
  9. I believe that because I stopped the cash payment, she then called my brother telling him she is not coming back, so I contacted the company's accountant to issue her a P 45, which was done in August 2020.
  10. I understand the Claimant is claiming £3,655.33 for payment arising from wages and furlough. The claim is misconceived because all wages entitlement were paid in full.
9. The arrival of the statement of Mr Reid prompted the Claimant into providing another statement which she signed and dated on 16 August 2021. In the statement, the Claimant denied that she had asked for, and received, payments in cash from the Respondent. She re-stated her belief that the reason she received the payments by direct debit on 18 August and 1 September 2020 was because, on learning that the Respondent, during a period when she had received no money by way of pay, had been asserting she had been receiving 80% of her normal wages as furlough pay, she had threatened to report the Respondent to the Furlough Fraud Department of HMRC. Her threat was also the reason, she asserted, for her receiving a P45 which stated her employment had finished on 31 August 2020 and that she had received a total of £2,719.14 in the current tax year.
  10. In the course of her evidence, the Claimant asserted that, at a Preliminary Hearing conducted before Employment Judge F Spencer on 1 July 2021, she had challenged Mr Norman Reid to prove that she had attended the Respondent's shop in order to collect her wages in cash. At the hearing, she had claimed he could so prove it (if, indeed, his allegation of her collecting wages in cash were true) by producing footage from the closed-circuit video camera that was positioned within the shop and thus was in a position to record the entry and exit of anyone through the front door of the shop. Mr Norman Reid, who was the sole witness for the Respondent, proved to be unable to rise to this challenge. He explained this inability as being due to the fact that there was a shooting outside his shop. As the Respondent's camera faced the doorway and events beyond the doorway might have been recorded, the police borrowed the recording. He did not specify the medium on which the camera made its recording but said that, when the police returned what they had borrowed, the recording was gone – the police had wiped the medium of all that had been recorded on it, hence he was unable to present the evidence that he

asserted would have been recorded by the camera – that of the Claimant attending the shop and receiving payment of furloughed wages in cash.

11. The Claimant also used her statement of 16 August 2021 to correct certain errors which had appeared in her letter of 14 June 2021. Two of these amendments related to the dates of her employment. She accepted that her assertion that her employment had not started, as she had said in her ET1, on 1 January 2017 (the date when first she began working for the Respondent) or even on 21 August 2019 (the date upon which in her ET1 she said was the start date of her second spell of employment with the Respondent) but on 1 November 2019 which was the date upon which the Respondent asserted in its ET3 her second spell had started.
12. She also accepted that she was wrong in asserting that her employment had ended on 12 March 2020. Her explanation for getting the termination of this second spell of employment wrong was that she did not understand the question. She asserted she had not worked during March, nor had she received any wages (although it must be said she had received 2 March 2020 by direct debit the sum of £566.49 in respect of the work performed in February 2020).
13. The Claimant was asked questions in cross-examination about a WhatsApp message which was set out on page 85 of the Trial Bundle. The message was sent by Mr Norman Reid to his solicitor on 1 July 2021 and purported to be the text of a message which Mr Reid in his statement said had been sent to his brother in or about the beginning of April 2020. The text reads as follows:

Hi, Anthony good evening. can you pls ask Norman pls not to pay through MRC as they didn't pay me this month plus my pay will be less this Month, thank you.
14. The Claimant denied having sent such a message and, given that Mr Norman Reid was setting out for the benefit of his solicitor words which his brother had reported receiving as a WhatsApp message from the Claimant, there was nothing in or about the message that obviously tied it to the Claimant. Mr Anthony Reid, the brother who allegedly had received the message, was not called as a witness.
15. The Claimant accepted that she had sent to, and received from Mr Anthony Reid, certain WhatsApp messages that were set out on 3 pages that were added to the bundle at pages 114 to 116. The exchange of messages started on 12 August 2020 with the Claimant writing:

OK! Know I understand it all! So, you guys furlough me and didn't bother to tell me, and not only did you guys didn't bother to tell me, but you take the money for yourselves, wow! Didn't even give me a penny from it, shame on you guys. I don't know what will happen now.
16. Mr Anthony Reid initially said he did not know what she was talking about, that he had not taken any money from her and then he is reported as having said:

You was working, and your payslip can show so I don't know how we were being fraudulent.

Some four and a half hours later, Mr Anthony Reid asks:

What furloughs are you talking about I did not receive any.

That leads to messages from the Claimant that rehearse her contention that she had not received the money that the payslips asserted her to have been paid as furlough pay.

## Discussion

17. I begin this discussion by observing there to be several anomalies in the evidence that are unexplained. I found it helpful to set out in tabular the details to be derived from the trial bundle of documents. The first two columns set out the date and then the amount shown in the payslips produced by the Respondent. The third and fourth columns record the amount the Claimant's bank account shows was received from the Respondent and the date of such payment. The fifth and sixth columns show the amount the Respondent's bank account shows as having been paid to the Claimant and the date thereof.

Payslip date	Payslip sum	C's bank A/c	date	R's Bank A/C	date
30-Nov-19	£566.49	£566.49	02-Dec-19	£566.49	02-Dec-19
30-Dec-19	£566.49	£566.49	30-Dec-19		
30-Jan-20	£566.49	£566.49	31-Jan-20	£566.49	31-Jan-20
28-Feb-20	£566.49	£566.49	02-Mar-20	£566.49	02-Mar-20
30-Mar-20	£566.49				
30-Apr-20	£453.19				
30-May-20	£453.19				
30-Jun-20	£453.19				
30-Jul-20	£453.19	£453.19	18-Aug-20	£453.19	18-Aug-20
30-Aug-20	£453.19	£517.23	01-Sep-20	£517.23	01-Sep-20

18. The first anomaly is that the bundle does not contain the page of the Respondent's bank account statement that would show the payment made on or about 30 December 2019. The bundle at page 104 shows the first page of the statement for the period 30 Nov – 30 Dec 2019. All but the pertinent entry for 2 December on that page are redacted and, at the bottom of the redactions (the last of which relate to activity in the account on 3 December, there appears the word "Continued". However, page 105 is the first page of the Respondent's statement for 31 Jan – 28 Feb 2020.
19. The second anomaly is that no-one explained why the payslip for 30 August 2020 shows a payment of £453.19 but the sum arriving in the Claimant's account and leaving the Respondent's account is shown to be £517.23.
20. The third anomaly is that the P45, dated 31 August 2020, asserts the "Total pay to date" to be £2,719.14 which is a figure obtained if the pay to date in the tax year had been 6 payments of £453.19. However, the final payslip asserts the Total Gross Pay to be £2,265.95 – a sum that is consistent with 5 payments of £453.19. The additional £64.04 over and above £453.19 that was paid on 1 September 2020 which is not recorded on the 30 August 2020 payslip fails to make an impression either on the "Total Gross Pay" on the payslip or on the "Total pay to date" in the P45. Had the Claimant received what was on the payslips in the tax year with the addition of that extra £64.04, the sum on the

August payslip for the "Total Gross Pay" and on the "Total pay to date" in the P45 should have been £2,329.99.

21. I put these anomalies to one side when considering, as Mr Onuegbu acknowledged in his submissions to me, the two contradictory versions of events contained in the evidence before me. It falls to me to decide who is telling the truth because both versions cannot be right. Mr Onuegbu submitted that the Claimant was not a witness of truth. She had claimed £100,000 without any supporting evidence. She has made unjustified allegations of fraudulent activity on the part of Respondent. She appeared, he said, not to know what furlough meant. If she wanted to claim the months of April to July because they were the months when she denied she was paid cash, she should not include – as she had done - the months of August and September.
22. I am not persuaded by Mr Onuegbu's submissions. The Claimant did claim £100,000 without offering any supporting evidence. She knew she had no evidential basis for so claiming but she made the statement to indicate how badly she had been affected by the hurt that was caused to her on learning that the Respondent was claiming her furloughed pay but not paying her. The hurt she experienced was accentuated by the fact that she was finding the Covid pandemic financially difficult as a single parent without work. Her family had been affected by the pandemic. In effect, the claim of £100,000 was hyperbole, designed to indicate the enormity of the hurt. It was not a reasoned claim for damages.
23. The Claimant is not a lawyer. She has claimed both the wages that she lost and also the reduction that was made in her Universal Credit as a result of the belief on the part of those calculating her entitlement that she was in receipt of wages. A lawyer knows that the damages to which she is entitled is that which puts her in the position she would have been in had the contract been properly performed. Her lack of legal knowledge does not indicate her evidence is not to be believed.
24. That her claim for the furloughed wages encompasses the months of August and September when it is clear on the bank statements of the accounts of both the Respondent and of the Claimant that she received wages on 18 August and 1 September does not mean, in my view, that she was attempting to hoodwink the Tribunal. It simply meant that she found the calculation of what she was properly owed to be challenging.
25. Ultimately, I have to decide who I believe. I could perhaps have been assisted in that task by hearing the evidence of Mr Anthony Reid. However, the Respondent has chosen not to call him. I am influenced by the consistency with which the Claimant has made her accusations. Once she knew that the Respondent was representing to the Government that she was furloughed, she has not shied away from alleging repeatedly that the Respondent has been involved in a scam.
26. I also influenced by the fact that story as told by Mr Norman Reid does not make sense. If the Claimant had asked for her wages to be paid in cash, the first collection of which was made by her partner John and the following three by her, why should she have reacted in the outraged fashion she did in the first

of her WhatsApp messages of 12 August? It would have needed quite an astute and devious mind to have decided that she could make additional money from being furloughed by asserting she had been wronged and to maintain that false account through to the hearing before me. I do not think the Claimant has such a mind. On the balance of probabilities, I believe her account. I think the brothers Reid did not expect the Claimant to realise that they were asserting her to be furloughed. If they did, they did not foresee the lengths to which she would go to right the injustice she identified.

27. Two other factors which persuade me to accept the Claimant's account as being true are, first, that the Respondent did not in the Grounds of Resistance assert the method by which the payments claimed had been paid to the Claimant. The fact that the payments were made in cash was advanced for the first time in the statement of Mr Norman Reid made in July 2021 and in response to the letter of the Claimant dated 24 June 2021.
28. The second factor that weighs with me in deciding who to believe is the explanation for the failure on the part of Mr Norman Reid to rise to the challenge thrown out by the Claimant at the Preliminary Hearing of this matter on 1 July 2021. I am prepared to accept that there might have been a shooting outside the shop in Hoxton at some time and I am prepared to accept that the police might have taken possession of the tape, disc or other medium on which recordings of events through the lens of the shop's closed-circuit camera had been stored. I am also prepared to accept that the tape, disc or other medium was wiped of its recordings when returned by the police. However, the hearing on 1 July 2021 must have been over a year after the shooting had occurred and no evidence was presented to me that Mr Reid, at the hearing on 1 July 2021, had responded to the challenge of the Claimant by mentioning before this hearing either that the recording was no longer in the hands of the Respondent or that it had been destroyed by police action. I am not persuaded that the shooting or the police's removal and subsequent wiping of the medium was the explanation for the failure on the part of Mr Reid to rise to the challenge of the Claimant.

### **Jurisdiction**

29. On 9 August 2021, the Respondent through its solicitor raised a point on jurisdiction that had not featured in its Grounds of Resistance. Mr Oneugbu focused on the statement at box 5 of the ET1 wherein the Claimant asserted that her employment ended on 12 March 2020. On that basis, the ET1 - presented to the Employment Tribunal on 11 November 2020 with only 14 days taken up with the Early Conciliation process – would be well out of time.
30. The Claimant's evidence regarding the filling in of box 5 was that she did not understand what was being asked of her. I find on the evidence that the Respondent continued to regard the Claimant as employed right up to the end of August 2020, a month for which they paid her on 1 September 2020. The Respondent issued a P45 on 17 September 2020 that asserted the leaving date of the Claimant to be 31 August 2020. In the circumstances, I find this assertion to be correct. The employment did continue up to 31 August 2020 and the ET1 that the Claimant presented to the Employment Tribunal on 11

November 2020 was within the three-month time limit from the end of the employment.

### **Remedy**

31. The payslips produced by the Respondent indicate that the Claimant should have been paid £566.49 on 30 March 2020 and £ 453.19 on each of the following dates 30 April, 30 May and 30 June 2020. However, these sums were not paid by direct debit into the Claimant's bank account as shown by the bank statements of both the Claimant and the Respondent. Mr Norman Reid has asserted these sums were paid in cash to the Claimant or her representative. That evidence I reject. I conclude that the Claimant did not receive four cash payments for her pay in respect of the sums stated in those four payslips. Accordingly, I award her the sum of £1,926.06, that being the total of the sums specified in the four payslips.

**EMPLOYMENT JUDGE PAUL STEWART**

**On: 25 August 2021**

**DECISION SENT TO THE PARTIES ON**

**.25/08/2021.**

**AND ENTERED IN THE REGISTER**

**28/08/2021.**

**FOR SECRETARY OF THE TRIBUNAL**