

Case No. 1302992/2018



EMPLOYMENT TRIBUNALS

BETWEEN

Mr A Raja

AND Mr M Arman t/a Shahzalal Takeaway

Claimant

Respondent

HELD AT Birmingham

ON

26 February 2019

EMPLOYMENT JUDGE Self

Representation

For the Claimant: In Person

For the First Respondent: No Response Entered and No Appearance

AMENDED JUDGMENT AFTER RECONSIDERATION

- 1. The Claim for unfair dismissal is dismissed. The Claimant does not have two years' service and none of the statutory exemptions apply.**
- 2. The Claimant was wrongfully dismissed and is awarded his notice pay in the net sum of £289.42.**
- 3. It is declared that the Claimant was subject to unlawful deductions from his wages and is awarded the net sum of £7,064.34.**
- 4. It is declared that the Respondent was in breach of contract by not paying contractual delivery payments and the Claimant is awarded the net sum of £1,890.**
- 5. The Claimant was not paid his holiday entitlement pursuant to the Working Time Regulations 1998 and is awarded the net sum of £618.45.**
- 6. The Claimant was not provided with a statement of his employment particulars and, pursuant to section 38 of the Employment Act 2002, is awarded £1,157.68.**
- 7. For the avoidance of doubt the total sum payable to the Claimant by the Respondent on account of this Judgment is **£11,019.89**.**

WRITTEN REASONS

1. By a claim Form lodged on 6 June 2018 the Claimant brought claims against his former employer who is the Respondent to his Claim. The specific claims were for unfair dismissal (including automatically unfair dismissal for asserting a statutory right), notice pay, holiday pay, arrears of pay and a failure to provide written particulars of employment.
2. The Respondent was due to file its Response by 22 August 2018 but failed to do so and a letter was sent from the Tribunal notifying the Respondent that thereafter a Judgment could be issued and informing the Respondent of the limitations on the Respondent in participating at any future hearing.
3. There was a postponement of a hearing date when the Claimant was unfit to attend on 26 November 2018 and the hearing was postponed until it was heard by me on 26 February 2019.
4. There has been no correspondence from the Respondent at all. I issued a judgment which was sent to the Claimant the day after the hearing and the Claimant asked for written reasons on 8 March and requested a reconsideration of the Judgment on 13 March 2019. The reasons for the reconsideration request was that the amounts awarded were not the same as in his schedule of loss; he has not been given any award to cover lost expenses and that the figure awarded for not having an employment contract was awarded as a net sum.
5. At the hearing the Claimant provided a written witness which he swore was true and also gave oral evidence in response to some queries by me.
6. I have considered the Claimant's Claim Form, his statement and his oral representations. I am satisfied that the employment started on 1 August 2017 and ended on 7 February 2018. The Claimant was a take-away delivery driver for the Respondent. The Claimant explained that he worked at the premises until the Respondent ceased trading. The Claimant explained that he just turned up one day and the take-away restaurant was shut without warning. He waited to see if it would re-open, but it did not and he told me that he did not know why it had shut down. He has not been able to contact or locate the owner since.
7. On the Claimant's own evidence his employment terminated because the place where he worked ceased to trade. In his Claim Form the Claimant asserted that the reason why he was dismissed was because he asserted a statutory right, but he did not follow through on that suggestion at this hearing. The Claimant did not have two years' service when his employment ended and as none of the statutory exemptions apply in this case and the reason for dismissal was that the business ceased to trade the unfair dismissal claim must be dismissed as I have no jurisdiction to deal with it.

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8. The Claimant would have been entitled to a week's statutory notice and the Claimant was awarded that. In his evidence bundle the Claimant asserted that he was paid £7.50 per hour for 44 hours a week. His position was that he should have been paid £330 a week gross and £289.42 a week net. Accordingly, I awarded the Claimant the net sum.
9. On the Claimant's case he had been employed for 27 weeks and accordingly his net pay should have been £7814.34. The Claimant gave evidence that he had only been paid £750 and I accepted that evidence which meant that the unlawful deduction of wages amounted to £7,064.34 on a net basis.
10. The Claimant would also have been entitled to holiday pay which he calculated as being 15 days and I made an award of £618.45 net at his prevailing daily rate on the information that was given to me.
11. I listened to the Claimant's evidence in respect of the expenses that he was paid on top of his salary the sums he was asserting were substantially higher than his salary. In simple terms I accepted that the basic sum of £2 per delivery was agreed between them but had no clear and cogent evidence as to the amount of deliveries undertaken by the Claimant over his period with the Respondent. I note that in a full week between 16 September and 22 September which was the only full week there are shown to be 15 deliveries. These are Just Eat deliveries and Hungry House Deliveries and not those direct from the store. Doing the best, I can and utilising the evidence I have I find that the Claimant did 40 deliveries per week (15 via the named Apps and 25 direct) which amounts to £80 per week gross or (as an estimate) £70 per week net. The Claimant worked for 27 weeks and therefore a net sum of £1,890 is due and owing.
12. The Claimant sought a reconsideration of the Judgment as set out paragraph 4 above. I deal with each in turn:
 - a) I vary my previous Judgment in relation to the travel expenses because they were not included on the last Judgement, but the sum awarded has been corrected following reconsideration above.
 - b)** I confirm my previous Judgment in relation to the claim under section 38 of the Employment Act 2002 and retain the award of a sum which reflects 4 weeks' net pay as opposed to gross pay.

Employment Judge Self

Signed on 26/02/2019