

Case No: 3307371/2020  
3307372/2020  
3307391/2020  
3307392/2020



# EMPLOYMENT TRIBUNALS

**Claimant:** (1) Mrs C Haywood  
(2) Mr S Haywood

**Respondent:** Mr K Croxon (Bucks Property Care)

**Heard at:** Watford (CVP)

**On:** 18 August 2021

**Before:** Employment Judge A.M.S. Green

## Representation

Claimant: In person

Respondent: In person

# JUDGMENT UNDER RULE 21

The respondent, having indicated that they do not intend to defend the claims, the claims for ordinary unfair dismissal, wrongful dismissal (breach of contract), holiday pay and unlawful deduction from wages are upheld.

# JUDGMENT ON REMEDY

The respondent will pay the first claimant:

1. Unfair dismissal (including wrongful dismissal – notice pay): £7,074.33
2. Holiday pay: £188.10
3. Arrears of pay: £18
4. Unlawful deduction of wages: £396

The respondent will pay the second claimant:

1. Unfair dismissal (including wrongful dismissal – notice pay): £9,059.67
2. Holiday pay £182.24
3. Arrears of pay: £16.42
4. Unlawful deduction of wages: £523.20

# REASONS

## Introduction

1. The respondent indicated on the ET3s that he did not intend to defend the claims. Consequently, I have entered a Rule 21 default judgment in respect of liability in favour of the claimants.
2. I conducted a remedy hearing.
3. The respondent was present at the hearing. The extent to which he could participate in the hearing in the absence of defending the claims was dependent upon the Tribunal's discretion. Furthermore, in the ET3s the respondent had not contested the dates of the claimant's employment or their levels of remuneration. However, I allowed him to speak to the Tribunal regarding its proposal to make an award for failing to provide the claimant with a written statement of particulars of employment.
4. I heard oral evidence from the claimants.

## The First Claimant

5. The first claimant told me that her normal take home pay was £264 per month and that her gross monthly payment was £360. She worked 10 hours per week over 5 days (i.e. 2 hours per day). This equates to a gross hourly rate of pay of £9. I have calculated compensation for the first claimant as follows:

## Unfair dismissal

### Basic award

6. Based on gross weekly pay of £90 and 13 (capped to 12) complete years of service from 8 July 2006 to 15 May 2020 and the age of the first claimant on the effective date of termination of employment (62)) £1,755

### Compensatory Award

#### *Immediate loss of earnings to hearing*

7. The first claimant has been actively looking for work and has been unable to find work to make up her lost hours. I am satisfied she has taken reasonable steps to mitigate her loss.
8. The first claimant is also claiming wrongful dismissal. The number of

weeks for immediate loss of earnings to the date of the hearing is calculated from the date on which the wrongful dismissal damages period ends through to the date of the hearing. The first claimant was entitled to the statutory minimum period of 12 weeks' notice (includes her continuous employment transferred under TUPE). The notice period ran from 15 May 2020 to 7 August. The immediate loss of earnings runs for 1 year 11 days. The value of the notice period is £792 (264 x 3). £3,168 is one year net pay + £95.47 (11 days) = £3,263.47.

#### *Future loss of earnings*

9. The future loss figure is based on the number of weeks for which it is calculated the particular loss will continue, and it may be that pay rises in the future will reduce the loss suffered in each of those years. The tribunal should take into account the personal characteristics of the employee such as age and health.
10. The first claimant has future loss of earnings. She has not secured another job. This has been exacerbated by the pandemic as many offices are not open and their workers are working from home. She also does not drive. However, the lockdown restrictions were lifted on 19 July 2020 and offices are re-opening. I consider it just and equitable to limit future loss of earnings to 2 months. This gives £528 (264 x 2).
11. Immediate and future losses = £3,791.47.

#### *Adjustments*

12. There is no evidence that the respondent followed the ACAS code on disciplinary and grievance procedures. The award of £3,791.47 is uplifted by 25% to £4,739.33. In her ET 1 the first claimant suggests that the purported reason for her dismissal was poor performance (i.e. conduct) which would have engaged the ACAS code.
13. The first claimant told me that respondent did not issue her with written particulars of employment as required under Employment Rights Act 1996, section 1 ("ERA").
14. There is an additional right to a remedy from a tribunal where a claim has been brought within the list of jurisdictions in Sch 5 to Employment Act 2002 ("EA"). The first claimant's claims are listed. Where under such a claim the tribunal finds for the employee, whether or not it makes an award in respect of that claim, and where when the proceedings were brought the employer was in breach of the duty to give written particulars, the tribunal will make an award of 2 weeks' pay unless it would be unjust and inequitable to do so, and may if it considers it just and equitable in all the circumstances make an award of 4 weeks' pay (see ss38(1) to (5) EA 2002). For such an award to be made, the employer must be in breach of the obligation at the time the proceedings have begun.

15. I consider it just and equitable to make an award of 2 weeks' gross pay of £180 (90 x 2).
16. Loss of statutory rights = £400.
17. There was no evidence of contributory conduct.
18. Total compensatory award £5,319.33

#### *Recoupment*

19. There is no recoupment element as the first claimant has not been in receipt of welfare benefits since termination of her employment.

#### **Holiday pay**

20. The Working Time Regulations 1998 ("WTR") provide workers with a minimum entitlement to paid leave and to receive payment in lieu of our news leave on the termination of their employment.
21. The respondent's holiday pay year is the calendar year. The first claimant did not take any holiday in the 2020 calendar year.
22. The first claimant worked 10 hours per 5-day week and left her employment on 15 May 2020. Her statutory entitlement to paid holidays is 20.9 hours of holiday. Her hourly remuneration is £9. She is entitled to £188.10 for accrued holiday pay on termination of employment.

#### **Arrears of pay**

23. The first claimant was not paid for 23 March 2020. This equates to £18.

#### **Unlawful deduction from wages**

24. In her ET 1, the first claimant states that she was not paid for April and May 2020. This equates to 1.5 months (her employment ended on 15 May 2020). This equates to £396.

#### **The Second Claimant**

25. The second claimant told me he was paid £324 per month gross based on working 5 days per week, 2 hours per day. This equates to £8.10 per hour. As at the effective date of termination of his employment, he would have been entitled to a National Living Wage of £8.72. This was increased from £8.21 on 1 April 2020. My calculations are based on the premise that he should have been paid the National Living Wage. I have also taken account of the fact that the second claimant did not earn enough to pay income tax. I have used gross figures.
26. I have calculated compensation for the second claimant as follows:

## Unfair dismissal

### Basic award

27. Based on gross weekly pay of £87.20 and 13 (capped to 12) complete years of service from 8 July 2006 to 15 May 2020 and the age of the first claimant on the effective date of termination of employment (61)) £1,700.40

### Compensatory Award

#### *Immediate loss of earnings to hearing*

28. The second claimant has been actively looking for work and has been unable to find work to make up his lost hours. I am satisfied he has taken reasonable steps to mitigate his loss.

29. The second claimant is also claiming wrongful dismissal. The number of weeks for immediate loss of earnings to the date of the hearing is calculated from the date on which the wrongful dismissal damages period ends through to the date of the hearing. The second claimant was entitled to the statutory minimum period of 12 weeks' notice (includes his continuous employment transferred under TUPE). The notice period ran from 15 May 2020 to 7 August. The immediate loss of earnings runs for 1 year 11 days. The second claimant did not earn enough money to be taxed. The value of the notice period is £1,046.40 (348.80 x 3). £4,185.60 is one-year's gross pay + £126.14 (11 days) = £4,311.74.

#### *Future loss of earnings*

30. The future loss figure is based on the number of weeks for which it is calculated the particular loss will continue, and it may be that pay rises in the future will reduce the loss suffered in each of those years. The tribunal should take into account the personal characteristics of the employee such as age and health.

31. The second claimant has future loss of earnings. He has not secured another job. This has been exacerbated by the pandemic as many offices are not open and their workers are working from home. However, the lockdown restrictions were lifted on 19 July 2020 and offices are re-opening. I consider it just and equitable to limit future loss of earnings to 2 months. This gives £697.60 (348.80 x 2).

32. Immediate and future losses = £5,009.34.

### *Adjustments*

33. There is no evidence that the respondent followed the ACAS code on

disciplinary and grievance procedures. The award of £5,009.34 is uplifted by 25% to £6,261.67. In his ET 1 the second claimant suggests that the purported reason for his dismissal was poor performance (i.e. conduct) which would have engaged the ACAS code.

34. The second claimant told me that respondent did not issue him with written particulars of employment as required under Employment Rights Act 1996, section 1 (“ERA”).
35. There is an additional right to a remedy from a tribunal where a claim has been brought within the list of jurisdictions in Sch 5 to Employment Act 2002 (“EA”). The first claimant’s claims are listed. Where under such a claim the tribunal finds for the employee, whether or not it makes an award in respect of that claim, and where when the proceedings were brought the employer was in breach of the duty to give written particulars, the tribunal will make an award of 2 weeks’ pay unless it would be unjust and inequitable to do so, and may if it considers it just and equitable in all the circumstances make an award of 4 weeks’ pay (see ss38(1) to (5) EA 2002). For such an award to be made, the employer must be in breach of the obligation at the time the proceedings have begun.
36. I consider it just and equitable to make an award of 2 weeks’ gross pay of £697.60 (348.80 x 2).
37. Loss of statutory rights = £400.
38. There was no evidence of contributory conduct.
39. Total compensatory award £7,359.27

#### *Recoupment*

40. There is no recoupment element as the second claimant has not been in receipt of welfare benefits since termination of his employment.

#### **Holiday pay**

41. The Working Time Regulations 1998 (“WTR”) provide workers with a minimum entitlement to paid leave and to receive payment in lieu of our news leave on the termination of their employment.
42. The respondent’s holiday pay year is the calendar year. The second claimant did not take any holiday in the 2020 calendar year.
43. The second claimant worked 10 hours per 5-day week and left his employment on 15 May 2020. His statutory entitlement to paid holidays is 20.9 hours of holiday. He is entitled to £182.24 (20.9 x 8.72) for accrued holiday pay on termination of employment.

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**Arrears of pay**

44. The Second claimant was not paid for 23 March 2020. This equates to £16.42 (8.21 x 2).

**Unlawful deduction from wages**

45. In his ET 1, the second claimant states that he was not paid for April and May 2020. This equates to 1.5 months (his employment ended on 15 May 2020). This equates to £523.20 (348.80 x 1.5).

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Employment Judge **A.M.S. Green**

Date 18 August 2021

JUDGMENT SENT TO THE PARTIES ON

13/9/2021

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FOR THE TRIBUNAL OFFICE