



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Ms S Bailey

v

Premier MiniBus & Coach Hire  
Limited

**Heard at:** Watford

**On:** 27 May, 4 June and 3 September 2021

**Before:** Employment Judge Hyams

**Representation:**

**For the claimant:** In person

**For the respondent:** On 27 May and 4 June 2021, Ms K Hoskins,  
representative, and on 3 September 2021, Ms G Rhoden,  
representative

## JUDGMENT

1. The claimant's claim for a sum due under a contract succeeds. The claimant is owed by the respondent in total £1,081.22, from which the respondent must deduct and pay to Her Majesty's Revenue and Customs such income tax and national insurance contributions as are required by the Income Tax (Pay as You Earn) Regulations 2003, SI 2003/2682.
2. The claimant's claim for unpaid wages is dismissed.

## REASONS

**The claims**

- 1 The claims made in these proceedings were for (1) unpaid wages and (2) the amount of pay that the claimant would have received from the respondent if the respondent had (or could have) received it from Her Majesty's Government via the Department for Work and Pensions ("DWP") under the "furlough" payment scheme introduced in 2020. That scheme was introduced in March 2020 when

a national closure of many activities imposed in response to the Covid-19 epidemic occurred. That closure was operative from 23 March 2020 onwards and was formalised by the end of that week. The closure has been referred to as a “lockdown”. There have been subsequent such closures, so the one imposed in March 2020 can be called the first Covid-19 lockdown, and I refer to it below as “the first lockdown”. I refer below to payments under the furlough scheme introduced in March 2020 as “furlough pay”. The claim was by 3 September 2021 being advanced, after a suggestion made by me but without objection on the part of the respondent, as a claim (under section 3 of the Employment Tribunals Act 1996 and article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, SI 1994/1623) for sums due under a contract connected with the claimant’s employment.

**The work which the claimant did for the respondent and the capacities in which she did it**

- 2 The claimant first worked for the respondent in November 2019 and she ceased to work for the respondent on 29 August 2020. The claimant’s work for the respondent was as an assistant on passenger transport provided by the respondent for persons with special educational needs.
- 3 There was a complication in that the claimant had, before the first lockdown started, asked to be permitted to work for the respondent on a self-employed basis. She had done so by signing a form to become a self-employed person working through a company called Keydriver. She had signed that form on 17 March 2020. However, it was not acted on by Keydriver until 30 March 2020. On one level that agreement was immaterial, because the respondent and the DWP were content to treat the claimant as not having become self-employed at least for the purpose of her receiving furlough pay. Nevertheless, the fact that the claimant had entered into an agreement with Keydriver was material, because she was on several occasions paid by Keydriver for work that she did ultimately for the respondent. I refer to one relevant occasion in paragraph 6 below.

**The claim’s procedural history and the conclusions to which I came on 3 September 2021**

- 4 The claim was originally listed to be determined at a hearing on 15 December 2020 for which one hour was allocated. That hearing was originally intended to be in person but it was then, at short notice, converted to a hearing by video (CVP) only. The hearing was then allocated to Employment Judge (“EJ”) Price. The respondent attended via CVP but the claimant did not. EJ Price was informed after the hearing had ended that the claimant had attended the hearing centre at Watford in person. An attempt was made to recommence the hearing but the claimant could not be contacted via email, so EJ Price made a series of case management orders and listed the hearing to take place at Watford Employment Tribunal on 27 May 2021. On 21 May 2021, the parties were informed that the hearing would take place via CVP.

- 5 I conducted that relisted hearing, on 27 May 2021, via CVP. I heard oral evidence from the claimant given under affirmation and some informal oral evidence from Ms Rhoden on behalf of the respondent. The hearing had not concluded by 12 noon, but the parties were unable to remain in the hearing after then. In the circumstances I was willing to adjourn the hearing, and the claimant accepted that that had to happen as it was the only fair and just way forward. I therefore adjourned the hearing to the soonest convenient date, which was 4 June 2021, i.e. just 8 days later, for an hour, starting at 9.00am (since I had a hearing starting at 10:00 on that day) on the basis that the parties agreed that they would co-operate in the period before the intended resumption of the hearing, including by the respondent ascertaining its position and sending a statement of that position to the claimant as soon as possible. The respondent then ascertained its position on the claim as clarified at the hearing of 27 May 2021 and set it out in a spreadsheet which it sent to the claimant on 2 June 2021 and the tribunal on 3 June 2021. The respondent's position was that the claimant was entitled, by way of unpaid furlough pay for the period up to and including 29 June 2020, to the sum of £249.18, and no more than that. The claimant said that she was owed more than that. As I understand her position in that regard, she believed that she was owed more because she had calculated her entitlement to furlough pay by reference to her full pay before April 2020.
- 6 Unfortunately, the claimant had not read the respondent's spreadsheet setting out the respondent's position before the resumption of the hearing on 4 June 2021. The claimant was, however, during the hearing on 4 June 2021, able to see the spreadsheet and to check her bank account to see what payments were received by her from Keydriver in respect of her work done for the respondent nominally as a self-employed person. The claimant told me during the hearing of 4 June 2021 that she had indeed received one of the payments to which the respondent referred as having been paid by Keydriver but of which she (the claimant) had not by then taken account. The payment which the claimant was able to see had been paid to her by Keydriver was stated in the respondent's spreadsheet to be £718.37. That payment (in fact it was a penny more: £718.38) was made (as shown both on the spreadsheet and on the claimant's bank account statement put before me on 3 September 2021, which also showed the payment to be £718.38) on 15 April 2020.
- 7 The claimant was nevertheless not able to go through the information (or, perhaps it would be better to say, the assertions) in the respondent's spreadsheet during the hearing of 4 June 2021 and to check them against all of her sources of information. The full history of what happened at the hearing of 4 June 2021 was recorded by me in a case management summary which was sent to the parties on 27 June 2021, but that full history is not material here since at the resumption of the hearing on 3 September 2021, copies of a letter and an email of 30 March 2020 were put before me which showed that the parties had agreed contractually that the claimant would receive "furlough pay", which I was satisfied after hearing from both parties on 3 September 2021

meant “such pay as the respondent did in fact receive, or (if greater) could have received, from the DWP” in respect of the claimant.

- 8 Because of what appears to have been a mistaken understanding on the part of persons acting on behalf of the respondent, the claimant was asked to send the respondent an invoice for her hours of work done in June 2020. The respondent then treated the claimant as no longer being an employee of the respondent after 29 June 2020, and therefore did not seek any more furlough pay for the claimant from the DWP. The claimant then, on 31 July 2020, resigned from her position as “Passenger Assistant at A to B effective from 1 August 2020, with [her] last day being 29 August 2020”.
- 9 The claimant’s furlough pay entitlement was calculated by the respondent on the basis of the DWP’s guidance by reference to the claimant’s pay in the period from November 2019 to April 2020, averaging out the payments made during that period. The rate of pay was 80% of the rate of pay as it accrued from day to day, so that the claimant was entitled to receive furlough pay at the rate of (it was the respondent’s case, which was consistent with the documentary evidence before me) £13.64 per day, i.e. a sum which was accrued every day of the week, and not just on every working day.
- 10 During the hearing of 3 September 2021, the claimant accepted (as I understood it) that that was indeed the daily sum that she was owed, and that her calculation of the sum owed to her by way of unpaid furlough pay was mistakenly based on her full pay and not 80% of it. In any event, I concluded that £13.64 per day was the rate of furlough pay to which she was entitled. It was her claim that the respondent could have claimed from the DWP 61 days’ pay at that rate, i.e. for the period from 30 June to 29 August 2020 inclusive, and that it therefore owed her that sum. I agreed. That sum was £832.04. I did not understand the claimant to claim that she was owed any more than the agreed sum of £249.18 to which I refer in paragraph 5 above in respect of the period before 30 June 2020, but if she did so claim then she did not point to any documentary evidence which supported that claim. Thus, the claimant was owed, I concluded, by way of unpaid furlough pay, £832.04 + £249.18, which is £1,081.22.
- 11 In addition, the claimant claimed that she had not been paid for all of the hours for which she was entitled to be paid in respect of the period before the first lockdown. The respondent pointed out some discrepancies in the claimant’s calculations, but pointed out also that the claimant’s own documents showed that she had been paid more than the amount that the claimant could now be saying she was owed for her work done before the first lockdown started. The claimant claimed that she had worked in the period before the first lockdown a total of 362.18 hours. I ascertained that she meant by that to say that she had worked for 362 hours and 18 minutes, which was 362.3 hours. Her rate of pay per hour was £8.21. That meant that she was entitled on her own case to be paid £2,974.48 (net; in fact no sums were deductible for national insurance contributions or income tax, so the sum was the gross sum, which was payable

without deductions) for her hours worked before the first lockdown commenced in March 2020. The sums shown in the claimant's own documents as having been paid by the respondent to her in respect of that period (including the £718.38 paid by Keydriver as I record in paragraph 6 above) were in total £2,988.84. That was £14.36 more than the claimant was entitled to on her own calculations. The respondent was not seeking the recovery of that slight overpayment, so I disregarded it, but most importantly, the claimant had been paid more than her full entitlement.

- 12 That meant that the claim for unpaid wages had to fail and that I had to dismiss it, which I did. The claim for money due under a contract connected with the claimant's employment however, as I indicate above, succeeded. The total payable by the respondent in that regard is £1,081.22.

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Employment Judge Hyams

Date: 4 September 2021

JUDGMENT SENT TO THE PARTIES ON

28 September 2021

FOR THE TRIBUNAL OFFICE