



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M. Khan

**Respondent:** Spice Villege Indian Restaurant Ltd

**Heard at:** Watford (by CVP)

**On:** 15 July 2021

**Before:** Employment Judge McNeill QC

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Saleem, Consultant

**Judgment** having been sent to the parties on 9 August 2021 and written reasons having been requested pursuant to rule 62(3) of the Employment Tribunals Rules of Procedure on the same date, the following reasons are provided

## REASONS

1. The Claimant, Mr Khan, makes claims for unpaid wages, notice pay and holiday pay.
2. The issues in the case are as follows:
  - (i) During what dates was the Claimant employed by the Respondent?
  - (ii) How did his employment come to an end and when?
  - (iii) At the date of termination of his employment, was he owed any sums in respect of holiday pay, notice pay or arrears of pay/unlawful deduction from earnings?
  - (iv) If so, what was he owed?
3. I heard evidence from the Claimant and from two witnesses for the Respondent: Mr Shah Emran Hussain and Ms S. Begum. I also read a witness statement from a Mr Tarek Foysal, who did not attend to give

evidence. I could give little weight to his evidence which was not tested in cross-examination and, in any event, in essence just repeated evidence in Mr Hussain's witness statement.

4. I read the documents that were contained in an agreed bundle, produced following a hearing in front of EJ Anderson on 3 March 2021. That hearing was listed to determine the Claimant's claims but was converted into a preliminary hearing after last minute activity by the Respondent in relation to the case, which meant that the hearing could not fairly proceed as a final hearing.
5. EJ Anderson gave clear directions as to what the parties needed to do in preparation for this hearing, including a direction for the parties to agree the documents to be included in the bundle for this hearing by 27 May 2021. The Respondent was to provide the Claimant with a copy of the bundle by 3 June 2021. Despite those directions, the Respondent forwarded to the Tribunal, after 5 pm and later in the night before this hearing, numerous documents which it wished the Tribunal to consider.
6. After hearing submissions, I allowed the Respondent to refer to a limited number of the documents that were produced late, including some printed payslips for December 2019 and January and February 2020. On their face, the payslips showed sums of £823.98 being payable to the Claimant in January and February 2020 and sums of £355.74 and £837.66 being payable to the Claimant in December 2019.
7. I also allowed the Respondent to refer to some screen shots of handwritten notes prepared by the Claimant in December 2019 referring to the restaurant's takings and various payments to staff and expenses. These notes did not include a record of anything paid to the Claimant.
8. There were entries in the handwritten notes evidencing payments to someone identified as "Shah". The Respondent contended that those entries related to payments to the Claimant. The Claimant disagreed. He said (and I accepted) that the references to "Shah" evidenced sums paid over by him to Mr Hussain (Shah Emran Hussain) after others' wages and expenses had been taken out of the takings. Mr Hussain might then make payment to the Claimant.
9. I also permitted the Claimant to adduce before me three payslips which showed that he was paid before September 2019 by a company named Spice Village and Bars Ltd.
10. Both parties sought to adduce further evidence before me relevant to how, when and by whom the Claimant was paid but I was not prepared to consider any further documentary evidence. The case had already been adjourned once and both parties were aware that all

documents relevant to the case should have been disclosed well in advance of today's hearing and put in the bundle. I could not fairly continue to receive evidence in a piecemeal way as and when the parties chose to produce it. The case had been given a time allocation, which was proportionate and not challenged by the parties, and it was in accordance with the overriding objective to ensure that the case was completed within that time.

11. The two main disputes between the parties were whether the Claimant was actually paid the sums set out in the December 2019 and January and February 2020 payslips and how his employment came to an end.
12. At the hearing before me, the Claimant said that his employment had terminated. He relied on his date of termination as 1 March 2020, as set out in his claim form and as shown on a P45 sent to him dated 28 March 2020. The Claimant accepted that he had been paid a sum of £680 in December 2019.
13. The Claimant produced a schedule of loss dated 29 December 2020 setting out his claims as follows:
  - (i) Payments due for December 2019, £133.98 wages and £303.77 for 37 hours overtime **£437.75**
  - (ii) Wages January 2020 – 43.33 hours at £8.21 less NI **£823.98**
  - (iii) Wages February 2020 – 43.33 hours at £8.21 less NI **£823.98**
  - (iv) Unpaid holiday for year 2019/20 – 21 days leave taken and 7 days owed **£823.98**
  - (v) Unpaid holiday for year 2018/19 – did not take any leave **£355.74**
  - (vi) Legal fees **£100.00**

The total sum claimed by the Claimant is **£3,365.43**.

14. In relation to subparagraph (i) of his Schedule, if the sums due to the Claimant were as set out in the December 2019 payslips, and the £680 which he admitted receiving was deducted from that sum, as well as NI contributions, the sum of £443.82 would remain due and owing. There was a very small discrepancy between this figure and the figure in his Schedule. The Claimant was content to stick to the figure of £437.75 as set out in his Schedule. In relations to subparagraph (ii) of his Schedule, the figure of 43.33 hours was incorrect but the parties agreed, as a matter of arithmetic, that the monthly net figure of £823.98 was correct.
15. The Claimant was entitled to have his employment terminated with notice and, in the absence of any written terms and conditions of

employment, he was entitled to one week's notice. This was agreed by the Respondent.

### **Findings of Fact**

16. The Claimant started to work at the Spice Village restaurant in Chipperfield in October 2018. He worked there as a waiter. He was not given a statement of written particulars of employment, as required by section 1 of the Employment Rights Act 1996. Mr Hussain said that "Indian restaurants do not provide written contracts". I make no finding on the generality of Indian restaurants but observe that the provision of written particulars is not only a requirement of law but enables employers and employees to know what is expected of them and can help to avoid this type of dispute.
17. At the time that the Claimant's employment commenced, it is not clear who employed him. Payslips for dates pre-dating 1 September 2019, provided by the Claimant, indicated that the employer was Spice Village and Bar Ltd, a company dissolved in October 2019 of which Mr Hussain was a director and shareholder. Other evidence suggested that the Claimant was employed by Spice Village Restaurant Ltd. That company was dissolved on 24 December 2019.
18. A new company Spice Villege Indian Restaurant Ltd ("Villege" was spelt with an "e" rather than an "a"), the Respondent in these proceedings, was incorporated on 10 July 2019. Ms Begum was a director of both Spice Village Restaurants Ltd and Spice Villege Indian Restaurant Ltd. The available evidence at Companies House indicates that she owns more than 75% of the shares in the Respondent company and had a significant shareholding in Spice Village Restaurant Ltd.
19. The Claimant was not made aware of the dissolution of Spice Village Restaurant Ltd (or indeed Spice Village and Bar Ltd) or of the incorporation of the Respondent company. As far as he was concerned, he was continuously employed by the same company for the full period of his employment.
20. Before 1 September 2019, the Claimant's wages were, it appears, processed through various different companies, including Spice Village and Bar Ltd. The Claimant usually received payment in cash, BACS payments from the Respondent or BACS payments from the personal account of Mr Shah Emran Hussain. Mr Hussain is the partner of Ms Begum and was a director of Spice Village and Bar Ltd.
21. The Claimant's normal pay was agreed to be £823.98 per month net. He worked for 24 hours a week. Where he worked overtime, he was entitled to be paid for this at the rate of £8.21 an hour, the minimum wage at the relevant time. He was entitled to holiday at the statutory rate of 28 days a year, including bank holidays.

22. From October 2018 to 1 March 2020, the Claimant took no holidays. The Claimant gave evidence that on 1 March 2020, he was asked to take a week's annual leave by the Respondent and that after he had taken one week off, he was advised to take a further two weeks off. Given that he agreed that his employment terminated on 1 March 2020, I did not explore this evidence further as this related to a period post-dating the termination of his employment.
23. The Claimant did chase up his pay and made several calls and sent text messages to the Respondent from January through to April 2020. After he received his P60, he emailed the Respondent, by its accountants, on 16 April 2020 saying that he had not received his salary from January 2020 and that he had encountered the same problem in December.
24. There was a dispute between the Claimant and the Respondent as to whether the Claimant should have been furloughed. Given that the Claimant accepted that his employment terminated on 1 March 2020, it was not necessary to explore this further. The Respondent alleged that the Claimant was motivated to bring this claim out of a sense of grievance or grudge that he had not been granted furlough: that motivation was material to my findings when assessing the reliability of his evidence. Although the Claimant was aggrieved about not being granted furlough, I believed what he told me about what he was and was not paid. I had to decide whether the Claimant was paid what he was due or whether monies remained owing.
25. I accepted the Respondent's contention that it employed the Claimant from 1 September 2019. However, it then contended that there was an agreement between the Claimant and the Respondent that the Claimant's employment would come to an end in December 2019 and that he would be paid for January and February 2020, those payments being in respect of holiday pay. I did not accept that. No such agreement was reached. There was no evidence of the specifics of any such agreement and there was no written record of it. Given the Respondent's contention (which I accepted) that it only employed the Claimant from 1 September 2019, it was implausible that it would agree to pay him two months' holiday pay in January and February 2020. No such agreement was reached.
26. The Claimant worked in January and February 2020 and was entitled to be paid for those months. He was not paid. Mr Hussain and Ms Begum said that the Claimant was paid in cash for those two months on 5 February 2020. I did not accept that. No written receipt was produced nor any documentary evidence of such a payment. It was implausible that a sum of more than £1,600 would be paid to the Claimant by the Respondent with no evidence of receipt and I did not believe what the Respondent told me.

27. The Claimant did work some overtime in December 2019. He was only paid £680 rather than his full monthly wage that month. He was not paid for 37 hours' overtime undertaken. Payslips provided by the Respondent for December 2019 at the hearing indicated that the Claimant was due more than just his monthly pay for this month.

### **Discussion and Conclusions**

28. The Spice Village restaurant has continued in business from the same premises in Chipperfield from October 2018, when the Claimant was first employed to work at the restaurant, to date.
29. The Respondent was incorporated on 10 July 2019 and the Claimant was employed by the Respondent from 1 September 2019. He should have been informed of the change of employer but was not. Nevertheless, his payslips from that date showed the Respondent as employer and he continued to work on that basis.
30. There was no agreement that the Claimant's employment would terminate on 31 December 2019 and he continued to work for the Respondent until 1 March 2020 when he agreed that his employment came to an end. His employment was terminated without notice. One week's pay is £190.15 and that is the amount to which he is entitled by way of damages for the Respondent's termination of his contract without notice.
31. On termination of his employment, he was entitled to statutory holiday pay. Pro-rated from 1 September 2019 he would be entitled to 14 days. Based on net earnings of £823.98 per month, that amounts to a figure of £411.99. He is not entitled to payment for any period before 1 September 2019. His claims for earlier periods pre-date his employment by the Respondent.
32. He was underpaid for December in the sum claimed by him, namely £437.75 which included overtime due.
33. He was not paid for January and February 2020 and based on the payslips provided which are an accurate record of what was due, he is owed  $£823.98 \times 2 = £1,647.96$ .
34. The total due is £2,687.85. The arithmetic was agreed with the parties. That is the total sum that the Respondent must pay to the Claimant.
35. In his schedule, the Claimant claimed a sum of £100 for legal fees. That is not a permissible head of claim and I made no award in respect of that sum. No application for a costs or preparation time order was made before me.

36. There were hints that this might be a case where I should be asked to “pierce the corporate veil” given the close association of the companies of which Mr Hussain and Ms Begum were directors but no arguments were addressed to me on this issue and I considered it no further.

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Employment Judge McNeill QC

Date: 20 September 2021

Sent to the parties on: .....

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For the Tribunal

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