



EMPLOYMENT TRIBUNALS

Claimant: Mr P Fryc

Respondent: Petr Kolar Construction Ltd

HELD at Leeds

**ON: 16 September 2021 and
28 October 2021**

BEFORE: Employment Judge Parkin

REPRESENTATION:

Claimant: In person, assisted by interpreters T Vrubel and B Stenclova

Respondent: No response presented and no attendance or representation

JUDGMENT

The Judgment of the Tribunal is that:

1. The claimant was employed by the respondent limited company under a contract of employment;
2. The respondent made unlawful deductions from the wages of the claimant. The claimant was entitled to be paid wages of £6,240.00 and gives credit for payments received from the respondent to the extent of £660.64 (after deduction of expenses incurred by the claimant on behalf of the respondent's business). The respondent is therefore ordered to pay the claimant the sum of £5,579.36 gross before any deduction of tax or national insurance; and
3. Pursuant to Regulation 14 of the Working Time Regulations 1998, the respondent is ordered to pay the claimant compensation for accrued paid annual leave representing 13 weeks' employment at his weekly pay of £480, 1.4 weeks' pay x £480, in the sum of £672 gross.

REASONS

1. By a claim presented on 14 July 2021 the claimant claimed unpaid wages and holiday pay in relation to his employment by the respondent from the end of December 2020 to 30 April 2021 as a supervisor on building contracts. His ET1 claim included:

“I have started to work for him from 31st December 2020.

When I was due to pay in February, I haven't received the whole salary. Peter kept telling me he will pay later. This followed for next two months till 30th April.

I have never received any payslip or full payment from Peter. He would never evidence anything work related or pay taxes (e.g. national insurance).

Time to time he would give me a part of my salary in cash but then ask me to buy him food or cigarettes from those money. Sometimes he would send me some of his money on my account to withdraw them for him from my bank so he could avoid paying taxes.

Me and few other co-workers have lived in Peter's house, where he was promising he will organize different living for all of us but even though he didn't pay us he will keep charging us for living there and we could not move out from there because we didn't had any money.

Peter had bought a company car ... but we wrote the insurance on me because he does not have a driving license. He promised to pay for that, and he did not which put me in dept there which I started to pay now (still missing £304.90).

Peter is doing a modern slavery as he has many other people who works for him in these bad working conditions full of promises and not getting paid...

I have been in contact with Peter to resolve this problem, but he said he don't care and ignored my warnings to pay me.

2. No response was presented by the respondent to the claim but on the first morning of the hearing, 16 September 2021, Mr Petr Kolar emailed that he was ill with epilepsy and had not attended to the claim, providing a certificate of sickness on a fitness for work certificate. No further contact was received by the Tribunal from the respondent and there was no attendance or representation on its behalf at either day's hearing.
3. On each day of hearing, the claimant was assisted by a Czech interpreter and gave oral evidence on oath. The purpose of the adjournment was so he could provide documentary evidence supporting his oral evidence; before and on the second day, he provided a copy of his employment agreement dated 31 December 2020 signed by both him and Mr Kolar on behalf of the respondent and his personal bank account statement running from 1 January to 30 April 2021. Overall, the Tribunal found the claimant a compelling and wholly credible witness giving evidence of matters very personal to him and still very deeply felt by him.

4. From that oral and documentary evidence, the Tribunal made the following key findings of fact. Although the initial arrangements were very informal and personal between Petr Kolar and the claimant such that he, with other workers, was living at Mr Kolar's house during his period of work, a formal contract entitled Employment Agreement was entered into on or about 31 December 2020, with the respondent company identified as employer. The version the claimant provided was the second one, tidied up with better grammar and spelling than the first; it described him as Team Leader/supervisor and in its final clause referred to the agreed rate of payment at £12 per hour. It did not cite the normal working hours per week but the claimant's evidence, which the Tribunal accepted, was that these were properly 40 hours per week. Like other workers, he often worked long and hard on building contracts for the respondent variously in Keighley, Skipton, Sheffield and Coventry. The claimant's ordinary weekly pay should therefore have been £480 gross, but he never received any payslips to confirm that and payment from the respondent was entirely irregular. He never had any paid holidays during his period of employment and worked solidly from 26 January 2021 until he resigned on 30 April 2021 because he was not getting proper pay from the respondent. He was fortunate to have family in London who he could live with to avoid the restrictions and impositions placed upon him by the respondent.

5. To a large extent, Mr Kolar used the claimant's own bank account as a secondary account for the respondent, making payments to the claimant but immediately expecting him to pay bills or take out cash on its behalf. On many occasions, the claimant paid business expenses for the respondent such as car insurance and parking fines but was not always reimbursed in full. The claimant took the Tribunal carefully through his bank statement revealing payments from the respondent and established that most did not amount to net payment of wages. Accordingly, payments of £200 and £60 on 29 January were wages, but only £39 of the £139 payment on 30 January was his wages since he took out £60 and £40 cash to pay his fellow workers. Likewise, the payments of £300 on 3 February and £40 on 4 February are not credited to the respondent since the claimant immediately took out or transferred on the same amounts the same or the following day. He received a payment of £150 on 25 February but only gives credit for the sum of £51.19 as wages after incurring expenditure of almost £100 on taxis and groceries for himself and his fellow workers. Likewise, no credit is given for the sums received of £71.50 on 27 February and £30 on 28 February and £20 on 1 March 2021, because of payments on which he made. He gives credit for two payments of £20 and £30 on 2 March and for £150 of the £500 transfer in made on 3 March and for £50 of the £150 payment in on 4 March 2021, having paid on his fellow workers, in particular the payment out of £300 on 3 March. He gives credit for £130 of the £300 payment on 25 March explaining that the balance paid the other workers but no credit for the £300 and 2 payments of £100 received on 25 March which were all to offset the personal payment he made for car insurance of £510.66 on 25 March. Since he was still out of pocket for the car insurance, he gives no credit for the further sums of £5 on 29 March, £15 on 29 March, £14 on 30 March and £15 on 31 March. In respect of the £20 transfer in on 9 April, he points to the payment out to the respondent of £77 and thus also offsets the £30 payment in on 13 April. Finally, in respect of the £80 payment in on 23 April, he gives credit only for £20 as wages since he had to pay a £60 parking fine in London. At about the same time he incurred extra expenses of £89.55 paying for a meal for Mr Kolar, his friend and the two colleagues when they were in London to obtain photographs and regularise work permit arrangements. He thus acknowledges credit for total sums received of

£750.19 on a net wage basis after deduction of expenses and seeks the further offset for £89.55 expenses, giving a total credit of £660.64.

6. Applying the law at Part II of the Employment Rights 1996 in respect of unlawful deduction from wages and the Working Time Regulations 1998 in respect of the holiday pay claim, the Tribunal concluded that the claimant was employed pursuant to a contract of employment by the respondent limited company as a Team Leader/supervisor on construction work formally from 31 December 2020 but in effect from 26 January 2021 until 30 April 2021. He was grossly underpaid his regular wages which should have been paid at £480 per week for 13 weeks, making a total of £6,240.00 against which he gives credit in the total amount of £660.64. Accordingly, the respondent made unlawful deductions from his wages in respect of the balance of £5,579.36 gross and is ordered to pay that sum to him.
7. Finally, since he worked for 13 weeks, he is entitled to compensation for paid annual leave accrued during that period with no paid annual leave to offset. The statutory minimum of 5.6 weeks per year applies instead of the 20 days set out in the employment agreement. The claimant worked for 13 weeks and is entitled to 1.4 weeks pay at the weekly rate of £480 and the respondent is therefore ordered to pay him further compensation in the sum of £672.00 gross.

Employment Judge Parkin
Date: 2 November 2021

JUDGMENT SENT TO THE PARTIES ON
Date: 3 November 2021