



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Barker

The Sailmakers Arms Ltd

PUBLIC HEARING

Heard: BY CVP

On: 15 December 2021

Before:

Employment Judge JM Wade

Representation:

Claimant:

In person

Respondent:

Mr D Wann

JUDGMENT

1. The Judgment sent to the parties on 29 July 2021 is revoked and replaced with the following:
2. The claimant's unauthorised deduction from wages complaint is dismissed.
3. The claimant's holiday pay claim succeeds and the respondent shall pay to him the sum of £460.60.

REASONS

1. I heard oral evidence from Mr Wann and from the claimant. I had access to attachments to the response form. I made the following findings.
2. The claimant started employment with the respondent on 4 September 2020 as a bar man. It was an oral contact of employment for flexible hours at £8.72 per hour, and a holiday year aligning to the calendar year. In reality the respondent mostly provided 20 hours per week, and when furlough commenced weekly pay reduced by agreement to the furlough rate of 80% of 20 x £8.72.
3. There was a gentleman's agreement with the claimant that he would remain with the respondent for six months after the pub re-opened after the second lockdown. Opening was notified to staff as 12 April 2021, on or before 5 April 2021. From 5 April staff were required to work to prepare the pub for opening. The claimant was paid his last furlough pay on or around 2 April 2021 for the week ending Sunday 4 April.
4. The claimant reneged on both the gentleman's agreement and the statutory obligation to provide a week's notice to end his employment (Employment Rights Act 1996 Section 86(2)). He sent a message on 6 April which did not provide a week's

notice and the respondent acknowledged this repudiatory breach saying the claimant was not required to come in the next day and the employment ended the same day.

5. The respondent had not sought to ask staff to take holidays during furlough and Mr Wann accepted that there was holiday to carry over into 2021.
6. The claimant had been employed seven complete months (plus two days), of which he had worked the first two or three months. He started new permanent employment having left the respondent in the way I describe.
7. The claimant had accrued 7/12thths of an annual holiday entitled of 5.6 weeks. That falls to be multiplied by the average pay during the last 12 or 17 weeks, applying Regulation 14 of the Working Time Regulations 1998. That is the weekly pay, identified in the claimant's claim form, agreed by the respondent to be correct, of £143. That produces a total holiday pay entitlement of £460.60.
8. There was no counterclaim before this Tribunal, seeking any losses incurred by the respondent in organising replacement staff, as a result of the breach.
9. The claim for furlough pay for the week commencing 5 April 2021 is misconceived on these findings and is dismissed.

Employment Judge JM Wade

15 December 2021