



EMPLOYMENT TRIBUNALS

Claimant: Mr D Fernandes
Respondent: Lined Out Limited
Heard at: London South **On:** 11 January 2022
Before: Employment Judge Milivojevic

Representation

Claimant: In person,
Respondent: Did not attend.

JUDGMENT

1. As indicated in the Notice of Remedy Hearing of 16 September 2021, the Respondent had failed to present a valid response on time, and the case proceeded in accordance with Rule 21.
2. The Claimant's claims for unfair dismissal, a redundancy payment, unlawful deductions from wages, and holiday pay are successful.

REMEDY JUDGMENT

1. Subject to paragraphs 2 and 3 below the Respondent should pay to the Claimant the total sum of £6,490.99. This comprises a statutory redundancy payment of £1,080.00 and a payment of £720.00 for a failure to provide a written statement of employment particulars, unlawful deductions from wages totalling £3,242.95, and a compensatory award for unfair dismissal of £1,261.04.
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.
 - (a) the total award is £6,490.99
 - (b) the "Prescribed Element" is £1,261.04
 - (c) the "Prescribed Period" is 25 March 2020 to 6 May 2020
 - (d) the amount by which the monetary award exceeds the Prescribed Element is £5,229.99

3. Payment of the prescribed element in the sum of £1,261.04 shall be stayed until the Secretary of State has served on the Respondent a recoupment notice in respect of Income Support or Universal Credit received by the Claimant or has notified the Respondent that it does not intend to serve such notice.

REASONS

1. By a claim form presented on 25 April 2020 the Claimant made claims relating to his dismissal from employment with the Respondent on 25 March 2020. The Claimant also claimed for a redundancy payment and unlawful deductions from wages, including entitlement to holiday pay which he had accrued but had not taken at the date of his dismissal. The Respondent did not file a response and has not participated in these proceedings. An Employment Judge decided that Rule 21 should apply and a remedy hearing was listed for 11 January 2022.
2. As requested, the Claimant sent details of his losses prior to the hearing. At the remedy hearing, which took place remotely by CVP, the Claimant gave evidence under oath, and provided further documents.
3. The Tribunal found that the Claimant had been dismissed on 25 March 2020 by reason of redundancy. He commenced employment on or about 3 April 2017. The Claimant was not provided with any notice or notice pay. The Claimant did not have a written contract of employment. Had he been provided with statutory minimum notice, which in his case would have been two weeks, his dismissal would have taken effect on 8 April 2020. At that stage he would have had three full years service. The Tribunal applied S145 (5) Employment Rights Act 1996 in awarding the Claimant a redundancy payment based on three years of service. The Claimant gave evidence that his contracted hours, as agreed verbally with the Respondent were 40 hours per week with a gross pay of £360 per week. Applying this to the Claimant's age and length of service, he is entitled to redundancy payment of £1,080.00
4. The Claimant was not provided with a written statement of employment particulars. Therefore, it was appropriate to make an award of two weeks' gross pay, totalling £720.00.
5. The Claimant was unfairly dismissed. However having heard evidence from the Claimant the Tribunal found that had the Respondent followed a fair procedure, the Claimant would have been fairly dismissed by reason of redundancy. The Tribunal concluded that it would have taken a further period of four weeks to conclude a fair process, to the point where the Respondent would then provide the Claimant with notice of dismissal. The Claimant was paid £360 gross per week. The Claimant had worked irregular overtime and therefore his payslips did not demonstrate the usual net pay which the Claimant would receive. The Tribunal considered it appropriate to use the figure of £315.26 per week (£63.05 per day) when calculating net losses. The Claimant is due the sum of £1,261.04 net.
6. The Claimant suffered an unlawful deduction from wages, in respect of his statutory notice period. The Claimant is therefore due the sum of £630.52 net in respect of his statutory notice period.
7. The Claimant suffered an unlawful deduction from wages, in respect of the period of 16 January 2020 to 11 February 2020 (3 weeks and two days) during which the Respondent told the Claimant not to attend work, but for which he was not paid. The Claimant also suffered an unlawful deduction

from wages for the period from 1 March 2020 to 17 March 2020 (2 weeks and two days) when he worked but was not paid. The Claimant is due the sum of £1,828.50 net for these periods.

8. The Claimant was not paid for the period of 18 March 2020 to 24 March 2020, when he was required to self isolate due to the symptoms of coronavirus. He is entitled to statutory sick pay for the period from 18 March 2020 to 24 March 2020 (one week) in the sum of £94.25.
9. The Claimant suffered an unlawful deduction from wages in respect of accrued but untaken holiday entitlement of four days, and is due the sum of £252.20 net.
10. The Claimant suffered an unlawful deduction from wages in respect of employer and employee pension contributions which were indicated on his pay slips but had not been paid to his pension provider. The Tribunal accepted the amounts which the Claimant provided in oral evidence. The Claimant is due the sum of £624.48 net.
11. The Claimant confirmed that although his ET1 referred to late payment of his wages in 2019, these sums had ultimately been paid (save in respect of the pension contributions referred to at paragraph 10 above) and therefore it was not appropriate to make any award of compensation for any other claims prior to 2020.
12. The Claimant said that he had received benefits after he was dismissed but he did not provide any documents or evidence setting out the amounts received.
13. The Claimant is required to account to HMRC if any additional tax or other liabilities arise in respect of the sums set out above.

Employment Judge Milivojevic
Date: 11 January 2022

Sent to the parties on
Date: 24 January 2022

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

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ANNEX TO THE JUDGMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit and Income Support Protective Awards

Under the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, it is the responsibility of the respondent to inform the Department for Work and Pensions (DWP) of the following information in writing:

- a) name, address and National Insurance number of every employee the award relates to; and
- b) the date of termination (or proposed termination) of every employee the award relates to.

This information should be sent to the DWP within 10 days of the judgment being announced at the hearing or within 10 days of the date that the judgment was sent to the parties if the judgment was reserved. If it is not reasonably practicable for the respondent to meet this deadline, the information must be sent as soon as is reasonably practicable after the 10 day period.

The remuneration due to an employee under the award should not be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit or Income Support which it paid to the claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the respondent usually within 21 days of receiving the above information from the respondent.

When the DWP sends the Recoupment Notice, the respondent must pay the amount specified in the Notice by the Department. The balance of the remuneration under the award is then payable to the employee(s) subject to the deduction of any tax or social security contributions. If the DWP informs the respondent that it does not intend to issue a Recoupment Notice, the respondent must immediately pay the whole of the remuneration to the claimant.

The claimant will receive a copy of the Recoupment Notice from the DWP. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the DWP in writing within 21 days. The tribunal has no power to resolve such disputes which must be resolved directly between the claimant and the DWP.