



THE EMPLOYMENT TRIBUNALS

Claimants: Mr Shawn Carr
Miss Sinatta Ramsay

Respondent: 108 (Darlington) Limited T/A The Chinese Buffet

Heard at: Newcastle upon Tyne Hearing Centre (by CVP)
On: Wednesday 19th January 2022

Before: Employment Judge Speker OBE DL

Representation:

Claimants 1 & 2: In Person
Respondent: Mr Peter Wu

JUDGMENT

1. The first claimant Shawn Carr has suffered unauthorised deduction of pay and the respondent is ordered to pay to the claimant the sum of £1,531.26.
2. The second claimant Sinatta Ramsay has suffered unauthorised deduction of pay and the respondent is ordered to pay to the claimant the sum of £1,406.25.

REASONS

- 1 These are claims brought by Mr Carr and Ms Ramsay against 108 (Darlington) Limited in which both of them claim to be entitled to payment for wages which they state are due under the contracts of employment which they had with the company.
- 2 I have heard oral evidence from both of the claimants and from Mr Wu, director of the respondent company, and there has been cross examination of all of them.
- 3 I have also been provided with certain documents including e-mails, letters of notice, correspondence with British Gas and the contract of employment management which both of the claimants signed with the company.
- 4 The background is that the respondent company operates a Chinese restaurant in Darlington. The trading name is one used by other companies but it was said, although I have no documentary evidence of it, that these are separate companies which operate restaurants in the north west but as far as this respondent company

is concerned it operates only the restaurant in Darlington at which the claimants were employed at Feethams in Darlington. It is also part of the background that the restaurant business had had to close down during the pandemic in 2020 and that a number of the employees were placed on furlough. Ultimately, plans were arranged for the restaurant to reopen early in July 2021. In advance of this it was necessary for the company to recruit staff for that opening and this included the first claimant, who had previously worked in the restaurant some time earlier but had left of his own accord. He was appointed as assistant manager and his partner the second claimant was employed as a supervisor. Both of them signed the contract of employment to which I made reference.

- 5 There was a short period of training and the opening of the restaurant took place on 5th July 2021. Both of the claimants attended between 11.00am and 12 noon for a shift that was to go on until approximately 3.00pm. During that lunchtime shift some gas board engineers arrived and carried out inspections and the outcome of this was that they determined that there was some irregularity with regard to the electricity meter and they notified the proprietor, This was passed to the staff, that the power was going to be disconnected but was put back to the time when all of the customers had left and it therefore occurred at approximately 3.00pm. There was no certainty as to when the situation would be regularised and the restaurant did not open for the evening shift that day and indeed, as we now noted, did not open again. There was uncertainty amongst the staff, including the claimants, as to what was to happen and there were subsequent communications from time to time over the days and weeks that followed. The hope was being expressed that the restaurant would again be open and that problems such as a necessary replacement part required for the meter would be resolved and any financial aspects would also be regularised.
- 6 However the situation was never regularised and as time passed, understandably, the claimants were concerned that they were not working and that they were not receiving their wages. Ultimately Mr Wu, having received pleas from Mr Carr about the financial difficulties in which this was placing Mr Carr and his partner, then made a payment from his own resources in the sum of £600.00 and, at the same time, made payments to some other members of staff. The payments made to the other members of staff were described as £150.00 which is a recognised statutory figure as the maximum for lay-off payments being five days pay in a three month period. This demonstrated some awareness on the part of Mr Wu of the existence of a scheme whereby employees can receive some payment if they are actually laid off. With regard to Mr Carr and Miss Ramsay, they were 'management' and Mr Carr had made direct requests with regard to financial assistance because of the need to meet household bills and rent and the figure paid in their case was rather more than the statutory figure to which reference has been made. Indeed it amounted, when divided between Mr Carr and Miss Ramsay, as double the amount which the government scheme requires to be paid. That sum was paid but no other payments were made.
- 7 The situation continued that, although there were some WhatsApp communications from the manager to members of staff, there was no clarity as to when the situation would change. Eventually both Miss Ramsay and Mr Carr gave notice of termination of their employment by e-mail during September and their employment came to an end. They then brought these claims to the tribunal claiming in Mr Carr's case the sum of £4,355.66 for unpaid wages and in Miss Ramsay's case for £3,009.96.

- 8 The case put forward by both claimants is that they were not laid off in any formal manner and that they were not specifically told, or written to, in any format telling them that they were legally laid off. They dispute the application of clause 7 in the statement and main particulars of terms of employment and they claim that that clause should not apply to them but that they remained in employment and they were always ready and willing to work and that they therefore should receive the payment of wages due to them under their contracts of employment.
- 9 They maintain that the sum of £600.00 paid to them was not a payment for lay-off but was a payment to secure some loyalty and that it should not be treated as a legal lay-off.
- 10 From Mr Wu's point of view, he argues that the Contract term did apply and that it was clear to all that the situation was one of lay-off. He says that the payment which he made from his own resources was made as it was because the company was not in a position to make any payments and he felt an obligation in the interests of both claimants to pay them some money because of financial difficulties which they were in.
- 11 The issue for me to decide is whether there was a legal lay-off or whether the claimants are entitled to payment of wages for the period of over three months from the closure of the restaurant on 5th July to the dates when they respectfully gave notice of termination of employment.
- 12 Clause 7 in the contract states as follows:
"In the unlikely event of there being a shortage of work the company reserves the right to lay you off of place you on short-term working. If this proves necessary the company will honour its obligations to pay you the statutory guarantee payment which is limited to a maximum of five days in any period of three months. The daily amount is subject to an upper limit which is reviewed annually."
- 13 It is the respondent's case that that clause applies to what occurred in connection with both of these claimants. I find that the reality and the substance of what occurred here was that the claimants, during the months referred to, were laid off. There was not only a shortage of work, there was a total absence of work and the claimants, although ready and willing to work, were not being required to do so. The situation which prevailed is within the context of what this contractual clause relates to and is also in accordance with general understanding of what lay-off amounts to.
- 14 I find that the claimants, effectively, did accept that they were laid off even though they do not accept that that term was ever used. In fairness to Mr Wu, he acknowledged a failure by the respondent to put things in writing, as he should have done, and the company should have clarified the situation as from when the lay-off scenario applied so that the claimants were in no doubt as to their position and would know that they were not required to come to work but also would not be entitled to receive any money other than the figure referred to in clause 7, namely the statutory guarantee payment.
- 15 It is also, I must say, to the credit of Mr Wu that he paid to both claimants more than the amount required under the contract and he did this in recognition of their difficulties and the fact that they were management as far as the company was concerned.
- 16 Therefore I do not find that the claims made by both claimants are fully made out. However, having analysed the evidence carefully, Mr Wu did concede, and I take his evidence to mean this, that the time at which it was made clear to the claimants that they were laid off was when the payments were made on 20th July 2021. Therefore they are entitled to be paid wages from when they commenced

employment and, indeed, they did work the full first shift on the first day, until 20th July.

- 17 This means that they have an entitlement to wages before the lay-off came into effect which I round off to a period of three weeks which, in the case of Mr Carr and based upon his contractual earnings, produces a figure of £1,531.26 and in Miss Ramsay's case a figure of £1,406.25. These monies are due under s13 of The Employment Rights Act 1996 as unauthorised deductions from pay.
- 18 The tribunal orders that the respondent make those separate payments to each of the claimants. I expressed some sympathy to all of those involved in what is clearly an unfortunate situation where all had been expecting that a reopened restaurant would be trading profitably and provide for the claimants in further employment which they both said they enjoyed at the restaurant and for Mr Wu, and his co-director, a profitable business., Sadly, for circumstances described, that has not been the case.

EMPLOYMENT JUDGE SPEKER OBE DL

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
1 February 2022**

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