



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Mojumdar

**Respondent:** Hello Spice UK Ltd

**Heard at:** London South Employment Tribunal      **On:** 24 February 2022 at 11am

**Before:** Employment Judge Keogh

## Representation

Claimant: In person

Respondent: Did not attend

# JUDGMENT

1. The claimant's claim for unlawful deductions from wages is successful. The respondent shall pay the gross sum of £4,037.59 subject to deductions for tax and national insurance.
2. The claimant's claim for holiday pay is successful. The respondent shall pay the gross sum of £1,535.16 subject to deductions for tax and national insurance.
3. The claimant's claim for notice pay is unsuccessful and is dismissed.

# REASONS

1. The claimant is bringing claims for unpaid wages, holiday pay and notice pay. The claimant attended today and represented himself. He was assisted by a Bengali interpreter. The respondent did not attend.
2. It is not in dispute that the claimant worked from 28 October 2019 to 20 September 2020 as a waiter for the respondent.
3. The claimant says he worked for 35 hours per week at least at a rate of £8.72 per hour. This is £305.20 per week gross of tax and national insurance. I accept that the claimant his evidence that he was working at least 35 hours per week during the relevant period, and that it was agreed

he should be paid at a rate of £8.72 per hour (which is £305.20 gross per week).

4. The claimant claims the following sums were not paid to him:
  - (i) 16 March 2020 to 21 March 2020 he should have been paid £305.20. He was paid £208.87, a shortfall of £96.33;
  - (ii) 23 March 2020 to 28 March 2020 he should have been paid £305.20. He was paid £30.00, a shortfall of £275.20;
  - (iii) 19 April 2020 to 5 July 2020 he should have been paid £3,815.00 (this is 12.5 weeks). He was paid £790.00, a shortfall of £3,025.00;
  - (iv) 12 July 2020 to 26 July 2020 he should have been paid £915.60. He was paid £721.86, a shortfall of £193.74;
  - (v) 2 August 2020 to 6 September 2020 he should have been paid £1831.20. He was paid £1,253.76, a shortfall of £577.44;
  - (vi) 13 September 2020 to 20 September 2020 he should have been paid £614.40. He was paid £451.56, a shortfall of £158.84;
  - (vii) On 20 September 2020 he worked an additional 7 hours. He should have been paid £61.04 and was not paid anything.
  - (viii) The claimant was paid £350.00 on 11 September 2020.
5. The total arrears of pay claimed is therefore £4,037.59.
6. The respondent in its response form says that there are no sums owing to the claimant. However no further detail is given as to how much it is alleged he was paid, nor how much was said to be agreed between the parties. The respondent did not attend today and so there is no challenge to the claimant's evidence as to how much he was paid.
7. I have seen some payslips for the claimant which do not correspond to the amounts said to have been paid or owing. I accept the claimant's evidence that the payslips showed incorrect sums owing and did not match what he was actually paid.
8. I accept the claimant's evidence as to how much he was paid.
9. Under section 13 of the Employment Rights Act 1996 the claimant is entitled not to have wages unlawfully deducted from his pay. The respondent has not suggested there was a contractual right to make any deductions or that there was any other agreement in place to make deductions. I therefore accept the claimant is owed the sum of £4,037.59.
10. Under Regulations 13 and 13A of the Working Time Regulations the claimant was entitled to 5.6 weeks' holiday per year. He worked from 28 October 2019 to 20 September 2020, so he accrued 5.03 weeks of holiday (328 days / 365 x 5.6). 5.03 weeks at £305.20 is £1,535.16. He says, and I accept, that he worked bank holidays and took no other leave. The

respondent has not given any details of holiday alleged to have been taken or sums paid on termination.

11. Under Regulation 14 the claimant was entitled to be paid on termination for holiday pay accrued but not taken during the course of his employment. I accept he was entitled to the gross sum of £1,535.16.
12. Under section 86 of the Employment Rights Act 1996 the claimant was entitled to one week's notice. However, the claimant accepted in evidence that he resigned from his employment without giving any notice to the respondent. The respondent was not therefore in breach of contract and the claimant is not entitled to any additional notice pay.
13. The total owing is therefore £5,572.75, gross of tax and national insurance, and I give judgment accordingly.
14. The claimant requested at the end of the hearing that full written reasons for this decision should be provided to him.

Employment Judge Keogh  
Date 24 February 2022