



# EMPLOYMENT TRIBUNALS

**Claimant**

Pavel Barani

v

**Respondent**

The Trigger Pond Country Pub and  
Kitchen Ltd (In voluntary liquidation)

**Heard at:** Bury St Edmunds (by CVP)

**On:** 24 March 2022

**Before:** Employment Judge Freshwater

**Appearances**

**For the Claimant:** In person

**For the Respondent:** None

## JUDGMENT

1. The Claimant's claim for unauthorised deductions from earnings (relating to unpaid wages) is well-founded.
2. The Respondent has failed to pay the Claimant's wages and is ordered to pay in the net sum of £4,900.00 to the Claimant.

## REASONS

Procedure

1. The hearing was a fully remote hearing by way of CVP. The Claimant attended and was not legally represented. The respondent did not attend and was not represented. The respondent is now in liquidation on a voluntary basis, and the liquidators had informed the tribunal that they would not be attending.
2. In advance of the hearing, I read the claim form, the response form and documentation provided from the liquidators appointed to demonstrate that the respondent is in liquidation.

3. I explained to the Claimant that there were two stages to his claim. First, the liability of the respondent. Second, if I found that the Respondent was liable then I would need to consider what, if anything, the remedy should be. I said that I would hear evidence on both aspects during the hearing.
4. There was no written evidence filed in the proceedings. I heard oral evidence from the Claimant. I agreed with the Claimant at the start that I would ask a number of questions relevant to the issues in the case and that he would have the chance to provide any other evidence that was relevant to the issues in the case afterwards. We also agreed that if the Claimant wished to rely on any documentary evidence to support his account, then that would be sent in by email.
5. The Claimant emailed a copy of an email chain to the tribunal office which I read during a break in the Claimant's evidence in chief. After the break, I asked the Claimant some more questions about the email chain. The Claimant concluded his evidence and gave brief closing submissions, as he explained he felt that everything important had already been covered.
6. The Claimant wished to submit one further document after the proceedings had finished, relating to the non-payment of taxes and national insurance. However, the document was not received by the court office and so I have not taken it into account.

#### Issues

7. The Claimant said that he had not been furloughed during the first lockdown in 2020 (as a result of the Covid-19 pandemic) and had not been paid his wages either. He therefore sought to recover his unpaid wages for the period 16 March 2020 until 22 June 2020.
8. Initially his claim had been for unpaid annual leave as well as for wages, but he was paid the amount he wanted for his unused annual leave as a result of the ACAS process. As such, he said that part of his claim was no longer an issue in the case.
9. The Claimant said that he was not seeking any compensation nor any other sum of money from the Respondent.
10. In the ET3 response form, the Respondent stated that a settlement payment had been agreed by the Claimant and paid by the Respondent in full and final settlement. It also stated that the Claimant's pay was £300 per week inclusive of his tax contributions and national insurance. Further, it said that the Respondent had provided food and accommodation for the Claimant to the value of £3,000 during lockdown.

#### Evidence

11. The Claimant said that he was employed by the Respondent through a recruitment agency. He accepted the offer of employment on

7 August 2019. He understood that the terms and conditions of his employment were as set out in an email chain between the recruitment agent and the owner of the Respondent pub (Mr Harwood Warrington, now deceased).

12. In an email dated 7 August 2019, the Claimant was told that by the recruitment agent that he would be paid a net pay of £350 per week plus “excellent tips” of around £80 a week. In addition, he would have his own room and two meals a day provided for him at no charge. He would work 40 – 50 hours a week and have two days off per week. Mr Warrington was also copied into this email chain.
13. The Claimant explained that he commenced his employment on 23 August 2019. He received a room and food. He was paid £350 per week in cash, although sometimes he was paid late. He did receive tips in variable amounts (which he said was standard in the catering industry) of between £30 and £50 a week. He often worked long hours and had irregular breaks, but was not unhappy about this as he considered it part and parcel of the type of work he did. He said that he had asked for a pay slip on numerous occasions, but never received one. He had also asked not to be paid in cash, and was given a string of excuses as to why this was not possible. He was told that tax and national insurance was being paid on top of his net pay, on his behalf.
14. The Covid-19 pandemic started in 2020, and because pubs were not allowed to trade during the first lockdown, the Respondent closed. The Claimant received his last payment on 16 March 2020. He asked to be furloughed, but this did not happen. He later found out that no tax or national insurance had been paid for him, and that it was not possible for him to be furloughed. The respondent continued to provide him with food and accommodation.
15. For a period of two weeks, the Claimant worked for a kebab caterer (unrelated to the Respondent). He could not recall the dates. However, he was unhappy about being paid in cash and so the arrangement ended.
16. The Claimant said that he told the Respondent it was over and that he was not working for him anymore. On 25 June 2020, the Claimant left and went to work in Port Isaac, for a previous employer.
17. The Claimant told me that the Respondent had said that he (the Claimant) was not owed any unpaid wages because he had been provided with food and accommodation. This was not accepted by the Claimant, who pointed to the email setting out that he would be provided with a room and two meals a day in addition to his wages.
18. The Claimant did not accept that the Respondent is in liquidation. He said that the pub is still trading. He was not aware that liquidators had been appointed.

19. The Claimant said that he was claiming his net weekly wage from the date of his last pay packet until the point at which he left for his new job.

Findings of Fact

20. The Claimant was not provided with any written particulars of his employment by the respondent. Evidence of his contract can be adduced by his oral evidence, and the email chain that was forwarded to him by the recruitment agent who found him employment with the respondent.
21. The terms of his employment were that he would be paid £350 a week. I find that he was paid this amount in cash each week until 16 March 2020. The evidence before me is that the Claimant had not ever been provided with a pay slip, despite repeatedly asking for one, which I accept.
22. No national insurance or tax payments were paid by the Respondent in respect of the Claimant.
23. The Claimant was not placed on furlough by the Respondent when the scheme was introduced in March 2020 and received no wages from the Respondent after 16 March 2020.
24. The Claimant was provided with accommodation and food from the commencement of his employment, including the period of time after 16 March 2020 until he left on 22 June 2020 to take up alternative employment in Port Isaac.
25. The Claimant ended his contract of employment when he took up his new job and moved to Port Isaac.
26. The Respondent is in creditors' voluntary liquidation as can be seen on the Companies House website.

The Law

27. Section 13 of The Employment Rights Act 1996 [ERA 1996] sets out the right of an employee not to suffer unauthorised deductions.

28. Section 13(1) of ERA 1996 states that:

*“An employer shall not make a deduction from wages of a worker employed by him unless—*

- (a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or*
- (b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.”*

29. Section 13(3) states:

*“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”*

30. Section 23(2)(a) ERA 1996 states that the time limit for making a claim for deductions for wages must be within 3 months of the date of the deduction. Section 23(3) ERA 1996 states that when there is a series of deductions, the claim must be made within 3 months of the last deduction in the series.

### Conclusions

31. There clearly was an offer of employment by the Respondent that was accepted by the Claimant. This can be seen in the email chain of 7 August 2019. In addition, the Claimant commenced his employment on the agreed date (23 August 2019) and was paid his wages in cash at the rate of £350 per week. The Claimant was therefore a worker for the purposes of section 13 of the Employment Rights Act 1996.

32. The Respondent did not provide written particulars of the contract of employment to the Claimant following the Claimant’s acceptance of the offer of employment, but it can be seen by the conduct of both parties that:

- (i) the wages £350 per week were paid; and
- (ii) the Claimant received a room and two meals a day as part of his contract of employment.

These were clearly two separate terms of the contract of employment and I do not find that the provision of a room and food after 16 March 2020 can offset the unpaid wages.

33. I accept the Claimant's oral evidence that he had not been paid any wages from the period 16 March 2020 until the point at which he ended his employment. He was unable to show me any pay slips because he had received none, and as he had been paid in cash there were no deposits into his bank account.

34. The Claimant commenced his claim on 23 July 2020, which is within 3 months of the date of the last unpaid wages (there having a continuous non-payment since the payment of 16 March 2020).

35. The Respondent made unlawful deductions from the Claimant’s wages by way of unpaid wages from the period 16 March 2020 until 22 June 2020 in the sum of £4,900.00 (net pay). This amount has been reached by multiplying the contractual rate of pay (£350 per week net) by the number of weeks where no wages were paid (14).

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Employment Judge Freshwater

Date: .....31 March 2022.....

Sent to the parties on: 22 April 2022

For the Tribunal Office