



## EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr E Horta v

**Respondent:**  
Playworks Limited

**Heard at:** Manchester (via CVP)

**On:** 16 March 2022

**Before:** Employment Judge Malik

### Appearances

For the claimant: Claimant attended via CVP link

For the respondent: Did not attend

## RESERVED JUDGMENT

1. It was not reasonably practicable for the claim to have been presented within three months of the effective date of termination and unauthorised deduction and it was presented within a further period which was reasonable. The Tribunal has jurisdiction to deal with it.
2. Upon hearing the claimant and upon the respondent not attending, the judgment of the Tribunal is that:
  - a. The complaint of unfair dismissal is well founded and succeeds;
  - b. The complaint relating to outstanding holiday pay on termination of employment is well founded and succeeds;
  - c. The complaint seeking a redundancy payment was dismissed upon withdrawal by the claimant.
3. Further information is required on the amounts claimed and a determination of remedy in relation to each of the claimant's successful complaints will be considered by Employment Judge Malik on paper only unless either party requests a remedy hearing. Further detail is requested via case management orders provided in a separate order.

# REASONS

## Preliminary matters and Issues for the tribunal to decide

1. The claim was issued in the Manchester Employment Tribunals on 9 November 2021. The respondent has failed to present a valid response on time. I have decided that a determination can properly be made of the claim in accordance with rule 21 of the Rules of Procedure.
2. The claimant brings claims of unfair dismissal and unpaid holiday pay. The claimant withdrew the claim seeking a redundancy payment at the outset of the hearing.
3. The claimant was employed by the respondent as barback (a bartender's assistant) on a zero hour contract. His employment with the respondent began on 17 July 2009 and ended on 5 April 2021.
4. The claimant was not made aware of his employment being terminated until September 2021 following numerous attempts to contact his manager. He only became aware of the termination following a discussion with HMRC in September 2021.
5. Once aware, the claimant presented his claim within 3 months of the date of his knowledge. ACAS Early Conciliation was commenced on 29 October 2021 and ended with the issue of the ACAS certificate on 8 November 2021. The claim form was presented on 9 November 2021.
6. The Tribunal is satisfied that it was not reasonably practicable for the claim to have been presented within 3 months of the deduction/dismissal and that it was presented within a further period which was reasonable.

## Procedure, Hearing & Evidence

7. The claimant attended the hearing via CVP link.
8. The respondent did not attend. Correspondence was received from their representative on 14 March 2022 confirming that the respondent had not traded since the pandemic and that it did not have anyone in a position to attend the hearing.
9. The respondent is still listed as an active company on Companies House.
10. The only papers before the Tribunal were the ET1 Claim Form and an attached letter from the claimant purporting to be his witness statement and accepted as such.
11. The claimant gave evidence on affirmation and answered questions from the Tribunal.

## Issues

12. To determine the claims I need to consider the following issues:

### Unfair Dismissal

13. In dealing with the claim of unfair dismissal:

- a. Is claimant an employee as defined in section 230 of the Employment Rights Act 1996?
- b. Was the claimant continuously employed for not less than 2 years at the effective date of termination as required by Section 108 of the Employment Rights Act 1996?
- c. Was there a dismissal?
- d. If so, when did the claimant's employment terminate?
- e. If so, what was the principal reason for the dismissal and was it a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996?

### Holiday Pay

14. In dealing with the issue of unpaid holiday pay:

- a. Was the Claimant entitled to leave?
- b. What was the relevant leave year?
- c. How much leave taken?

## Findings of Fact

### The claimant's contract

15. The respondent business is a bar/restaurant. The claimant started to work for the respondent as a barback in July 2009 on a zero hours contract. He later progressed to the role of a bartender. He had a written contract of employment and was defined as an employee in accordance with section 230 of the Employment Rights Act.

16. The claimant had been continuously employed for a period of more than 2 years at the time of the effective date of termination as required by section 108 of the Employment Rights Act.
17. In the immediate months prior to March 2020, the claimant was averaging 4.75 hours a week at a rate of £8.50 per hour.
18. Following the announcement of the national lockdown in March 2020 the respondent stopped trading and did not reopen their doors.
19. The respondent paid the claimant furlough pay up to 31 July 2020.

### The dismissal

20. In the period from 22 March 2020 onwards the claimant made numerous attempts to contact management to ascertain the position on his employment. These proved futile.
21. In/around September 2020, the claimant was informed by other colleagues that HMRC had notified them that their employment had been terminated.
22. The claimant contacted HMRC in September 2021 and was told that his contract had been terminated on 5 April 2021. The dismissal in these circumstances falls under section 95 (1)(a) of the Employment Rights Act 1996 whereby the employer terminated the contract without notice.
23. The respondent did not inform the claimant that his employment had been terminated and no procedure or process was followed.

### Holiday pay

24. The contract of employment confirmed that the claimant was entitled to 5.6 weeks holiday leave per year.
25. The leave period for holiday ran from 1<sup>st</sup> February to 31<sup>st</sup> January.
26. The claimant did not take any holiday in this time period.
27. The claimant was entitled to be paid in lieu of accrued but untaken holiday on termination of employment.

### **Conclusions**

28. The respondent did not give notice to the claimant to terminate employment and no reason was provided for the dismissal pursuant to Sections 95 and 98 of the Employment Rights Act 1996. The dismissal was unfair.
29. The respondent made an unlawful deduction from wages in failing to pay the claimant for accrued but untaken holidays.

**Case Number: 2414439/2021**

**Employment Judge Malik**  
12 April 2022

Sent to the parties on:  
28 April 2022

For the Tribunal Office: