



EMPLOYMENT TRIBUNALS

Claimant:
Miss A Taylor

v

Respondent:
Craft Ales and Cocktails Ltd

Heard at: Nottingham

On: 21 February 2022

Before: Employment Judge Fredericks

Appearances

For the claimant: In person

For the respondent: Ms S Wood (litigation consultant)

JUDGMENT ON REMEDY

1. The claimant suffered an unlawful deduction from her wages in April 2021, May 2021 and June 2021 and it is ordered that the respondent must pay her **£477.12**.
2. The claimant has also not been paid in respect of accrued but untaken holiday and it is ordered that the respondent must pay her **£371.55**.
3. Consequently, the total amount that the respondent is ordered to pay the claimant is **£848.77**.

WRITTEN REASONS

1. These written reasons are produced at the request of the respondent's representative after Mr Neale of the respondent left the Tribunal building once it became clear that his application to set aside the Rule 21 default judgment was refused.
2. This claim was due to be heard at the same time as two other employees of the respondent. One of those other claimants had presented her claim out of time and so it was dismissed. Consequently, I conducted a remedy hearing for both claimants today.

Respondent's application to extend time to (1) set aside default judgment, (2) extend time to a response, and (3) postpone the hearing

3. By an application dated 18 February 2022, the respondent applied for the hearing to be postponed in order that the default judgment could be set aside and an opportunity given for the respondent to respond to the claim.
4. The application contended that the respondent was unaware that the claims had been issued and so had not had the opportunity to deal with them. It was said that the respondent's business had closed down and so the respondent's director, Mr Neale, could not access the post. It was claimed that the respondent considers it has reasonable prospects of success to defend the claim. The application was not accompanied by a draft ET3 Form for acceptance and the reason offered for this was that the respondent was not aware of what the claims were.
5. When considering the application, I had in mind the guidance provided by *Kwik Save Stores Ltd v Swain an Ors [1997] ICR 49 EAT*, and so sought to consider (1) the reason provided for the late presentation of a response, (2) the merits of any defence contained within the response, and (3) where the balance of prejudice lay between the parties. The Tribunal also bore in mind its overriding objective to deal with cases fairly and justly.
6. The respondent remains a live entity at Companies House and its registered address is the one provided to the tribunal and the one where the documents in this case were sent. Ms Wood informed me that the respondent's Mr Neale had not changed the registered address to one where he could receive post and Mr Neale seemed to accept that he knew he should have done this. It seems to me that this is indeed a step which should have been completed, and so it is not a good reason for a lack of response to claim that the documents were sent to an inaccessible location.
7. No defence was advanced in the hearing today and so I was unable to determine whether the possible defence had any merit. I accept that, if the respondent was unaware of the nature of the claims, a defence might be difficult to put together, but no further information was offered at all to justify the bald contention that the respondent believed it had reasonable prospects of success if allowed to defend the claim.
8. It is clear to me that the balance of prejudice in relation to the application lay with this and the other claimant. They had completed all of the steps required of them, including providing witness statements and a bundle for the hearing. They are entitled to receive a remedy on the back of their obtaining default judgments and would be prejudiced significantly by any delay.
9. Finally, and importantly, I did not consider that it would be in accordance with the overriding objective to set aside the default judgments and extend time to file a response in the circumstances. The respondent had not responded to the claim in time because it had not fulfilled its responsibility to update its registered office at Companies House. The respondent had also not provided a draft response form in the hearing and had not substantiated its claims to have a viable defence.

10. In my judgment, the duty to deal with cases fairly and justly, without inappropriate delay, leads me to refuse the respondent's application and continue with the remedy hearings.
11. Following this decision, Mr Neale left the hearing. His representative remained but offered no submissions in respect of the evidence provided or the remedy to be awarded.

Unlawful deduction of wages and unpaid holiday

12. The claimant's claims under this heading succeeded courtesy of the production of the default judgment. Prior to the hearing, the claimant was asked to particularise her claim. Her claim form said that she was owed 'approximately £850'. At the hearing, the claimant provided witness evidence and a spreadsheet showing the hours she said she worked and the amounts she said she was paid, which gave rise to the shortfall.
13. I asked the claimant questions about how the evidence was put together and checked the calculations so that I could be satisfied in the document's accuracy. I was satisfied that the document was accurate and so awarded the full amount particularised.

Compensation for emotional distress

14. Part of the claimant's claim related to trauma associated with incidents witnessed whilst working for the respondent. This included incidents of domestic violence seen between Mr Neale and others. The claimant also claims for trauma caused by what she describes as the lack of duty of care for the other claimant's health and wellbeing. She asked for £1,500 in compensation.
15. I did not award any compensation under this heading because I did not consider that the claimant had evidenced the extent of the impact on her health and wellbeing. The claimant was open about the mental health difficulties that she already suffered from prior to her employment with the respondent and could not identify any material ways in which her employment had caused that condition to deteriorate. I am also mindful that the claimant was claiming an element of compensation relating to the way another employee had been treated, and I could not detect the basis upon which that alleged breach of duty would have caused a harm to the claimant which I could make an award in respect of.

Uplift request in respect of unreasonable failure to follow ACAS Code of Practice

16. The claimant claimed a 25% uplift for the respondent's failure to address her complaints about her wages. I accept that the claimant did query her wages with Mr Neale and colleagues who were involved with payroll. However, I consider that efforts were made to address the problem even though they did not resolve it. Further, the claimant then left the respondent's employment within weeks of complaining about her pay which may have deprived the respondent of time to address it.

17. Consequently, I made no uplift in respect of failure to follow an ACAS code of practice.

Failure to provide written statement of particulars or pay slips

18. The claimant's witness evidence included a claim under this heading, but it was not a claim which was specifically advanced in the claim form. A careful reading of the claim form also does not give rise to facts in that document which might make out the claim.

19. Consequently, I did not consider that this request was covered by the default judgment and made no award under this head.

Employment Judge Fredericks

11 March 2022

Sent to the parties on:

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For the Tribunal Office:

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Full written reasons will not be provided unless asked for by a written request presented by any party within 14 days of the sending of the written record of the decision.