



EMPLOYMENT TRIBUNALS

Claimant: A A Suja

Respondent: UKRO Ltd

Heard at: London Central in person On: 29 June 2022

Before: Employment Judge Sullivan

Representation

Claimant: in person

Respondent: did not attend and unrepresented.

RESERVED JUDGMENT

1. The judgment of the tribunal is:
 - (i) the claimant's claim of unfair dismissal is well-founded.
 - (ii) the claimant's claim that there was an unlawful deduction from his wages is well-founded.
2. The respondent is ordered to pay the claimant the following:
 - (i) basic award – £715.50
 - (ii) compensatory award - £11,462.22 net
 - (iii) unlawfully deducted wages – £30,427.45 gross
3. The gross figure should be paid by the respondent less deductions for tax and NI contributions.

REASONS

Procedure

1. The tribunal heard evidence from the claimant through a Somali interpreter.

2. Other than the ET1 no other documentary evidence was available to or considered by the tribunal. The claimant was unable to produce pay slips or any other documentary evidence to support his claim. My factual findings are therefore based upon his oral evidence and confirmation from the banking app on his phone as to what he was paid by the respondent.
3. The respondent did not attend today or at the previous hearing. It has not responded to communication from the tribunal and did not file an ET3.

Factual findings

4. The claimant was employed as a member of kitchen staff at the Buddha-Bar restaurant, London. The commercial vehicle for the restaurant is UKRO Ltd. The claimant began his employment on 18 August 2019. He was aged over 41 throughout his employment.
5. He worked six days a week for around 9-10 hours a day. He was paid £744.26 net fortnightly, which is equivalent to a weekly net payment of £372.13.
6. From 23 March 2020 the claimant was placed on furlough. He was told that he would continue to receive 100% of his wages with the respondent claiming 80% from the government furlough scheme and making up the remaining 20% themselves.
7. The claimant was not paid any wages for the period 1 March 2020 to 30 June 2021 other than four payments of £178.98 in May and June 2020.
8. The claimant returned to work at the end of his furlough period on 30 June 2021. He was asked by the respondent whether he had brought a claim before the Employment Tribunal in relation to his unpaid wages. He told them that he had. The respondent in turn dismissed the claimant.
9. By around 30 August 2021 the claimant had found himself a new job as a carer. He continues in that role to this day. In that role he visits the individual he cares for a number of times a day and works for a total of 2.25 hours each day. He works six days a week and earns £640 net per month.
10. The non-payment of the claimant's wages caused him to become homeless and reliant upon the support of friends. His homelessness resulted in the loss of his pay slips.

Law

11. An employer is prohibited from making a deduction from wages as per s.13 Employment Rights Act (ERA) 1996.
12. As he had not been employed by the respondent for more than two years the claimant can only claim successfully for unfair dismissal if he was dismissed for one of a number of identified reasons that are considered automatically unfair. One such reason is dismissal for alleging that the employer had infringed a right of his which is a relevant statutory right (s.104(1)(b) ERA) with the definition of a relevant statutory right including that contained within s.13 ERA.

13. Compensation for unfair dismissal is in two parts, a basic award and a compensatory award.
14. The basis award is calculated in accordance with s.119 ERA. Gross weekly pay is used in the calculation subject to the relevant maximum cap in place at the date of the dismissal.
15. s.123 ERA provides for the compensatory award to be “*such amount as the tribunal think is just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.*”
16. The claimant is under a duty to take reasonable steps to mitigate any loss and this must be taken into account by the tribunal.

Conclusions

(i) *Unlawful deduction from wages*

17. The respondent failed to pay the claimant his full entitlement to wages for a period spanning 70 weeks.
18. The respondent was entitled to wages equivalent to £447 per week gross. In the absence of his pay slips the claimant was unable to provide me with his actual weekly gross pay figure, but I have calculated by taking his weekly net pay figure and entering it into an online tool (www.stafftax.co.uk) to identify the equivalent gross figure. I have similarly grossed up the four payments made in May and June of 2020.
19. The respondent is therefore entitled to $(70 \times £477) - £862.55 = £30,427.45$ gross.

(ii) *Unfair dismissal*

20. The claimant was dismissed due to alleging the infringement of a relevant statutory right, namely to be paid his wages without deductions. As such the reason for his dismissal is automatically unfair and there is no issue about his term of employment being less than two years. I conclude that he was unfairly dismissed.

(iii) *Basic award*

21. Given his age the calculation of his basic award is as follows $(£477 \times 1 \times 1.5) = £715.50$ gross.

(iv) *Compensatory award*

22. I deal with the compensatory award in two parts. The claimant was unemployed for 8 weeks prior to finding a new job. That is a reasonable period in which to find a new job and he should receive the equivalent of his full wages for that period. Taking net figures that is a calculation of $8 \times £372.13 = £2,977.02$.

23. The claimant has then worked a period of 10 months to the date of the hearing in a job that paid him less than his previous job with the respondent. The net difference in monthly pay is £848.52. The claimant was dismissed at the end of the furlough period from an industry heavily impacted by the pandemic. He does not speak English. He mitigated his loss in good time by finding new employment. He found himself homeless for a period and reliant upon the support of friends. I therefore find it reasonable that the respondent should be responsible for making up that difference over that 10 month period, but no further. This second part of the compensatory award is therefore $10 \times £848.52 = £8485.20$ net.

24. This gives a total compensatory award of £11,462.22 net.

Employment Judge **Sullivan**

Date 30 June 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.01/07/2022.

FOR EMPLOYMENT TRIBUNALS