



EMPLOYMENT TRIBUNALS

Claimant: Duabo Denni-Fibersma

Respondent: Hills Bridge Services Ltd

Heard at: East London Hearing Centre (by telephone)

On: 08 August 2022

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Appearance not entered

CORRECTED JUDGMENT

- 1. The Respondent made unlawful deductions from the wages of the Claimant.**
- 2. The Respondent is ordered to pay to the Claimant the sum of £18,017.70.**

REASONS

1. The Claimant was employed by the Respondent. He worked maintaining track for Network Rail and Transport for London. He worked under a contract of employment, stated to be employed by Platinum Pay Ltd, but his real employer was the Respondent.
2. On 27 March 2020 he was furloughed. Until 04 June 2020, he was not paid but that covered the period back to the start of furlough.
3. On 28 August 2020 he went back to work and worked until 06 January 2021.

4. The Respondent said that the furlough pay would be based on actual pay for the last financial year. The furlough pay for the Claimant was £414.20.
5. His furlough payments were behind, and he was not paid for the period 04 July 2020 – 31 July 2020. That is 3 weeks. $3 \times 414.40 = \text{£}1,242.60$.
6. On 06 January 2021 the Claimant was again furloughed. He was not paid after being furloughed again. In an email dated 03 February 2021 the payroll manager wrote to the Claimant (and all other employees) to say that he would be on furlough. It also stated that he had been on unpaid leave as there was no work. This is a contradiction, and plainly it was intended that the Claimant was intended to be placed on furlough. The letter stated that he would be on furlough or until the scheme ended. He signed to agree.
7. The Claimant's employment came to an end on 13 October 2021.
8. The furlough scheme ended on 30 September 2021.
9. In response to contact from Acas, the Respondent said that it could not submit a claim for furlough pay, as payroll was conducted by Platinum Pay Ltd. This is not credible, particularly as both the Respondent and Platinum Pay Ltd are owned and run by the same individual.
10. In any event this is no reason as the pay of furloughed individuals is due from the employer whether or not a claim for recompense is made or is successful.
11. Platinum Pay Ltd is owned by the same person who owns the Respondent, Paul Brisenden. The contract of employment states that it is with Platinum Pay Ltd. It says that Platinum Pay Ltd enters into contracts with clients to provide services. However, it is the Respondent for whom the Claimant worked. Platinum Pay Ltd was merely the conduit for processing payroll.
12. This is demonstrated by another document as well as the Claimant's evidence. On 08 July 2020 the Claimant entered into a training agreement with Hills Bridge Services Ltd, and the document is headed with that company's name in capitals, in bold, which starts:

*"In consideration of the training which I will be receiving from ETA I agree to remain **employed by Hills Bridge Services Ltd** for a minimum period of one year after completion of my training."* [emphasis added]

It adds

"...if I leave my employment at any time... I undertake to refund to my employer..."

and

"The employee shall ... be liable to pay ... costs reasonably incurred by Hills bridge in the recovery of any unpaid Fees..."

13. The period from 06 January – 13 October is 40 weeks. The last two weeks are outside the furlough scheme.
14. $\text{£}414.20 \times 38 = \text{£}15,739.60$.
15. For the last two weeks the Claimant is entitled to full pay (it not being relevant that the Respondent had no work for him during that time). That pay is $\text{£}414.20$ divided by 4 multiplied by 5 = 517.75. Twice that is **£1,035.50**
16. The total payable is $\text{£}1,242.60 + \text{£}15,739.60 + \text{£}1,035.50 = \text{£}18,017.70$.
17. The Claimant asked for damages in respect of the strain this had caused him. The Employment Tribunal is a statutory Tribunal, with only the powers given by Acts of Parliament. Those powers do not include such a head of claim.
18. The Claimant also asked for $\text{£}500$ in respect of training that was paid for by the Respondent, but which he did not receive. This was not a deduction from wages, and so this cannot be awarded.

Employment Judge Housego
Dated: 08 August 2022