



EMPLOYMENT TRIBUNALS

London South Employment Tribunal on 17th August 2022

Claimant

Between

Respondent

Mr Michael Gordon

&

Sutton and Cheam Limited

Before

Appearances

Judge M Aspinall (Sitting as an Employment Judge)

Mr M Gordon (in person) via telephone
No appearance by the Respondent

FULL MERITS HEARING Judgment

1. Judgment of the Tribunal

Having heard from the Claimant and in the absence of the Respondent (see below), I find:

1. That the Respondent made unlawful deductions from the wages properly due to the Claimant.
2. That the claims for holiday and notice pay are also made out and therefore succeed.
3. The Respondent shall pay to the claimant the sum of **£2,338.64 (gross)** after making lawful deductions for *income tax* and *employees national insurance* and accounting to HMRC for those and employers national insurance.

2. The Respondent did not attend the hearing and the Director, on the being contacted by our Clerk, informed the Tribunal that he was jogging and believed that the hearing was taking place tomorrow. The notice of hearing was issued on 14 December 2021 to both parties and clearly states that the hearing was listed, by video, on 17 August 2022 at 10:00. I was satisfied that the Respondent had proper and sufficient notice of the hearing and that it was in the interests of justice to proceed.

3. In reaching my decision to proceed, I considered the overriding objective and the interests of justice and I was satisfied that both would be met by proceeding in these circumstances. I also had the benefit of seeing an email from the Respondent - sent at 08:18 on 16 August 2022 to the Tribunal and not copied to the Claimant. In that email, the Respondent asked for connection details for the hearing, explained that the business had been sold in May 2022 and that he wanted to attend to "...sort out exactly how much we owe Mr Gordon as I've tried to sort out through acas with no success". (sic)

4. Details of the Tribunal decision

- The Claimant was paid a monthly salary of £2,833.00 (x12 = £33,996)
- This amounts to a weekly sum of £653.77 (33996/52)
- This breaks down to a daily amount of £130.75

5. The Claimant sought payment for the following amounts:

- 12 days work (12x130.75 = £1,569.00)
- 6 days holiday (6x130.75 = £784.50)
- 1 week notice pay (5x130.75 = £653.75)
- 1 week for being out of work (5x130.75 = £653.75)
- A total of £3,661.00

6. The Claimant is entitled to be paid for 12 days salary, 6 days of unpaid holiday and 1 week notice. He had insufficient service to bring a claim for unfair dismissal and so cannot properly claim for pay in the week whilst he was out of work following his dismissal. Deducting that amount from the total above, we reach a final gross sum of £3,007.25.
7. The Respondent had paid to the Claimant the sum of £668.61. This amount appeared to have been calculated by taking the amount of £1,268.56 (being the net amount on his final payslip) and deducting from it the value of two invoices which the Respondent said the Claimant had to pay (invoice 83545 for £500 dated 28/7/21 and invoice 82691 for £99.65 dated 13/4/21).
8. In the absence of an express contractual provision, legal order, statutory requirement or the express written consent of the Claimant, the Respondent had no lawful basis to make the deduction of £599.65 (the total of the two invoices) and should not have done so.
9. Taking account of the gross amount properly due to the Claimant (£3,007.25) and deducting from it the £668.61 which the Respondent paid to the Claimant by cheque in October 2021, the balance of £2,338.64 remains and that is the amount which the Respondent is ordered to pay forthwith.

Judge M Aspinall on Wednesday, 17th August 2022