



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss L Arnold  
**Respondent:** Food and Fuel Break Limited

**Heard at:** By CVP                      **On:** 5 October 2022  
**Before:** Employment Judge JM Wade

## Appearances

For the claimant: In person  
For the respondent: Ms McGrath, consultant

## RULE 21 JUDGMENT

The claimant's complaints of unlawful deductions from wages and unpaid holiday pay succeed. The respondent shall pay to her the gross sums of £532 in respect of unpaid wages and £121.60 (1.6 weeks' pay), a total sum of **£653.60**.

## REASONS

1. The claimant presented the above claims on 11 July 2022, in which she included sums said to be owing for wages from April and May of this year. Upon her resignation she had undertaken ACAS conciliation (25 May to 5 July 2022). There is no limitation issue. She commented in her claim form that the employer was saying she had taken her wages as cash from the tills and he can prove that, but she had not. She said she had not had a wage slip since October 2021.
2. The claim was accepted, a legal officer identifying the employer as above. On 2 August 2022, the notice of today's hearing, the ET3 form and the claim were posted to the respondent company. The respondent company was informed that the response must be provided by 30 August 2022.
3. On 2 August the claimant emailed the respondent's director, Mr Marshal Muthukumar, her calculation of the sums said to be owing, saying "as the Tribunal requested this is the list of monies owed to me"...and she set out her calculations. The claimant had by that stage received the directions from the Tribunal by email, but the respondent was yet to receive them by post. The standard orders required her to provide that calculation by 30 August also. She did it immediately.
4. In his reply to that email, Mr Marshal Muthukumar said, "Hi Laura, please do go to court I have got plenty of evidence ....."
5. The respondent did not present its response by the return date.
6. On 10 September 2022 the respondent emailed to the Tribunal a response form asserting a counterclaim relating to sums allegedly taken from the till by the claimant. He expressed hope that the response, thought late, could be accepted.

7. On 21 September 2022 the Legal Officer rejected that application because no reason was given for the extension sought and it was not copied to the claimant for her comment.
8. On 25 September the claimant was asked to provide her calculations to the Tribunal and she provided a copy of the 2 August email, in response.
9. There was then no further communication to the Tribunal from or on behalf of the respondent until this morning.
10. A letter was sent by representatives instructed that morning, and Ms McGrath made a second application, developed orally today, that I extend time for presentation of the response.
11. Her application gave the reason for the delay as her client making a mistake as to the return date, believing it to be 30 September. This was not consistent with the letter he had written on 10 September in which he indicated he knew the response was already late.
12. The lateness was also said to be due to working seven days a week, personal life and childcare.
13. It was said that the respondent had a defence – that is that the claimant had in fact received her wages by taking them from the till in cash.
14. In considering this application I take into account the timing and manner of the application: the respondent has left it to the last possible minute to instruct a representative and make a further application, and the instructions are not consistent with the letter already written on behalf of the respondent on 10 September.
15. The application also involves making allegations against the claimant which the respondent well knew, or was threatening, on 2 August.
16. The respondent is a limited company, that is the way in which Mr Marshal Muthukumar operates his business; as such there is an obligation to manage its affairs prudently, including dealing with paperwork efficiently. A representative could have been instructed on or around 21 September, and the alleged evidence for the allegations against the claimant could have been provided promptly to support the application. It was already directed to be provided by mid September.
17. As it is, I have before me bare allegations, that the claimant took cash wages, and that is said to be the defence.
18. The prejudice to the claimant in permitting the allegation is great; she will have to wait not less than a further three to four months to have her claim relisted, with stigmatising allegations hanging over her. The directions will need to be brought up to date and arrangements made for a final hearing.
19. The prejudice to the respondent is that if I do not permit the application, he loses the opportunity to have his allegations against the claimant determined -resulting in a possible finding that she has already received her wages by taking them in cash and the claims being dismissed.
20. It seems to me that the defence is, of itself, a high evidential mountain to climb, and that having had notice since 2 August, if there was merit in it, the evidence would have been addressed promptly.
21. The sums involved are small, in relation to the cost of representation, and the Tribunal and other resources that will be involved in delay. On the other hand they are very significant sums to the claimant.
22. In these circumstances I consider it is not in the interests of justice to extend time for the response to be presented. I exercise my discretion to refuse the application, and in those circumstances there is sufficient information for me to give Judgment. The only discount to the claim is that the claimant admitted she had “guessed” the holiday

pay due. Its calculation is a matter of maths, and I can do this on the information I have.

JM Wade  
Employment Judge JM Wade

5 October 2022

Judgment sent to the parties on:

7 October 2022  
For the Tribunal Office:

*CM Haines*