



EMPLOYMENT TRIBUNALS

Claimants: Mr Cristian Paul Iriarte Valdivia

Respondent: Italian Catering Concept Limited T/A Don Giovanni

HELD AT: Manchester on 18 October 2022

BEFORE: Tribunal Judge Holt

REPRESENTATION:

Claimant: In person (by CVP)

Respondent: No attendance

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claim was issued in the Manchester Employment Tribunals on/around 8 June 2022. The respondent has failed to present a valid response (on time or at all). The Tribunal Judge has decided that a determination can properly be made of the claims in accordance with rule 21 of the Rules of Procedure.
2. The respondent has made unauthorised deductions from the claimant's wages and failed to pay holiday pay and therefore must pay the Claimant £1,680 as claimed.

REASONS

3. The respondent has failed to respond to the Claims. The Chronology of the proceedings is:

11 April 2022

22 May 2022

8 June 2022

ACAS notification

ACAS certificate

Claim form

18 August 2022	ET3
15 September 2022	Letter from Tribunal. Judge McDonald wrote asking for details of the respondents Defence and stating that it has to be provided by 29 September 2022. The letter emphasised need for compliance with previous Tribunal Directions of 21 July 2022.
21 July 2022	Tribunal letter – notice of hearing

4. The Orders made on 21 July 2022 were:

Orders

- The claimant must by 4 weeks from the date of this letter send to the respondent:
 - a document setting out how much s/he is claiming and how the amount has been calculated;
 - copies of all supporting documents and evidence.
 - The respondent must by 6 weeks from the date of this letter send to the claimant copies of all its relevant documents and evidence.
 - The claimant and the respondent must bring copies of all the documents and evidence to the hearing for their own use. They must also bring 2 spare copies of their own documents and evidence for the Tribunal to use.
 - The claimant and the respondent are responsible for making sure any relevant witnesses attend the hearing.
5. The respondent filed an ET3 form but has not provided and details of any response/defence (and not even full details of their address. The postcode is obviously inaccurate being “M13be”). Nonetheless, the respondent stated at para 2.7 of the ET3 that they wanted to take part in the hearing by videolink. At the box at 6.1 of the ET3 response form asking for the facts of the claim, the respondent has simply written “*Cristian abandoned his job*”.
6. My first decision, therefore, was whether the case could proceed under rule 21 of The Employment Tribunal Rules of Procedure 2013 (as Amended) (see [Appendix 1](#) at the end of this Judgement). In the light of the lack of response from the respondent, I decided that the case should proceed under rule 21(2).
7. Having decided that the Claim should, proceed, I had to decide the following key questions:
- a. Was the claim presented in time?
 - b. Was the claimant a worker?
 - c. Is each claim in respect of wages?
 - d. Has the employer made a deduction in relation to the claim?
 - e. Was the deduction authorised?
 - f. Was it an exempt deduction?
 - g. Is there any financial loss attributable to the non-payment

8. In making my decisions on the claim, I also bore in mind of the legal framework which included: S13 of the Employment Rights Act 1996 (“ERA”) (the right not to suffer unauthorised deductions); the meaning of “wages” at S27 of the ERA 1996 and the definition of employees and workers etc at S230 of the ERA 1996.
9. I heard evidence from the Claimant (only) via video-link facilitated by the Tribunal’s virtual platform (CVP), having been provided with an electronic file of papers. The documents submitted in advance of the hearing were scant and simply consisted of Tribunal correspondence, the ET1 claim form for the claimant, ET3, as well as an email appending the claimant’s contract of employment, (albeit that the contract was dated 27 October 2021 and he started his employment in March 2021). The respondent has not complied with directions, not provided any evidence, nor otherwise engaged in this process. The respondent did not attend the hearing.
10. I find that the claimant did have a written contract with the respondent. This document says that the claimant was employed as a “head chef” and that he was to be paid £40,000 per annum. This equated to £769.23 a week (gross), which is precisely what he claimed in his claim form. The claimant said in the claim form, and confirmed at the hearing, that he was paid £559.23 a week net. I am satisfied that the claimant was expected to work 5 days a week and that he was entitled to 28 days paid holiday a year. I am satisfied that the claimant knew the role that he was required to fulfil as a chef, the work that he had to complete, and the agreed weekly rate of payment. I find that the claimant fulfilled his work obligations during the course of his employment between 24 May 2021 and 28 March 2022. In fact, I am satisfied by his evidence that he often worked extra hours and went “above and beyond” his contracted hours. Given that the claimant was not paid for his final week, I am satisfied that he is owed one week’s pay.
11. In his claim form the claimant set out how he calculated his claim which was effectively outstanding holiday plus one week’s earnings because he was not paid for his final week. He claimed **£1,680**.
12. I am satisfied that he had worked for the respondent for just over 10 months and that, in that period, he only took 4 days holiday. It therefore seems that he was owed $[(10/12 \times 28 =) 23 - 4 =]$ 19 days holiday. This is 3.8 weeks which equates to $(3.8 \times 559.23 \text{ net} =)$ £2,125.07. In addition, he was owed one week of pay which would bring the claim to £2,684.30 (calculations on a net basis). The claimant has always stated that he was paid £513 at some point by the respondent after he left. This would bring the claim down to $(2,684.30 - 513 =)$ £2,171.30.
13. I find that the claimant appears to have in fact made his claim to the Tribunal based on an under-calculation. Nonetheless, at the hearing before me he did not seek to amend his claim and was content that his claim should be decided on the basis of £1,680 set out in the claim form. In any event, given that the respondent was not present and would not have had notice of any changes to increase the claim, I would have been reluctant to allow for an increase in the claim on the day).

14. I therefore decided to allow the claim in the sum claimed, namely £1,680, which is a figure calculated net of tax.

Decision (Communicated to the Claimant at the hearing on 18 October 2022)

15. The Respondent has made unauthorised deductions from the Claimant's wages and failed to pay holiday pay therefore must pay the Claimant £1,680 (net).

Tribunal Judge Holt

Dated 18 October 2022

JUDGMENT SENT TO THE PARTIES ON

19 October 2022

FOR THE TRIBUNAL OFFICE

Appendix 1

Rule 21 Effect of non-presentation or rejection of response, or case not contested

- (1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.
- (2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone. [Where a Judge has directed that a preliminary issue requires to be determined at a hearing a judgment may be issued by a Judge under this rule after that issue has been determined without a further hearing.]
- (3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2404808/2022**

Name of case: **Mr C P Iriarte** v **Italian Catering Concept**
Valdivia **Limited t/a Don Giovanni**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day, the calculation day, and the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 19 October 2022

the calculation day in this case is: 20 October 2022

the stipulated rate of interest is: **8% per annum.**

For the Employment Tribunal Office