EMPLOYMENT TRIBUNALS

CLAIMANT: **Mr. D. Scott**

RESPONDENT: **Epic Pies Limited**

HEARD AT: London Central **ON:** 6 May 2022 & 23 September 2022

BEFORE: Employment Judge J Galbraith-Marten

REPRESENTATION:

CLAIMANT: In person
RESPONDENT: Mr. D. Jobsz & Miss H. French, Directors

CERTIFICATE OF CORRECTION

Employment Tribunals Rules of Procedure 2013

Under the provisions of Rule 69, the judgment sent to the parties on 26 October 2022 is corrected further as set out in bold at recital A and paragraphs 53, 54, 55 and 76 and is replaced by the judgment attached.

Employment Judge J Galbraith-Marten

17 November 2022

Sent to the parties on:

18/11/2022

For the Tribunal Office:

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CORRECTED JUDGMENT

The judgment of the Tribunal is:

A. The unlawful deduction from wages claim succeeds in part and the claimant is awarded **£444.27 gross** subject to the necessary deductions for tax and national insurance.

B. The unlawful deduction of wages claim in respect of holiday pay is not well founded and is dismissed.

REASONS

Introduction

1. The claimant originally presented a claim of unfair dismissal, unlawful deduction from wages and holiday pay but the unfair dismissal claim was withdrawn as the claimant did not have 2 years' continuous service at the date of his dismissal.

2. The remaining claims are a series of unlawful deduction from wages during the period 1 March 2020 to 26 November 2020 and a failure to pay accrued but untaken holiday at the date of termination. The Respondent denies the claims but accepts it owes the claimant the outstanding sum of £163.42.

3. Both parties were unrepresented, the respondent produced a bundle of documents and both Mr. Scott and Mr. Jobsz gave sworn evidence.

Preliminary Issue

4. As set out in his amended schedule of loss included in the bundle at page D33, the claimant stated on the first day of the hearing that he should have received two weeks' notice pay rather than one week as provided by the respondent and he sought to amend his complaint to include a breach of contract claim. The respondent objected to the amendment.

5. In relation to amendment applications, the leading authority is **Selkent Bus Company Ltd v Moore [1996] ICR 836**. In deciding whether to exercise its discretion to grant leave for an amendment, the Tribunal should consider all the circumstances and balance the injustice or hardship which would result from the amendment or the refusal to amend. The factors to be considered include the nature of the amendment, the applicability of the statutory time limits, and the timing and manner of the application to amend.

6. Lord Justice Langstaff in **Chandok v Tirkey [2015] IRLR 195** set out; "*The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case*."

7. The Presidential Guidance on General Case Management for England and Wales also states there is a distinction between applications to amend which add new claims essentially out of facts that have already been pleaded and applications to add new claims which are entirely unconnected with the original claim. The Tribunal must consider the entirety of the claim form.

8. The claim form was presented on 25 February 2021. At section 8 the claimant complained he was unfairly dismissed, owed holiday pay and other payments. At section 8.2 specific reference is made to non-payment of overtime and outstanding holiday pay. There is no reference to a notice pay complaint in the claim form. Therefore, this is a new head of claim that was not originally pleaded.

9. The claimant accepted the notice pay that he had received was correct in his original schedule of loss included at pages B40 & B41 of the bundle.

10. The amendment is a new claim made outside the statutory time limit with no explanation regarding the delay. The application was made on the first day of the hearing and this was not a claim the respondent understood it was required to defend. In the circumstances, the Tribunal rejected the claimant's application to amend to include a breach of contract claim as the balance of hardship was with the respondent.

Findings of Fact

11. The Tribunal's findings of fact are made based on the oral and documentary evidence provided to the Tribunal and on the balance of probability. The claimant was employed by the respondent as a head chef between 13 January 2020 and 26 November 2020. The respondent operates a pie restaurant.

12. The claimant's salary was £35,000.00 gross per annum as set out in section 7 of his contract of employment included in the bundle at page B4. He was required to work 44 hours per week across 6 shifts as set out in sections 6.1 & 6.2 of the contract. This equated to 7.33 hours per shift.

13. The claimant was entitled to 20 days paid holiday together with the usual public holidays as set out at section 8.2 of the contract. At section 8.5 of the contract, he was entitled to payment in lieu of accrued holiday upon termination.

14. At result of the COVID-19 pandemic, on 16 March 2020, the UK government recommended those who could work from home should. On 23 March 2020 the UK was placed into national lockdown. The Claimant was not required to attend work from 16 March 2020 onwards.

15. On 26 March 2020 Mr Jobsz sent the claimant an email to confirm he was furloughed, and he would be entitled to 80% of his salary from 1 March 2020. The government introduced the Coronavirus Job Retention Scheme (CJRS) which supported businesses and employees by paying 80% of a furloughed employee's wages up to a gross cap of £2,500 per month.

16. The claimant agreed to be furloughed and that email exchange was included in the bundle at page B23. As set out in the amended response to the claim, the respondent accepts the claimant's period of the furlough began on 26 March 2020, but he was not required to work from 16 March 2020.

17. The claimant and respondent kept in touch during the lockdown period and the claimant attended work on 25 May 2020 and meet with Mr. Jobsz as confirmed by

their WhatsApp exchange included in the bundle at page D8. The claimant also attended work on Monday 15 June 2020 and Tuesday 23 June 2020 as set out in the messages at pages D9 & D10 of the bundle. As set out in the messages, and as both parties confirmed during their evidence, the respondent was voluntarily supplying pies to a local shelter and the claimant was assisting with that.

18. The Claimant also attended work on Thursday 25 June 2020 and again he made pies for the shelter as set out at page D10 of the bundle. The Claimant was also asked to do some cleaning on that occasion.

19. The Claimant next attended work on Tuesday 30 June 2020. He again delivered pies to the shelter and checked the contents of the freezers for out-of-date goods as set out at page D11 of the bundle.

20. On 1 July 2020 the CJRS flexible furlough scheme commenced, and this was applicable to employees who had already been furloughed. The flexible furlough scheme aimed to support the UK's economic recovery by allowing workers back part-time where it was possible for them to return safely. Under the flexible furlough scheme, employers were required to pay employees for hours worked and the government continued to contribute to furloughed hours when the employee was not working.

21. The Claimant attended work on Thursday 2 July 2020 and on that occasion, he was attending to the Respondent's fridges and freezers in anticipation of an environmental health officer visit as set out at page D11 of the bundle.

22. In August 2020, and as set out in the WhatsApp messages at page D12 of the bundle, the respondent asked the claimant at 21.20pm on 6 August 2020 to attend work; "*let's do 13, 14 then Wed-Fri for the next 2 wks pls. This is your main task list but there will always be more. Based on how our first launch went I'd rather have you there and not need you than need you... Doing press*." The Claimant replied at 21.53pm on 6 August 2020; "*I will work whenever we are open and as and when we need to. What date would you like to open. Going to be busy I am sure but that's what we live for. Nothing is a problem. So I will work as necessary. In the meantime, see you on 13th*." It is clear from this exchange the respondent requested the claimant's presence at work and produced a list of tasks for him to complete. Therefore, this was work.

23. The claimant produced his TFL journey statements for August 2020 and they confirm he made the journey to the restaurant 4 times on 19, 20, 25 & 26 August 2020. Those statements were included in the bundle at pages D27, D29, D30.

24. At page B-19 of the bundle the claimant sent the respondent an email on 27 August 2020 asking for an additional £24.51. He had received an advance of £700 from the respondent and by providing him with the additional sum he stated that "*is all my holiday for the year paid for*". The claimant also stated in that email; "*just to confirm I agree to the allocated holiday periods*." In evidence the respondent stated the claimant was required and had agreed to take all outstanding leave during the furlough period. The claimant disputed that.

25. Annual leave was discussed again by WhatsApp and included in the bundle at page D15 when Mr. Jobsz stated at 17.42 on 12/09/2020; "*Why do you need out off mate? Thought we said no leave till next year*". This accords with the Respondent's position that accrued leave for 2020 was to be taken during the furlough period. Based on the claimant's email of 27 August 2020 and this exchange, the Tribunal prefers the respondent's evidence on this point and accepts the claimant was advised to take his accrued but untaken annual leave during the furlough period. It would have been difficult for the respondent to allow its employees to return to work with a large amount of outstanding leave to take when it needed to focus on rebuilding its business post lockdown.

26. It is apparent again from the WhatsApp messages that the claimant was at the restaurant more regularly from 3 September 2020 onwards and on 12 September 2020 he asked for a day off on Friday 2 October 2020. He wouldn't have needed to request annual leave unless he was working. The claimant was also given a day off on 25 September 2020 as set out at page D16 of the Bundle.

27. In relation to September 2020, the claimant again produced his TFL journey statements in respect of the journeys he made to the restaurant. He made 9 visits in September 2020. Those statements were included in the bundle at pages D25 & D26, D31 & D32. The claimant again referred to the WhatsApp messages between himself and Mr. Jobsz during September 2020 and included in the bundle at pages D14-D16. During this period, the respondent agreed in evidence that it was preparing to reopen by trialling new recipes on friends and families, taking pictures to promote the restaurant and, setting up its outdoor dining area. The claimant's evidence was all these activities required work from him and the respondent was also supplying food from its kitchen to the pub next door and generating revenue.

28. The respondent's evidence was the claimant was not at work on each of the occasions he alleges he attended the restaurant during August and September, and his TFL journey statements were "*spurious*" evidence of that fact. Alternatively, if he was present, it was purely to assist with preparing for reopening and that was permissible under the terms of the CJRS. Furthermore, none of the activities the claimant was engaged in was for the purposes of generating revenue. The Tribunal prefers the claimant's evidence that he was required to work as supported by the WhatsApp messages and the TFL journey receipts.

29. The respondent reopened and began trading on 7 October 2020 but the restaurant was only open for 16 days before the second national lockdown on 5 November 2020. The claimant stated he worked on all those occasions, and this is supported by his TFL journey statements which show 16 journeys to the restaurant during October 2020. Those statements were included in the bundle at pages D19-24. The respondent stated the claimant worked 77 hours in October; the claimant stated he worked 120.68 hours. The Tribunal prefers the claimant's evidence. His schedule setting out his hours in October 2020 was included in the bundle at D45. The respondent provided no evidence to support its contention the claimant worked only 77 hours during October 2020.

30. On 27 October 2020 the Claimant requested 3 days annual leave on 3,4 & 5 November 2020 by text to attend a family court appointment that he was obliged to attend. In his follow up email to the Respondent at 4.15pm on 28 October 2020 he stated, "*this court case could be life changing for my family. I understand that you have supported early payments to support me. But if I had been paid correctly for the work in March, then that would have not been necessary. Without going into the time, I have worked during furlough. This is the first holiday time in 10 months that I am requesting*." That email was in the bundle at B20. The last sentence cannot be said to be correct as the claimant had requested two days leave previously as set above.

31. The respondent did not approve the claimant's request, but he did not attend work on 3,4,5 November 2020.

32. As the claimant did not provide the respondent with sufficient notice of his leave nor was it authorised by a director, a disciplinary hearing took place on 17 November 2020 and the outcome was the claimant was given notice of dismissal for misconduct by letter dated 19 November 2020. He was provided with one week's notice. In the dismissal letter the respondent expressly stated the claimant was not owed any unpaid wages. The claimant's letter of dismissal was included in the bundle at pages B29 & B30.

33. The claimant appealed his dismissal by email dated 24 November 2020 and this was included in the bundle at page B32. He also submitted a grievance on the same date challenging the information contained in the dismissal letter. This was included in the bundle at pages B33 & 34. The Claimant stated, "*Throughout the process of closure, I was assured that I would be paid for my work by you*." The Respondent declined to hear the Claimant's appeal, nor did it hear his grievance and that was confirmed by email included in the bundle at page B35.

Submissions

34. The respondent submitted it had done its best to understand the claim and make sense of it which was more than can be said of the claimant. The respondent accepts it owes the Claimant £164.63 but nothing further.

35. The respondent highlighted the manner in which the claimant had conducted the proceedings. In its view, there were attempts to delay and postpone the proceedings, the claimant would not communicate with them directly and they felt he did not have a good handle on the claim he was bringing.

36. The claim had changed several times. It is a speculative claim, with lots of different versions of calculations and the claimant has made little effort to follow the process.

37. Also, the claimant is not a credible witness, and this was established under cross examination when he denied the amounts he received in January & February 2020 were included in the overall loss claimed. Further, the claimant was aware the March overtime that was outstanding had already been paid yet he continued with that claim.

38. In respect of the WhatsApp messages, the claimant has cherry picked some but deleted others and the messages have been edited to his advantage so they cannot be relied upon.

39. The claimant's furlough pay was calculated with reference to his actual working hours of 44 hours per week worked over 5 or 6 shifts. However, the claimant's calculations are based on payments for every calendar day.

40. In respect of the flexible furlough period, the claimant did not undertake any work for the respondent, he was merely taking part in preparations as the head chef for the restaurant to reopen as the respondent understood he was permitted to do whilst furloughed.

41. Regarding the alleged underpayment of holiday pay, the respondent submitted there was an agreement that all outstanding annual leave would be taken during the period the Claimant was furloughed and he agreed to that. As the Claimant was paid at 80% in respect of that annual leave, the Respondent provided the 20% top up to full pay in the claimant's final pay as set out in his November 2020 pay slip included in the bundle at page B28.

42. In summary, the claimant is a selfish individual, trying to exploit a small business. He didn't raise any issue regarding under payments whilst employed, and his story doesn't add up. The respondent accepts it owes the claimant £164.63 only.

43. The claimant submitted the evidence is clear, he attended work throughout the lockdown period while fully furloughed and flexibly furloughed, and his salary was not reflective of that. In response to the respondent's comments, he believes the manner in which it has conducted the proceedings is evidence of the behaviour he experienced whilst employed. The respondent did not follow the furlough rules and potentially acted in a manner not entitling it to make a claim on the CJRS in the first place.

44. The claimant maintained his loss is as set out in the schedules he produced for the period 1 March to 26 November 2020 and included in the bundle at pages D38-D46. Finally, he did not take any annual leave whilst employed by the respondent.

The Law

45. In accordance with section **13(1) of the Employment Rights Act 1996**, a worker has the right not to suffer unauthorised deductions. A deduction is defined as: -

s.13(3) where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

46. In accordance with section **23 of the Employment Rights Act 1996**, an unlawful

deduction from wages must be brought: -

s.23(2) subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
(a)in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
(b)in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
(3) Where a complaint is brought under this section in respect of—
(a)a series of deductions or payments, or
(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,
the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

47. In relation to holiday pay, compensation related to leave is set out in **Regulation 14(2) Working Time Regulations 1998.**

s.14(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu in accordance with paragraph (3).

Conclusions

Unlawful deduction from wages

48. The claim relates to a series of deductions ending on 26 November 2020. The claim was submitted to the Employment Tribunal on 25 February 2021.The ACAS early conciliation certificate dated 24 December 2020 was included in the bundle at page A1. The conciliation period lasted 13 days. The claim was submitted within the statutory time limit including the extension of 13 days provided by early conciliation.

49. The first iteration of the CJRS was in place between 1 March and 30 June 2020 and during this period employers were required to pay furloughed employees the lower of 80% of their regular wage or a maximum of £2,500.00 per month.

50. The claimant was paid a gross salary of £35,000.00 per annum or £2,916.66 gross per month payable in arrears. The claimant commenced employment with the respondent on 19 January 2020 and prior to being furloughed on 26 March 2020, he had received two payments from the respondent, £2,405.49 in respect of January's salary and £3,574.56 in respect of February's salary (and that included over time). Those figures are confirmed by the HMRC schedule at page D35 of the bundle.

51. The respondent's accountant calculated the claimant's salary for the purposes of furlough to be £2,990.03 per month representing the average of the payments he received in January and February 2020. The accountants also calculated the

claimant's normal monthly working hours (based on January and February 2020) to be 195.43 per month providing an hourly rate of £15.30 per hour. The accountants' undated email to the respondent confirming those figures was included in the bundle at page C8. The Tribunal accepted those figures and therefore, the correct amount of monthly furlough pay the claimant was entitled to was 80% of £2990.03 which is £2,392.02.

March 2020

52. The claimant accepted in evidence any over time owed in respect of March 2020 was provided in his final salary in November 2020. Therefore, the Tribunal has not considered that aspect of his claim. However, he maintained he was owed outstanding salary for March in respect of the period up to 16 March 2022 when he was working. The claimant alleged he was owed £2,810.81 in respect of March 2020 as set out at page D38 of the bundle.

53. The Tribunal accepted the claimant worked 80.51 hours during March 2020 as set out at page D38 of the bundle and he was furloughed for the reminder of March 2020. Therefore, and using the respondent's accountants' normal monthly hours as being 195.43, his salary in March 2020 should have been: -

(1) normal salary of 80.51 hours @ £15.30 =	£1,231.80
(2) furlough pay of 114.92 @ £15.30 x 80/100=	£1,406.62
(3) total salary and furlough pay =	£2,638.42
(4) actual salary received =	£2,333.33
(5) payment made in final salary =	**£246.92**
(6) payment made 13/7/20 =	**£68.55**
(7) shortfall =	**£0.00**

April 2020

54. The Claimant seeks £2,500.00 in respect of April 2020 as set out at page D39 of the bundle. In April 2020 the Claimant was on furlough and carried out no work for the Respondent. Therefore, his salary in April 2020 should have been: -

(1) furlough pay £2,990.03 x 80/100 =	£2,392.02
(2) actual salary received =	£2,333.33
(3) payment made 13/7/20 =	**£68.55**
(4) shortfall =	**£0.00**

May 2020

55. The claimant seeks £2,500.00 in respect of May 2020 as set out at page D40 of the bundle. Therefore, his salary in May 2020 should have been: -

(1) furlough pay £2,990.03 x 80/100 =	£2,392.02
(2) actual salary received =	£2,333.33
(3) payment made 13/7/20 =	**£68.55**
(4) shortfall =	**£0.00**

June 2020

56. The claimant seeks £2,500.00 in respect of June 2020 as set out at page D41 of the bundle. The Tribunal accepted the claimant attended the restaurant on at least four occasions during June and both parties confirmed in evidence the restaurant was providing pies to a nearby shelter at this time and this is confirmed by the WhatsApp messages in the bundle at pages D9-D11.

57. Whilst furloughed, employees were not permitted to do any work that generated money for their organisation, nor could they provide services for their organisation, or an organisation linked or associated with the organisation. Employees could take part in training, volunteer for another employer or organisation or, work for another employer if contractually allowed as set out in the extract from the government website at D6 of the bundle. The activity the Claimant took part in June 2020 falls within the scope of volunteering as was permissible under the CJRS at that time.

58. In June 2020, the Claimant was on furlough and carried out no work for the Respondent. Therefore, his salary in June 2020 should have been: -

(1) furlough pay £2,990.03 x 80/100 =	£2,392.02
(2) actual salary received =	£2,392.02
(3) shortfall =	**£0.00**

July 2020

59. The claimant seeks £2,622.38 in respect of July 2020 as set out at page D42 of the bundle.

60. On 1 July 2020 the second iteration of the CJRS came into effect and this was known as the flexible furlough scheme. Employees could return to work under flexible furlough, and they were required to be paid their usual wages for any hours worked. For any hours they were not working and were part furloughed, they were entitled to 80% of their wages proportional to the hours not worked.

61. The claimant asserted he worked 8 hours on 2 July 2020 as set out at page D42 of the bundle. It is accepted the claimant attended the respondent's premises on that occasion, as confirmed by the WhatsApp messages at page D11 of the bundle dated 1 July 2020 discussing the activity planned for the following day. The tasks the claimant carried out on the 2 July 2020 were not training or volunteering and notwithstanding the respondent's business was not open and this was not an activity that generated any income, it was a service provided by the claimant to the respondent and the Tribunal finds the claimant was entitled to be paid.

62. Therefore, the proportion of furlough pay to normal salary in July 2020, and using the respondent's accountants' normal monthly hours as being 195.43, should have been: -

(1) furlough hours 187.43 @15.30 x 80/100 =	£2,294.14

(2) normal hours 8 @15.30 =	£122.40
(3) total furlough hours and normal hours =	£2,416.54
(4) actual salary received =	£2,392.02
(5) shortfall =	**£24.52**

August 2020

63. The claimant seeks £3,109.35 in respect of August 2020 as set out at page D43 of the bundle.

64. In August 2020 the claimant attended the restaurant on 4 occasions as supported by both his TFL journey statements and the WhatsApp messages and he worked 34.95 hours as set out in his spreadsheet on page D43. Again, the claimant was providing services to the respondent on those occasions, and he was entitled to be paid for the work undertaken. Although the respondent asserted the claimant was simply assisting with the preparation for the re-opening of the restaurant and this was permissible within the terms of the CJRS, that is incorrect. Employees were allowed to return to work but were required to be paid to do so.

65. Therefore, the proportion of furlough pay to normal salary in August 2020, and using the respondent's accountants' normal monthly hours as being 195.43, should have been: -

(1) furlough hours 160.48 @15.30 x 80/100 =	£1,964.28
(2) normal hours 34.95 @15.30 =	£534.74
(3) total furlough hours and normal hours =	£2,499.02
(4) actual salary received =	£2,392.02
(5) shortfall =	**£107.00**

September 2020

66. The claimant seeks £3,146.80 in respect of September 2020 as set out at page D44 of the bundle.

67. The claimant attended the respondent's restaurant 9 times in September 2020. He worked for 58.5 hours as set out at page D44 of the Bundle and he was entitled to be paid for the work undertaken.

68. Therefore, the proportion of furlough pay to normal salary in September 2020, and using the respondent's accountants' normal monthly hours as being 195.43, should have been: -

(1) furlough hours 136.93 @15.30 x 80/100 =	£1,676.02
(2) normal hours 58.5 @15.30 =	£895.05
(3) total furlough hours and normal hours =	£2,571.07
(4) actual salary received =	£2,392.02
(5) shortfall =	**£179.05**

October 2020

69. The claimant seeks £3,516.64 in respect of October 2020 as set out at page D45 of the bundle.

70. In October 2020, the Claimant received £2,627.64 as set out in his wage slip included in the bundle at page B26. Again, the Claimant's travel statements correlate with the spreadsheet on page D45. He was present at work on 16 occasions and worked 120.68 hours and was entitled to be paid for that work.

71. Therefore, the proportion of furlough pay to normal salary in October 2020, and using the respondent's accountants' normal monthly hours as being 195.43, should have been: -

(1) furlough hours 74.75 @15.30 x 80/100 =	£914.94
(2) normal hours 120.68 @15.30 =	£1,846.40
(3) total furlough hours and normal hours =	£2,761.34
(4) actual salary received =	£2,627.64
(5) shortfall =	**£133.70**

November 2020

72. The claimant seeks £8,470.93 in respect of November 2020 as set out at page D46 of the bundle.

73. The claimant's final wage slip for November 2020 was included in the bundle at page B28 and the claimant received £3,897.92 gross and that included: notice pay £673.08, holiday pay £1,463.97, pay @ 80% £1,514.95 and other additional payment of £649.75 which represented an adjustment to his October pay and the outstanding March 2020 over time. From those payments the respondent made deductions for tax, national insurance, pension contributions, advance payments of £1,300.00 and unpaid leave of £403.83 (in respect of the 3 days the claimant was required to attend family court that had not been authorised by the respondent).

74. The claimant did not attend work during November 2020 and prior to his employment terminating on 26 November 2020. The claimant was provided with full notice pay for the period 19 to 26 November 2020 and during the first 19 days of November the claimant was furloughed. The claimant submitted he should have received full pay on 3,4 & 5 November as the respondent deducted those days at 100% but he was only paid at 80%. The Tribunal agrees.

75. Therefore, the proportion of furlough pay to normal salary in November 2020, and using the claimant's normal daily hours: -

(1) furlough days 16 x 7.33 @ £15.30 x 80/100 =	£1,435.51
(2) normal days top up 3 x 7.33 @ £15.30 x 20/100 =	£67.29
(3) total furlough hours and normal hours =	£1,502.80
(4) actual salary received =	£1,514.95
(5) shortfall =	**£0.00**

76. Therefore, the claimant's unlawful deduction from wages claim in respect of the period 1 March 2020 to 26 November 2020 is well founded in part and the claimant is entitled to **£444.27** gross subject to tax and national insurance deductions.

Holiday pay

77. In relation to the claimant's holiday pay claim the Tribunal accepted the respondent requested the claimant take any outstanding leave during the furlough periods.

78. The claimant's annual leave entitlement was 28 days per annum (including bank holidays) or 0.076 per day. His total entitlement in respect of his employment was 311 days x 0.076 = 23.64 days.

79. The respondent paid the claimant's holiday entitlement at 80% and not at 100%. The claimant received 24 days annual leave top up @ 20% in his November salary and as such there is no outstanding sums to be paid in respect of holiday pay. In the circumstances, the holiday pay claim is not well founded and is dismissed.

Employment Judge J Galbraith-Marten

17 November 2022

Sent to the parties on:

18/11/2022

For the Tribunal Office: