



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr J Connellan

AND

Respondent

Cornish Pub Company Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin

ON

25 November 2022

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: Did not attend

JUDGMENT

1. The correct name of the respondent is Cornish Pub Company Limited and the record is amended accordingly; and
2. The claimant does not pursue any claim for breach of contract in respect of notice pay and this claim is dismissed on withdrawal by the claimant; and
3. The claimant's claim for unlawful deduction from wages succeeds and the respondent is ordered to pay the claimant the gross sum of £1,873.00; and
4. The claimant's claim for accrued but unpaid holiday pay succeeds, and the respondent is ordered to pay the claimant 14 days' pay in the gross sum of £1,680.00.

RESERVED REASONS

1. In this case the claimant Mr James Conellan brings monetary claims for breach of contract, for unlawful deduction from wages, and for non-payment of accrued holiday pay against his ex-employer Cornish Pub Company Limited. The respondent has entered a response resisting the claims. The claimant initially issued these proceedings against Mr Barnard of the respondent personally, but the claimant was actually employed by Cornish Pub Company Limited, which is the correct name of the respondent, and the record is amended accordingly.
2. This hearing was held in person. Other than entering its response, the respondent has failed to engage with the Tribunal process and has not sought to assist in preparing an agreed list of documents and no written witness statements have been exchanged. Mr Barnard of the respondent wrote to the Tribunal in early November 2022 to suggest that

- he resides in either Spain or Thailand and requested that the hearing could be held remotely by video. By letter dated 7 November 2022 Employment Judge Bax directed that if the respondent wished to have a hearing by video, or alternatively to attend a hybrid in person hearing by video, then an application should be made for that purpose. In addition, an application would need to be made to the Tribunal relating to the possibility of evidence being taken from a foreign jurisdiction. The relevant information and guidance in that respect was also included in that letter.
3. The respondent has not made any application to attend by video, nor to give evidence from abroad by video, nor to postpone this hearing. I therefore decided to continue with this hearing and in the interests of justice to determine the claimant's claim on the information before me in order to avoid delay and to ensure that there is finality in this litigation.
 4. I have heard from the claimant. The respondent did not attend. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
 5. The facts:
 6. The claimant was employed by the respondent as a breakfast chef at the Port Gaverne Hotel in Cornwall from 1 June 2021 to 21 November 2021. He was paid at the hourly rate of £12.00 gross per hour. He worked a minimum of eight hours a day, and sometimes in excess of 12 hours a day, and asserts that his average working hours were 10 hours per day, which gives rise to average gross daily pay of £120.00. The claimant asserts that he was promised a bonus of £1000.00 if he completed working for the whole summer season, which he did up until 21 November 2021.
 7. The claimant was not paid his bonus of £1,000.00 for working the season when he left. In addition, the respondent deducted £450.00 from sums otherwise due and recorded under his payslips, apparently on the unfounded basis that the claimant had been overpaid in tips. The respondent also failed to pay the claimant an additional 35.25 hours at £12.00 per hour or £423.00. The respondent therefore made unlawful deductions in the total sum of £1,873.00.
 8. In addition, the claimant did not take any holiday during his 25 weeks of employment and the respondent failed to pay any holiday pay to the claimant during this period.
 9. Having established the above facts, I now apply the law.
 10. The law:
 11. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
 12. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3). In the absence of any relevant agreement which provides for payment of accrued leave, then the sum is calculated according to the formula $(A \times B) - C$. For the purposes of this formula A is the period of leave to which the worker is entitled under Regulations 13 and 13A; B is the proportion of the worker's leave year which expired before the termination date; and C is the period of leave taken by the worker between the start of the leave year and the termination date.
 13. Decision:
 14. The claimant no longer proceeds with his claim for breach of contract in respect of his notice pay, and this claim is now dismissed on withdrawal by the claimant
 15. The respondent failed to pay the claimant his seasonal bonus of £1,000.00, and wrongfully deducted the sum of £450.00 from wages otherwise due to the claimant. In addition, the respondent failed to pay the claimant 35.25 hours at £12.00 per hour amounting to

- £423.00. The respondent is therefore ordered to pay the claimant the sum of £1,873.00 in respect of these unlawful deduction from his wages.
16. In addition, the respondent failed to pay the claimant any accrued holiday pay. He was employed for 25 weeks and was entitled to the pro rata equivalent of his annual 28 days' pay entitlement, which rounded up is 14 days. The average working day was 10 hours, which at £12.00 per hour is £120.00 per day. The respondent is also ordered to pay the claimant the sum of £1,680.00 in respect of this accrued but unpaid holiday pay.

Employment Judge N J Roper
Date: 25 November 2022

Judgment sent to Parties: 02 December 2022

FOR THE TRIBUNAL OFFICE