



EMPLOYMENT TRIBUNALS

Claimant: Mr D Wilson

Respondent: Manddbars Ltd (in Liquidation)

Heard at: London South via CVP **On:** 27 February 2023

Before: Employment Judge D Wright (Sitting Alone)

Representation

Claimant: In person

Respondent: Did not attend

JUDGMENT

1. The complaint of unauthorized deductions from pay contrary to Part II Employment Rights Act 1996 is well-founded.
2. The respondent made an unauthorised deduction from the claimant's pay in respect of the period 19/03/2020 to 30/06/2020 in the amount of £4,923.86 gross.
3. The respondent made a further unauthorised deduction from the claimant's pay in respect of the period 1/7/2020 to 30/9/2020 in the amount of £8,410 gross.
4. The respondent is ordered to pay to the claimant the total gross sum of £13,333.86 which was deducted from his pay.

REASONS

5. The claimant attended in person by way of CVP. The respondent was not represented. However, the day before the hearing the Tribunal received an email from Hudson Weir informing the Tribunal that the respondent was in voluntary liquidation and that they had been appointed as administrators. They confirmed that they would not be appearing today.
6. In his schedule of loss the claimant brings three claims. The first was for unpaid holiday, which I have not considered as it was not brought in the original ET1 and no application has been made to amend the claim to include it.

7. The second claim was in relation to underpayment during the period 19 March 2020 and 30 June 2020. The third, relating to underpayment during his notice period from 1 July 2020 to 30 September 2020.
8. This is a case where the dispute between the parties clearly goes further than the facts of this case. I understand that potential questions relating to fraud (including against HMRC), assault and misconduct as a director are also being levelled at the respondent's director, but I make no findings in relation to those as they remain beyond the jurisdiction of this Tribunal.
9. It is common ground that the Claimant's annual salary was £50,000 and he was to be paid around £4,166 gross each month.

March to June 2020

10. The claimant says that he was not put on covid furlough during the period 19 March to June 30 2020, although there are references to it in the redundancy letter. I see no compelling evidence from the Respondent that the Claimant had been placed on furlough through the government scheme and therefore find that the Claimant was entitled to his full rate of pay.
11. The claimant says that during this period he received a payment of £15,906.14 which is a gross figure. However, this also covered his pay for February and all of March. For this period (February to June 2020) he was entitled to £20,830 gross. Therefore, I find that the Respondent has underpaid him by £4,923.86 gross.

Notice Period

12. On 30 June 2020 the Claimant was given notice that he was being made redundant and that as he was entitled to three months notice his last day was 30 September 2020. This would have entitled him to a gross notice payment of £12,500
13. On 4 September 2020 the Claimant was informed that his employment was being terminated immediately for Gross Misconduct. The Respondent relied on two actions for this:
 - a. Working for another restaurant during this period, and lying about being paid for it.
 - b. Promoting the other restaurant on social media.
14. The Respondent relied upon clause 14.1(e) of the contract which allows immediate termination where the claimant is:

“guilty of any fraud or dishonesty or act in any manner which in the opinion of the company brings or is likely to bring you or the company into disrepute or is materially adverse to the interests of the company”
15. The Claimant explained to me that that the restaurant he was working in was in Dalston, about 45 minutes by public transport (and the opposite side of the River Thames) from the Respondent, which is based in Bermondsey. He also informed me that they sold a different cuisine and had a different target market. He denied being paid, saying he was simply helping out a friend who was seriously ill and unable to cook that night. He tells me the industry relies on favours such as this to survive.
16. In the absence of any evidence of payment I find that the Claimant was not

paid for this work in another kitchen.

17. In relation to the social media posts, although the Respondent says that they were attached to the letter terminating the Claimant's employment, they were not attached when the Respondent sent the letter to the Tribunal. I therefore find that no such posts were made.
18. Even if I am wrong and the posts were made, and the Claimant was paid for his work in this kitchen, I find that no reasonable employer could hold the opinion that this was conduct likely to bring the company into disrepute (helping another struggling restaurant is unlikely to be seen as a bad thing). Nor could any reasonable employer hold the opinion that this would be materially adverse to the interests of the company. I find that the other restaurant was not a competitor as it was in a different location, selling a different style of food, with a different target market.
19. Therefore I find that this clause was used to try and hide the real reason for termination, which was an attempt to punish the Claimant for resigning as a director and raising questions of financial impropriety (the substance of which I make no findings on), and also to avoid paying him for the full period.
20. Therefore, I find that the Claimant was entitled to the full £12,500 gross, of which he received £4,090. This leaves an underpayment of £8,410 gross.
21. All figures have been given gross because the Claimant has never received a payslip, P60, P45 or other evidence of how he has been paid. The Claimant is of the view that no tax has been paid to HMRC.

Employment Judge **D Wright**
Date: 27 February 2023

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