



EMPLOYMENT TRIBUNALS

Claimants 1 Mr M Chappell

Represented by 2 Mr B Turner
In person

Respondent HR Construction UK Ltd

Represented by Mr R Dymych

Employment Judge Ms A Stewart (sitting alone)

Held at: London Central by CVP **on:** 22 March 2023

JUDGEMENT

1 The Respondent's application for an extension of time in which to present a Response is refused.

2 The Claimants' claims in respect of unlawful deduction from wages, under section 13 of the Employment Rights Act 1996, are well-founded and succeed.

3 Accordingly, it is ordered that the Respondent pay to the first Claimant the sum of £11,200.00 net unpaid notice pay.

4 And it is ordered that the Respondent pay to the second Claimant £4,186.35 net unpaid salary for September 2022, £8,372.70 net notice pay and £16,000.00 gross unpaid bonus, a total of £28,559.05.



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Respondent	HR Construction UK Ltd
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REASONS

Time extension application:

1 The Notice of Claim was sent to the Respondent by the Tribunal on 7 February 2023 stating that the time limit for lodging a Response was 7 March 2023. A Response was sent on 20 March 2023, almost 3 weeks out of time.

2 Mr Dymych applied for an extension of time because he had been in Spain visiting his children and had caught covid there, making him unable to think clearly about anything. However, he also said that he was in Spain around the end of January, for 2 and a half weeks. He admitted that he had received the Tribunal correspondence, which stated clearly the date limit for responding, but said that his accountant had looked at it and had told him that he had until 5 days before today's hearing to lodge a Response. He had no explanation why he had not been in a position to deal with the Tribunal through February and the first week of March. Mr Dymych's English is fluent.

3 The Claimants strongly resisted the Respondent's application for a time extension, saying that Mr Dymych could have responded at any time, even remotely from Spain. They had tried consistently to approach the Respondent personally, since the end of September 2022 in order to try to sort out these matters, and via ACAS but Mr Dymych had ignored them and was not taking the Tribunal process seriously.

4 The Tribunal was unable to find any reasonable explanation for the Respondent failing to comply with the Tribunal deadline and therefore refused his application. However, in the interests of justice, the Tribunal did permit Mr Dymych to take part in today's hearing to the extent of responding orally to the Claimants' Wages Act claims and explaining the Respondent's position.

Case Numbers: 2200699/2023; 2200700/2023

The Claims:

5 The Respondent admitted that the 2 months' notice pay had been promised to the Claimants and was owed to them, as well as the Second Claimant's September 2022 salary. Mr Dymych said that the only reason they had not been paid was because the Respondent was in debt, financially unable to pay and had no current work project. He asked for a payment plan over a time period to be agreed.

6 In relation to the Second Claimant's £16,000 bonus – the Respondent admitted that it had been contractually due one month after the Second Claimant had introduced a new project to the company, some 11 months before.

7 This raised a question of whether or not this part of the claim had been presented to the Tribunal out of time; that is more than 3 months from its non payment date. However, there was an email from the Respondent to the Second Claimant, dated 28 July 2022, acknowledging that this bonus was due and noting an intention to pay it to him 'in 3 to 4 months'. Four months expires on 28 November 2022. The Claimants went to ACAS on 8 January 2023 and presented their complaints to the Tribunal on 25 January 2023. Therefore the Second Claimant's claim is within 3 months of the last acknowledgment of the debt and expiry of the promised payment date, and is in time.

8 Accordingly, the above Judgement is given in the Claimants' favour.

Signed: Employment Judge A Stewart

Employment Judge

Date 22 March 2023

Judgment sent to the parties on

22/03/2023

FOR THE TRIBUNAL OFFICE