



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Magdalena Jakubas

**Respondent:** Mortgarten Restaurant (Lakeside) Limited  
(In Creditors Voluntary Liquidation)

**Heard at:** East London Hearing Centre (via CVP)

**On:** 11 May 2023

**Before:** Employment Judge John Crosfill

## Representation

**Claimant:** In person assisted by Mrs Lane

**Respondent:** No appearance or representation

# JUDGMENT

UPON the Respondent not attending, not presenting an ET3 and playing no part in the proceedings.

1. The Respondent unlawfully deducted the sum of £1,183.56 due in respect of unpaid wages from the Claimant's final instalment of wages payable on 31 May 2022 contrary to Part ii of the Employment Rights Act 1996. The said sum being calculated as follows:
  - a. The Claimant's annual salary was £27,000 which is deemed to accrue daily.
  - b. The Claimant worked from 1 May to the date of her resignation on 16 May 2022 a period of 16 days.
  - c. The daily rate of accrual of salary was £73.97.
  - d.  $16 \times £73.97 = £1,183.56$ .
2. The Respondent unlawfully deducted the sum of £971.94 due in respect of accrued but untaken holiday pay from the Claimant's final instalment of wages payable on 31 May 2022 contrary to Part II of the Employment Rights Act 1996. The said sum being calculated as follows:

- a. The Claimant started work on 15 January 2022 and resigned without notice on 16 May 2022.
  - b. The Claimant therefore worked for 122 days.
  - c. The Claimant was entitled to 5.6 weeks of holiday per year and worked for 5 days a week.
  - d. The accrued holiday is therefore  $122/365 \times 5.6 \times 5 = 9.36$  days.
  - e. The Claimant took no paid leave.
  - f. For the purposes of calculating holiday pay the daily rate is  $27,000/(52 \times 5) = £103.84$
  - g. The pay due pursuant to regulation 14 and 30 of the Working Time Regulations is £103.84
  - h.  $9.36 \times £103.84 = £971.94$
3. The Claimant's claim for breach of contract, notice pay, brought under the Employment Tribunals of Jurisdiction (England and Wales) Order 1994 is well founded and succeeds.
  4. The Claimant has established that she has suffered loss and damages equating to the period between 16 May 2022 when she was constructively dismissed and 23 May 2022 when she found alternative employment at the same rate of pay. She has suffered no further loss thereafter. The Claimant has losses of 1 week's pay which should be calculated net of tax = **£423.50**.
  5. The Respondent is ordered to pay the Claimant the sums of £1,183.56 and £971.94 as wages and £423.50 as damages. The said payments shall be made within 7 days of receipt of this judgment.

**Employment Judge Crosfill**  
**Dated: 11 May 2023**