



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Jasbir Kaur

**Respondent:** Pronto Paratha Limited t/a Simply Delicious by Pronto Paratha

**Heard at:** Watford Employment Tribunal by CVP                      **On:** 4<sup>th</sup> May 2023

**Before:** Employment Judge Young (sitting alone)

## Appearances

For the Claimant: Mrs J Kaur with Mr Iqbeer Singh assisting

Respondent: Did not appear and was not represented

Interpreter: Ms S Bhalla

# JUDGMENT

1. The Claimant's claim for unlawful deduction of wages is well founded. The Respondent has made an unauthorised deduction from the Claimant's wages and is ordered to pay the Claimant, the gross sum of £2,819.00.
2. The Claimant's claim for holiday pay accrued and payable on termination of her employment is well founded. The Respondent has failed to pay the Claimant's outstanding holiday pay on termination and is ordered to pay the Claimant, the gross sum of £568.10.
3. The Claimant's complaint that the Respondent failed to provide her with a written statement of particulars of employment under section 1 ERA is well founded. The Claimant is awarded 2 weeks' pay amounting to £901.20 gross.
4. Interest will accrue at the judgment rate, currently 8% from the day after the judgment unless it is paid within 14 days.
5. By the Employment Tribunals' initiative under rule 34 of the Employment Tribunal Rules of Procedure, the Respondent's name is substituted for Pronto Paratha Limited (company number 08460615).

# REASONS

## Facts

1. The Claimant's claim for unlawful deductions of wages was issued in the Watford Employment Tribunals on 9 November 2022. The Respondent's ET3 was accepted. The Respondent's ET3 defended the claim but on the facts accepted that they were liable to pay the Claimant for outstanding unpaid wages. The Respondent made no mention of holiday pay. The Claimant was employed by the Respondent from 11 June 2022 to 31 August 2022 as a Chef. During the Claimant's period of employment, the Claimant was made one payment of wages by the Respondent of £1000.00 by BACS into her bank account.
2. The Respondent gave notice on 3 May 2023 by email that they would not be attending the hearing. The Respondent nor any representative attended the hearing, and they did not request a postponement.

## The Hearing/Evidence

3. The hearing was listed for one day and conducted by video (CVP). As the Respondent was not in attendance, I only heard evidence from the Claimant through an interpreter speaking Punjabi. By way of documentation, I considered the ET1 and ET3 and the ACAS conciliation certificate and I received the aforementioned email dated 3 May 2023 from the Respondent. I also received two bank statements from the Claimant for the months of August and September 2022 and a PDF of photos of a handwritten document with a list of hours on particular days between 11 June- 31 August 2022 and some totals; that document was titled "document 11". However, I shall refer to the document in this judgment as the "list of hours."
4. The Claimant, Mrs Kaur attended with Mr Singh who explained that he was not legally trained but a trainee police officer. Mrs Kaur was his mother, and he was assisting her with her claim. Ms Sandka Bhalla attended as the interpreter for the language of Punjabi.
5. Following enquires with Mr Singh, the Claimant confirmed that she had not received the Respondent's email of 3 May 2023. Mr Singh was sent the email which he shared via WhatsApp with his mother. I therefore adjourned for 10 minutes to give Mr Singh an opportunity to discuss the email with his mother before I heard evidence from the Claimant.

## The Law

### Unlawful deduction of wages

6. The general prohibition on deductions from wages is set out at s.13 Employment Rights Act 1996 ("ERA 1996") which provides, as far as is relevant:

“

(1) *An employer shall not make a deduction from wages of a worker employed by him unless –*

*(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or*

*(b) The worker has previously signified in writing his agreement or consent to the making of the deduction.*

(2) *In this section “relevant provision” in relation to a worker’s contract, means a provision of the contract comprised –*

*(a) In one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) In one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

(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.”*

7. By s. 27 ERA 1996, ‘wages’ means any sums payable to the worker in connection with his employment and covers any fee, bonus, commission, holiday pay or other emolument referable to the employment.

8. For a payment to fall within the definition of wages properly payable, there must be some legal entitlement to the sum in question (New Century Cleaning Company Limited v Church [2000] IRLR 27, CA). To determine whether any sum is properly payable to an employee as part of an unlawful deduction from wages claim, the Tribunal can resolve any dispute as to the meaning of the contract relied on (Agarwal v Cardiff University and anor [2018] EWCA Civ 2084).

9. A claim under s.23 ERA 1996 for unauthorised deductions from wages must be submitted to the tribunal before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made.

#### Holiday Pay

10. Under Regulations 13 & 13A of the Working Time Regulations 1998 (WTR 1998), workers are entitled to take paid holidays and to be paid holiday pay. The right under Regulation 13 is 4 weeks; the right under Regulation 13A is 1.6 weeks, meaning that a worker has a right to 5.6 weeks paid holiday.

11. Under Regulation 14 WTR 1998, an employee is entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired but which has not been taken by the employee during that time.
12. Regulation 14(3) WTR 1998 provides for calculation of the amount of holiday pay due in these circumstances as follows:  $(A \times B)$  less C, where A is the period of leave to which the worker is entitled, B is the proportion of the leave year expired and C is the period of leave taken. Holiday pay is paid gross.
13. By Regulation 13(3) WTR 1998, the leave year begins when the employment begins, in the absence of an agreement the contrary between the employee and the employer.

#### Section 38 Employment Act 2002

14. By s.38 Employment Act 2002 (“EA 2002”), where a tribunal makes an award in claims including unlawful deduction of wages and, when the proceedings were begun, the employer was in breach of his duty to provide the employee with written particulars of employment, the tribunal must, subject to subsection (5), award 2 weeks’ gross pay and may, if it considers it just and equitable in all the circumstances, increase the award to 4 weeks’ pay instead.
15. According to s.38 (5) EA 2002 the duty on the tribunal to increase the award does not apply if there are exceptional circumstances which would make an award, or an increase under that subsection, unjust or inequitable.

#### Substitution of Respondent

16. Rule 34 of the Employment Tribunal Rules of Procedure provides that “The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included”
17. The leading case of Cocking v. Sandhurst (Stationers) Ltd and another [1974] ICR 650 establishes where there is no reasonable doubt about the identity of the respondent, but there has been a genuine mistake about the name of the Respondent, then the name of the Respondent can be substituted for the correct one.

#### **Claims to consider and Issues**

18. The Claimant’s claims I was required to decide were the claim for unpaid wages under s.13 ERA 1996, a claim for accrued holiday pay on termination of employment under Regulation 14 WTR 1998 and a claim for failure of the Respondent to provide the Claimant with written particulars of her employment under s. 38 EA 2002.

19. As the Respondent had accepted in their ET3 and 3 May 2023 email liability for unpaid wages and that the Claimant was their employee between 11 June 2022- 31 August 2022, I was only required to determine the amount of money owed to the Claimant in respect of the unpaid wages. However, I was required to determine the issue of whether the Claimant was entitled to holiday pay on termination of her employment, and if so, how much, and whether the Respondent had failed to provide the Claimant with her written statement of particulars of employment.
20. The Claimant named the Respondent as Simply Delicious by Pronto Paratha and this was matched on the ET3. However, it was not clear whether Simply Delicious by Pronto Paratha was a legal entity. An email received by the Employment Tribunal from the Respondent on 3 May 2023 was signed off with Pronto Paratha Limited. I was therefore required to determine who was the proper Respondent.

### **Findings & Conclusions**

21. I found the Claimant to be a truthful and credible witness. Mr Singh ably assisted his mother without any legal training and was helpful to the Employment Tribunal in ensuring the Claimant had the correct documents in front of her. The Claimant told me that she made a record of all her hours of work during the time she was working and confirmed that was the document 11. I accepted the contents of that document as a contemporaneous document of the Claimant's hours of work when working for the Respondent.
22. The Claimant told me, and I accepted her evidence that when she was first employed by the Respondent, she was told would work 10 hours a week 10am- 8pm, 5 days a week. She says she was also told would be paid annual leave when she was first employed. She also told me she took no annual leave whilst employed by the Respondent. The Claimant told me that throughout her employment she was given a rota and on occasion told not to come in to work. She on average worked 5 or 6 days a week. I find that there was no holiday given to the Claimant and the Claimant is entitled pro rata to 28 days of annual leave for the period of time she worked for the Respondent.
23. The Claimant told me that at the end of her employment she agreed with the Respondent that they would deduct from her wages 30 minutes from each day she worked for her breaks. The Claimant confirmed she took these breaks. I find that there was an agreement to deduct 30 mins from the Claimant's wages.
24. The Respondent asserted in their email 3 May that the Claimant was entitled to £2950. The Claimant disputed this amount saying that it did not include annual leave on termination, and she did not know how the Respondent calculated this amount. She did not accept the amount as she had done her own calculation. The Claimant was not able to give me a total calculation of pay but she confirmed that she was told by the Respondent that she would be paid £9.50 per hour, and she said that her hours were set out in document 11. She confirmed that she would be happy with whatever calculation the Employment Tribunal used.

25. I calculated all the hours of work the Claimant undertook in the period of 11.06.22-31.08.22 "the period" as set out in the list of hours. I deducted 30 minutes from all the dates where the Claimant worked for the day. There were a few days where the Claimant did not work the full day where a deduction for a 30 minute break was not made as the Claimant had not worked the day and the Claimant told me she took a break when she worked the day. The Claimant worked a total of 402 hours based upon this calculation. I then multiplied the total number of hours by the pay rate of £9.50 which was the proper minimum wage whilst the Claimant was employed. I then deducted the £1000 that the Claimant had already been paid for work done by the Respondent to get the final amount of unpaid wages. Unfortunately, when I gave my oral judgment, I inadvertently failed to add the Claimant's short hours to the calculation resulting in an incorrect calculation of the Claimant's unpaid wages. I have now corrected this error in this written judgment.

26.  $402 \text{ hours} \times £9.50 = (£3,819 - £1000) = £2,819$  unpaid wages.

27. In order to calculate the Claimant's holiday pay. I used the Claimant's average weekly pay based upon arrangement of the hours and days the Claimant was told she would work by the Respondent. On average the Claimant worked 5 days per week. The Claimant worked mostly 9.5 hours a day (having deducted breaks of 30 minutes). On that basis the Claimant worked an average of 47.5 per week. The Claimant was not provided with a holiday year, so the Claimant's start date of 11<sup>th</sup> June 2022 is taken as the start of her holiday year. The Claimant left before the end of the holiday year so using the period of her employment (82 days) as a percentage of the holiday year 22.19%, the Claimant was entitled to 59.8 hours of annual leave on termination of her employment.

28.  $22.5\% \times 28 \text{ days} = 6.3$  days annual leave.

29.  $6.3 \times 9.5 = 59.8$  hours

30.  $59.8 \text{ hours} \times £9.50 = £568.10$  of holiday pay.

31. Simply Delicious by Pronto Paratha is the name of the restaurant where the Claimant worked, and the name used on the claim form for the Respondent. The ET3 and the ACAS conciliation certificate also stated the name of the Respondent as Simply Delicious by Pronto Paratha. The Claimant told me in evidence that she was never told the name of her employer and that she believed it was both the owner who she described as Mr Prabjot Sapal's mother and Mr Prabjot Sapal who employed her. She also stated that she never received any documentation from the employer who communicated with her either by phone or WhatsApp message. It was therefore perfectly reasonable as to why the Claimant would not have had any notice of the limited company Pronto Paratha Limited that employed her and so could not have named them in her ET1. As the ET1 was lodged in time and so there was no issue with any time limits and there was no documentation from the Respondent other than the ET3 and the 3 May 2023 email, I concluded from that evidence, the legal entity employing the Claimant must be Pronto Paratha Limited and so I find this is the proper Respondent.

32. I considered that it was not necessary to serve the claim form on the new Respondent as, the Secretary of the company as named Prabjot Sapal of Pronto Paratha Limited was the same person who the Claimant confirmed employed her. Furthermore, he was the person who wrote the email dated 3 May 2023 on behalf of the Respondent accepting liability of unlawful deduction of wages and confirming “we would like to accept the liability of owing Mrs J Kaur her wages of £2950 which we have never denied” and signed the email Pronto Paratha Limited. The claims were clearly between Pronto Paratha Limited the business and the Claimant. In those circumstances Simply Delicious by Pronto Paratha was a trading name of Pronto Paratha Limited and I considered that it was in the interests of justice to substitute what was essentially the trading name of Simply Delicious by Pronto Paratha for Pronto Paratha Limited.
33. The Claimant gave evidence that she repeatedly requested written particulars of employment that she never received. In fact, she was told not to worry about it, which she did not accept. I accepted the Claimant’s evidence and find that the Respondent did fail to provide those written particulars of employment. Whilst I consider that an award follows the findings of fact made, I do not consider that it is just and equitable to increase the award beyond the statutory minimum of two weeks’ pay.
34. The Claimant works an average of 47.5 hours per week and is paid an hourly rate of £9.50. In those circumstances, the calculation for the Claimant’s week’s pay is £451.25. Unfortunately, due to an error, my oral judgment stated that the 2 weeks pay award was £608.00. I have now corrected this error in this written judgment with reasons.
35.  $2 \times £451.25 = £902.5$
36. And it is for those reasons I find the Claimant’s claims for unlawful deductions of wages including holiday pay and failure to provide written particulars of employment well founded.

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Employment Judge **Young**

Date\_\_18<sup>th</sup> May 2023

JUDGMENT SENT TO THE PARTIES ON

6 June 2023

GDJ  
FOR THE TRIBUNAL OFFICE

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