



EMPLOYMENT TRIBUNALS

Claimants: (1) Ms Jennifer Williams, (2) Ms Brianne Henry, (3) Mr Matthew Cole, (4) Mr Logan Neave, (5) Ms Josephine Lamouche, (6) Mr Rory Cook, (7) Mr Jay Murphy, (8) Ms Raissa Kisseljova, (9) Mr Jake Bench

Respondent: Stakester Limited (in voluntary liquidation), sued as Thomas Fairey

London Central by CVP

7 July 2023

Employment Judge Goodman

Representation:

Claimants: Claimants 1-4, 7-9 in person. Claimants 5 and 6 did not attend and were not represented

Respondent: did not attend

RESERVED JUDGMENT

1. The fifth claimant's claim is dismissed for want of jurisdiction.
2. The first claimant's unfair dismissal claim is dismissed for want of jurisdiction.
3. The respondent is ordered to pay the seventh claimant a redundancy payment of £1,846.15.
4. The respondent is further ordered to make payments of unpaid wages, notice pay and holiday pay to claimants 1-4 and 6-9 as shown in the following table:

Claimant	Unpaid wages	Statutory Notice	Contractual Notice	Holiday Pay
Williams	£4,442.26	£673.07	£2,091.27	£511.52
Henry	£3201.53	£458.05	£1,616.58	£369.20
Cole	£3,930.48	-	-	-
Neave	£16,250.01	£1,250	£5,000	£2,000
Cook	£7,889.10	£606.88	£1,820.64	£971.04
Murphy	£1,2000	£1,846.15	£1,846.15	£1,656.58

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Kisseljova	£3,948.39	£583.09	£1,749.27	£443.16
Bench	£3,985.27	£1,207.67	£1,207.67	£603.80

REASONS

1. The claimants were all employed by the respondent and bring claims for money due arising from employment.

The Respondent

2. The respondent was sued as Thomas Fairey, who is the sole director of the employing company, at the same address, but the claimants identified their employer to ACAS on the early conciliation certificates as Stakester Limited, and documents show Stakester was the employer. For those reasons it is just to order an amendment.
3. Proceedings were started by ET1 on 3 May 2023. The tribunal sent the claim form and notice of hearing to the employer on 18 May asking for a response by 15 June, the 28 days allowed by rule. The employer did not respond. On 21 June the tribunal was informed that the respondent had applied for voluntary liquidation. Last week the employer advised it had instructed Fastspeed Legals of Helston in Cornwall to act. They have not attended, but it conforms the respondent is aware of the tribunal proceedings. The liquidator is Tom Bowes of Ideal Corporate Solutions in Bolton and the creditors meeting is today. No information about the liquidation yet appears on the Companies House register.

The Claimants

4. Eleven claimants were named on the claim form. One, Micah Cook filed a separate claim form and has already obtained judgment in default. I was informed by Ms Williams that Kirsty McGowan had also obtained judgement. I could not find that on the Tribunal case management system on the case number provided to me (2207399/23). Given Ms McGowan's absence today I assume the lack of information on the Tribunal file is an administrative error. If there has been any misunderstanding and she has not had a judgement she should apply for reconsideration within 14 days of this judgment being sent to the parties.
5. Some of the documents sent to me by Ms Williams for this hearing concerned Nathan Rawle. She indicated that she wanted to apply to amend to add him as a claimant. I do not have his current address, only an address from May 2021, or any information about his relevant employment dates, nor whether he has been to ACAS for early conciliation, nor do I know why his claim was not included before, or the amendment application is made now. It is on the

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face of it outside the three month time limit, which will require more information, and a judicial decision whether to allow it out of time. For those reasons I do not allow an amendment. Mr Rawle can present a claim to the tribunal himself and a decision could be made on a claim. He can also approach the liquidator and the Pensions Regulator.

Evidence

6. I was supplied with 91 pdfs from various claimants by way of evidence, such as bank statements. These had been assembled by Ms Williams. I supplemented missing information by asking questions of individual claimants in the hearing.

Relevant Law and other General Matters

7. Employees can bring claims for unauthorised deductions from wages under section 23 of the Employment Rights Act 1996. The award is the difference between what was “properly payable” on a date and what was actually paid (section 13).
8. “Wages” are defined in section 27. The definition includes holiday pay.
9. Unfair dismissal claims can be made by employees who have 2 years’ service at the date of termination, subject to some special exceptions – section 108.
10. A contract of employment will usually provide how much notice is to be given of termination. The Employment Rights Act implies minimum terms into contracts. The relevance of the distinction is that where there is insolvency section 184(1)(b) provides that payment from the national insurance fund is made for statutory notice. (In this context it should also be noted that section 186 caps the weekly amount payable on insolvency, and section 184(1)(a) limits payment of arrears of pay to 8 weeks.)
11. I have assessed awards as gross sums. This is because they are liable to tax as received, likely to be in the current year, so no accurate assessment can be made of allowances or tax bands, nor can there be confidence any PAYE deduction would reach HMRC – the company’s statement of affairs shows £1,221,038 owed to HMRC. Any money received as wages, notice or holiday pay can be declared for tax in 2023/24. I understand that if anything is paid by the state under the insolvency provisions of the Employment Rights Act tax will be deducted.
12. Not everyone was able to produce a contract. Those I have seen appear to be in standard form, so in the absence of an employer’s response I assume they were standard for all claimants. The contract provides staff were to be given one month’s notice of dismissal.
13. Holiday Pay entitlement in the contract was 25 days plus bank holidays. This is more than the amount of holiday provided in the Working Time Regulations

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(20 days plus 8 days for bank holidays, so 5.6 weeks). The Regulations provide for untaken holiday at termination to be calculated and paid pro rata to the current holiday year.

14. The right to a redundancy payment arises after completing two years' service (sections 135 and 155 Employment Rights Act), where employment is terminated by reason of redundancy as defined in section 137.

15. Claims for unpaid wages must be brought in time. Section 23(2) states:

an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made

16. When a claim is made out of time:

“where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”

17. Rule 21 of the Employment Tribunal Rules of Procedure provides that where an employer does not respond to a claim, the tribunal may enter judgement without a hearing where the available material is sufficient and at a hearing where it is not. A hearing was necessary in this case because several matters were unclear from the claim form and the documents were supplied just before the hearing.

First Claimant – Jennifer Williams.

18. Ms Williams started on 13 July 2021 and was dismissed, with 30 days' notice given, on 14 February 2023. She has not been paid for January, February or March 2023.

19. Her claim for unpaid wages is assessed at 6.6 weeks at £ 673.07 per week gross and £518.91 net of tax, national insurance and student loan repayment, so £4,442.26.

20. Her claim for unpaid notice is 1 week statutory notice, £673.07. The other 3 weeks is contractual notice, £2,091.21.

21. Holiday pay. The statutory entitlement is 5.6 weeks, which includes statutory holidays. In the absence of evidence I assume that she and all other claimants did not work on New Years Day, a statutory holiday and took no other holiday in 2023 before dismissal. Pro rata, she worked 6.6 weeks so her statutory holiday entitlement was $28 \times 6.6/52$, less 0.2 (one day), so 2.55 days, at £134.61 per day. That makes £343.27 awarded under the Working Time Regulations 1998. I have not seen her contract or her dismissal letter. I assume her terms were the same as those claimants for whom this information is provided, so 30 days holiday, and that she was asked to take them in her notice period, so in effect they were not paid. The award for all holiday pay pro-rated to the date of termination is 3.80 days or £511.52.

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22. Ms Williams has included a claim for unfair dismissal in her statement of loss. I make no award because she does not have the two years' service required to qualify for a claim of unfair dismissal.

Second Claimant – Brianne Henry

23. Ms Henry started in October 2021 and was dismissed on 14 February 2023 with one month's notice. She was not paid in January February or March 2023. Her gross pay per week was £485.08. Her net pay per week was £407.08.

24. The award for unpaid wages to 14 February is £ 3,201.53. The award for one week's statutory notice is £485.08. Contractual notice is £1,616.58.

25. Holiday pay – statutory holiday pay is 2.55 days at £97.16 per day= £247.76.

26. As with Ms Williams I assume that in line with claimants who have provided contracts and dismissal letters she was entitled to 3.8 days on termination, so the total award for holiday pay is £369.20.

Third Claimant – Matthew Cole

27. Mr Cole started in May 2021 and resigned with effect from 22 November 2022. He was not paid October wages until early in December. He was not paid for November 2022. He approached ACAS for early conciliation. He was told the employer agreed to pay him and was sent a COT3 (ACAS conciliated agreement form, called a "court free agreement") on 13 March 2023 which he signed. However the respondent did not sign and did not pay.

28. At first sight the claim was presented outside the 3 month time limit set in the Employment Rights Act. Time runs from when the money was "properly payable", which was on 27 or 30 November 2022. Late claims can be admitted if it is shown it was "not reasonably practicable" to present in time, and the claim is made in a reasonable time thereafter. I find it was not reasonably practicable to present a claim by 29 March because (1) as his October wages were paid in early December he might reasonably await a payment in early January, and the evidence of other claimants is that in 2022 payment was often late, for example, December wages were not paid until 16 January 2023 (2) he understood the employer had agreed the claim, so he need not present one; it was not reasonably practicable to present a claim when he was assured it was settled; it was reasonable to wait 6 weeks until 3 May, by which time the employer, whatever it had said to the ACAS conciliation officer, had neither signed an agreement nor paid.

29. The respondent is ordered to pay the claimant £3,930.48 gross. That is the amount shown on his November 2022 payslip but never paid. Net of tax, national insurance and student loan that would be £2,911.11.

Fourth Claimant -Logan Neave

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30. Mr Neave started on 19 July 2022. He was dismissed on 29 March with effect from 30 March 2023. He was not paid for January, February or March 2023. His gross pay per month was £5,416.67, which is £1,250 per week. His monthly pay net of tax and national insurance was £3,896.34.
31. The award for unpaid wages is £16,250.01 (13 weeks). The award for statutory notice is one week, £1,250. The balance of contractual notice is £5,000.
32. Holiday pay: on termination he was entitled pro rata to 7 days statutory holiday, of which one was taken, so owed 6 days at £250 per day, £1,500. An extra 2 days contractual holiday had accrued, according to the dismissal letter. Total holiday pay award: £2,000.

Fifth Claimant – Josephine Lamouche

33. Ms Lamouche did not appear and I had no documents for her. I was told she had resigned one or two weeks before Matthew Cole. There is a P45 showing she left 30 November 2022, and a statement that she is owed £1,665.31. It is not stated whether that is gross or net. For want of other information, that would be the award for unpaid wages.
34. However, if she left on 30 November, the claim is out of time. I do not know if she approached ACAS for early conciliation before the end of February 2023 (when time expired), or was paid other arrears later, or obtained a certificate or obtained some agreement, as did Mr Cole. Lacking information, I am not able to make a finding that it was not reasonably practicable to present a claim in time. The claim is dismissed for want of jurisdiction.

Sixth Claimant -Rory Cook

35. Mr Cook started on 18 May 2021 and was dismissed on 29 March 2023 with effect from 31 March 2023. Like everyone else he was not paid in 2023. Mr Cook is not able to state his gross pay, as the contract documents and payslips are on a defunct employer website and he did not download relevant material or make screenshots when employed. I therefore make awards based on his pay after deductions, as shown on his bank statements, at £2,629.83 per month, £606.88 per week.
36. The award for unpaid wages is £7,889.40 (13 weeks).
37. The award for unpaid statutory notice is £606.88. The balance of the one month contractual notice is £1,820.64.
38. The award for unpaid statutory holiday is £728.28, calculated as 7 days accrued to 31 March, less one day for a bank holiday, at £121.38 per day. He is entitled to a further 2 days under contract, as the dismissal letter states 9 days unused from January. Total holiday pay £971.04.

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Seventh Claimant – Jay Murphy

39. Mr Murphy started on 17 October 2020 and was dismissed on 29 March 2023 with effect from 31 March. His payslips show a gross monthly wage of £4,000, and £2,901 after deductions. He was not paid in 2023. He was over 21 and less than 41 on termination. He is awarded £12,000 in unpaid wages (13 weeks), and a redundancy payment of two weeks pay, £1,846.15.

40. He was entitled to 2 weeks' notice by statute, £1,846.15 and another 2 weeks, £1,846.15 under the contract of employment.

41. The award for statutory holiday is 6 days at £184.62 per day. According to the dismissal letter he had accrued 9 unused days holiday in 2023. Total holiday award: £1,656.58.

Eighth Claimant – Raissa Kisseljova

42. Ms Kisseljova started in January 2022 and was dismissed on 14 February with one month's contractual notice. Her payslips show gross monthly pay of £2,526.72 and monthly deductions of £473.25.

43. She is awarded 6.6 weeks unpaid wages, £3,848.39.

44. The statutory notice pay due is one week, £583.09. The balance in contractual notice is £1,749.27.

45. Statutory holiday pay is 2.55 days at £116.62 per day. As with Ms Williams and Ms Henry I assume she was entitled in all to 3.8 days by the date of termination, so the total holiday pay award is £443.16.

Ninth Claimant Jake Bench

46. Mr Beech started in November 2020 and was dismissed on 14 February 2023. His net pay was £2,131 after tax. He believes his gross pay was £30,000 per annum but has no relevant documents, not even a P45. He was unpaid in 2023.

47. The award for unpaid wages is 6.6 x £603.83, £3,985.27.

48. Statutory notice is 2 weeks, £1,207.67. The rest of the contractual notice is another £1,207.67.

49. Statutory holiday pay is 2.55 days at £120.76 per day. He was told in the dismissal letter he was to take 5 unused holiday during the notice period. As this was not paid, his total claim for unpaid holiday is £603.80.

Pension Contributions

50. All claimants had been enrolled in the Peoples Pension Scheme, a defined contribution scheme. The agreement was that the employer would contribute

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8% gross earnings and the employee none. Documents show that the employer made no contributions to the scheme after April 2022. This should be taken up with the liquidator.

Employment Judge Goodman
Dated 10 July 2023

JUDGMENT AND REASONS SENT to the PARTIES ON

10/07/2023

FOR THE TRIBUNAL OFFICE