



EMPLOYMENT TRIBUNALS

Claimant: Mrs P M Araujo da Silva

Respondents: (1) Androulla Loizou
(2) Little Adventures Play Centre Ltd

Heard at: East London Hearing Centre (Video hearing)

On: 09 June 2023

Before: Employment Judge P Housego

Representation

Claimant: Steven Ribeiro (Claimant's husband)

Respondents: Did not attend, were not represented and entered no appearance

JUDGMENT

1. The Claim against the 1st Respondent is dismissed.
2. The 2nd Respondent made unlawful deductions from the pay of the Claimant.
3. The 2nd Respondent is ordered to pay to the Claimant £5,529.60 in respect of those deductions.
4. I make a preparation time order against the 2nd Respondent in the sum of £3,604.60, which the 2nd Respondent is ordered to pay to the Claimant.

REASONS

1. The Claimant was employed by the 2nd Respondent. She agrees that this is so. Accordingly, the claim against the 1st Respondent (a director of the 2nd Respondent) is dismissed.

2. The 2nd Respondent (Company number 11814619) was placed into creditors' voluntary liquidation on 11 April 2023.
3. The liquidator consented to this claim proceeding.
4. The Claimant was made redundant immediately the Covid-19 pandemic started. Then the furlough scheme was introduced. The Claimant was reinstated on 21 March 2020, and immediately furloughed.
5. Once furloughed she received no pay prior to being dismissed again.
6. Whether the 2nd Respondent obtained the furlough pay from the Government is not known to me.
7. On 23 July 2020 the Claimant was again dismissed, as redundant. She was paid the correct amount in lieu of notice pay.
8. The period between reinstatement and dismissal was 17 weeks and 4 days.
9. The Claimant's pay was £9 an hour. She worked 43.5 hours a week. For 17 weeks that is 739.5 hours. For the additional 4 days she would have worked, if not furloughed, 3 days at 7.5 hours and 1 day at 6 hours. This is a further 28.5 hours. The total number of hours for which she should have received furlough pay was therefore 768 hours.
10. The full pay for those hours would have been $768 \times 9 = £6,912$.
11. The Claimant was entitled to furlough pay of 80% of that, which is £5,529.60.
12. I order the 2nd Respondent to pay that sum to the Claimant.
13. As the 2nd Respondent is in liquidation the Claimant will make application to the Government's redundancy payments service for payment of this sum.

Costs application

14. The ACAS early conciliation period in respect of this claim was 18 October 2020 – 18 November 2020.
15. On 01 December 2020 the directors of the 2nd Respondent applied for it to be struck off.
16. On 13 December 2020 this claim was filed.
17. On 13 July 2021 the 2nd Respondent was struck off the register.
18. On 01 December 2021 a hearing of this claim was adjourned partly by reason of the dissolution of the 2nd Respondent.

19. The Claimant paid £300 in fees to Companies House and £856 to a professional (Stanley Davis Group) to have the company restored, in order that the claim could proceed. Receipts were provided to me.
20. On 03 January 2023 the Court ordered the restoration of the 2nd Respondent to the register.
21. On 18 February 2023 the parties were given notice of this hearing.
22. On 11 April 2023 winding up the 2nd Respondent commenced.
23. On 18 April 2023 a voluntary liquidator was appointed.
24. On 01 May 2023 an extraordinary resolution to wind up the 2nd Respondent was passed.
25. (The details are from Companies House website for the 2nd Respondent.)
26. At a Case Management Hearing on 02 December 2021 the 1st Respondent attended, and Counsel made a costs application against the Claimant seeking £5,400. That application was subsequently refused.
27. The Case Management Order from the hearing of 02 December 2021 states that that the 2nd Respondent knew of the claim (because the 1st Respondent is a director of it and she attended the hearing) but that as the claim did not name the 2nd Respondent and the claim was not served on the registered office a claim against the 2nd Respondent was either not made or was not served in accordance with the Rules.
28. This was, plainly, a technicality given that a director of the 2nd Respondent was in attendance.
29. The history of this matter shows a calculated course of action designed to make it difficult for the Claimant to proceed, either by causing the 2nd Respondent to cease to exist, or by trying to frighten the Claimant by seeking large sums as costs.
30. The sum claimed as costs is almost as large as the claim. Instead of fighting the claim the 2nd Respondent could have paid it and been little worse off.
31. No defence has been filed to this claim, by either Respondent.
32. The Claimant's representative, her husband, has spent 58.3 hours overall on this case. That does not include any time spent at hearings.
33. I consider this to be a reasonable amount of time, particularly given the approach to the case taken by the 2nd Respondent. The application complies with Rule 45(1).

34. I have regard to the paying parties means. The 2nd Respondent is insolvent. The Secretary of State will not be paying the preparation time order. It will be admitted for payment with all the other unsecured creditors of the 2nd Respondent. That seems to me entirely appropriate.

35. I make a preparation time order under Rule 42 and Rule 44(3). I consider that the conduct of the 2nd Respondent, under the direction of the 1st Respondent falls within the required parameters. The 2nd Respondent clearly conducted the proceedings “otherwise unreasonably”, in the ways set out above, and I consider it appropriate to make a preparation time order. The provisions are:

“(2) *A tribunal or chairman shall consider making a preparation time order against a party (the paying party) where, in the opinion of the tribunal or the chairman (as the case may be), any of the circumstances in paragraph (3) apply. Having so considered the tribunal or chairman may make a preparation time order against that party if it considers it appropriate to do so.*

(3) *The circumstances described in paragraph (2) are where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by the paying party has been misconceived.”*

36. A litigant in person is entitled to claim expenses - [CPR 46.5](#). The expenses of getting the 2nd Respondent restored to the register were essential to enable the claim to be heard, for unless such an application was made successfully there would be no respondent.

37. The hourly rate for a preparation time order was £40 (06 April 2020- 05 April 2021), £41 (to 05 April 2022), £42 (to 05 April 2023) and is currently £43.

38. The work done has spanned several of those years. I decide that most of the work was done in the year for which the rate was £42. There would have been some in the years either side, which would average out at £42 also.

39. I therefore award $58.3 \times £42 = £2,448.60$ plus the disbursements of £1,156. This totals £3,604.60.

40. Rule 42(7) provides:

“(7) *No preparation time order shall be made unless the Secretary has sent notice to the party against whom the order may be made giving him the opportunity to give reasons why the order should not be made. This paragraph shall not be taken to require the Secretary to send notice to that party if the party has been given an opportunity to give reasons orally to the chairman or tribunal as to why the order should not be made.”*

41. The 2nd Respondent was served with notice of this hearing but did not attend. The 2nd Respondent had the opportunity to give reasons orally why an order should

not be made, but by failing to attend has not availed itself of that opportunity. If the 2nd Respondent is aggrieved at this decision, then application can be made for it to be reconsidered, giving reasons.

**Employment Judge P Housego
Date: 9 June 2023**