



EMPLOYMENT TRIBUNALS

Claimant: Mr B Bertoncini
Respondent: Dolphin Movers Ltd
Heard at: Watford Employment Tribunal
On: 18 July 2023
Before: Employment Judge Quill (Sitting Alone)

Appearances

For the Claimant: In Person
For the respondent: No Appearance

JUDGMENT

1. The Respondent has made unauthorised deductions from the Claimant's wages totalling £39,584.86 gross, and the Respondent is ordered to pay that sum to the Claimant (subject to lawful PAYE deductions, if any, but without any other deduction or set off).
2. The Claimant's employment contract has not terminated and I therefore do not award either redundancy pay or payment in lieu of holiday pay at this time, as the claim is premature.

REASONS

1. A Notice of Hearing dated 13 May 2023 informed parties that this hearing would proceed in accordance with Rule 21. The Claimant attended today, and the Respondent did not, and nor did it send any written representations.
2. The claim was presented on 31 March 2022, following ACAS Early Conciliation between 16 February 2022 and 29 March 2022.
3. The Claimant has been employed by the Respondent since 1994. He was placed on furlough in around March 2020, and received around 80% of normal salary between then and September 2021.
4. He has been available for work and has contacted the Respondent to say so several times. In September 2021, he applied for annual leave and that was approved and he was paid.

5. However, the Respondent has not provided him with work, or paid him, since. He last had contact from the Respondent in January 2022, and the lack of further response prompted him to issue this claim.
6. The Respondent filed no response to the claim.
7. Both in the claim form itself, and in a letter dated 3 April 2023, the Claimant made clear that he would like to claim for arrears of salary after the date of the presentation of the claim. It is in the interests of justice to grant that amendment, and I do so.
8. The Respondent has not communicated to the Claimant that his employment is over, or supplied P45, or notice of termination, or payment in lieu of holiday, etc. Likewise, the Claimant has not informed the Respondent that his employment has terminated. For example, in the claim form, he said that he was seeking salary “until such time as the company decide what they will be doing with me”. The contract has not been validly terminated.
9. The Claimant’s salary is £1833.33 gross per month. The Respondent has made unauthorised deductions from his wages by not paying him at all for the period 1 October 2021 to 18 July 2023. The aggregate deduction is £39586.86. This is a gross figure.
10. Since the employment contract has not been validly terminated by either side, there is no entitlement to redundancy pay or payment in lieu of holiday, and I make no decision about whether there is, or is not, an entitlement in principle to either of those things should the contract be terminated by either side in due course.

Employment Judge Quill

Date 18 July 2023

JUDGMENT SENT TO THE PARTIES ON

30/8/2023

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