



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Aziz Dirik

v

Mr Emrah Muzrak

Heard at:

Watford

On: 26 July 2023

Before:

Employment Judge Alliott (sitting alone)

Appearances

For the Claimant:

In person (with an interpreter: Turkish)

For the Respondent:

Mr Harun Ozer (a friend)

JUDGMENT

The judgment of the tribunal is that:

1. The respondent has made unauthorised deductions from the claimant's wages and is in breach of contract and is ordered to pay him the sum of £1,516.66 (subject to tax and national insurance).

REASONS

Late presentation of the claim

2. The claimant was last employed by the respondent on 3 July 2022. Consequently the three month primary limitation period for bringing his claim expired on 2 October 2022.
3. The claimant notified Acas on 12 November 2022. Consequently the claimant's claim is 1 month and 10 days late.
4. On 4 July 2022 the claimant smashed up a fridge at the respondent's restaurant.
5. The claimant told me that he went on holiday to Turkey from 6 July until 5 September 2022. Whilst in Turkey the claimant became aware from his daughter that the police had gone round to his home.
6. On the claimant's return from Turkey he presented himself to Edmonton Police Station. In due course he gave a statement to the police. It would appear that the claimant was charged with the offence of criminal damage and that there were three or four court appearances.

7. About one week before the claimant went to Acas the claimant had his trial. The claimant told me he pleaded guilty.
8. The claimant appears to have been convicted for an offence of criminal damage and was ordered to pay a total of £400. I do not know how that sum was made up and whether it was a fine or costs or a victim surcharge. In addition the claimant told me that he was ordered to undertake 20 visits to a probation officer.
9. Despite an order that the claimant's witness statement should deal with the issue of why he presented his claim late, in his witness statement the claimant has not dealt with this. However, in evidence before me today the claimant told me that he only became aware of the possibility of recovering his wages as a result of what was said to him by the Judge (who was presumably a Magistrate) when he was sentenced. The claimant told me that in his sentencing remarks the Magistrate told him that there were two ways to get his money either through a solicitor or by going to court. That indicates to me that as part of his defence or mitigation in his witness statement the claimant was saying that the reason he had committed the criminal damage was because he had not been paid.
10. The claimant told me that he did not know anything about how to bring a claim in the employment tribunal. It was only as a result of the Magistrate's comments that he took action. He told his daughter who did research and found it for him. Thus it is that the claimant notified Acas on 12 November 2022, approximately a week after his trial, and presented his claim on 15 November 2022.
11. When dealing with an individual who says that they did not know of their ability to bring a claim in the employment tribunal, let alone about the time limit, I have to consider whether the ignorance was reasonable. For two months the claimant was in Turkey. On his return it is clear to me he was heavily involved with the criminal case being brought against him. I accept that the claimant only became aware of his right to bring a claim as a result of the sentencing remarks of the Magistrate. Thereafter I find that he acted promptly in bringing a claim within about 10 days.
12. The claimant is not an English speaker and has Turkish as his first language. In my judgment the ignorance of his rights that he has told me about was reasonable in all the circumstances and I find that he presented his claim within a reasonable period thereafter.
13. Therefore I find that there is jurisdiction to hear this claim.

The claimant's claim

14. Despite orders from the tribunal that the respondent was to put in a witness statement dealing with this claim the respondent has not done so. Consequently I have no evidence or documents from the respondent.
15. The claimant gave me evidence that he began working for the respondent on 21 June 2022. Mr Ozer on behalf of the respondent accepts that the claimant was employed by the respondent but says that it only began on 29 June 2022. The response form put in by the respondent suggests that prior

to that there were only preliminary meetings about getting the restaurant started.

16. The claimant told me that he began work on 21 June 2022 and went with the respondent to get the ingredients to start the restaurant. The claimant told me that on 22 June 2022 he did a full day's work preparing meat and salads. The claimant told me that the restaurant opened on 23 June 2022 and he worked a full shift every day thereafter until 3 July 2022. I accept the evidence of the claimant and find that he was working from 21 June 2022 and that that was the start date of his contract of employment with the respondent.
17. The claimant told me that he would be employed at a rate of £700 per six day week. In fact, because the claimant needed the money, he worked the full 13 days. $£700 \div 6 = £116.66 \times 13 = £1,516.66$ gross.
18. In the response form it is contended that the claimant was paid all sums due, namely £600. I do not accept that the claimant was paid £600 or any amount. The reason I reject this contention is as follows:-
 - 18.1. Firstly, the respondent has presented me with no evidence.
 - 18.2. Secondly, it is quite clear that the claimant went to the restaurant on 4 July and committed an act of criminal damage. It was suggested by Mr Ozer that this may have been in revenge for his employment being terminated. I reject that contention. I find that it supports the contention of the claimant that he was owed wages and he did this out of frustration.
 - 18.3. Thirdly, it is clear that the claimant was saying to the magistrates that he had not been paid for his time working. In my judgment these contemporary actions corroborate the fact that he had not been paid correctly.
19. Consequently I find that the respondent made unauthorised deductions from the claimant's wages and/or is in breach of contract and owes him the total sum of £1,516.66 (subject to tax and national insurance).

Employment Judge Alliott

Date: 10 August 2023

Sent to the parties on:
13 September 2023

For the Tribunal Office