



EMPLOYMENT TRIBUNALS

Claimant: Mr J A Leon Lopez

Respondent: Esto Es Espana Ltd

Heard at: Liverpool

On: 16 October 2023

Before: Employment Judge Ainscough (sitting alone)

Representatives

For the claimant: in person – assisted by interpreter

For the respondent: Not in attendance

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£480**.
2. The respondent failed to pay the claimant's pension provider with the amounts deducted for the purposes of pensions contributions from the claimant's wage. The respondent also failed to pay employer's contributions to the claimant's pension provider and is ordered to pay the claimant **£1268.27**.
3. The respondent failed to pay the claimant a redundancy payment and is ordered to pay the claimant **£1293.48**.
4. The respondent failed to allow the claimant to take paid annual leave during his employment and failed to pay the claimant accrued but untaken annual leave on termination of employment and is ordered to pay the claimant the sum of **£1897.06**.
5. The respondent failed to pay the claimant for his notice period and is ordered to pay the claimant the gross sum of **£862.32**

REASONS

Introduction

1. The claimant worked as the Head Chef for the respondent's restaurant from 1 April 2021 until 2 April 2023. The claimant's employment was terminated without notice on 2 April 2023 when the respondent closed the restaurant.

2. On 11 May 2023 the claimant commenced ACAS Early Conciliation and issued claims for breach of contract, failure to pay a redundancy payment, unlawful deduction from wages and holiday pay on 15 May 2023. The respondent failed to serve a response.

3. I determined that this matter should be dealt with in accordance with rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. However, it was necessary to hold a hearing in person because English is not the claimant's first language, and he required the assistance of an interpreter.

Evidence

4. The claimant provided evidence of his contract of employment and a payslip. I also heard evidence from the claimant under oath.

Relevant Findings of Fact

5. The claimant began working for the respondent in December 2020 on a casual basis. The claimant signed a contract of employment which was effective from 1 April 2021. The effective date of termination was 2 April 2023. The claimant was 52 years of age on termination of his employment.

6. The claimant worked on average 36 hours per week at a rate of £12 per hour. The claimant's average gross weekly pay was £431.16. The claimant's average gross annual salary was £20,695.68. The gross daily rate was £86.23.

7. The claimant was not paid for his last week of work for the respondent. The claimant worked 40 hours in that last week.

8. The contract of employment provided the claimant with 28 days annual leave in accordance with the Working Time Regulations 1998. The respondent's holiday year ran from January to December.

9. However, the claimant was precluded from taking 15 days annual leave in 2022 because the respondent had under resourced the kitchen and the claimant was the only chef. The claimant was only allowed to take 5 days paid annual leave.

10. On the date of the termination of the claimant's employment he had accrued a further 7 days annual leave.

11. The contract of employment provided the claimant with statutory notice in accordance with section 86 of the Employment Rights Act 1996. On the date of the termination of the claimant's employment he was entitled to a notice period of two weeks.

12. The respondent's business ceased to trade and therefore the claimant qualified for a redundancy payment in accordance with section 135 of the Employment Rights Act 1996.

13. For the last twelve months of the claimant's employment the respondent failed to make a 3% contribution to the claimant's pension scheme.

14. The respondent was also obliged to pay to the pension provider the amount deducted from the claimant's wages each week. The respondent failed to do this for the last 12 months of the claimant's employment.

Relevant Law

15. Rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that when a respondent does not enter a response, the Tribunal can determine the claim on material and evidence provided by the claimant.

16. Regulation 14 of the Working Time Regulations 1998 provides that a worker is entitled to payment of accrued but untaken annual leave on termination of employment. The value of that payment is calculated by multiplying the annual leave allowance by the percentage of the leave year that has expired on the date of termination and deducting the leave already taken by the claimant.

17. In the case of **King v Sash Window Workshop Ltd (C-214/16)**, the European Court of Justice determined that if a claimant has been unable to take annual leave for reasons beyond his control, the annual leave will be carried over into the following leave year. If on termination of employment, that leave is still untaken, the claimant is entitled to payment of the accrued but untaken leave in accordance with Regulation 14 of the Working Time Regulations 2013.

18. Section 13 of the Employment Rights Act 1996 provides that an employer should not deduct wages that are properly payable to an employee.

19. Section 86 of the Employment Rights Act 1996 provides that an employee will be entitled to notice of one week for each year of continuous employment once they have been continuously employed for two years.

20. Sections 135, 139, 155 and 162 of the Employment Rights Act 1996, respectively provide that an employee is entitled to a redundancy payment, if on achieving two years continuous service, the employer ceases to carry on the business for the purposes of which the employee was employed. In such circumstances, the employee will receive pay equivalent to 1.5 weeks pay for each year that he was continuously employed over the age of 41.

Calculations

21. In the last week of employment, the claimant worked 40 hours at the rate of £12 per hour. The respondent unlawfully deducted £480 from the claimant's wages.

22. The respondent failed to pay employer pension contributions for a period of 12 months at the rate of 3% of the claimant's gross salary. The claimant's gross

annual salary was £20,695.68. The claimant is entitled to £620.87 in unpaid employer pension contributions.

23. The respondent also failed to pay the claimant's contributions to the pension provider for the last 12 months of the claimant's employment. The claimant made a weekly contribution of £12.45. The claimant is entitled to recoupment of £647.40.

24. The claimant was entitled to a notice period of two weeks. The claimant's average gross weekly salary was £431.16. The claimant is entitled to payment of £862.32 for his notice period.

25. The claimant worked for the respondent for two years. The claimant's gross weekly pay was £431.16. The claimant was over the age of 41 throughout his employment. The claimant is entitled to 1.5 weeks pay for each year he worked for the respondent. The claimant is entitled to a redundancy payment of £1293.48.

26. The claimant was unable to take 15 days annual leave in 2022. This annual leave carried over into the 2023 leave year. On termination of employment 25% of the leave year had expired and the claimant had not taken any leave. The claimant had therefore accrued 7 days additional annual leave by the time his employment terminated. The claimant's gross wage each day was £86.23. The claimant is therefore entitled to £1897.06 in accrued but untaken holiday pay.

Employment Judge Ainscough

Date: 16 October 2023

JUDGMENT SENT TO THE PARTIES ON

31 October 2023

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2405831/2023**

Name of case: **Mr J A Leon Lopez v Esto Es Espana Ltd**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 31 October 2023

the calculation day in this case is: 1 November 2023

the stipulated rate of interest is: **8% per annum**.

For the Employment Tribunal Office