



EMPLOYMENT TRIBUNALS

Claimants: Mr Danu Radu & Mr A K M Rassal
Respondent: Boiler & Company Ltd
Heard at: London South Croydon, in public, by CVP
On: 6 October 2023
Before: Employment Judge Tsamados (sitting alone)

Representation

Claimants: Both in person
Respondent: Response not received, did not attend & not represented

JUDGMENT

The Judgment of the Employment Tribunal is as follows:

- 1) The correct Respondent is Boiler & Company Ltd. Mr Carr is removed as a Respondent.
- 2) The complaints of unauthorised deductions from wages and damages for breach of contract are well-founded and I make the following awards payable by the Respondent in respect of each Claimant:

Mr Radu

- a. Compensation for unauthorised deductions from wages in respect of unpaid wages of **£384** gross and accrued but untaken annual leave of **£32.40** gross;
- b. Damages for breach of contract for failure to give notice of dismissal in the sum of **£240** gross;
- c. Compensation for the failure to provide written particulars of employment **£960**
- d. This is a total award of **£1616.40**.

Mr Rassal

- e. Compensation for unauthorised deductions from wages in respect of unpaid wages of **£1200** gross and accrued but untaken annual leave of **£709.20** gross;
- f. Damages for breach of contract for failure to give notice of dismissal in the sum of **£420** gross;
- g. Compensation for failure to provide written particulars of employment **£1680**;
- h. This is a total award of **£4,009.20**.

REASONS

The claim

1. This claim is brought by Mr Radu and also includes a claim for Mr Rassal. The claim form was received on 14 April 2023 following a period of ACAS Early Conciliation between 12 and 14 April 2023.
2. The claim was brought against Mr Adam Carr and “Boiler & Co” and gave what the Companies House website confirms to be the registered office of “Boiler & Company Limited”. Mr Carr is a Director of the limited company. Both claimants were employed to work at a cocktail bar/restaurant called “Boiler & Co” on the Southbank in London.
3. With the Claimants’ agreement I removed Mr Carr as first Respondent and changed the name of the second Respondent to Boiler & Company Limited. Boiler & Co is clearly the limited company’s trading name. Given that service of the claim form was on the limited company’s registered address, I am satisfied that service has taken place. No response has been received from either Mr Carr or Boiler & Co.

Today’s hearing

4. For today’s hearing, I had a copy of Mr Radu’s claim form which only contains information about his own claim and nothing about Mr Rassal, beyond his name and address. Mr Radu has provided two witness statements, one dated 24 August 2023 and the other dated 1 September 2023. These are both in his name and contain more or less the same information. Whilst standard case management orders were issued these have not been complied with by any of the parties beyond Mr Radu’s witness statements. However, this does not present a problem for today’s hearing.
5. By 10 am there was no attendance by the Respondents. I commenced the hearing and explained the position regarding the Respondents to the Claimants. I then took unsworn evidence from both of Claimants.

Findings of fact

Mr Radu

6. Mr Radu was employed by the Respondent as a Kitchen Porter from 25 March to 4 April 2023. He was taken on by Mr Carr who told him that he was the Manager. He explained to Mr Carr that he was a student and could only work 20 hours per week and Mr Carr told him he would be paid £12 gross per hour. However, he was only given 16 hours of work per week.
7. On 4 April 2023, Mr Carr told him that his employment was ending that day. This was without any prior warning. The Claimant has searched on Google and the bar/restaurant has closed down. By this stage he had worked for 32 hours over a two week period and had not been paid.
8. He repeatedly asked Mr Carr for pay-slips and a P60 for the purposes of his Student Loan but was not provided with them. He asked again on his final day.
9. He did not have a written contract of employment. He did not receive a P45 on termination of employment and from what Mr Carr said to him on the last day, he believes that Mr Carr did not inform HMRC of his employment. He did not take any annual leave and was unaware of his entitlement. From what Mr Carr told him, he was led to believe that he was self-employed.
10. Mr Radu is very aggrieved by Mr Carr's behaviour. He repeatedly chased him for tax documents and pay slips which he needed for his Student Loan and finance, he repeatedly chased him for his wages but received nothing. Mr Carr dismissed him without any warning. He was unable to find alternative employment, had to live on his savings and then nearly lost his home after an argument with his landlord over not being able to pay the rent on time. He was concerned that his student finance would be reduced if he were unemployed for over a month.

Mr Rassal

11. Mr Rassal was employed by the Respondent from 16 December 2022 until 4 April 2023 as a Kitchen Porter and part-time Sous Chef. He was paid £12 gross per hour and work 6-7 hours per day, usually 7 from Monday to Friday. He was originally paid every two weeks and after the third month of his employment, Mr Carr told him that he would be paid monthly.
12. He did not have a written contract of employment and did not receive any pay-slips. He was dismissed without warning or notice by Mr Carr at the same time as Mr Radu. He did not take any annual leave and was unaware of his rights. From what Mr Carr told him, he was led to believe he was self-employed. At the time of his dismissal, Mr Rassal was owed £1200 gross in respect of 100 hours worked.

Conclusions

13. I expressed my sympathies with Mr Radu for the difficulties caused by what had happened to him but emphasised that unfortunately I was not able to assist with that beyond putting what he had said to me as part of my reasons so at least he could show this to the student loan/finance people. He said this would be of assistance.
14. I also explained that I had no jurisdiction to do anything about the tax documents he requested or his suspicion that his employment had not been declared and suggested that both he and Mr Rassal take these matters up with HMRC.
15. I formed the view that it was highly unlikely that the Claimants who were working solely for the Respondent as kitchen staff were self-employed and that in the circumstances it seemed clear that they were employees.
16. Both Claimants have not been paid for wages for work undertaken, did not receive notice of dismissal or their entitlement to accrued annual leave.
17. I have treated the claims in respect of arrears of wages and accrued but unpaid annual leave as complaints under section 13 of the Employment Rights Act 1996. In other words, unauthorised deductions from wages.
18. I determined what was properly payable to each Claimant, that it was not paid to them and the Respondent had lawful right to make deductions in respect of what was properly payable.
19. I treated the claims in respect of unpaid notice entitlement as complaints of damages for breach of contract arising or outstanding on termination of employment under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994. I determined that Mr Radu was entitled to reasonable notice which in respect of a Kitchen Porter would be at least one week. Mr Rassal was entitled to statutory minimum notice of one week under section 86 of the Employment Rights Act 1996.
20. The Claimants did not receive any itemised pay statements contrary to section 8 of the Employment Rights Act 1996. This entitles employees to be provided with an itemised pay statement at the point of payment of wages. Of course the Claimant never received any pay slips and was only employed for two weeks. Although Mr Rassal was paid in the past, he was not paid during the period that this would cover (from 13 January 2023). I concluded that it was disproportionate for me to calculate what each Claimant's itemised pay statements should have contained as deductions for income and tax and national insurance for the periods in question, at which I could only guess at. Moreover, it was highly unlikely that Mr Carr had notified HMRC of the Claimants' employment. Further, Mr Radu's wages appeared to be below the point at which tax and national insurance was even payable. In the circumstances I also concluded that it was disproportionate to consider an

award of compensation in respect of unnotified deductions under section 11 of the Employment Rights Act 1996.

21. After the hearing had concluded, it occurred to me that as neither Claimant had received written particulars of employment at the start of their employment, as required under section 1 of the Employment Rights Act 1996, and still had not received them at the date of the claim, I could award them compensation under section 38 of the Employment Act 2002. This is in the sum of either 2 weeks or 4 weeks gross pay. Given the impact on the two Claimants in not knowing their true employment status, their entitlement to notice or to holiday, I decided to award them each 4 weeks' gross pay for this failure. I have therefore added this to the awards that I told them of at the hearing.
22. Based on my above findings I make the following awards (all figures are gross):

Mr Radu

Unauthorised deductions from wages

Arrears of pay

- a. 32 hours worked at £12 per hour = £384

Accrued but untaken annual leave

- b. Based on the leave year running from the date of his employment – 25 March 2023 to 24 March 2024
Working 16 hours per day / 2 days per week
Dismissed 4 April 2023
Gov.uk calculator entitlement = 2.7 hours holiday
£12 per hour x 2.7 = £32.40

Damages for breach of contract

- c. Reasonable notice of one week
£12 per hour x 20 hours (the number of hours that the Claimant contracted to work each week) = £240

Failure to provide written particulars of employment

- d. 4 weeks pay at £240 per week (based on 20 hours per week = £960

Total award

- e. £1616.40

Mr Rassal

Unauthorised deductions from wages

Arrears of wages

f. 100 hours x £12 per hour = £1200

Accrued but untaken annual leave

g. Based on the leave year running from the date of his employment - 16 December to 15 December
35 hours pw / 5 days per week
Dismissed 4 April 2023
Gov.uk calculator entitlement = 59.1 hours holiday
£12 x 59.1 = £709.20

Damages for breach of contract

h. Statutory notice of 1 week
Working 35 hours pw at £12 per hour = £420

Failure to provide written particulars of employment

i. 4 weeks pay at £420 per week = £1680

Total award

j. £4,009.20.

Employment Judge Tsamados
Date: 13 November 2023

All judgments (apart from those under rule 52) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.