



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Y B Gurung

v

Insignia Security Services Ltd

**Heard at:** Reading (CVP)

**On:** 10 November 2023

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms Mahyew-Hills, consultant

This has been a remote hearing to which the parties did not object. The form of remote hearing was Cloud Video Platform (CVP). A face-to-face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

## JUDGMENT

- (1) The Respondent's application to submit its response out of time is dismissed.
- (2) The claim of unlawful deduction from wages succeeds in the sum of £5,462 (gross).
- (3) The claim for a redundancy payment succeeds in the sum of £1,891.
- (4) The claim for holiday pay succeeds in the sum of £1,638.
- (5) The total sum due to the Claimant is £8,991.00 and he will be responsible for paying any tax due on that amount.

## REASONS

**Introduction**

1. On 10 October 2022, the Claimant brought claims for unlawful deduction of wages, for a redundancy payment and for unpaid holiday pay.
2. He asserted he had been employed by the Respondent between 14 October 2019 and 30 June 2022 as a security officer. Although he never received a contract he worked 57.5 hrs per week, Monday to Friday and was paid monthly in the sum of £2,731 gross. He worked at Puckeridge barracks, Aldershot. His date of birth is 17 May 1963.
3. At the end of March 2022, he was told that the Respondent had lost the relevant security contract and that he would no longer be required from the end of June 2022 (when the security contract terminated). Furthermore, he was never paid for any of the work he did in the months of May 2022 and June 2022.
4. The Respondent was notified of the claim and that a response was required by 21 November 2022.
5. No response was submitted and the matter was set down for hearing today.
6. On 9 November 2023 (the day before today's hearing), the Respondent made an application to submit a response out of time pursuant to rule 20 of the Employment Tribunal Rules of Procedure 2013. As regards why the response was not submitted in time, the Respondent said the address on the claim form was the Respondent's central office, and that mail was not forwarded from there to the Luton address, which had been the Claimant's main point of contact while he was working for the Respondent.
7. The draft response states that the Claimant had worked as security personnel on an army base pursuant to a contract from Amey PLC and in March 2022 the Respondent was informed the contract would not be renewed. Amey PLC was responsible for paying the Respondent for things like holiday pay and redundancy and when the contract was not renewed the Respondent did not receive the money from Amey. Although the Claimant might be owed redundancy and holiday pay, the Respondent denied it fell to them to pay him.

**Application for extension of time to submit a response**

8. At the outset of the hearing I heard the Respondent's application to submit its response out of time, which was essentially based on the matters set out above.
9. I noted the Respondent was seeking to submit a response nearly one year late.

10. Secondly, no explanation had been given as to why mail sent to the Respondent's central office, which is the address registered on Companies House, is apparently neither opened at that central office nor forwarded to the Luton office. I considered the Respondent had not made reasonable efforts to ensure that important correspondence, such as the claim form in this case, comes to its attention.
11. Thirdly, the merits of the draft response appeared weak. It does not even touch on the Claimant's complaint that the Respondent did not pay his wages for May and June 2022. Further the assertion that Amey PLC did not pay to the Respondent monies it owed the Respondent, is not a defence to the claim that the Respondent failed to pay the Claimant monies it owed him in the form of holiday pay and redundancy pay.
12. I was therefore satisfied that the balance of prejudice was against the Respondent and that having regard to the overriding objective to deal with cases fairly and justly, the application for an extension of time to submit the response should be dismissed.
13. Having rejected the response, I then considered the merits of the claim. The Respondent took no part in this part of the hearing.

### **The Substantive Claim**

14. The Claimant's evidence essentially repeated the matters in his Claim Form. He said the Citizen's Advice Bureau had filled in the form for him on the basis of all the information the Claimant told them at the time. He could still remember that he worked 57.5 hrs per week from Monday to Friday but could not now remember details of his pay.
15. As regards holiday, he didn't have to work bank holidays because the site was closed and he received payment for those days. He didn't take any other holidays because there was nobody to take his place if he didn't work. In the previous year he had filled out a form and the Respondent had paid him holiday pay but when his employment terminated and he asked for his wages for May and June 2022 and his holiday pay, he didn't get any response from the Respondent.

### **Unlawful deduction from wages (s. 13 Employment Rights Act 1996)**

16. I am satisfied the Claimant was not paid his wages for May and June 2022, and further that those wages were as set out in his claim form, namely £2,731 gross per month.
17. It follows that the Claimant is entitled to the sum of £5,462 gross in respect of unpaid wages.

### **Redundancy Payment (s.136 Employment Rights Act 1996)**

18. I am satisfied the Claimant was dismissed by reason of redundancy pursuant to section 139 Employment Rights Act 1996 and was entitled

to a redundancy payment pursuant to section 135 Employment Rights Act 1996.

19. Since the Claimant was employed by the Respondent for two full years and was not below the age of forty-one during both of those years, he is entitled to a redundancy payment of three weeks' pay (section 162(2)(a) Employment Rights Act 1996).
20. This is an amount of £1,891 (the Claimant's weekly gross pay being £630.23).

Holiday Pay (regulation 14 of the Working Time Regulations 1998)

21. The annual leave entitlement is 5.6 weeks.
22. Claimant's leave year began on 14 October and his employment terminated on 30 June 2022. This is a period 259 days and 71% of a leave year.
23. At the date of termination, the Claimant was therefore entitled to 4 weeks' holiday (being 5.6 weeks x 0.71).
24. However, he says that he was given paid bank holidays, which during the period in question would have been Christmas Day, Boxing Day, New Years' Day, Good Friday, Easter Monday, and two May bank holidays, namely 7 days.
25. This means the Claimant is entitled to be paid for 13 days holiday or 2.6 weeks of pay. This is a sum of £1,638.

**Total Sum Due**

26. It follows that the total sum due to the Claimant is £8,991 (£5,462 + £1,891 + £1,638).
27. At the hearing I calculated that the sum due to the Claimant was approximately £9,000 and explained that the exact sum would be set out in the judgment once I had had an opportunity to check my calculations.

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Employment Judge S Moore

Date: 10 November 2023

Sent to the parties on: 6/12/2023

For the Tribunal Office – N Gotecha