



EMPLOYMENT TRIBUNALS

Claimant: Mr L Lloyd

Respondent: Cookstable Catering Limited

Heard at: London South Employment Tribunal (by CVP)

On: 11 December 2023

Before: Employment Judge T Perry

Representation

Claimant: in person

Respondent: did not attend

JUDGMENT

1. The Claimant's claim for deduction from wages in respect of salary in the period January to May 2022 is well founded and succeeds. The Respondent is ordered to pay the Claimant the gross sum of £4,332.47. The Claimant may be liable to tax on this sum.
2. The Claimant's claim for damages for failure to pay notice pay is well founded and succeeds. The Respondent is ordered to pay the Claimant the gross sum of £6,456. The Claimant may be liable to tax on this sum.
3. The Claimant's claim in respect of a redundancy payment is well founded and succeeds. The Respondent is ordered to pay the Claimant a redundancy payment of £6,725.
4. The Claimant's claim in respect of accrued untaken holiday pay is well founded and succeeds. The Respondent is ordered to pay the Claimant the gross sum of £968.40. The Claimant may be liable to tax on this sum.

REASONS

Attendance of the Respondent

5. The Respondent failed to attend the hearing.
6. The Tribunal staff attempted to call the Respondent on the phone number provided in the ET3 but received no response.
7. The Claimant informed the Tribunal that the Respondent had failed to respond to a number of other claims brought against it.
8. Having made what I considered to be all practicable attempts to contact the Respondent, I decided to proceed with the hearing in the Respondent's absence under rule 47.
9. I had limited documentation before me and relied to a significant extent on the Claimant's oral version of events given at the hearing.

The issues

10. The Claimant brought a claim under section 13 Employment Rights Act 1996 in respect of not having received his full salary between January and May 2022.
11. The Claimant brought a claim for breach of contract in respect of failure to pay notice.
12. The Claimant brought a claim for a redundancy payment under section 163 Employment Rights Act 1996. The Claimant said his dismissal was wholly or mainly attributable to a redundancy situation, namely the closure in May 2022 of the Famous Ship Inn public house at which he worked.
13. The Claimant claimed not to have been paid his accrued untaken holiday in respect of 2022 and claimed this as an unlawful deduction from wages under section 13 Employment Rights Act 1996.

Findings of fact

14. There was an apparent dispute between the parties regarding the date of commencement of the Claimant's employment. The current owners acquired the business by TUPE transfer in 2021 (when the Claimant received a statement of particulars of employment). The Claimant claimed to have continuous employment with the previous owner WAS Sandgate Limited going back to 12 October 2010, whilst the Respondent said employment ran only from 2021. In the Respondent's absence, I accepted the Claimant's evidence on this point.

15. In the Respondent's absence, I accepted the Claimant's evidence that the Respondent failed to pay his full salary from January 2023 and that he was owed a net amount of £3,336. It appeared that this entitlement was accepted by the Respondent in any event.
16. In its ET3, the Respondent suggested that the Claimant's employment had been ended on 26 March 2023 by the Claimant's resignation and that the Claimant had only worked on a casual basis thereafter. The Claimant denied this and said that he continued as an employee until dismissed without notice on 3 May 2023 when the pub was closed. In the Respondent's absence, I accepted the Claimant's evidence on this point.
17. Given his length of service, the Claimant was entitled to but was not paid 12 weeks' statutory minimum notice.
18. The Claimant confirmed that:
 - a. the Respondent's holiday year was the calendar year;
 - b. holiday was lost if not taken by year end;
 - c. the Claimant's entitlement to holiday was 28 days; and
 - d. the Claimant had taken no holiday in 2023
19. Accordingly, the Claimant's accrued untaken holiday entitlement was 13 days'.

The Law

20. Section 163 Employment Rights Act 1996 covers references to Employment Tribunals regarding the right to and amount of redundancy payments. It sets out a rebuttable presumption that dismissal was by reason of redundancy.
21. Section 139 Employment Rights Act 1996 defines dismissal by reason of redundancy. The definition includes ceasing to carry on business in a place where the employee was employed.
22. Section 13 Employment Rights Act 1996 contains the protection against unlawful deduction from wages.
23. The right to payment in lieu of accrued untaken annual leave on termination of employment is set out in Regulation 14 Working Time Regulations 1998.

Conclusions

24. By virtue of both the rebuttable presumption in section 163 Employment Rights Act 1996 and the definition contained in section 139 Employment

- Rights Act 1996, I am satisfied that the reason for the termination of the Claimant's employment was redundancy (namely the closure of the pub).
25. Given the Claimant's age at dismissal (42 years 3 months), his gross weekly wage (£538) and his length of service (12 years), he is entitled to a redundancy payment of £6,725.
26. The Respondent made unlawful deductions of £4,332.47 from the Claimant's wages from January to May 2023.
27. The Claimant's notice period should have been 12 weeks and his gross salary was £538. Dismissal without notice was in breach of contract and damages are £6,456.
28. The Claimant's accrued holiday entitlement was 13 days. His daily pay was £74.50. The Respondent unlawfully deducted £968.40 from the Claimant's pay.

Employment Judge **T Perry**

Date 15 December 2023

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>