



EMPLOYMENT TRIBUNALS

Heard at: London South **On:** 22 and 23 May 2024

Claimants: (1) Mr G Onos
(2) Mr P Garabagiu

Respondents: (1) Mr D M Ferris
(2) Performa Drywall Consultants Ltd

Before: Employment Judge Ramsden

Representation:

Claimants Mrs E Donaldson, Solicitor

Respondents Non-attending

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The Claimants' claims were each issued in the London South Employment Tribunal on 22 March 2023.
2. The First Respondent has failed to present a valid response to either claim on time on the expiry of the time limit in Rule 16 of the Employment Tribunals Rules of Procedure 2013 (the **ET Rules**).
3. The Second Respondent failed to present a valid response to the First Claimant's claim on time on the expiry of the time limit in Rule 16 of the ET Rules.
4. The Second Respondent presented a valid response to the Second Claimant's claim, but that response was struck-out on 23 May 2024 for the Second Respondent's failure to actively pursue it. The Second Respondent had failed to attend the first day of that hearing, whereupon a strike-out warning was issued and the Second Respondent was given until 9:30 am on the second day of the hearing (today) to make representations. The Second Respondent failed to make any representations, and so that response was struck-out. In accordance with Rule

37(3), the effect of the strike-out of that response shall be as if no response was presented.

5. The Employment Judge has decided that, pursuant to Rule 21(2) of the ET Rules, a determination can properly be made of the claim, or part of it, on the available material, and finds that:
- a) The Claimants were each employed by the First Respondent for the period 28 April 2022 to 9 November 2022;
 - b) The Second Respondent acted as the First Respondent's payroll agent during that period;
 - c) The Claimants' claims of:
 - (i) Unauthorised deductions from their wages under section 13 of the Employment Rights Act 1996 in respect of the period 14 October 2022 to 9 November 2022 (23 days of work); and
 - (ii) Failure to pay compensation on the termination of their employment related to their entitlement to leave under regulation 14 of the Working Time Regulations 1998,are well-founded; but the claim of:
 - (iii) Wrongful dismissal, i.e., failure to pay them notice pay on the termination of their employment,is not well-founded, as each of the Claimants accepted the First Respondent's fundamental breach of contract and ceased work without giving notice on 10 November 2022. That brought their employment contracts to an end.
6. The First Respondent must pay to the First Claimant damages in the sum of **£10,036.25 gross**, comprising:
- a) £5,700 for unauthorised deductions from his wages, calculated as follows:
 - (i) The First Claimant worked 21 days in the period 14 October 2022 to 9 November 2022 at a daily rate of £237.50 gross for which he was not paid;
 - (ii) The First Claimant worked 2 days in the period 14 October 2022 to 9 November 2022 at a daily rate of £356.25 gross (the Sunday rate) for which he was not paid;
 - (iii) Therefore the compensation to which he is entitled in respect of this unauthorised deduction is 21 times £237.50, i.e., £4,987.50, together with 2 times £356.25, i.e., £712.50, which amounts to £5.700 gross in aggregate;
 - b) £3,586.25 gross by way of compensation for 15.1 days of unpaid holiday at a daily rate of £237.50, i.e., £3,586.25; and

- c) £750 by way of interest incurred on a loan he took out on 1 November 2022 to cover his bills when he was not paid by the First Respondent. The First Claimant took out a loan in the principal sum of £3,000, and paid 5% interest per month on that loan. The loan was repaid on 1 April 2023. The First Claimant therefore paid interest of £150 per month for five months, i.e., a total interest of £750.
7. The First Respondent must pay to the Second Claimant damages in the sum of **£9,886.25 gross**, comprising:
- a) £5,700 for unauthorised deductions from his wages, calculated as follows:
- (i) The Second Claimant worked 21 days in the period 14 October 2022 to 9 November 2022 at a daily rate of £237.50 gross for which he was not paid;
 - (ii) The Second Claimant worked 2 days in the period 14 October 2022 to 9 November 2022 at a daily rate of £356.25 gross (the Sunday rate) for which he was not paid
 - (iii) Therefore the compensation to which he is entitled in respect of this unauthorised deduction is 21 times £237.50, i.e., £4,987.50, together with 2 times £356.25, i.e., £712.50, which amounts to £5,700 gross in aggregate;
- b) £3,586.25 gross by way of compensation for 15.1 days of unpaid holiday at a daily rate of £237.50, i.e., £3,586.25; and
- c) £600 by way of interest incurred on a loan he took out on 18 November 2022 to cover his bills when he was not paid by the First Respondent. The Second Claimant took out a loan in the principal sum of £2,000, and paid 5% interest per month on that loan. The loan was repaid on 16 May 2023. The First Claimant therefore paid interest of £100 per month for six months, i.e., a total interest of £600.
8. Each of the First and Second Claimants must account to HMRC in respect of any payment received by him pursuant to this judgment.

Employment Judge Ramsden

Date 23 May 2024

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