



EMPLOYMENT TRIBUNALS

Claimant: Mr Mahbub Khan
Respondent: I Luv Coffee Ltd
Heard at: Watford (by CVP)
On: 12 June 2024
Before: Employment Judge Alliott

Appearances

For the Claimant: In person
For the Respondent: Did not attend

JUDGMENT

The judgment of the tribunal is that:

1. The claimant was unfairly dismissed and the respondent is ordered to pay him the total figure of £10,458.75 made up as follows:
 - 1.1. Basic award: £3,900.51
 - 1.2. Compensatory award: £6,058.24
 - 1.3. Loss of statutory rights: £500
2. The respondent has made unauthorised deductions of the claimant's wages and the respondent is ordered to pay him the gross sum of £3,499 (subject to Tax and National Insurance)

REASONS

1. The claimant was employed by the respondent on 1 May 2014 as a Customer Service Operator. The claimant resigned on 18 August 2023.
2. By a claim form presented on 3 October 2023, following a period of early conciliation from 12 to 21 September 2023, the claimant brings complaints of unfair dismissal (constructive) and unauthorised deduction of wages.
3. The respondent has not put in a response and consequently this hearing was listed for a two hour full merits hearing.
4. Given that the respondent has not put in a response, so I decided to proceed with the hearing in the absence of the respondent.

5. The claimant has provided a witness statement with a number of exhibits. The claimant verified his witness statement on oath.
6. I find that save for a payment of £890 made on 7 August 2023, the claimant was not paid his wages for June, July and August 2023. The claimant has produced a document from HM Revenue & Customs indicating his taxable income for the months ending in May, June, July and August.
7. I find that the respondent has made unauthorised deductions from the claimant's wages in the total sum of £3,499 gross and accordingly I award the claimant judgment for that sum.
8. For the last 10 months of his employment the claimant experienced significant difficulties in receiving his wages. As already found, the claimant was not paid for June, July and August save for the £890 payment. I find that the respondent was in fundamental breach of the claimant's contract of employment by not paying his wages and that the claimant resigned his employment in consequence of that fundamental breach. Accordingly, I find that the claimant was constructively unfairly dismissed.
9. The claimant worked variable hours each week. The Inland Revenue documents indicate that his gross earnings for May/June/July 2023 were £5,200.72. ÷ by 12 that gives £433.39 gross per week. The net earnings for the same period were £4,543.73. ÷ 12 = £378.64 net per week.
10. I have used these weekly wage figures in my calculations.
11. The claimant has provided limited information as to how many jobs he applied for and details of the job he obtained in December 2023. The claimant told me that he applied for four or five jobs after he resigned. The claimant obtained alternative employment on 15 December 2023 when he started working for a food company. He told me his hours varied between about 20 and 30 per week at £11.95 per hour. He had no real explanation for not working more hours other than health possibly. The claimant obtained Job Seekers Allowance at some stage.
12. The claimant is under a duty to mitigate his loss. It is not an onerous duty but he must make reasonable efforts. The claimant told me he applied to Starbucks for a job. I accept that the claimant had difficulties obtaining alternative employment in the short term but nevertheless I find that the claimant could and should have obtained comparable employment by the time he started work on 15 December 2023. Accordingly, I award the claimant loss of earnings for four months. Consequently, I make the following awards:-
13. Basic award: 9 x £433.39 = £3,900.51
14. Compensatory award: 16 x £378.64 = £6,058.24
15. Loss of statutory rights: = £500.00

Recoupment

- The total monetary award: = £13,957.75
- The prescribed element: = £6,058.24
- The period to which the prescribed element relates: 18 August - 15 December 2023.
- The amount by which the total monetary award exceeds the prescribed element: £7,899.51.

Employment Judge Alliott

Date: 13 June 2024

Sent to the parties on: 01/08/2024

For the Tribunal Office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>