



# EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr Z McCabe**

v

**Proper North Ltd**

**Heard: BY CVP**

**On: 16 January 2025**

**Before:**

**Employment Judge JM Wade**

**Representation:**

**Claimant:**

**In person**

**Respondent:**

Mr Tyldsley, director

## JUDGMENT

- 1 The claimant's complaint of breach of contract succeeds and the respondent shall pay to him the following sums in damages:
  - £237.62 (April loss);
  - £648 (May loss);
  - £312.83 (June loss).
- 2 The claimant's complaint of a failure to pay accrued holiday pay on the termination of employment succeeds and the respondent shall pay to him the gross sum of £562.50.
- 3 The total sum payable by the respondent to the claimant is £1760.95

## REASONS

1. The claimant presented a claim form on 23 July 2024. He alleged he had been offered and accepted work as a chef at a pay rate of £12.50. The sums paid for him were then short of the amounts he expected. He also alleged he had not been paid the correct holiday pay at the end of his employment.
2. The claim papers were posted to the respondent's Leeds city centre premises. No post was returned to the Tribunal (as happens if a workplace is closed or unoccupied or for other reasons it has not been able to deliver them).
3. No grounds of resistance were provided by the return date of 8 November 2024. A hearing notice for today's hearing was included. Mid morning yesterday the respondent sought a postponement saying Mr Tyldsley had only just seen the claim, and had been on compassionate leave.
4. That request was refused by the duty judge yesterday. Today I explained that as there was no defence, and no application setting out the grounds of any defence,

I did not consider it unfair to proceed with the hearing. Nevertheless I enabled Mr Tyldsley to set out the basis of the respondent's defence of the claim, which was or would be:

- 4.1. The pay rate of £12.50 was not agreed;
  - 4.2. The hours taken from the claimant's clocking records were not right because they could show an employee had attended work even if they came within metres of the premises (but did not attend work) and hours on the "app" had to be approved;
  - 4.3. The claimant had his start date a week out.
5. Having identified that such a defence would involve considerable preparation of records, and sworn oral testimony from the person who had employed the claimant on behalf of the respondent (the premises manager and not Mr Tyldsley), I considered that such were the respondent's likely evidential difficulties, these were not materially changed circumstances such that I would change the previous decision not to postpone.
6. I heard sworn oral evidence from the claimant in support of the details he had emailed about these events. The claimant verified his evidence by access to his bank and HMRC records which recorded his employer has been filing information for him in April, May and June of this year: Proper North Limited.

### Findings

7. The claimant was not provided with a contract of employment or with payslips. He was offered and accepted a job as a chef on "as many hours as you can do" at a pay rate of £12.50 per hour.
8. He commenced his employment on or around 1 April 2024 and his first pay was paid to his bank account on 26 April. He was paid £1096.70, with £13.40 deducted for tax and £5.40 for employee national insurance. The hours worked were correct but the pay rate was not – the claimant was paid at an hourly rate of around £9.73. The gross difference in pay was £237.62.
9. Over the weeks he worked, the claimant worked three or so forty hour weeks, one of 60 or so hours, one of 50 or so, and so on, and the average during his short employment was approximately 45 hours per week.
10. In May the claimant received payment for 234 hours and the gross difference between the sum applying the agreed pay rate and the sum actually paid was £648 gross.
11. The claimant's employment ended on 6 June 2024. In his final week he worked forty hours and forty minutes. He received a final payment including £195.50 representing one day's pay and one day's holiday pay, instead of £508.33. The gross shortfall was £312.83 at the £12.50 hourly rate. The claimant also received a tax refund in this payment (he was only able to see or understand this when he later looked at his HMRC record).

### The law and conclusions

12. The claimant's main claim is one pursuant to the Tribunal's breach of contract jurisdiction. He was promised a pay rate by someone who could bind the employer; he accepted the offer; he did the work; and he was not paid accordingly and has suffered loss and damage. His evidence and position on hours of work struck me as likely reliable given the location of the premises on a main Leeds commercial street, and that was consistent with "as many hours as you can do" offer.
13. A contract was formed; the respondent has not complied with its terms; the claimant has suffered a gross loss in wages, and given he was subject to a tax refund in June and this was right at the beginning of the tax year I consider it wholly likely that his loss is the gross amount (he would not have used his personal allowance by this point) or reached the threshold for national insurance in the year. I duly award those sums.
14. Holiday pay rights are governed by the Working Time Regulations 1998 and in particular regulation 14. The claimant had not taken or been paid any paid holiday (other than one day paid in his final wages for which I have given credit in the damages assessment).
15. The holiday entitlement on termination of employment was  $9/52 \times 28$  days – that is five days or one week. The average weekly hours were 45 and I duly award the claimant the consequent gross compensatory sum of £562.50.
16. I was not asked to uplift this award by two or four weeks' pay for a failure to provide a section 1 statement of particulars of employment and I did not consider it in the interests of justice to raise this of my own motion. Mr Tyldsley had indicated caring responsibilities had kept him away from this business and indicated that was the explanation for why the papers had not found their way to him. It struck me disproportionate to have the evidential enquiry about that, or indeed to permit further time for a response – including for the reasons above. This claim was addressed in an expedient way, which is the purpose of the Tribunals in such claims: to remedy pay failures quickly, but particularly where employers provide no documentation to enable staff to easily check pay.

Employment Judge JM Wade

16 January 2025

Note: Decisions and written reasons are published on the Tribunal's website shortly after they are made available to the parties.