

THE INDUSTRIAL TRIBUNALS

CASE REF: 377/13

CLAIMANT: Yannick Boiseau

RESPONDENT: Hakim Hamadi

DECISION

The unanimous decision of the tribunal is as follows:-

1. the respondent made an unlawful deduction from the claimant's wages and the respondent is hereby ordered to pay to the claimant the sum of £198.08 (gross).
2. the respondent's counter-claim in respect of breach of contract is hereby dismissed.

Constitution of Tribunal:

Chairman: Ms J Turkington

Members: Mr T Wells
Mr R Schofield

Appearances:

The claimant appeared and was represented at the hearing by Mr R Gillespie, assisted by a French interpreter.

The respondent appeared and was represented at the hearing by Mr A Farg.

THE CLAIMS

The claimant brought the following claim before the tribunal:-

1. A claim in respect of unpaid wages.

The respondent brought the following claim before the tribunal:-

2. A counter-claim for loss and damage, including loss of business and goodwill, caused by the claimant's failure to give notice of termination of his contract.

THE ISSUES

The issues to be determined by the tribunal were:-

3. Whether the respondent failed to make payment to the claimant in respect of wages due and, if so, the amount of such unpaid wages.
4. Whether the claimant was contractually required to give notice of termination to the respondent and, if so, whether the respondent suffered actionable losses as a result of the claimant's failure to comply with any such contractual requirement.

SOURCES OF EVIDENCE

5. The tribunal heard oral evidence from the claimant and Mr Gillespie on behalf of the claimant, and from the respondent, and considered a small number of documents submitted by each of the parties.

Facts of the Case

Having considered the claim form submitted by the claimant, the response form submitted by the respondent and having heard the evidence of all the witnesses and considered the documents submitted by the parties, the tribunal found the following relevant facts:-

6. The claimant was employed by the respondent at his café and creperie business at Wellington Place, Belfast from 6 November 2012 to 16 November 2012. The claimant was employed as a crepe-maker.
7. The claimant's rate of pay was the national minimum wage at the relevant time, namely £6.19 per hour.
8. There was limited discussion between the claimant and respondent before the claimant started work. The claimant did not receive a written statement of Main Terms and Conditions of Employment. The tribunal does not believe that there was any agreement between the parties in relation to a minimum period of notice to be given by the claimant.
9. There was a dispute between the parties as to the hours worked by the claimant during the 10 days for which he was employed by the respondent. Both parties prepared a written table of the hours they claimed had been worked by the claimant.
10. The claimant's case was that he had worked a total of 96½ hours during this period, to include 11¼ hours per day in the days before the café opened on 10 November. The respondent's case was that the claimant had worked a total of 57 hours. The respondent said that the claimant had only worked 3 or 4 hours per day in the days before the café opened.
11. The tribunal found it difficult to resolve this conflict in evidence. There was little or no contemporaneous documentary or other evidence available which could corroborate one version or the other. Doing the best it could with the limited evidence available to it, the tribunal, on the balance of probabilities, concluded that the claimant worked an average of 7 hours per day throughout the period of his

employment. That is, the tribunal concluded that the claimant worked 70 hours in total during his employment with the respondent.

12. There was also a dispute between the parties regarding whether or not the claimant had received any payment whatsoever during his employment. On balance, the tribunal found the respondent's evidence on this point more convincing. The tribunal therefore finds as a fact that the claimant received pay of £235 in cash on or about 13 November 2012. This equates to 38 hours at the claimant's rate of pay of £6.19 per hour.
13. On 16 November, the claimant left his employment with the respondent without giving notice as he found the working conditions intolerable. The respondent gave evidence that his business had to close after the claimant had walked out, or at least that the creperie part of the business had to close, but the respondent gave no evidence of any losses which flowed directly from such closure.
14. The claimant did not receive any further pay from the respondent. He returned to the café on a number of occasions to ask for payment. The respondent refused to pay the claimant. The claimant sent a letter to the respondent on 3 January 2013 formally requesting payment of unpaid wages. The respondent did not respond.
15. The claimant lodged his claim with the tribunal on 11 February 2013.

STATEMENT OF LAW

16. By Article 45 of the Employment Rights (Northern Ireland) Order 1996 ("the Order"), an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised by statute or a relevant provision of the worker's contract or the worker has previously signified in writing his consent to the making of the deduction. A complete failure to pay wages on any occasion constitutes a deduction from wages.
17. By article 118 of the Order, in the absence of any express agreement between the parties, the notice required to be given by an employee who has been employed for one month or more to terminate his contract of employment is not less than one week.

CONCLUSIONS

Unpaid wages

18. The tribunal found as a fact that the claimant had worked a total of 70 hours during his employment with the respondent. The tribunal also found that the claimant had received pay for some 38 hours of work. This means that the claimant was not paid for 32 hours.
19. The following is due to the claimant:-

32 hours x £6.19 per hour (gross) = £198.08 (gross)

20. The respondent is therefore ordered to pay to the claimant the sum of £198.08 (gross) by way of unpaid wages.

Respondent's counter-claim

21. The tribunal found as a fact that there was no agreement between the parties whereby the claimant was required to give any minimum period of notice to the respondent to terminate his contract. The statutory requirement to give a minimum period of notice only applies where an employee has been employed for a continuous period of one month. The claimant was only employed for 10 days.
22. Therefore, there was no breach of contract on the part of the claimant when he terminated his contract of employment without notice. Further, and in any event, there was no evidence before the tribunal of any losses directly caused to the respondent by the claimant's failure to give notice.
23. Accordingly, the respondent's counter-claim is hereby dismissed.
24. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Chairman:

Date and place of hearing: 11 June 2013, Belfast.


Date decision recorded in register and issued to parties:

**INTEREST NOTICE
INDUSTRIAL TRIBUNALS
INTEREST ON AWARDS IN NON DISCRIMINATION
CASES**

The Industrial Tribunals (Interest) Order (Northern Ireland) 1990 provides that interest shall accrue on a sum of money payable as a result of a decision of an industrial tribunal (not being an award to which the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (Northern Ireland) 1996 applies) where that sum remains unpaid in whole or part 42 days after the day the decision of the tribunal was issued to the parties. 'Decision day' in this context means the day the decision of the tribunal was issued to the parties and 'calculation day' means the day immediately after the expiry of the period of 42 days from (and including) the decision day. The 'stipulated rate of interest' is the rate of interest in force on amounts awarded by decree in the county court on the decision day. Interest does not accrue on costs or expenses awarded by the tribunal.

In this claim, please note that -

1. the decision day is 2nd August 2013 being the day the decision was sent to the parties;
2. the calculation day is 13th September 2013 being the day immediately after the expiry of the period of 42 days from and including the decision day; and
3. the stipulated rate of interest is 8% being the rate of interest in force on amounts awarded by decree in the county court on the decision day.



Secretary of the Tribunals