



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Greenfield

**Respondents:** 1. Market Place Fish and Chips  
2. Mr Yannis Joannau

**Heard at:** Nottingham

**On:** Thursday 21 September 2017

**Before:** Employment Judge P Britton (sitting alone)

**Representation**

**Claimant:** Mr D Bunting of Counsel

**Respondents:** No appearance

## JUDGMENT

1. The claim against the First Respondent (Market Place Fish and Chips) is dismissed upon withdrawal.
2. The Second Respondent having failed to file a Response, the claim against him succeeds.
3. As to breach of contract (failure to pay notice pay), the Second Respondent will pay the Claimant damages in the sum of £345.60.
4. The claim for unauthorised deduction from wages succeeds. The Second Respondent will pay the Claimant compensation in the sum of £115.20.
5. The claim for outstanding holiday pay succeeds. The Second Respondent will pay the Claimant compensation in the sum of £144.
6. The claim for unfair dismissal succeeds. The full quantification is set out in the reasons hereto. The Second Respondent will pay the Claimant compensation in the sum of £2,110.75.
7. The claim for failure to provide written particulars of employment pursuant to Section 38 of the Employment Act 2002 succeeds. The second Respondent will pay the Claimant compensation of 4 weeks' pay, namely £460.80.
8. This makes a total award of compensation payable by the Second Respondent to the Claimant of **£3,176.35**.
9. Finally, the claim of failure to provide written reason for the dismissal is

dismissed upon withdrawal.

# REASONS

## Introduction

1. The claim (ET1) was presented to the tribunal on 20 April 2017 having been drafted for the Claimant by his legal representative, DLG Legal Services. It set out how he had been employed commencing 1 October 2013 at the Market Place Fish and Chips in Chesterfield as a fish fryer/job share manager. The employment ended on 19 January 2017.

2. As has been made much clearer before me today, the second Respondent Yannis Joannau ("Yianni") was the employer of what is a family enterprise of which there are three fish and chip shops. Working at the Chesterfield branch during the period was also Yannis's father, Chris.

3. The job suited the Claimant because he only worked two days a week for a total of 16 hours, and he which could fit in with his other work interests. Usually he worked Tuesdays and Thursdays but sometimes that would vary depending upon what Chris wanted to do.

4. As to the circumstances of the Claimant's dismissal which is pleaded as being unfair, they are fully set out in the ET1 including that he did not receive a basic award or any notice pay; had not been paid holiday pay and was owed wages.

5. The time for filing a Response would have been by 25 May 2017, the claim having been sent to both Respondents care of the Matlock Fish Bar, 17 The Causeway Lane, Matlock, Derbyshire DE4 3AR. This was on the basis that the address is the main office of the business. No Response was ever filed. In those circumstances, the matter having been listed for hearing on 17 August, in the usual way an Employment Judge caused a letter to be written to the Claimant's representative to the effect that if he could provide a schedule of loss, then it was likely that the tribunal would simply go ahead and issue a default judgment without the need for any attendance. The schedule of loss was duly produced by the Claimant's legal representatives on 12 June 2017.

6. As it is, on 26 July my colleague Employment Judge Dyal decided that there ought to be a short hearing for the reasons he set out in his directions. One of the issues needing clarification was as to who actually was the employer Respondent; otherwise to deal with mitigation of loss and issues inter alia such as whether or not the Claimant could proceed with one of his claims, which is a failure to provide written particulars of employment.

7. The matter was therefore relisted for today to determine the issues that Judge Dyal had set out and notice was sent to the parties on 21 August 2017. It is to be noted that it was sent to the Respondent at both the Matlock address and also 69 - 71 Low Pavement, Chesterfield, Derbyshire S40 1PB, which is where the Claimant had been based.

8. Cross-referencing to the ET1, and it is to be noted that in fact the address

for service for the First Respondent was the Chesterfield address and the address for the Second Respondent was the Matlock address. So I start from the premise that the Respondents clearly ought to have received notice of the proceedings and of the first hearing and thence this one.

9. The notice of hearing had been preceded by Judge Dyal's orders and directions, which was also sent to the Respondents at both addresses and this was on 19 August 2017.

10. There is no doubt that the Second Respondent knew what was happening because he wrote in to the tribunal on 11 September 2017. This letter was not referred to a Judge. Suffice it to say that he appears thereby to be providing reasons for why he is entitled to defend the action.

11. However, he cannot do that pursuant to the Tribunal's 2013 Rules of Procedure because as he is out of time to file a Response, he needs to make formal application explaining why only now he wants to defend the action and he needs to complete a Response (ET3) and send that in with his application. This has not happened.

12. Finally, in order to be fair, I directed this morning when I read the file and before the hearing that he should be emailed. This was done by the clerks at 09:45. He was asked was he going to attend today. The tribunal had not received a reply by the time this Judge completed this adjudication at approximately 11:00. Indeed it still has not at the date of signing these reasons.

13. What that means is that as there has been no defence filed, I therefore will issue what is known in common parlance as a default judgment, the Respondents having failed to file a Response.

### **The identity of the employer**

14. By way of further explanation of Para 2 above, a company search was made by the tribunal; although there is a limited company, Market Place Fish and Chips Ltd with a registered address in Ashbourne, Derbyshire, it was only incorporated on 16 March 2017. In other words, some two months after the employment with the Claimant had been ended. Thus it cannot be the employer.

15. Mr Bunting has also made searches and found another company but that was not registered until August 2017. The payslips which I have seen for the Claimant do not say Market Place Fish and Chips Ltd; they simply refer to Market Place Fish and Chips.

16. From everything he has told me (and I have read his witness statement), the Claimant always understood this family business to be owned by Yianni.

17. It follows that I am quite satisfied on that basis that the employer was the Second Respondent. He was properly served with the proceedings for the reasons I have now given. Prior thereto there was an ACAS early conciliation certificate issued relating to him. Therefore I proceed on the basis that the correct employer is the Second Respondent, Mr Yannis Joannau trading as Market Place Fish and Chips.

18. Before proceeding to quantifying the awards Mr Bunting withdraws the claim

for an award for failure to provide written reasons for the employment, this is because a pre-requisite is to have requested the same, which did not happen.

### **Quantifying the Claims brought**

19. The weekly pay was £115.20.

### **No written particulars**

20. The Claimant never received pursuant to Part 1 of the Employment Rights Act 1996 ( the ERA) any written particulars of his employment, known in common parlance as a contract of employment. I have had no explanation as to why this was not the case. This is not a particularly small business given it has three branches. Therefore I am with Mr Bunting that the usual consequences should flow, and so pursuant to Section 38(3) of the Employment Act 2002, compensation having been claimed in the ET1, I do find it just and equitable in all the circumstances to award the maximum applicable of 4 weeks' wages. Thus the award is  $4 \times £115.20 = \mathbf{£460.80}$ .

### **Outstanding holiday pay**

21. As to holiday pay, the Claimant has set out how he was owed accrued holiday pay untaken since October 2016 up to the end of the employment. I note that he has never been paid holiday pay; his lawyers have limited the claim to the last 12 months of employment. As to the amount, it is set out in the schedule of loss. Thus I award **£144**.

### **Unpaid wages**

22. The Claimant was not paid his wages during the period 13 - 20 November 2016. Therefore the claim for unlawful deduction from wages of course succeeds. The amount is again set out in the schedule of loss. Thus I award **£115.20**.

### **Notice Pay**

23. The Claimant had a statutory entitlement, given his length of service, to 3 weeks' wages in lieu of notice, which he was never paid. Thus I award damages of  $3 \times £115.20 = \mathbf{£345.60}$ .

### **Unfair dismissal**

24. The Claimant was dismissed without any procedure. I have no explanation from the second Respondent as to why not. Thus the dismissal is unfair pursuant to s98 (4) of the ERA.

### **Basic Award**

24.1 The Claimant was employed from 1 October 2013 to 19 January 2017. He was 52 at the date of his dismissal. Therefore he is entitled to 4½ weeks' wages. Thus basic award is  $£115.20 \text{ net} \times 4.5 = \mathbf{£510.40}$ .

## Compensatory Award

24.2 I commend Mr Greenfield for his honesty in that in fact what has actually happened is that post his dismissal Chris appears to have taken over the shifts that the Claimant used to do. Ironically if the Respondent had dealt with this matter in the proper way, and I note the Claimant's offer to settle (albeit headed without prejudice he has allowed me to refer to it), then this matter would never have needed to come here because all he was asking for was his redundancy pay, notice pay and outstanding entitlements. But the Second Respondent did not pay and so here we are.

24.3 As to whether or not this is therefore a redundancy was never made plain by the second Respondent at the material time. He ignored the queries that the Claimant had, which were more based upon uncertainty as to whether or not he had a job because at one stage it appeared that the business was being sold. As it is I have no evidence whatsoever that there ever was a transfer in the legal sense of that word at the material time. But having heard from the Claimant and him being well aware that Chris is undertaking his shifts, it is obvious to me that if this process had been handled properly by the second Respondent, then there would have come a time when the Claimant would have been made redundant. He does not disagree with me. I conclude that the adoption of a fair process including consultation and the exhaustion of a right of appeal in the circumstances is likely to have taken about 6 weeks to complete. Therefore, I am going to cut off the award for compensation for the unfair dismissal at 6 weeks. As to mitigation of loss I am quite satisfied that in those first 6 weeks, for the reasons as set out in his statement, the Claimant did his best to try and obtain alternative work: not easy given that he only wanted 2 days.

24.4 Thus compensatory element is:

£115.20 x 6 = £691.20

Loss of statutory rights = £479.

## Recoupment

24.5 The Claimant did not claim benefits as a consequence of his dismissal. Thus the recoupment provisions do not apply.

24.6 Total award so far for the unfair dismissal = £1,688.60

## Statutory Uplift

24.7. The ACAS Code of Practice as to compliance with procedures for the purposes of the dismissal would apply because I have no evidence from the Second Respondent that at the time of the dismissal there actually was a redundancy. Therefore, he completely failed to comply with the Code and he has given no explanation as to why not. Thus I am with Mr Bunting that pursuant to s207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 it is just and equitable in all the circumstances, that there should be an uplift of the unfair dismissal award by 25%.

24.8 Thus  $25\% \times \pounds 1,688.60 = \pounds 422.15$

**Total for the unfair dismissal**

24.9 Total  $\pounds 1,688.60 + \pounds 422.15 = \pounds 2,110.75.$

**Conclusion**

25. I award total compensation under all heads of claim payable by the second Respondent to the Claimant of **£3,176.35.**

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Employment Judge P Britton

Date: 23 October 2017

JUDGMENT SENT TO THE PARTIES ON

14 November 2017

FOR THE TRIBUNAL OFFICE