



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

Case Number: 2205593/2018

Claimant

Mr S Wharton

V

Respondents

Proud Publishing Ltd (1)
Cabaret Club (City) Ltd (2)

HELD AT: London Central ON: 4/12/2018
Employment Judge: Mr J S Burns

Appearances

For Claimant:

In person

For Respondents:

Mr C Bilmes (General Manager)

JUDGMENT

By consent:

1. The Order dated 3/12/2018 is set aside and the First Respondent is given leave to defend on the basis of the ET3 already filed.
2. Cabaret Club (City) Ltd is added as Second Respondent
3. The requirement for the Second Respondent to serve a separate ET3 is dispensed with.
4. The claim against the First Respondent is dismissed.

Not by consent:

5. The Second Respondent is ordered to pay the Claimant £576.47 as holiday pay within 14 days.

REASONS

1. I heard evidence from the Claimant (C) and from Mr Bilmes and looked at some documents produced.
2. The First Respondent (R1) ceased trading in April 2018 and the ET1 was sent to an accountant. As soon as the matter came to Mr Bilmes attention he acted promptly to file an ET3. He was unaware of the requirement to apply separately for leave to serve out of time. Hence it is in the interests of justice to allow R1 to defend.
3. The Claimant started working for R1 in December 2017. On 4/4/2018 his employment was transferred to the Second Respondent (R2) under TUPE. This

transferred all rights and liabilities in relation to C's employment to R2. Cs employment with R2 ended on 10/6/2018.

4. C's contract promised him £8.50 per hour plus holiday pay at the rate of 12.07% of hours worked. He was however paid at the rate of £8.50 per hour including holiday pay. This situation continued until 16/4/2018 when his rate of pay was decreased to £8.48 per hour but in addition from then he was paid holiday separately at the rate of 12.07% (of £8.48 per hour).
5. The Claimant has calculated the holiday pay due but not unpaid throughout his employment as £576.47, (£476.17 plus £100.30 which figures are shown on the Claimants document entitled "Proud Holiday Entitlement workings out" and agreed by Mr Bilmes).

Employment Judge Burns
4 December 2018

Date sent to parties
5 December 2018