



EMPLOYMENT TRIBUNALS

Claimant: Mr J Ritts

Respondent: Rooffabs Direct Ltd

HELD AT: Manchester

ON: 15 January 2018

BEFORE: Employment Judge S A Shore

REPRESENTATION:

Claimant: In person

Respondent: Mr P McMahon, Director

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unpaid holiday pay fails.
2. The claimant's claim of unauthorised deduction of wages succeeds. The respondent will pay the claimant **£675.38** as calculated in paragraphs 22 to 24 of the Reasons below.
3. The claimant's claim of breach of contract (failure to pay notice pay) succeeds. The respondent will pay the claimant **£337.69** as calculated in paragraphs 22 and 25 of the Reasons below.
4. The respondent failed to give the claimant a written statement of terms and conditions of employment. Having made an award for breach of contract and unauthorised deduction of wages, the respondent shall pay the claimant two weeks' pay at £381.50 per week, being a total of **£763.00**
5. The respondent is entitled to credit for the £350.00 paid to the claimant, so the total payable by the respondent to the claimant is £1,776.07 less £350.00 = **£1,426.07**. The respondent will pay the claimant a total of **£1,426.07**.

REASONS

1. Neither the claimant nor the respondent were professionally represented.
2. That meant that the papers were not easy to follow in terms of the claims being made and the defence to those claims. However, after speaking to Mr Ritts at the outset of the hearing, I ascertained that his claims were as follows: -
 - (1) Non-payment of two days' worked in hand on 22 and 24 February 2017 - £336.
 - (2) Four days' pay for 21 August to 24 August 2017 at £100 per day - £400.
 - (3) Holiday pay for August Bank Holiday - £68.
 - (4) Failure to provide work for 29, 30 and 31 August 2017.
 - (5) 6.8 days' holiday.
 - (6) Failure to pay notice pay – £272.
3. The respondent's defence is that Mr Ritts had been paid everything due to him.
4. I heard evidence from Mr Ritts and Mr McMahon. Mr Ritts said that he had walked into the respondent's shop in February 2017 and had asked for work. He had been given Mr McMahon's number and they had spoken on Friday 19 or Saturday 20 February 2017 and agreed that Mr Ritts would work for the respondent doing odd jobs including working in the shop, working in the respondent's factory and working in the yard outside. Later, it was agreed that Mr Ritts would undertake work at sites at which the respondent was undertaking work. The first site that Mr Ritts worked at was Southport and it was agreed that he would be paid £100 per day. There is a dispute in evidence between Mr Ritts and Mr McMahon as to whether the £100 per day rate applied when he worked on other sites.
5. Mr Ritts was not given a written statement of terms and conditions of employment, as is his right under section 1 Employment Rights Act 1996. I appreciate that the respondent is a small employer, but the law applies equally to small employers in this instance.
6. Initially Mr Ritts worked Mondays, Wednesdays and Fridays for the respondent at an agreed rate of £8 per hour. He principally worked at the shop which was open from 7.30am to 4.33pm and he took half an hour of unpaid lunch.
7. Mr Ritts was asked to complete a handwritten sheet recording his hours which he handed in to the company. Unbeknown to him and without his agreement, the company then deducted any hours which they did not think was a valid claim and made payment the following month. Between 25th and 31st of each month, Mr Ritts would be paid for the work he had undertaken between the 19th day of the previous month and the 18th day of the current month.
8. Mr Ritts said that he did not receive his first wage slip until 31 March 2017 and kept an eye on the wage slips he received and the timesheets he had submitted. He

said there were occasions when his timesheets did not match his own records of the hours he had worked, which he raised with Mr McMahon.

9. The only evidence before me of this was a text exchange between Mr McMahon and Mr Ritts in respect of his August payslip which Mr McMahon said he would look into.

10. The respondent did not operate a signing in or signing out system and Mr McMahon confirmed there was no discussion between the company and Mr Ritts about any disputed hours.

11. Mr Ritts said that he thought he had been told he would work a week in hand and believed that he may have been entitled to two days' pay for 22 and 24 February 2017. However, he said that this had been on the basis of advice he had received and he was not at all certain that he was entitled to these monies. I find that he has not provided evidence to me that he was not paid for 22 and/or 24 February 2017 on the balance of probabilities, and therefore that part of his claim fails.

12. Neither party provided me with a full documentary history of hours worked, holidays taken and monies paid, so Mr Ritts was unable to meet the evidential burden on the balance of probabilities showing that any holiday pay was outstanding to him. That part of his claim fails.

13. That essentially, therefore, left the payment that Mr Ritts says he was due from 19 August 2017 until the end of his employment.

14. Mr Ritts says he worked for the respondent at a site as Castleton on 21, 22, 23 and 24 August 2017. His timesheet that he submitted shows that he worked from 7.30am to 4.30pm on 21, 22 and 23 August 2017. There was no entry for 24 August 2017 because he says he had not been back to work to complete that day's hours.

15. Mr Ritts said that if he left the site early he returned to the shop and completed his day's work at the shop.

16. Mr McMahon said that he had edited Mr Ritts' timesheets and significantly reduced the hours claimed to 17 hours. I preferred Mr Ritts' evidence, as I found it to be more credible than that of Mr McMahon.

17. Mr McMahon then said that there was no work for Mr Ritts, who was told there was no work for him for the week commencing 28 August 2017. Mr Ritts went on holiday for two weeks starting on 4 September 2017 and, as he was due to return, he was told that he was dismissed.

18. Mr Ritts was entitled to one week's notice as a matter of statutory law. He was given no notice. There was no right by the employer to lay off Mr Ritts for the week commencing 28 August 2017 and therefore he is entitled to his usual week's pay for that period. I find that Mr Ritts has not met the evidential burden to show that there was a binding agreement he would be paid £100 a day for work on site. I find that his entitlement is for eight hours per day, but that his entitlement is for the hours he recorded rather than the reduced hours that were amended by Mr McMahon.

19. The reason I prefer Mr Ritts' evidence is that I do not accept Mr McMahon's evidence regarding the respondent's dealings with Mr Ritts in terms of his wages. In September 2017, Mr Ritts was paid £350 with no payslip and no explanation. Mr McMahon tried to explain how these monies were calculated which, essentially, was for the 17 hours he had reduced Mr Ritts' claim for the week commencing 21 August 2017 to, plus what he says was holiday pay which I worked out would have been 26.5 hours at £8 per hour to get to a total payment of £350.00.

20. I could see no logical, evidential or legal reason for this interpretation of the contract or for this calculation.

21. I therefore find that Mr Ritts was entitled to payment for the week commencing 21 August 2017, one week's notice and one week's pay for being unlawfully laid off when no work was provided for him. Section 38 Employment Act 2002 says that where the claimant has not been given a written statement of terms and conditions of employment and the tribunal makes an award for another matter, it shall award two or four weeks' pay for failure to provide a written statement of terms and conditions of employment. I award two week's pay in this case.

22. I have to calculate Mr Ritts' earnings by using a broad-brush approach. I have calculated Mr Ritts' average weekly gross and net pay from his 31 July 2017 pay slip, as his 31 August pay slip is incorrect because of the failure to properly account for his hours. The 31 July payslip gives Mr Ritts' cumulative earnings and deductions from the start of the tax year in April 2017 to 18 July 2017. That is a period of 14 weeks. In those 14 weeks, Mr Ritts was paid £5,341.00, which is £381.50 gross per week. In the same period, he was deducted income tax of £300.80, which is £21.49 per week and NI contributions of £314.52, which is £22.32 per week. His average net weekly pay is therefore $£381.50 - £21.49 - £22.32 = £337.69$ per week.

23. Mr Ritts is entitled to one week's net pay for the week commencing 21 August 2017; £337.69.

24. Mr Ritts is entitled to one week's net pay for being laid off on the week commencing 28 August 2017; £337.69.

25. Mr Ritts is entitled to one week's net notice pay: £337.69.

26. The respondent will also pay Mr Ritts two weeks' gross pay for failure to provide a written statement of terms and conditions of employment: £763.00.

27. The respondent is entitled to credit for the £350.00 paid to Mr Ritts in September 2017.

Employment Judge S A Shore

Date 23 January 2018

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
26 January 2018

FOR THE TRIBUNAL OFFICE

**NOTICE****THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number(s): 2421223/2017

Name of Mr J Ritts v Roofabs Direct Ltd
case(s):

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 26 January 2018

"the calculation day" is: **27 January 2018**

"the stipulated rate of interest" is: 8%

For the Employment Tribunal Office