EMPLOYMENT TRIBUNALS

Claimant: Miss E Harding

Respondents: Adliz Leisure Limited

Heard at: Manchester by CVP **On:** 17 December 2020

Before: Employment Judge Holmes

REPRESENTATION:
Claimant: In person
Respondent: Response not entered- no attendance or representation

JUDGMENT

It is the judgment of the Tribunal that:

1.The respondent unlawfully deducted **£480.29** from the claimant's wages, which sum it is ordered to pay her. This is a net sum and the respondent shall (if it has not done so already) account to HMRC for any tax and national insurance payments due upon it.

2.At the time of the bringing of the claims the respondent had failed to provide to the claimant a written statement of particulars of employment, as required by s.1 of the Employment Rights Act 1996. The Tribunal accordingly, in accordance with s.38 of the Employment Act 2002 , makes an additional award of 4 weeks pay, at the weekly rate of £76.15, a total of **£304.60**.

REASONS

1.The code V in the header indicates that this was a CVP hearing, held because the Tribunal considered that the issues could be determined without the need for an in person hearing. Neither party objected to that. The Employment Judge explained the procedure to the claimant, and invited her to raise any questions she may have during the course of the hearing.

2.By a claim form presented to the Tribunal on 7 October 2020 the claimant brought claims of unlawful deductions from wages her former employer. The claimant worked

for the respondent at the Jolly Hatters public house on Haughton Green Road , Denton. The address of the respondent company is the same address, and the Directors, Adam Taylor and Elizabeth Finegan give that address as their address, and indeed, the claimant confirmed, live at the public house. No response , which was due by 19 November 2020 ,was received to the claims, and the respondent did not participate in the hearing, of which it was notified when the claim was served on 22 October 2020.

3.In these circumstances , the Employment Judge took evidence from the claimant. She had supplied the Tribunal with copies of her bank statements from February to June 2020, which shoed what payments she had received from the respondent. She also had received a document from HMRC, a table of payments allegedly made by the respondent to her, and the tax deductions thereon from April until July 2020. She had helpfully marked up one further copy , in which she annotated the details of payments she had received, or not received, against those which the respondent claimed to HMRC to have been made.

4.Whilst the claimant agreed that many payments had been made, some had not, or had not been made in full. An analysis of these figures and the claimant's bank statements shows that on 6 occasions when the respondent claimed to have paid the claimant £76.15, it did not, plus on one occasion the sum of £79.19, and on another £21.60 was withheld from the payment made.

5.That totals £557.69 (not £536.09, as the claimant overlooked the £21.60 in her calculation).

6.The claimant was employed as bar staff , on the National Minimum wage . As she was 18 years of age when she started in October 2019, the applicable hourly rate for the period for which she is claiming , post April 2020, is £6.45.

7.She was, as she put it, furloughed by the respondent around March 2020. She did not, however, provide any written agreement to this, it was effectively decided by the respondent, and she was informed by text. The payments made represented , or were meant to, 80% of the claimant's wages. She generally worked 15 hours per week, but this could be more. The figure of £76.15 per week appears to equate with 80% of a 15 hour week, although the Tribunal's calculation is that £77.40 per week would be the correct figure, assuming a 15 hour working week.

8.The Employment Judge was thus satisfied that the claimant had suffered the deductions from wages that she claims, in the total sum of £557.69, less £76.80, for tax, making the total amount of the deductions £480.29.

9.The Employment Judge has considered the effect of the absence of a written agreement to be furloughed, and to accept 80% of pay, upon the claimant's entitlement. The requirement (if such it be, for this has not been clear) for a written agreement is feature of the CJRS , and not a legal requirement. Absence of an agreement, or written evidence of one, may affect the eligibility of the respondent to receive payments under the CJRS from HMRC. It does not, however, affect whether there was an agreed variation of the claimant's contract of employment to accept

80% of her pay. The claimant, of course, was not working, she was agreeing to accept 80% of her pay in circumstances where she could not work, but remained in employment. The alternative, presumably, would be termination of the employment, where the claimant , having been employed for only 6 months or so, would only have an entitlement to one week's notice pay.

10.The Employment Judge has therefore concluded that, whilst not in writing, or even evidenced in writing, there was an implied variation of the contract of employment in these circumstances, and the claimant could not (not that she has sought to) argue for 100% of her wages in these circumstances. That is also true if the £76.15 is not exactly 80% of her full entitlement. She apparently had no fixed hours, and had accepted the £76.15 payments without argument for a period of time.

11.Thus, subject to a slight re-calculation, the Employment Judge does find that the claimant succeeds, and that the respondent unlawfully deducted in total £480.89 from the claimant's wages. The respondent is ordered pay this to the claimant. It is a net sum, the claimant having given credit for the income tax payable (and possibly actually paid) by the respondent.

12.The claimant confirmed that she had suffered no consequential losses as a result of the deductions made.

13.Finally, as it was apparent that the claimant was never provided with a written statement of terms of her employment, as required by s.1 of the Employment Rights Act 1996 (nor, it would seem, any itemised payslips as required by s.8 of the Act) the Tribunal is required by s.38 of the Employment Act 2002 to make an additional award of either two or four weeks pay, unless there are exceptional circumstances which would make it unjust or inequitable to do so.

14.The Employment Judge can see no reasons not to do so, and given the wholesale failure of the respondent to provide any contract or written particulars, he awards the higher additional award of four weeks pay. Again this should be at the varied rate of £76.15 per week, a total of £304.60.

Employment Judge Holmes
Dated : 17 December 2020

JUDGMENT SENT TO THE PARTIES ON
08 January 2021

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