



THE EMPLOYMENT TRIBUNALS

Claimant
Mr Robert Quinn

Respondent
John Gibson Hire and Sales Limited

JUDGMENT (Liability and Remedy)
Employment Tribunals Rules of Procedure 2013 –Rule 21

MADE AT NEWCASTLE

ON 27 August 2020.

JUDGMENT

The claim of unlawful deduction of wages is well founded . I order the respondent to repay to the claimant £10660.50.

REASONS (bold print is my emphasis and italics quotations)

1. The claim of non-payment of wages and “holiday pay” was presented on 28 March 2020. The claimant said his employer has failed to pay wages since 31 December 2019 and he was still employed by the respondent, although he had not been required to attend work. It was served by post to the respondent’s registered office on 6 May and a response was due by 3 June.
2. One arrived on 15 May. The respondent claimed the company was to be transferred to an unnamed third party at the end of February 2020, but the potential purchaser had fraudulently acquired control of the company’s assets without there being a valid transfer of the business or its employees and this is being investigated by the police. The respondent said this crime had put it out of business and the claimant’s employment came to an end on an unspecified day in February 2020, although there is no indication whether dismissal was communicated to him.
3. On consideration of the pleadings on 19 May Employment Judge Arullendran ordered the respondent by **5 June 2020** to write to the Employment Tribunal and the claimant saying whether the claimant was told his employment had been terminated and, if so, who told him what and when. Until dismissal is communicated it has no effect . If he was not told the respondent was to say whether it accepted he is still employed and, if not why The response had not said if it agreed the claimant had not been paid any wages or holiday pay since 31 December 2019 and she ordered it should do so.
4. She also asked whether the investigation by the police into the alleged fraudulent acquisition of the company has been concluded and, if not, what stage the police had reached in their enquiries. She noted the claims arise from his employment relationship with this respondent and, as such, the ongoing or outcome of any criminal proceedings against a third party does not

necessarily affect his ability to pursue his claims in the Employment Tribunal. Those orders were sent on 26 May and a telephone preliminary hearing was fixed for 25 June

5 On 11 June the claimant wrote this to the Directors of the respondent

I am writing to complain about the company's failure to respond to my earlier letter.

I am a longstanding employee with over 30 years' service and not to have been kept informed is completely unacceptable. The company has my address and telephone number and I would have expected to have been told what is happening , rather than being kept in the dark.

The company's behaviour has been appalling and it shows a disregard for me as a long-serving employee. I have been laid off now for many weeks, including what should have been my most recent pay date on Friday 29 May 2020, and continuing up to yesterday and I am giving you notice that I intend to claim a redundancy payment because of this.

I understand the POLICE are now involved over the removal of business equipment from the premises at Queensway in Middlesbrough. It appears there was never any intention to provide further work for me because there is now no equipment at the Queensway site, which is my place of work, for me to be able to do any work . It is unreasonable of the company to expect the situation, with no work and no wages can continue.

My wife is very ill and the whole situation is incredibly stressful.

6. On 24 June he copied to the Tribunal an email he and a colleague had received on 10 March from Mr Graham Mudie General Manager of the respondent confirming they were still employed ,not required to attend the business premises but forbidden to work for any other employer . On 24 June the claimant resigned due to the closure of the business which employed him. **At that point constructive dismissal occurred.**

7. On 25 June Employment Judge Sweeney conducted the preliminary hearing at which the respondent did not attend. It had not responded to the orders of Employment Judge Arullendran so he made an order that unless it did within 14 days of the orders being sent the response would be struck out and the claim proceed as if no response had been entered . That order was sent on 6 July. Nothing has been received from the respondent since. On 26 August confirmation of dismissal of the response was posted to the respondent.

8. On 17 July the claimant emailed the Tribunal

Dear Sirs

I am applying to amend my claim and I attach,

1. *Draft Amended Grounds of Complaint.*
2. *Copy letter to the respondent giving Notice of my intention to claim a redundancy payment*
3. *Proof of postage of that letter*
4. *Copy letter giving notice to terminate my employment with 12 weeks' notice*
5. *Proof of postage of that letter*

The information I was ordered to provide at the telephone Case Management Hearing on 25 June 2020 is, using the enumeration of the Judge's order,

2.1.1 *My gross monthly wage is £1,815.00*

2.1.2 *My gross weekly wage is £453.00*

2.1.3 I was usually paid on or around the 25th of each month

2.1.4 I was last paid on 31 December 2019 and I was paid £1,668.37 gross

2.1.5 I am claiming unpaid gross wages,

- | | | |
|----|--|-----------|
| a) | for the period 1.01.20 to 28.03.20 of | £5,630.00 |
| b) | for the period 29.03.20 to 20.07.20 of | £7,311.42 |
| c) | for the period 21.07.20 to 16.09.20 of | £3,750.84 |

(as shown in the draft amendment to my claim form)

2.1.6 I am applying to amend my claim in accordance with the draft amendment attached which includes a claim for unpaid wages from 28 March 2020 and a claim for a statutory redundancy payment.

2.1.7 I am claiming £11,062.26 since 28 March 2020

I confirm I have sent a copy of this email and its attachment to the respondent. Should the respondent object, it should notify the Employment Tribunal and myself as soon as possible and I confirm compliance with the provisions of Rules 30(2) and 92.

Yours faithfully

Robert Quinn

9. It is possible to amend a claim to include something which at its presentation had not yet happened but if I did I would have to re-serve the claim. The right to a redundancy payment arises on dismissal as does the right under the Working Time Regulations 1998 to compensation for untaken annual leave. He can also claim notice pay of about £5436. I therefore refuse the application to amend and suggest the claimant, after Early Conciliation issues a fresh claim which, on these facts, would be unanswerable. It is safer to deal now only with the unpaid wages the law of which is in Part 2 of the Employment Rights Act 1996(the Act). Even if the respondent does not enter formal insolvency proceedings the Secretary of State will pay the redundancy payment if the claimant applies of £13590. If it does go into liquidation or administration the Secretary of State will under Part 12 of the Act pay part of the wages I am awarding today compensation for untaken annual leave of about £1250 and the notice pay . A Companies House search shows no changes of significance until on 17 December Mr Barry Ernest Robinson resigned as company secretary as and was replaced by Mr Graham Mudie, but the company's accounts are well overdue which signals it may be insolvent.

10. I have in the claim form sufficient to enable me to find the claim of unpaid wages proved on a balance of probability and determine the sum to be awarded which is pay from 1 January to resignation being communicated on receipt of the claimant's letter which in the normal course of post would be 25 June. Five times his monthly wage of £1,815.00 and 3.5 times his weekly wage of £453.00. This judgment will not prevent the claimant pursuing his other claims separately

Employment Judge T.M. Garnon
Judgment authorised by the Employment Judge on 27 August 2020