



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Miah  
**Respondent:** Zaara Leigh On Sea Ltd  
**Heard at:** East London Hearing Centre  
**On:** 26 January 2022  
**Before:** Employment Judge Park

**Representation**  
**Claimant:** In person  
**Respondent:** Mr Bari (Director)

## RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimant's claim that there was an unauthorised deduction from his wages is well-founded. The Respondent is ordered to pay the Claimant the gross sum of £3,404.81.
2. The Respondent did not provide the Claimant with a written statement of particulars of employment as required by section 1 Employment Rights Act 1996. The Respondent is ordered to pay the Claimant the sum of £315.26, being two weeks' pay.

## REASONS

### Claims and Issues

1. The claim was for unauthorised deduction of wages relating to the period of time following the first national lockdown in March 2020.
2. The claim was submitted by the Claimant on 17 June 2020. In that the Claimant stated that he was still employed by the Respondent but had not

been paid since the start of lockdown. He sought payment for this time based on what he would receive under the Coronavirus Job Retention Scheme ("CJRS"), also referred to as furlough, which was 80% of his normal wages.

3. The Respondent argued that the Claimant had resigned and his employment terminated on 31 May 2020. The Respondent also stated that the Claimant had been placed on furlough and paid in full in accordance with the CJRS for April and May 2020.
4. The parties' accounts of events from March 2020 onwards differed considerably and there was little that was agreed. To determine the claim I need to consider the following issues:
  - 4.1. What were the relevant terms of the Claimant's contract of employment?
  - 4.2. When did the Claimant's employment terminate? Was it on 31 May 2020 as stated by the respondent or a later date? If it was a later date when did the Claimant's employment terminate?
  - 4.3. What was the Claimant entitled to be paid up until the date his employment terminated?
  - 4.4. Was the Claimant paid all the sums that were due up until the termination of his employment or are there any sums due?

**Procedure, documents and evidence heard**

5. An interpreter, Mr Hassan, was present to assist the Claimant.
6. There was no agreed bundle of documents but both parties brought to the hearing copies of documents. The Claimant brought copies of some pay statements from his time working for the Respondent up to March 2020. He also brought some correspondence relating to benefits he claimed and pay statements from new employment. The Respondent brought pay statements for the Claimant for March-May 2020, a P45 dated 31 May 2020 and extracts from bank statements from April and May 2020.
7. Neither party had prepared witness statements. The Claimant confirmed he wished to rely on the account in his ET1 as being his statement. Mr Bari, for the Respondent, also confirmed he wished to rely on the account in the ET3 as his statement. I gave both the opportunity to provide additional oral evidence and asked further questions.
8. At the outset I asked Mr Bari about the status of the company as I had previously noted on Companies House there was a proposal to strike off. Mr Bari confirmed that the business was no longer trading and he was seeking to dissolve the company. I informed the parties that while there were ongoing legal proceedings the company should not be dissolved.

## Findings of fact

9. The Respondent business is a restaurant. The Claimant started to work for the Respondent as a chef in June 2019. He did not have a written contract of employment but it was agreed verbally that he would work 24 hours per week and be paid the National Minimum Wage. At the time this was £8.21 per hour. The Respondent paid the Claimant weekly in cash and then provided him with a monthly itemised pay statement.
10. The Respondent's only other permanent employee was Mr Bari, who was the owner of the business. Mr Bari also explained he had three other members of staff but they were all engaged on a casual basis.
11. On 22 March 2020 the national lockdown was announced. Mr Bari told the Claimant to go home as the restaurant would be closing.
12. On around 1 or 2 April 2020 Mr Bari went to the restaurant and found that the landlord had locked him out and there were builders present for a different business. The Respondent business has not reopened since then.
13. The Respondent paid the Claimant for March 2020. The Claimant did not receive any pay from the Respondent after the end of March 2020. The Claimant tried to contact Mr Bari regularly after 22 March 2020, calling every few days. At some point during April 2020 the Claimant found out about furlough and asked Mr Bari to put him on furlough.
14. Mr Bari said he had furloughed the Claimant and paid him once he received payment under the CJRS scheme. I preferred the Claimant's evidence on this issue. I found Mr Bari's evidence unpersuasive. His explanation of when he actually paid the Claimant for April was unclear. Mr Bari was unsure if he had paid the Claimant in cash, as he usually would, or by bank transfer. He was also unclear about the timing. He initially suggested he had gone round to the Claimant's house in mid-April. Subsequently he stated he did not receive the CJRS payment until early May at which point he thought he may have paid the Claimant by bank transfer. I found that Mr Bari's account was inconsistent and the documents he had provided, such as the extracts of his bank statements, did not corroborate his account. Had he claimed furlough for the Claimant there would be documentary evidence of this, but Mr Bari did not provide this. I have concluded that the Respondent did not pay the Claimant at all after March 2020.
15. The Claimant had contacted Mr Bari in April 2020 and made it clear he would agree to be paid at the lower rate that could be recovered under the CJRS. There was no written agreement for the Claimant to be furloughed and receive the reduced rate of pay. However in light of the lack of written contract and verbal nature of the arrangements previously I am satisfied that the Claimant had informed the Respondent that he agreed to accept pay at a lower rate during the lockdown while he was not required to attend work. The lower rate of pay would be £157.63 per week.

16. The Claimant continued to try and contact Mr Bari with no success and in June 2020 submitted this claim. In August 2020 the Claimant found a new job and started on 1 September 2020. He considered that his employment with the Respondent ended at this point when he could not get hold of Mr Bari to inform him.
17. Mr Bari said that the Claimant had resigned in May 2020 but I prefer the Claimant's evidence on this issue. In the ET3 Mr Bari had stated that the claimant resigned in order to claim different benefits but in person he said that the Claimant resigned to seek a new job. These accounts were inconsistent and unconvincing. I found it unlikely that the Claimant would have asked for his employment to terminate for either reason. In his ET1 the Claimant had stated his employment was ongoing. The Claimant did not need to resign in order just to look for a new job and the explanation that he would have been financially better off by resigning was unconvincing.
18. Mr Bari relied on the P45 as evidence that the Claimant's employment had terminated on 31 May 2020. Had the P45 been sent to the Claimant this would have given notice to the Claimant that his employment was terminated. Mr Bari was unable to confirm whether or not the P45 had been sent to the Claimant. He stated his accountant would have sent it but did not know if this had actually happened. I find that the Claimant did not receive the P45 on or shortly after 31 May 2020. His employment did not terminate at the end of May, either due to him resigning or being given notice. As a result the Claimant's employment was ongoing when he submitted his claim and continued until at least the end of August 2020.
19. In September 2020 the Claimant started new employment and was no longer willing to work for the Respondent in any event.

## **The Law**

20. A contract of employment can be in writing or made verbally. Section 1 Employment Rights Act 1996 ("ERA") places an obligation on an employer to provide a worker with a written statement of particulars of employment setting out certain terms of the contract of employment. This must include the particulars of remuneration, including rate of pay, hours of work and intervals when the worker will be paid.
21. Section 13 ERA states that an employee has the right not to suffer an unauthorized deduction from their wages. Under section 13(3) there is a deduction where the total amount of wages paid on any occasion by the employer is less than the amount properly payable on that occasion.
22. Section 23 ERA gives a worker a right to bring a claim in the Employment Tribunal to complain that their employer has made an unauthorised deduction from their wages.
23. An employee is entitled to be paid in accordance with their contract of

employment if they are ready willing and able to work. If a contract provides fixed hours of work at a certain rate of pay the employee is entitled to their normal pay even if no work is provided.

24. The CJRS introduced in March 2020 did not change these underlying principles of employment law. An employer who instructed their employees not to attend work due to the lockdown was still obliged to pay their employees as normal under their contract so long as the employee remained ready willing and able to work. If an employee was placed on furlough the CJRS provided a mechanism whereby the employer could recover the costs of a certain proportion of their employees' pay. Again this scheme did not change the underlying principles of employment law. The employer was still obliged to pay the employee their normal pay in full unless the employee agreed to accept the lower rate of pay. The employer's obligation to pay the employee was also not conditional on the employer receiving money under the CJRS.
25. A permanent contract of employment will continue until either party gives notice to the other of the termination of employment. If an employer wishes to terminate the employee's contract of employment they must give notice of this and it will only take effect once that notice has been received by the employee.
26. Section 38 Employment Act 2002 states that if an Employment Tribunal upholds a claim listed in schedule 5 Employment Act 2002 and during the course of proceedings the Employment Tribunal finds that the employer had failed to provide a written statement of particulars under section 1 ERA the Employment Tribunal must order the employer to pay compensation. The compensation payable is two weeks' pay or, if the Employment Tribunal considers it just and equitable, four weeks' pay. A claim under section 23 ERA is one of those listed in schedule 5.

## **Conclusions**

27. The Claimant had entered into a verbal contract with the Respondent to work 24 hours a week for the National Minimum Wage. He did not receive a written statement of particulars in accordance with section 1 ERA. The Respondent confirmed that there was not written contract and everything had been verbal.
28. The Respondent business closed on 22 March 2020 and the Claimant was sent home. He was still entitled to be paid as normal as he was ready, willing and able to work. The pay he was entitled to was £197.04 gross per week. From the beginning of April 2020 the claimant was not paid by the respondent.
29. The Claimant verbally agreed to accept the lower rate of pay that could potentially be recovered under the CJRS. This was £157.63 per week. The Claimant was entitled to be paid at this rate until his employment terminated. The Claimant was entitled to this rate of pay while he remained ready and

willing to work irrespective of whether or not the Respondent did claim under the CJRS or receive reimbursement of the Claimant's wages under the CJRS.

30. I have found that the Claimant did not in fact receive pay after March 2020. This failure to pay the Claimant was an unauthorised deduction of wages and there was a series which was ongoing until the Claimant's employment terminated.
31. I have concluded that the Claimant's employment did not terminate at the end of May 2020 as alleged by the Respondent. The Claimant had not given notice of the termination of employment and the Respondent did not give notice to the Claimant of the termination of his employment.
32. Neither party gave notice to the other to terminate the Claimant's employment. The Claimant did try to contact Mr Bari to inform him he had another job. The Claimant then started further employment on 1 September 2020. Because of this from 1 September 2020 the Claimant was no longer ready willing and able to work for the respondent. Therefore, irrespective of whether his employment had actually terminated, the Claimant was not entitled to be paid by the Respondent after that date.
33. I find that the Claimant was entitled to be paid the sum of £157.63 per week from 1 April 2020 until 31 August 2020. This is 21 weeks and 5 days. The total amount payable is £3,404.81. The Respondent failed to pay this which amounts to an unlawful deduction from wages.
34. I have already found that the Respondent did not provide a written statement of particulars of employment. I have upheld the Claimant's claim under section 23 ERA. I award the Claimant an additional 2 weeks' pay which is £315.26.

**Employment Judge Park  
Dated: 4 March 2022**