



EMPLOYMENT TRIBUNALS

Claimant: Mr J Tyler

First Respondent: Oakvale Pine Ltd
Second Respondent: Mr William John Pywell

Heard at: Cardiff
On: 6 December 2022 by CVP
In chambers 3 January 2023

Before: Employment Judge S Moore

Representation:
Claimant: In person (joined by audio)
Respondents: Did not attend

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The first and second respondent are jointly and severally liable to the claimant in respect of this judgment.
2. The first and second respondent have made an unauthorised deduction from the claimant's wages and are ordered to pay the claimant the gross sum of £2,976.00.
3. The claimant was dismissed in breach of contract in respect of notice and the first and second respondent are ordered to pay damages to the claimant the gross sum of £4,464.00.
4. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £9,300.00.
5. The first and second respondent have failed to pay the claimant's holiday entitlement and are ordered to pay the claimant the gross sum of £2,678.40.

REASONS

Background and introduction

1. The claimant complied with early conciliation and named “Oakvale Pine Ltd” as the prospective respondent.
2. The ET1 was presented on 1 June 2022. The claimant brought claims of unpaid wages, notice pay, unpaid holiday pay and a redundancy payment. The respondent was named as a Mr William John Pywell in the ET1. The claim was accepted despite the name of the prospective respondent differing on the ACAS early conciliation certificate to the claim form as it would not have been in the interests of justice to reject the claim under rule 12 (f) of the Employment Tribunal Rules of Procedure 2013. The response should have been lodged by the 26 July 2022. However no response was entered. A search at Companies House revealed that there was an active proposal to strike off Oakvale Pine Ltd which had been suspended following an objection. Mr William John Pywell is a director of Oakvale Pine Ltd. On 9 August 2022, Judge Brace directed that the claim be re-sent (not re-served) to Oakvale Pine Ltd at the registered address, which is 1a Charnwood Park, Bridgend, Wales CF31 3PL. No communication or correspondence has ever been received by the Tribunal from either Mr William John Pywell or Oakvale Pine Ltd.
3. At some point between 28 June 2022 and 9 August 2022 the name of the respondent was changed to Oakvale Pine Ltd. This was not done under direction from a Judge and appears to have been an administrative error. From 9 August 2022 correspondence was addressed to Oakvale Pine Ltd.
4. Also on 9 August 2022 a letter was sent to the parties stating that no response to the claim had been received and a Rule 21 judgment could be issued. The claimant was asked to provide information to consider if his claim could be quantified. I considered the information supplied on 11 August 2022 from the claimant. The claimant had explained he had never received a pay slip or contract of employment and based his losses on the amount that was paid into his bank account each week. In the circumstances I determined that a Rule 21 hearing was required to hear evidence from the claimant. That hearing took place by CVP on 6 December 2022. I heard evidence from the claimant and directed he send it documentation. I considered the documentation on 3 January 2023 and reached my decision recorded in this judgment.

Findings of fact

5. I have made the following findings of fact.
6. The claimant commenced employment as a manager of a Pine Furniture shop based at Swansea Enterprise Park, Unit 15, St David’s Road, Swansea in August 1992. The claimant has always managed and run the shop his main duties being selling furniture, invoicing customers and organising deliveries. Until 2019 the claimant was employed by “Swansea Pine Warehouse”. This was the name of his employer identified on his P60 end of year certificate for the tax year 5 April 2019. Swansea Pine Warehouse was a trading name of a business that was run by a Mr M Thomas, a sole trader. There are no records at Companies House indicating this was a limited company.

7. After April 2019 the business was sold to Mr William John Pywell. The claimant continued as before as the manager. He began to experience problems receiving his wages. Sometimes he would not be paid for 2 – 3 weeks. He asked for a contract of employment and was told by Mr Pywell to download one from the internet. He was never issued with any information about the sale of the business or how this affected his employment and was never subsequently issued with an amended contract explaining who his employer was. He also was not given any pay slips by Mr Pywell despite numerous requests. He received his wages of £372 weekly paid into his bank account. The name of the payee on his bank statements was “Oakvale Pine”.
8. The customer invoices changed to say “Oakvale Pine”. The sign above the door of the shop stayed as “Swansea Pine Warehouse”.
9. The claimant was last paid at the end of March 2022. He carried on going into work incurring fuel costs, opening up the shop in the hope he would be paid. Mr Pywell made various excuses for not paying the claimant promising he would be paid.
10. On 31 May 2022 the claimant arrived at work to find the locks had been changed and the shop closed. A man running the noodle van on site told the claimant the landlord had changed the locks. This knocked the claimant sideways. He tried to contact Mr Pywell but he had blocked the claimant’s number.
11. The claimant has contacted HMRC to try and identify who his employer was. He was informed that because of demand they could not acknowledge any requests for employment history, but he was informed on the telephone that this will take 26 weeks for a reply and that no national insurance has been paid by his employer since the business was taken over from Mr M Thomas. National insurance was paid up to 5 April 2019 as can be evidenced by the P60.
12. The claimant has only even taken two week’s holiday per year, for which he was paid. He does not know what his holiday year is. He commenced employment in August 1992. In accordance with Regulation 3 (b) (i) Working Time Regulations 1998 I determine that his leave year began on 1 August.
13. Since he was locked out of the premises on 31 May 2022 he has had no contact with the respondents despite trying to make contact by messaging and calling Mr Pywell who has blocked the claimant.

Conclusions

14. On the basis of the information before me I have determined that liability should fall jointly on both respondents. The claimant has never been provided with the proper documentation by his employer, namely a contract of employment or pay slips to be sure of the identity that is whether it is the limited company or Mr Pywell trading as Oakvale Pine. Neither respondent has chosen to engage in these proceedings and has had the opportunity to do so.
15. The claimant was entitled to be paid wages for the work he performed. He diligently continued to attend work, opening the premises and performing his duties despite not receiving pay for an 8 week period. I award the claimant 8 week’s unpaid wages in respect of April and May 2022 at the rate of £372 per week.

16. I award the claimant 12 week's notice pay also at the rate of £372 in accordance with S86 (1) (c) Employment Rights Act 1996 in the sum of £4464.00.
17. The unpaid holiday pay claim has been brought under S13 ERA 1996. On the basis the claimant has only ever been paid two week's holiday pay per year, I have determined that there has been a series of non payment of holiday pay. As the entitlement amounts to 28 days per year, and the claimant has only taken and been paid for 10 days per year, the shortfall for each year has amounted to 18 day's holiday.
18. The claim was presented on 1 June 2022. Under S23 (4A) ERA 1996 an employment tribunal can only consider a complaint for the two years prior to the date of presentation of the claim.
19. I have calculated the unpaid wages for holiday pay as follows as the claimant could not be sure of when he took the two week's leave. I was satisfied and accepted his evidence that he had only ever been paid for two week's leave. I have awarded two years loss at 18 days per year. Based on a fixed hours and fixed pay the amount is calculated as a week's pay. $£372 / 5 = £74.40$ per day x 18 = £1339.20.
20. I therefore award the claimant a total of 36 days unpaid leave representing 18 days unpaid leave for the two years' prior to presenting his claim which totals £2678.40.
21. All awards have been made gross as the tax position in the absence of pay slips has been uncertain.
22. I award the claimant the sum of £9300 redundancy pay based on an entitlement of 25 weeks @ £372 per week. The claimant was 51 years old when he was made redundancy and had worked for the respondents (including periods protected by the TUPE Regulations to preserve continuity) for 20 years.

Employment Judge S Moore

Date: 4 January 2023

JUDGMENT SENT TO THE PARTIES ON 6 January 2023

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE Mr N Roche