



EMPLOYMENT TRIBUNALS

Claimant: Samuel Ball

Respondent: Rowley Manor Lifestyles UK Limited (in Creditors Voluntary Liquidation)

Heard: by CVP **On:** 15 October 2024

Before: Employment Judge Ayre

Representation

Claimant: Joseph Ball, brother

Respondent: Did not attend and was not represented.

JUDGMENT

1. The name of the respondent is amended to Rowley Manor Lifestyles UK Limited (in Creditors Voluntary Liquidation).
2. The respondent made unauthorised deductions from the claimant's wages and is ordered to pay the sum of £3,988.73 (net) to the claimant.
3. The respondent failed to provide written itemised pay statements to the claimant and is ordered to pay the sum of £1,872.42 to the claimant in respect of unnotified deductions.
4. The respondent failed to pay the claimant the holiday pay to which he is entitled under the Working Time Regulations 1998. The respondent is ordered to pay the sum of £2,322.81 holiday pay to the claimant, less such sums as the respondent may be required to deduct for tax and national insurance contributions.

5. The respondent failed to provide the claimant with a statement of initial employment particulars and to provide a statement of changes to those particulars when the claimant was promoted. The respondent is ordered to pay the sum of £2,572 to the claimant in respect of these failings.

REASONS

Background

1. The claimant was employed by the respondent from 1 April 2023 until 30 December 2023. Early conciliation started on 31 December 2023 and ended on 2 January 2024. The claim form was presented on 2 February 2024.
2. The claim was served on the respondent with a deadline for responding to the claim of 20 May 2024. No response was received.
3. On 4 June 2024 Devjani Mitra, director of the respondent, wrote to the Tribunal stating that he had been unable to file a response by 20 May because he had been abroad due to family illness. He wrote in the email that the claim was baseless but did not submit a response to the claim or seek an extension of time to do so.
4. On 19 June 2024 a letter was sent to the respondent (at the email address used by Devjani Mitra when writing to the Tribunal) stating that any response submitted after 20 May 2024 would need to be accompanied by an application to extend time and be accompanied by a draft response form. On 2 July Mr Mitra sent a further copy of his email of 4 June to the Tribunal. He wrote again to the Tribunal on 3 July stating that further "*formal replies are in the process of being sent*" and repeating his assertion that the claim is without merit.
5. No 'formal replies', response or application of time to submit a response were received from the respondent. On 11 July the Tribunal wrote to the respondent informing it that under Rule 21 of the ET Rules of Procedure, because it had not entered a response to the claim, judgment may now be issued.
6. A Preliminary Hearing took place on 15 July 2024. The respondent did not attend the hearing and was not represented. At that hearing it was clarified that the claims the claimant is bringing are for unpaid wages, holiday pay and failure to provide wage slips. The claimant was ordered to provide further information about his claim by 29 July, the respondent to set out any response to the claimant's calculations by 12 August, and the parties to send a hearing file to the Tribunal by 1 October. The case was listed for final hearing today.
7. On 29 July the claimant wrote to the Tribunal providing further information about his claim and attaching a number of documents including one entitled 'Claim amendment'.

8. On 27 August the claimant wrote to the Tribunal applying for a default judgment for unpaid wages. On 11 September Employment Judge Shepherd directed that a letter be sent to the claimant informing him that as the claimant had provided a substantial amount of evidence and indicated a wish to amend his claim, the Tribunal would consider the evidence and the amendment at today's hearing.
9. On 16 September the claimant wrote to the Tribunal stating that the respondent was in liquidation. A search of the Company's House Register of Companies reveals that Rowley Manor Lifestyles UK Limited went into creditors voluntary liquidation on 5 September 2024 and that Zane Collins was appointed as liquidator.

The hearing

10. Shortly before the hearing was due to start a solicitor from Zane Collins' firm 'Insolvency One' wrote to the Tribunal stating that the respondent would not be attending or represented at the hearing, and that they were informed that the claimant was not an employee of the respondent but was rather self-employed at his own request. The email was not copied to the claimant. I read it to the claimant at the start of the hearing.
11. I heard evidence from the claimant, including on the question of employment status, and from the claimant's brother. I had before me a number of documents sent by the claimant to the Tribunal on 29 July 2024.
12. One of the documents sent to the Tribunal by the claimant was headed 'Claim amendment' and referred to the claimant wanting to amend his claim "*based on wages owed for the last 13 weeks of employment*" and to claim for accrued annual leave throughout the period of his employment.

The issues

13. The issues that the Tribunal had to determine were as follows:

- 13.1 Should the claimant be allowed to amend his claim as set out in the 'Claim Amendment' document he sent to the Tribunal on 29 July 2024?
- 13.2 Was the claimant employed by the respondent or was he self-employed?
- 13.3 Did the respondent make unauthorised deductions from the claimant's wages and, if so, how much was deducted?
- 13.4 How much holiday did the claimant accrue during the course of his employment? How much holiday did he take whilst employed by the respondent? What sums, if any, was the claimant entitled to be paid by way

of holiday pay on the termination of employment?

- 13.5 Did the respondent fail to provide the claimant with itemised pay slips.
14. In light of the evidence given by the claimant during the hearing, the Tribunal also considered whether to make an award under section 38 of the Employment Act 2002 for failure to provide a statement of employment particulars and a statement of change in those particulars.

Findings of fact

15. The claimant was employed by the respondent from 1 April 2023 until 30 December 2023. He began working for the respondent as Second Chef on a part time basis. In August 2023, around the time of the bank holiday, he was promoted to Kitchen Manager.
16. The claimant's understanding was that he was an employee of the respondent. There was never any discussion about him being self-employed and he did not ask at any time to be self-employed. The claimant did not have a manager on a day to day basis, but reported to and took instructions from Devjani Mitra, a director of the respondent.
17. The claimant was not provided with a written contract of employment. At the time of his promotion to Kitchen Manager he was told that a contract of employment was being prepared. He repeatedly asked for a copy of the contract, but it was never provided. At the time the claimant issued this claim in the Employment Tribunal he still had not been provided with a contract or written details of his employment terms and conditions.
18. When the claimant was promoted to Kitchen Manager there was a change in the way he was paid. Before the promotion he was paid an hourly rate. After that date he was paid a salary which was the same as the salary paid to the previous Kitchen Manager. His gross pay was £2,876 a month and £110.61 a day. His net or take home pay was £2,300 a month, and £88.46 a day.
19. The claimant worked six days a week, with every Monday off. During the time that he was employed by the respondent he did not take any holiday. He also worked on Christmas Day and was told that he would be paid double time for working that day.
20. During the last 13 weeks of his employment the claimant was entitled to be paid salary of £8,738.61 gross and £6,988.46 net.
21. Over the same period the claimant spent £2,097.86 of his own money on stock for the respondent. As Mr Mitra was not present in the business on a day to day basis, the arrangement in place was that the claimant would go to Makro the

retailer and buy stock for the respondent. The claimant used his personal money to pay for the stock, on the understanding that the money he spent would be reimbursed to him by the respondent.

22. The claimant was also asked by Mr Mitra to pay staff and told that he would be repaid for the payments he made to staff. During the last 3 months of his employment the claimant made payments totalling £1,768.57 to the respondent's staff on the understanding that the respondent would reimburse him for these payments.
23. Between 31 October 2023 and 28 December 2023 the claimant received payments totalling £6,866.16 from the respondent. The claimant was not provided with itemised pay statements either during the last three months or indeed at any time during his employment. There was no evidence before me as to what the payments made were for, or what deductions had been made.

The Law

Unauthorised deductions from wages

24. Section 13 of the Employment Rights Act 1996 states that:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) The worker has previously signified in writing his agreement or consent to the making of the deduction...

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”

25. The definition of 'wages' for the purposes of section 13 is set out in section 27 of the Employment Rights Act 1996 and excludes “*any payment in respect of expenses incurred by the worker in carrying out his employment*” (section 27(2)(b)).
26. Section 23 of the Employment Rights Act 1996 gives workers the right to make a complaint about unauthorised deductions from wages to an Employment Tribunal and section 24 provides that where an Employment Tribunal finds a complaint to be well-founded “*it shall make a declaration to that effect and shall*

order the employer – (a) To pay to the worker the amount of any deduction made in contravention of section 13”. By virtue of section 24(2) the Tribunal may also order the employer “such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”

Holiday pay

27. Regulations 13 and 13A of the Working Time Regulations 1998 contain the right for all workers to 28 days’ paid holiday a year. Regulation 14 deals with compensation for untaken annual leave on the termination of employment and provides that:

“(1) Paragraphs (1) to (4) of this regulation apply where –

- (a) A worker’s employment is terminated during the course of his leave year, and
- (b) On the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be –

- (a) Such sum as may be provided for the purposes of this regulation in a relevant agreement, or
- (b) Where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula

$$(A \times B) - C$$

Where –

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A

B is the proportion of the worker’s leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.”

Itemised pay slips

28. Section 8 of the Employment Rights Act 1996 provides that:

“(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

(2) The statement shall contain particulars of –

- (a) the gross amount of the wages or salary,*
- (b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*
- (c) the net amount of wages or salary payable,*
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and*
- (e) where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as –*
 - (i) a single aggregate figure, or*
 - (ii) separate figures for different types of work or different rates of pay.”*

29. Section 11 gives workers the right to make complaints to Employment Tribunals if they are not provided with itemised pay statements or are provided with statements that do not comply with the legal requirements.

30. By virtue of section 12(3) of the Employment Rights Act 1996, where a Tribunal finds that an employer has failed to give a worker a pay statement in accordance with section 8, the Tribunal “*shall make a declaration to that effect*”. Section 12(4) provides that:

“Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made (from the pay of the worker during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.”

Failure to provide a statement of employment particulars

31. Section 1 of the Employment Rights Act 1996 places an obligation on employers to provide workers with a statement of particulars of employment on the commencement of their employment. Under section 4 employers are required to give workers a written statement containing details of any changes in the employment particulars.

32. Under Section 38 of the Employment Act 2002, if an Employment Tribunal finds in favour of a worker in a claim under any of the jurisdictions listed in Schedule 4 of the 2002 Act and makes an award to the worker; and, when the proceedings were issued, the employer was in breach of its duty under section 1(1) or 4(1) of the Employment Rights Act, the Tribunal must make an award of two weeks' pay to the worker and can, if it considers it to be just and equitable in the circumstances, award four weeks' pay to the worker. The amount of a week's pay is calculated in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 and shall not exceed the maximum amount of a week's pay specified in section 227 of the Employment Rights Act.

Conclusions

'Claim amendment'

33. The document sent by the claimant to the Tribunal on 29 July headed 'Claim amendment' is not, in my view, an application to amend the claim. Rather, it is a clarification and explanation of the sums claimed by the claimant, albeit that the sums claimed are different to those set out in the claim form. It does not introduce any new claims, or amount to a relabelling of the existing claim. To the extent, if at all, that it does contain amendments to the existing claim, I grant the application to amend. The hardship to the claimant of not being able to pursue the amended sums set out in the 'Claim amendment document' outweighs any hardship to the respondent of allowing the claimant to pursue them. The respondent has not filed a response to the claim and did not attend today's hearing.

Employment status

34. In an email sent to the Tribunal shortly before the hearing the respondent asserted that the claimant was self-employed. The respondent did not however file a response to the claim. Nor did it attend the hearing or adduce any evidence. In contrast, the claimant attended the hearing, gave evidence, and sent to the Tribunal documents that he wished to rely on.
35. The claimant's evidence to the Tribunal was that there was never any discussion about him being self-employed and that he did not, at any time, ask to be self-employed. Rather, he said that he had always been an employee of the respondent, and that there had been discussion about providing him with a contract of employment, albeit the respondent did not follow through on these discussions.
36. In the circumstances I have no hesitation in finding, on the evidence before me, that the claimant was, at all material times, an employee of the respondent and was not self-employed.

Unauthorised deduction from wages

37. During the last three months of his employment the claimant was entitled to be paid wages of £8,738.61 gross, based upon the agreed gross monthly pay of £2,876 (times three) plus £110.61 as one day's additional pay for Christmas day when the claimant was entitled to double time. The net pay to which the claimant was entitled during this period was £6,988.46 (three months plus one day).
38. In addition, the claimant was entitled to be reimbursed for the £2,097.86 of his personal money he spent at Makro buying stock for the respondent, and for £1,768.57 he paid in wages to other staff. The total sum that the claimant was entitled to be reimbursed by the respondent was £3,866.43 (£2,097.86 plus £1,768.57).
39. The claimant was only paid £6,866.16 during the last three months of his employment. There was no evidence before me to suggest whether the payments made were in respect of salary or by way of reimbursement for the claimant's expenditure at Makro or reimbursement for salaries paid to other staff by the claimant.
40. In the absence of any evidence to the contrary from the respondent, I find that the first £3,866.43 of the payments made to the claimant in the last three months of his employment were to reimburse him for the expenses he incurred at Makro and paying staff. The balance of the payments made to him (£6,866.16 minus £3,866.43) was £2,999.73 and this was in respect of the claimant's wages.
41. As the claimant was entitled to be paid wages of £6,988.46 net during the last three months of his employment, and was only paid £2,999.73, he was underpaid by £3,988.73 (£6,988.46 minus £2,999.73).
42. The respondent therefore made an unlawful deduction from the claimant's wages in the sum of £3,988.73 and is ordered to pay that sum to the claimant.

Holiday pay

43. The claimant was entitled, by virtue of the Working Time Regulations 1998, to 28 days holiday a year. There was no evidence before me as to when the respondent's holiday year started and finished, so I therefore calculate the holiday year as running from the date upon which the claimant's employment started – 1 April 2023.
44. The claimant worked for nine months of the holiday year and did not take any holiday. His gross daily rate of pay was £110.61.
45. Applying the calculation set out in Regulation 14(3) of the Working Time Regulations 1998 : $(A \times B) - C$. A in this case is 28, B is 0.75 (9 months out of 12) and C is zero. $28 \times 0.75 - 0 = 21$ days. 21 days at the daily rate of £110.61 gives a total holiday pay entitlement of £2,322.81 gross.

46. I therefore find that the claimant was entitled on the termination of his employment to holiday pay of £2,322.81 less such deductions as may be required for tax and national insurance.
47. The respondent is ordered to pay to the claimant holiday pay of £2,322.81 less tax and national insurance contributions.

Itemised pay statements

48. The respondent did not provide the claimant with any itemised pay statements during the course of his employment. The respondent failed to comply with its obligations under section 8 of the Employment Rights Act 1996 to provide such statements.
49. The claimant should have paid the claimant £8,738 gross for the last 3 months of his employment. It paid him £6,866.16 and provided him with no pay statement or statement of deductions. The deductions were therefore unnotified and, in accordance with section 12(4) of the Employment Rights Act 1996 I order the respondent to pay the sum of the deductions to the claimant.
50. The respondent is therefore ordered to pay the sum of £1,872.42 to the claimant pursuant to section 12(4) of the Employment Rights Act 1996.

Failure to provide a statement of employment particulars

51. At the time the claimant started these proceedings, and indeed throughout the time that he was employed by the respondent, the claimant was not provided with a statement of his employment particulars. No statement was provided when he began working for the respondent, and no statement was provided when he was promoted to Kitchen Manager in August 2023. The respondent was, therefore, in breach of both section 1 and section 4 of the Employment Rights Act 1996.
52. The respondent has provided no explanation for its failure to provide a statement of employment particulars to the claimant, other than an email sent to the Tribunal shortly before today's hearing suggesting that the claimant was self-employed. I have found that the claimant was not in fact self-employed, but was an employee, and that the respondent had indicated to him that he would be provided with a written contract when he was promoted to the kitchen manager role in August 2023.
53. In these circumstances I find that it would be just and equitable to award the claimant four weeks' pay under section 38 of the Employment Act 2002. The claimant's gross weekly pay at the time, based on his monthly pay of £2,876, exceeded the statutory cap on a week's pay that applied at the time, namely £643. Four weeks' pay therefore amounts to £2,572 (four times £643).

54. The respondent is ordered to pay the claimant an additional sum of £2,572 under section 38 of the Employment Act 2002.

Employment Judge Ayre

Date: 17 October 2024

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