



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr M Petrie  
Miss C Romien

**Respondent:** Licensed Support Services Limited

**Heard at:** Bristol **On:** 15 August 2016

**Before:** Regional Employment Judge Parkin

## **Representation**

Claimants: Mr Petrie

Respondent: Mr A Merricks, Managing Director

# JUDGMENT

## **The judgment of the Tribunal is that:**

- 1) the respondent's application to strike out the claims is dismissed;
- 2) the respondent made unlawful deductions from wages of the claimant Mr Petrie and is ordered to pay him the sum of £1079.66;
- 3) the respondent made unlawful deductions from the wages of Miss Romien and is ordered to pay her the sum of £726.33;
- 4) pursuant to section 38 of the Employment Act 2002, the respondent is ordered to pay Mr Petrie two weeks' pay in the sum of £961.54;
- 5) pursuant to section 38 of the Employment Act 2002, the respondent is ordered to pay Ms Romien two weeks' pay in the sum of £576.92;
- 6) pursuant to rule 75 (1) (b) of the Employment Tribunals Rules of Procedure 2013, the respondent is ordered to pay Mr Petrie the sum of £390 in respect of the issue and hearing fee paid in these proceedings;  
and

7) pursuant to rule 75 (1) (b) of the Employment Tribunals Rules of Procedure 2013, the respondent is ordered to pay Miss Romien the sum of £390 in respect of the issue and hearing fee paid in these proceedings.

## REASONS

1. By their claims presented on 14 January 2016 both claimants claimed unlawful deductions from wages and outstanding holiday pay in respect of sums they claimed were unpaid on the termination of their employment with the respondent in October 2015.
2. By its response presented on 11 February 2016, the respondent resisted their claims in full contending that final deductions it had made from their wages were authorised under the terms and conditions of employment document given to the claimants by its predecessor Singer Inns and Taverns Ltd such that all terms and conditions of employment transferred under the TUPE legislation. It contended there had been a massive stock deficit on departure which entitled the respondent to deduct the wages.
3. The claims were originally dismissed for non-payment of the hearing fee but subsequently reinstated at a Preliminary Hearing on 24 June 2016 when Employment Judge Mulvaney also determined that the claims were not struck out for failure to actively pursue them and that both claims and the response to them were not struck out or subject to deposit orders on the basis that they had no reasonable prospect or little reasonable prospect of success. The judge made a series of case management orders to be complied with before the final hearing.
4. At the start of this hearing the judge identified with the parties the documents they had provided and checked that each side had those documents. No application to dismiss the claims was made by the respondent at that stage but subsequently in closing submissions the respondent applied to dismiss the claims firstly contending it was compromised because it was unable to call its original supporting witness, Mr Mark Walter, who would have been able to attend the very first hearing listed but was not able to come to this hearing because of business commitments and secondly that the claimants had not complied with the bulk of the case management orders made by Judge Mulvaney. The respondent had written to the Tribunal on 9 August 2016 applying for the claims to be struck out because of the claimant's failure to comply with the case management orders but had failed to copy in the claimants and to give them the opportunity to object to the application as required by Rule 30 of the 2013 Rules at that stage.
5. The Tribunal rejected the respondent's application to strike out the claims. Firstly, it concluded that it was always open for the respondent to make an application for a witness order to secure the attendance of a missing witness within standard Tribunal procedures but, in any event,

the possible evidence from the witness Mr Walter was in a written statement provided in the respondent's bundle; the Tribunal was prepared (subject to the weight it could attach to that written witness statement) to take account of the contents so far as relevant. The respondent's more substantial application was that based on non-compliance with the Rules, in circumstances where the claimants had earlier been told at the preliminary hearing that they needed to prepare their case fully. However, the claimants brought short witness statements with a single document (a photocopy summary of their bank account entries) on the day which were all provided to the respondent before the hearing. The respondent had provided the documents he was disclosing including the witness statements about a month before the hearing to the claimants. The Tribunal was satisfied that the respondent was not taken by surprise by the contents of witness statements or document put forward by the claimants and indeed the fact that the hearing proceeded with full hearing of evidence before the respondent made its application to strike out, once the issues were significantly narrowed, showed that it was still possible to hold a fair hearing of the issues in the claims notwithstanding the late compliance by the claimants.

6. At the beginning of the hearing, the Tribunal sought to clarify with the claimants what the size of their claim was and to what extent that was disputed by the respondent, subject to its defence that all deductions from wages and holiday pay were justified by the written provision in their contracts of employment. After some discussion, the claimants agreed to limit their wages claims to the precise amount admitted in writing by the respondents (during correspondence expressly ordered by the Tribunal at the Preliminary Hearing, which the claimants had complied with). Subject to the Tribunal's decision on the lawfulness or otherwise of the deductions, the figures relating to non-payment of wages including holiday pay (i.e. compensation for accrued paid annual leave not taken at date of termination) were agreed at £1079.66 for Mr Petrie and £726.33 for Miss Romien.
7. The Tribunal heard evidence from both claimants and from Mr Andrew Merricks, the managing director of the respondent. On the dispute as to whether the claimants ever received and signed the terms and conditions/contract of employment document (15-16) the Tribunal accepted the claimant's version that they did not do so. They had set out in writing prior to and in the claim that they received no contract from the respondent but had actively sought a contract, particularly when the respondent had taken over from the previous employer. There was no reason, if such a document was signed by both parties with a copy retained by each (as the respondent contended) for counterpart copy documents containing both signatures not to be retained by both parties. The Tribunal concluded that the fact of a signed copy of formal terms of employment document was not only inconsistent with the claimant's version that they only knew of the administration of Singer later but did not accept the respondent's insistence that it was not now in a position to obtain the document it said still existed. Notwithstanding that the predecessor company

Singer was in administration, it plainly had professionals such as accountants or insolvency experts working as administrators to carry on the business as a going concern who had in turn appointed Licensed Solutions Ltd, the different limited company for which Mr Merricks then worked as manager, as its agents to run the pub. The Tribunal did not accept that the fact the original employer was in administration meant that the signed document could not in any way be obtained by the respondent if it existed. Moreover, it seemed to the Tribunal that the respondent's case about the terms of employment document had developed during the proceedings from the assertion that the claimants had been given a copy of the document to Mr Petrie actually signing a copy of the documents on behalf of both of them, which was the version in Mr Merricks' witness statement and at the hearing.

8. The Tribunal made the following brief key findings of fact on the balance of probabilities. The claimant's employment with the respondent commenced on 22 September 2014. As set out above, the Tribunal concluded that they did not prior to the commencement of that employment sign the document headed Licensed Solutions Ltd Employment terms and conditions with their name included setting out the employer was Singer Inns and Taverns Ltd (in administration). Whilst that document, apparently found by the respondent in the office at the living accommodation above the public house after the termination of the claimants' employment, did accurately set out their place of work as the Orchard Inn TA4 1DS and the job position as joint management couple with Mike Petrie to also act as head chef, and the joint salary of £40,000 per annum (live in), it set out the start date as 22 September 2015 (even if a slip, a complete year out) and had an express line to be signed by the employee as well as the employer but with no signature set out on the employee line. The Tribunal did not accept the respondent's evidence that counterpart agreements were signed by both sides in the public house garden a week before the claimants commenced employment. Ms Romien was never cross-examined on her assertion that she had, on a number of occasions especially after the takeover, sought a contract from the respondent to regularise the claimants' employment position and the Tribunal accepted that she had done so. The document at 15-16 refers to the provision to the claimant of the "Company Staff Handbook" but the Tribunal finds no such handbook was provided to the claimants on 15 September 2014 or at all. The Tribunal concluded that the hiring of the claimants prior to commencement of their employment was very informal and that they were unaware the owner of the pub was in administration until shortly after they had moved in to the pub and started their employment.
9. The claimants only ever dealt with Mr Merricks and with effect from about 31 March 2016, his company Licensed Support Services Ltd (this respondent) acquired the pub business from the administrators of Singer under a Transfer of Undertakings arrangement, such that the employment of all employees of Singer including the claimants transferred over to the respondent. As Mr Merricks accepted, no

statement of particulars or contract reflecting this change of identity of employer had been provided to the claimants by the time their employment ended. The claimants' combined salary of £40,000 gross per annum was split as to £25,000 to Mr Petrie and £15,000 to Ms Romien per annum or £480.77 and £288.46 gross respectively per week.

10. The claimants worked hard on behalf of the respondent in the public house building up the business of the pub. On or about 25 September 2016 they gave notice to the respondent to terminate the employment in these terms:

“Following our conversation on Friday, 25 September regarding our notice period I am writing to confirm that 20 October will be our final day. 12 October being the day we leave the final 8 days will be the holiday pay due to others as confirmed by Ros Cullen (the payroll officer), on 28 September”.

Whilst there was some dispute as to the final days the claimants were to work, i.e. whether they should have worked on 10 and 11 October, their formal last day at work 12 October 2015 ahead of the termination of employment on 20 October 2015.

11. Having carried out a stock take on a day after the claimants had left the premises which they did not witness, the respondent found major stock deficits which it sought to claw back by deducting part from the outstanding wages and holiday pay/compensation for paid annual leave from their final pay salary. Notwithstanding that a month later it issued a final payslip to each claimant (9), the sums set out on those payslips, save for small amounts to each which the claimants have given credit for, were simply never paid. No other contractual written document or written consent by the claimants was put forward by the respondent.

12. Whilst there was considerable heat in respect of the parties' respective positions on the claim, the law is straightforward and is set out at part II of the Employment Rights Act 1996, in particular at section 13. Section 13 provides that:

“An employer shall not make a deduction from wages of workers employed by him unless - (a) the deduction is required or authorised to be made by virtue of the 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.

13. By subsection (2):

“... a “relevant provision” in relation to a worker's contract means a provision of the contract comprised - (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or (b) in one or more terms of the contract (whether

express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”

14. The respondent relied upon the document at pages 15-16 in its bundle as authorising the deductions here. However, the Tribunal concluded on the balance of probabilities that no such contract or statement of particulars of main terms of employment was received by the claimants or indeed signed by them. The Tribunal therefore concluded that the respondent was not justified in making the final deductions from the wages of the claimant including holiday pay as it had sought to, notwithstanding the stocktaking deficits which it uncovered. Therefore those deductions were unlawful deductions applying section 13 and by section 24 of the Act the Tribunal finds the complaints well-founded and orders the respondent to pay the outstanding sums (in the sums which were agreed during the hearing, subject to liability being determined) .
15. Finally the Tribunal considered the statutory provisions at section 38 of the Employment Act 2002, dealing with failure to give a statement of employment particulars. It follows from the judgment that the respondent (and its predecessor) was in breach of its duty under section 1 of the Act to provide a statement of the main particulars of employment at the commencement of their employment and then, within a month of the variation on about 31 March 2016, under section 4 to provide a revised statement recognising the change of employer when the respondent took over the business. In the circumstances, although the respondent did not admit the claimants were entitled to these additional awards, the Tribunal makes additional awards of the minimum amounts of two weeks pay to Mr Petrie of £961.54 and £576.92 to Ms Romien. The claimants succeed in their claims and it is appropriate to make costs orders against the respondent reflecting the issue and hearing fees paid by them.

Regional Employment Judge Parkin

Date: 19 August 2016

JUDGMENT & REASONS SENT TO THE PARTIES ON

22 AUGUST 2016 BY EMAIL AND POST

MR JA ONGARO FOR THE TRIBUNAL OFFICE