



# EMPLOYMENT TRIBUNALS

## *Claimants*

## *Respondent*

Mrs J Wu (1)  
Miss A Bauza Garcia-Arcicollar (2)  
Mr M Ayyub (3)  
Miss V Bucci-Marconi (4)

**AND**

LearnerLane Limited

**Heard at:** London Central

**On:** 21 November 2017

**Before:** Employment Judge Norris

## **Representation**

**For the Claimants:** Claimants (1) to (3) in person.  
Claimant 4 did not appear and was not represented

**For the Respondent:** Did not appear and was not represented

## **JUDGMENT**

The Claimant's claims are well-founded and succeed.

The Respondent is ordered to the Claimants the following sums:

Claimant (1): £4,142.08 (gross/net);  
Claimant (2): £4,906.35 net;  
Claimant (3): £2,930.11 net;  
Claimant (4): £2,377.16 net.

## **REASONS**

### **Background**

1 The Claimants worked for the Respondent for different short periods between December 2016 and March 2017, when they were each informed that they were being given four weeks' notice (to be paid in lieu) in line with their contracts of employment.

### **The Hearing**

- 2.1 These claims were consolidated to be heard together, although Claimants (1) to (3) have collaborated on the presentation of the claims while Claimant (4) has not been in touch with them and had not contacted the Tribunal. Reference in these Reasons are to Claimants (1) to (3) unless otherwise stated.
- 2.2 The Respondent had written to the Tribunal to say that it had not received the claim forms, which were re-sent on 1 November by email, with a letter from the Regional Employment Judge stating that the Hearing would proceed on 21 November and requiring the Respondent to submit an ET3 (late acceptance of which would be considered at the Hearing) or risk having judgment entered against it. Nothing further having been heard from the Respondent and no ET3 response having been received for any of the claims, judgment was formally entered for all the Claimants. It was then a question of remedy only, and the calculation of the sums owing.
- 2.2 The Claimants have received notice that the Respondent was proposing to enter creditors' voluntary liquidation. A meeting was scheduled for 22 November 2017, the day after the Hearing. In the circumstances, given that the Respondent was still trading on the date of the Hearing but had not attended or sent a representative, the matter proceeded. The Claimants are aware that they may have recourse to the scheme operated by the Insolvency Service if they are unable to enforce the award made at this Hearing; but I explained that I was unable to advise them of the process to be followed and that it is possible that the entire amount which I have awarded may not be recovered using the scheme.

### **The Issues/law**

- 3.1 Each of the Claimants is owed back pay and notice; Claimants (2) to (4) are owed holiday pay for holiday accrued but not taken at the effective date of termination.
- 3.2 There was an additional amount claimed by Claimant (1) that represented tax and/or national insurance contributions paid by a former employer in error, which the Respondent was supposed to repay her through the PAYE system, but did not; it seems to me that this is not a "deduction" made by the Respondent, who neither took the money out of what it owed the Claimant nor paid it over to HMRC. This figure was not "properly payable" to her pursuant to s.13(3) Employment Rights Act 1996 as it did not represent wages she was owed by the Respondent but the reimbursement of deductions made by another employer and paid over to the State. In the circumstances, I made no award in respect of this head of complaint.

### **Findings of fact and conclusions**

- 4.1 Claimant (1) started working for the Respondent on 5 December 2016 and was paid for December 2016 and January 2017. Her payslips were for

£1,453.97 but she was paid £1,453.13 on each occasion (two shortfalls of 84 pence); she was not paid on 27 February because she was told the Respondent did not have enough money to do so. She was paid £600 on 10 March, £375 on 28 July, £200 on 11 September and £400 on 23 October 2017. On 31 March she was given four weeks' notice. She had accrued nine days' annual leave, which she had taken prior to being given notice.

- 4.2 Claimant (2) started employment on 6 February 2017; she worked for February and March without being paid anything although she should have received £1,080.24 net monthly. She took no holiday in the two months she worked for the Respondent.
- 4.3 Claimant (3) started employment on 3 January 2017; he worked and was paid for the month of January but, like Claimant (1), was told on 27 February that his payment for that month would be delayed and at the end of March the Respondent purported to give him four weeks' contractual notice. He was paid £400 on 10 March, £375 on 28 July and £200 on 11 September 2017.
- 4.4 Claimant (4) started employment on 20 February 2017. She was not paid for the week she worked that month or for March 2017. She accrued holiday which she did not take. She has not been paid any money.
- 4.5 The calculations are therefore:

Claimant (1): is owed her notice pay £1,615.40 less the £975 paid leaving £640, plus her back pay of £3,500 and the shortfall of £1.68 in her December and January pay = **£4,142.08**. This figure is the same net as gross, because her earnings in that financial year were too low for her to pay tax.

Claimant (2): is owed her notice pay £997.15 plus her back pay of £1,745.00 and her accrued but untaken holiday of £187.96 = **£2,930.11**. These are net figures based on the payslips she produced for the hearing.

Claimant (3): is owed his notice pay £1,631.36 less the £975 paid leaving £656.36, plus his back pay of £3,679.01 and his accrued but untaken holiday of £570.98 = **£4,906.35**. These are net figures based on the payslips he produced for the hearing.

Claimant (4): is owed her notice pay of £996.92 plus five weeks' pay £1,246.15 and her accrued but untaken holiday of £134.09 = **£2,377.16**. These are net figures based on the amounts set out in her claim form.

- 4.6 I record that I considered making an employer penalty under section 12A Employment Tribunals Act 1996 but concluded, without having heard

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representations but in light of what I know of the Respondent's means, that it would not be appropriate to do so in this case.

- 4.7 For the same reason, I have made no award as to the Claimants' fees paid in this matter, but in light of the *Unison* decision, they will all be able to reclaim all and any sums paid directly from HM Courts and Tribunal Service.

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Employment Judge Norris

Dated: 27 November 2017