



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss N Heer**

**v**

**Subway S F Limited**

## JUDGMENT

### Employment Tribunals Rules Procedure 2013 – Rule 21

1. The respondent has made unauthorised deductions from the claimant's wages and is ordered to pay the claimant £1,210.80.
2. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £263.08.
3. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of £355.26.
4. The respondent was in breach of its duty to employee under section 1(1) or (4) Employment Rights Act 1996 to provide a statement of employment particulars and pursuant to section 38(3) of the Employment Act 2002 the respondent is ordered to pay to the claimant an award of 2 weeks gross pay in the sum of £594.46.

## ORDER

I amend the title of the proceedings by correctly recording the name of the respondent as Subway SF Limited as shown on the payslips received by the claimant during her employment with the respondent.

## REASONS

1. By a claim form presented to the Tribunal on 1 November 2016 the claimant brought claims of an unauthorised deduction from wages contrary to the provisions of section 13 and 23 of the Employment Rights Act 1996, a claim for damages for breach of contract namely notice pay, a claim for an award under section 38 of the Employment Act 2002 in respect of failure to provide written particulars of employment and a claim for holiday pay under the provisions of Working Time Regulations 1998.

2. The respondent in the proceedings did not present a response. The claimant described the respondent by the title of Serve First Limited in her claim form. However the pay slips she has submitted to the Tribunal covering her period of employment show her employer as Subway S F Limited and I direct that the title of the proceedings be amended to correctly record the respondent's title as Subway S F Limited. The respondent has not submitted a response to these proceedings.
3. The claimant was employed by the respondent from the 18 March 2016 to the 9 June 2016 in the position of Subways Sandwich Artist and Staff Trainer. At no time was she provided with written particulars of employment notwithstanding her request to the respondent that particulars be provided and notwithstanding the obligation on the respondent under the provisions of section 1 of the Employment Rights Act 1996 to provide a statement of employment particulars no later than 2 months after the beginning of the employment.
4. She worked for 179 hours in May and was entitled to be paid at the rate of £9.70 per hour a total of £1,736.30. She actually received in June for the work she did in the month of May the sum £1,140.48 and is owed the sum of £595.82. In June the claimant worked for 63 hours and 40 minutes and received no payment at all claims for 63.4 hours at the rate of £9.70 per hour a total of £614.98. She is accordingly due from the respondent outstanding wages in the sum of £1,210.80.
5. She had no employment contract and accordingly no contractual period of notice. Applying the provisions of section 86(1) of the Employment Rights Act 1996 she is entitled to one weeks' notice , her continuous period of employment being less than 2 years. Damages for breach of contract, namely unpaid notice pay, are payable net. Her monthly take home pay as set out in her claim form was £1,140.00 which equates to a net weekly sum of £263.07 and she is entitled to that payment by way of damages for breach of contract, namely notice pay.
6. The claimant did not receive any holiday pay throughout her employment. She worked a total of 59 days from 18 March 2016 to 9 June 2016 excluding weekends. Her entitlement to holiday pay for a full 12 month period was 28 days and she was therefore entitled over 59 days to 6.32 days holiday pay calculated at the daily gross rate of £59.21 a total of £374.21.
7. The respondent failed to provide a statement of employment particulars and applying the provisions of section 38(2) I make the award I am required to make of the minimum amount of 2 weeks pay for failure to provide a written statement of employment particulars. There is no information before me which would cause me to consider it is just and equitable to award the higher amount of 4 weeks. Accordingly the sum to which the claimant is entitled under section 38 of the Employment Act 2002 is £594.46.

8. The claimant claimed for other sums in her claim form, namely costs in connection with preparation of her claim, and costs arising from going overdrawn due to non-payment of wages. I am unable to make any awards in respect of those matters because the provisions under which a costs order, (for an unrepresented claimant that is a preparation time order) do not arise on the information provided to me by the claimant and there is no evidence before me to show the extent of any bank charges incurred or that any charges so incurred arose solely as a result of the respondent's failure to pay wages.

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Regional Employment Judge Byrne

Date: ...25 May 2017.....

Sent to the parties on: .....

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For the Tribunal Office