

## EMPLOYMENT TRIBUNALS (ENGLAND & WALES) LONDON CENTRAL

## **BETWEEN**

Mr M Bruno Claimant

-AND-

Med Fish Distribution Ltd Respondent

Employment Judge: Mr J S Burns

Representation: Claimant In person Respondent: No appearance

## **JUDGMENT**

following a hearing by CVP on 20/11/2020

The Respondent must pay the Claimant £12700 by 4/12/20

## **REASONS**

- 1. The hearing was on CVP. There were no technical problems.
- 2. I heard evidence from the Claimant on oath and considered various documents in a bundle which the former solicitors of the Respondent assembled and were kind enough to email to the Tribunal before they recently came off the record.
- 3. The Claimant confirmed his ET1 in which he claimed holiday pay, arrears of pay and other payments. The Respondent had filed an ET3 but there was no appearance of the Respondent at the final hearing today.
- 4. The Claimant was employed as a full time (6 days a week) executive chef from 1/4/2019 until 7/2/20 when he resigned.
- 5. The written employment contract provided that he would be paid £3000 per month net of tax plus 10% gross commission on the service charge. The Claimant told me that his share of the service charge was about £1500 per month.
- 6. The main defence in the ET3 is that the claim is based on an agreement to pay additional payments which agreement was unauthorised by the Respondent and that the Claimant was aware of that. Having heard the Claimant, I reject that defence. His main claim is based and calculated on his entitlements as set out in his written contract which was formally executed by a director. Furthermore the main sum in his claim namely (£8200 net of tax and NI contributions) is shown on a payslip he was issued by the Respondent on 31/1/2020 (at page 34 of the bundle). This sum represents salary for January 20 and arrears for the previous month. He received a payment on £3000 on account but £5200 net of tax of that amount is still due.
- 7. He worked a week until 7 February 2020 but received no pay slip or pay for that week. He is due £900 gross of tax.
- 8. Extra hours the contract provided in clause 17 that the Claimant agreed to work additional hours outside the Claimant's normal hours of work. Per the schedule to the contract the normal

- hours were 40 hours per week up to a maximum of 48 hours extra on occasion. I accept the Claimant's evidence that he routinely worked 65 to 70 hour weeks and I accept his calculation that over the last 6 months of his employment he worked at least 250 hours over his contractual maximum. The rate at which he would be paid overtime is not specified in the contract so I apply a quantum meruit figure of £15 gross per hour (which is what the Claimant told me is the going rate for a senior chef). The Claimant is due £15 x £250 in this regard = £3750 gross
- 9. The contract provided that the holiday year ran from 1st April each year and that the Claimant was entitled to 26 days paid holiday in addition to public holidays. There are 8 public holidays per year so in total the Claimant was entitled to 34 days holiday per year. By 7/2/20 the Claimant had worked 10 months so he had accrued an entitlement to 28 days. He told me that he took 9 days holiday including 2 days over Christmas. Hence on termination he was due compensation for 19 days untaken holiday. The gross daily pay was £150 so the total due in this regard is £2850.

The judgment sum is calculated

Balance of January pay slip	£5200
February pay	£900
Extra hours	£3750
Holiday pay	£2850
	February pay Extra hours

Total £12700

Item (i) is net of tax and (ii) to (iv) gross of tax. On receipt the Claimant must account to the Inland Revenue for any tax due of these gross sums.

> J S Burns Employment Judge **London Central** 20/11/2020

> For Secretary of the Tribunals

date sent to the Parties – 20/11/2020