



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Jarecka

Respondent: Platter Yorkshire Ltd trading as Platter Yorkshire

Heard at: Leeds (by CVP video hearing) **On:** 1 July 2021

Before: Employment Judge Parkin sitting alone

Representation

Claimant: In person

Respondent: No response presented and no attendance

JUDGMENT

The judgment of the Tribunal is that:

- 1) The claimant's employer was Platter Yorkshire Ltd trading as Platter Yorkshire and she was employed from 10 September 2020 to 19 February 2021.
- 2) The respondent made unlawful deductions from the wages of the claimant in the sum of £1,008.00 but she gives credit for the £805.00 payment made later. The respondent is therefore ordered to pay her the sum of £203.00.
- 3) The respondent is ordered to pay the claimant damages for breach of contract representing her notice pay entitlement in the sum of £180.00.
- 4) Under regulation 14 of the Working Time Regulations 1998, the respondent is ordered to pay the claimant compensation for paid annual leave accrued at the date of termination of her employment in the sum of £446.40.
- 5) Under section 38 of the Employment Act 2002, the respondent is ordered to pay the claimant two weeks' pay in the sum of £360.00 for failure to provide a statement of particulars of the main terms and conditions of her employment; and
- 6) The claimant's redundancy payment claim and deduction from benefits claim are dismissed for want of jurisdiction.

REASONS

1. By her claim presented on 23 April 2021, the claimant claimed a redundancy payment, notice pay, holiday pay and unlawful deduction from wages including benefit payments all in respect of her employment with the respondent and termination of that employment in February 2021. She notified ACAS under Early Conciliation on 5 March 2021 and her certificate was issued on 16 April 2021. The claimant named her employer in both Early Conciliation and her claim form as Platter Yorkshire; in the claim form she also referred on a number of occasions to “the company”.

2. The respondent did not present a response to her claim but the duty Employment Judge did not consider it suitable for a Rule 21 paper judgment.

3. The hearing proceeded by CVP video hearing. The claimant represented herself and there was no attendance for the respondent. Although she did not give evidence on oath or affirmation, the Tribunal accepted her version in its entirety. From the ET1 claim form and the claimant’s letter dated 15 June 2021 and her contribution at the hearing, the Tribunal made the following findings of key fact.

4. The claimant’s employment was at the café/restaurant which traded as Platter Yorkshire at 123 Barnsley Rd, South Elmsall, West Yorkshire. This was the trading name of the limited company, Yorkshire Platter Ltd, owned and run by Anna Maria Baldyga. The claimant was employed as a chef at the restaurant from 10 September 2020, working 20 hours a week over 5 days (Monday to Friday) at an hourly rate of £9 per hour, £180.00 per week gross and net. She never had any paid annual leave or holiday. After Christmas 2020 and New Year 2021, she returned to work on 4 January 2021 and was told later that day by the proprietor that the business accountant had advised her to apply for and put the claimant on furlough. This meant the claimant would not attend for work but would receive 80% of her wages under the government’s Coronavirus Job Retention Scheme.

5. The claimant agreed to this arrangement with words: “Yes okay, that is fine”; she was not surprised because of the low level of trade in the business. In the event, the claimant received no furlough payments from the respondent and, when she enquired, learned that the respondent’s proprietor had put her mother on the payroll and was paying the furlough payments to her. The claimant’s benefit claim when she applied for Universal Credit was also adversely affected because the respondent continued to tell HMRC that the claimant was receiving pay.

6. The claimant resigned without notice on 19 February 2021 after having received no ordinary or furlough pay for seven weeks. No payment of notice or outstanding wages or holiday pay/compensation for accrued paid annual leave was made at that time. The claimant sought Citizens Advice Bureau assistance and tried to make contact with the respondent to claim her missing pay but to no avail. However, when she contacted the respondent after presenting her claim to check whether it was aware of the proceedings, Ms Baldyga’s boyfriend contacted her and suggested they meet up. Although the claimant agreed, the

boyfriend failed to attend but then, unexpectedly, she received a payment by bank transfer of £805 on 8 June 2021, which she accepts she must give credit for. No further explanation of that payment or further contact from the respondent was received. Although she had asked for a contract of employment or statement of main terms and conditions of her contract whilst in employment, she never received this from the respondent.

7. To those facts, the Tribunal applied the law in respect of redundancy payments at part XI and unlawful deduction from wages at Part II both of the Employment Rights Act 1996, in respect of notice pay/breach of contract at section 86 ERA read together with the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994, and in respect of the holiday pay claim at regulations 13, 13A and 14 of the Working Time Regulations 1998.

8. The Tribunal concluded that the respondent made unlawful deductions from the wages of the claimant in respect of the whole 7 weeks from 1 January 2021 to 19 February 2021 when she resigned. However, having regard to the furlough arrangements, it concluded that there was an agreed variation of the claimant's contract such that she would not attend for work but would still continue to receive payment of wages albeit at the reduced 80% rate. Since no such payments were received she was thereby entitled to 80% of her seven weeks pay, £1,008.00, but the respondent is ordered to pay her the lower sum of £203.00 after she gives credit for the payment of £805.00 she received later.

9. The Tribunal found that the claimant was effectively constructively dismissed in breach of contract by the respondent when it failed to comply with the express term of the contract to pay wages to her, at 80% in accordance with the agreed variation. This was a repudiatory breach which she accepted in resigning. Since the respondent should have given her notice to terminate the employment, she is entitled to damages representing loss of the statutory minimum notice period, one week's pay at her standard weekly rate of £180.00 not the 80% rate.

10. The claimant is entitled to compensation for accrued paid annual leave in respect of the time she worked for the respondent when she never had any paid holiday. The entitlement is based upon the annual entitlement of 5.6 weeks (28 days), commencing with her start date of employment, and she had accrued 2.48 weeks for the time she worked up to 19 February 2021, equating to £446.40 at her standard weekly rate. Accordingly, the respondent is ordered to pay her this sum.

11. Since the claimant never received her statement of particulars under section 38 of the Employment Act 2002, the Tribunal makes the further minimum award of two weeks' pay in the sum of £360.00 for the respondent's failure to provide a statement in accordance with this statutory requirement.

12. In respect of the claim for redundancy payment, the claimant lacked the necessary two years' continuous service for the Tribunal to declare such an entitlement. Likewise, it has no power under Part II, ERA 1996 to award missing benefits; that must be taken up by the claimant with Her Majesty's Revenue and Customs (HMRC) or the Department for Work and Pensions (DWP).

Case Nos: 1802603/2021

Employment Judge Parkin

Date 1 July 2021