



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Bones

**Respondent:** The Brew House (Wirksworth) Limited

**Heard:** in Nottingham

**On:** 24 August 2022

**Before:** Employment Judge Ayre, sitting alone

**Appearances:**

**Claimant:** In person

**Respondent:** Did not attend and was not represented

## JUDGMENT

The respondent has made unauthorised deductions from the claimant's wages and must pay the claimant £800 gross.

## REASONS

### Background

1. On 22 March 2022 the claimant issued a claim for unlawful deduction from wages against the respondent. The claim followed a period of Early Conciliation that started on 7 February 2022 and ended on 20 March 2022.
2. The claim form was served on the respondent at its registered office. The deadline for filing a response to the claim was 25 April 2022. The respondent has not filed any response to the claim, and the Tribunal has, as at the date of today's hearing, not received any communications from the respondent about the claim. The respondent did not attend the hearing and was not represented.
3. In the claim form the claimant stated that he had been employed by the respondent from 26 June 2021 until 28 October 2021. In his answer to question 8.2 on the claim form however, the claimant referred to payday being the 28<sup>th</sup> of the month, to having worked 10 days at the start of October, and to then having tested positive for Covid.
4. The claimant also wrote in section 8.2 that he had been kept off work between 4<sup>th</sup> and 8<sup>th</sup> and to having been invited to a back to work meeting on 12<sup>th</sup> or 14<sup>th</sup> "*at which point I had found a new job and never wanted to step foot in the building...*". It appeared that the month the claimant was referring to in relation to these dates was November 2021.

5. Although the respondent did not enter a response to the claim it was not possible to enter a Default Judgment in favour of the claimant because it was not clear from the claim form or from the additional information provided by the claimant to the Tribunal what sums he was claiming. The case was therefore listed for a hearing.

### **Issues**

6. The issues that fell to be determined today were:
  - a. Was the claimant's claim for unlawful deduction from wages presented in time? If not, should time be extended?
  - b. Did the respondent make an unlawful deduction from the claimant's wages? If so, how much was deducted? The claimant claims £400 in unpaid wages and £400 holiday pay.

### **Today's proceedings**

7. I heard evidence from the claimant and was provided with a copy of the claimant's contract of employment and a pay slip dated 28 July 2022.

### **Findings of fact**

8. The claimant was employed by the respondent as a chef. His employment started in July 2021 and ended on 8 November 2021. The claimant was paid a daily rate of £100 gross.
9. The claimant worked for 10 days at the start of October 2021. His last working day was 15 October. On 16<sup>th</sup> October he tested positive for Covid and began self-isolating. He telephoned his manager, Stephen, and told him that he had tested positive. Stephen told him to follow government guidance, get a PCR test and stay at home.
10. On 24<sup>th</sup> October the claimant started to feel better and tried to contact the owner of the respondent, Joanne, to discuss a return to work. Joanne told him that he needed to get a negative PCR test before he could return to work.
11. The claimant took a PCR test on 26 October and on 28 October was informed by NHS Test and Trace that the test was positive and that he should continue to self isolate.
12. The claimant's normal pay date was the 28<sup>th</sup> of the month. He should have been paid on 28 October 2021 for the ten days he worked at the start of October. He was not paid anything on 28 October. He tried to contact Joanne to get his salary payment.
13. On 2 November Joanne contacted the claimant by text and informed him that he would need to have a return to work meeting, and that she had sent him a letter about this. The claimant did not receive that letter and called Joanne on 5 November to tell her. By this time the claimant was looking for another job as he was not happy that he had not been paid.
14. On 7<sup>th</sup> November the claimant received a letter from Joanne inviting him to a return to work meeting on 10<sup>th</sup> November. The claimant sent a WhatsApp message to Joanne saying that he would attend the meeting on 10<sup>th</sup> November, his reason for doing this was that he wanted to 'keep her sweet' so that he could get his salary payment from her.

15. The claimant received an offer of another job on or around 7<sup>th</sup> November. On 8<sup>th</sup> November the claimant received a payment of £600 from the respondent. He sent a WhatsApp message to Joanne saying that he wanted the rest of his money. He also told Joanne that he had got a new job and would not be attending the meeting on 10<sup>th</sup> November.
16. Joanne replied to the claimant's message saying that she had withheld part of his salary because she believed he had not contacted her by telephone when he had become unwell, and had not taken a PCR test until 26<sup>th</sup> October.
17. The claimant should have been paid £1,000 gross for the ten days he worked in October 2021 before he became unwell. He was only paid £600 gross for October 2021. That payment was made on 8 November 2021.
18. The claimant's employment terminated on 8<sup>th</sup> November 2021 when the claimant told the respondent that he had got another job and would not be attending the meeting on 10<sup>th</sup> November.
19. As at the date his employment terminated, the claimant had four days' accrued but untaken holiday pay.

### **The Law**

20. Section 13 of the Employment Rights Act 1996 states that:

*“(1) An employer shall not make a deduction from wages of a worker employed by him unless –*

- (a) The deduction is required or authorised to be made by virtue of a 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...*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”*

21. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

*“(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –*

- (a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....*

*(3) Where a complaint is brought under this section in respect of –*

- (a) a series of deductions or payments...*

*the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

- (4) Where the employment tribunal is satisfied that it was not reasonably practicable for*

*a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.”*

## **Conclusions**

22. Having heard the evidence of the claimant I am satisfied that the claim was presented in time. The claimant was due to be paid his salary on 28<sup>th</sup> October 2021. It was not paid on that date. The respondent then made a payment to the claimant on 8<sup>th</sup> November 2021. The respondent should have paid the claimant £1,000 gross on that date. It paid him £600.
23. The respondent therefore made a deduction from the claimant's wages on 28<sup>th</sup> October, when it failed to pay him at all, and then again on 8<sup>th</sup> November, when it made a part payment to him. There was therefore a series of deductions, the last of which was on 8<sup>th</sup> November 2021.
24. The claimant began early conciliation on 7<sup>th</sup> February 2022, which was within three months of the last deduction from wages. Early conciliation ended on 20 March that the claim was presented on 22<sup>nd</sup> March.
25. The claim is therefore in time and the Tribunal has jurisdiction to hear it.
26. Holiday pay is not expressly mentioned in the claim form. The claimant told me that this was due to an error. A claim for holiday pay can be pursued as a complaint of unlawful deductions from wages, which is included in the claim form.
27. To the extent that an application to amend the claim is required in order for the claimant to pursue a complaint of holiday pay, I allow this amendment. The balance of injustice and hardship favours allowing the amendment. The claimant would be prejudiced if he were not allowed to pursue the claim for holiday pay which appears, on the face of it, to be a strong claim. The respondent has not filed a response to the claim and has played no part in the proceedings.
28. The claimant was entitled to be paid £1,000 gross for the ten days that he worked in October 2021 before he became unwell. He was only paid £600 gross for October 2021. The respondent's purported reasons for withholding the claimant's salary for October relate to the period after 15<sup>th</sup> October, when he became unwell. They do not justify withholding pay for days that he worked before he went off sick.
29. The respondent has made an unlawful deduction from the claimant's wages for October 2021 in the sum of £400 gross.
30. The claimant is also entitled to the sum of £400 gross in respect of four days' holiday pay, also calculated at the rate of £100 a day. This sum became payable to the claimant on 8<sup>th</sup> November 2021 when his employment ended. The respondent has therefore made an unlawful deduction from the claimant's wages by not paying him £400 gross in respect of holiday pay.
31. The respondent has made unlawful deductions from the claimant's wages totaling £800 gross and is ordered to pay that sum to the claimant.

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Employment Judge Ayre

Date: 24 August 2022

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE