

# THE INDUSTRIAL TRIBUNALS

CASE REF: 38813/21

**CLAIMANT:** Stephen Dowie  
**RESPONDENT:** Holywood No 1 Limited

## DECISION

The unanimous decision of the tribunal is as follows:-

1. The decision of the tribunal is that the claimant's claims of breach of contract is well-founded as the respondent had not remedied, on the termination of the claimant's employment, the shortfall in payments due to the claimant for salary. The tribunal orders the respondent, Holywood No 1 Limited, to pay to the claimant the total sum of **£1,464.92** in compensation, computed as set out at the conclusion of this decision.

### Constitution of Tribunal:

**Employment Judge:** Employment Judge Sheehan  
**Member:** Mr Barron

### Appearances:

**The claimant appeared and represented himself.**

**The respondent had entered no appearance. The respondent did not attend the hearing and was not represented.**

### PRELIMINARY ISSUE

1. At the outset of the hearing, the tribunal brought to the attention of the claimant that the third member of the panel, appointed to sit for this hearing under Regulation 10 (2) of the Industrial Tribunal and Fair Employment Tribunal (Rules and Constitution of Proceedings) Northern Ireland 2020, (referred to as the 2020 Rules) was unable to attend. The Tribunal, acting in accordance with the overriding objective set out in rule 2 of Schedule 1 to the 2020 Rules, raised with the claimant his entitlement, under rule 53 (1) of Schedule 1 to the 2020 Rules to have the hearing conducted by a three-member panel. The tribunal indicated this would necessitate an adjournment to another date. The alternative was for the claimant to consent to the hearing proceeding that day but to be determined by an employment judge and one

other member only. The claimant consented to the hearing proceeding to be determined by a two-member tribunal, constituted by the employment judge and the single panel member.

## **SOURCES OF EVIDENCE**

2. The tribunal heard oral evidence from the claimant and received a number of relevant documents from him, including written statement of main terms and conditions for position of Head Chef and pay slips dating 14 May to 23 July 2021.

## **THE CLAIM AND THE RESPONSE**

3. The claimant brought claims for breach of contract, breach of an agreement to refund monies in the sum of £130.00 belonging to the claimant, unlawful deduction of wages and notice pay arising during, or by the date of termination of, his employment with the respondent. The respondent did not file a response and did not attend the hearing.

## **THE FACTS**

4. In consequence of the oral and documentary evidence adduced at hearing, the tribunal made the following findings of fact, upon the balance of probabilities:
5. The claimant was recruited initially as a Chef for a restaurant/bar owned by the respondent known as 'Stokers Halt' in Holywood, County Down. The claimant was interviewed by completing a trial shift. At the completion of the shift, he was offered and accepted employment with effect from 1 May 2021. His initial salary was £30,000 per annum. It was clear from the pay slips provided to the tribunal that the applicant was not paid a salary at that level. However, the claimant made clear that his concern was the failure to pay him salary at the agreed rate for head chef, which occurred on 21 May 2021.
6. After one week, the claimant was offered employment as Sous Chef at an increased salary of £32,000 per annum. On 21 May 2021, because of the head chef becoming ill, the claimant was offered and accepted the position of Head Chef at a salary of £37,000 gross per annum. This is reflected in the unsigned written statement of terms and conditions of employment provided to him by the respondent on that date. This document is identified and marked as 'A1' by the tribunal.
7. It was not until 31 May 2021 that the claimant received pay slips from the respondent. His wages payments were made by BACS. The claimant was paid not only one week in arrears but also with a 'lay in week' operating. The wages slips furnished by email on 31 May concerned the claimant as no deductions for tax, only national insurance, were detailed on those documents.
8. The claimant raised the issue of tax deductions with the respondent through Kevin Hamilton, a manager for the respondent. He became dissatisfied with the delay in responding to his enquiry. He directly logged in details of the pay received to the

Inland Revenue website and ended up having to pay the Inland Revenue £760.00 for tax unpaid by the respondent at that time.

9. Periodically, throughout June and July 2021 pay slips were provided to the claimant but usually in multiples of two or three at a time. The claimant realised that the salary being paid was not in accordance with his contractual entitlement of £37,000 per annum from 21 May 2021. The tribunal had sight of pay slips dated 14 May to 18 June 2021 (the bundle of copy pay slips are identified and marked as 'A2'). There are multiple pay slips where the entry for income tax is nil. The first entry for income tax appears on a pay slip date 25 June 2021 (wk 12) for £8.80.
10. The claimant approached Peter Brady, a director of the respondent company, Kevin Hamilton and Kevin McGarry on various occasions about sorting out tax payable as well as the correct rate of his wages since taking up the post of Head Chef. The matters remained unresolved when the respondent mid-July 2021 proposed reducing staff in the kitchen. During a meeting on 19 July 2021, the claimant due to dissatisfaction with the lack of response to his pay and tax enquiries, offered to resign in place of making other kitchen staff redundant. His notice of resignation was accepted with the agreed date of termination occurring on the 30 July 2021.
11. The claimant received pay slip dated 23 July 2021, for week 16 in the tax year, which concerns the tax week of 19 to 26 July 2021. This and one earlier pay slip dated 2 July 2021, for week 13 in that tax year, had both the correct amount of earnings as well as the tax to be deducted. On the salary of £37,000 per annum, the claimant calculated the weekly gross amount was £711.11 reducing to £554.93 nett.
12. The claimant's final payment received from the respondent was the payment of £554.23 nett on 23 July 2021. The claimant had agreed that the termination of his employment would take effect on 30 July 2021. The claimant received no further pay slips, no P45 or P60 despite making contact with the respondent by sms messages, texts and WhatsApp.
13. The wage slips provided show the first payment made to the claimant on 14 May 2021 was for the figure of £225.00 in week 6 of the tax year. This sum reflected the short week completed by the claimant in his first week of employment running from 1 May to the 7 May. The claimant produced ten pay slips during the hearing. The pay slips had no break and ran from week 6 to week 16 in the tax year. They do not account for the full period of the 12 weeks of the claimant's employment with the respondent.

## THE LAW

### 14. Unauthorised Deduction from Wages

Article 45(1) of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order") provides as follows:-

*"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".*

Article 45(3) of the 1996 Order provides as follows:-

*"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".*

15. Breach of Contract

The Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994 confers jurisdiction on industrial tribunals to hear claims for breach of contract and Article 3(c) provides as follows:-

*"Proceedings may be brought before an industrial tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for sum due in respect of personal injuries) if –*

*(c) the claim arises or is outstanding on the termination of the employee's employment."*

16. Notice Pay

Article 118 of the Employment Rights (Northern Ireland) Order 1995 makes provision in relation to notice periods as follows:-

*"118.— (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—*

*(a) is not less than one week's notice if his period of continuous employment is less than two years,*

*(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and*

*(c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.*

*(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week."*

## CONCLUSIONS

17. The claimant abandoned the element of his claim relating to £130.00 winnings left behind a till which went missing. The offer to replace that money was not part of the contractual terms of employment. No consideration had been tendered by the claimant in advance or at the time of that offer of payment.
18. The written statement of terms and conditions required the claimant to give 4 weeks' notice. The claim in respect of notice pay was withdrawn during the hearing. The claimant accepted he had resigned from his position with agreed notice of one week and therefore would not be eligible for notice pay.
19. The tribunal are satisfied that the claimant was entitled contractually to the weekly rate of pay commensurate with an annual salary of £37,500 gross from 21 May 2021. The tribunal was satisfied this reflected a weekly gross sum of £711.00 and a nett sum of £548.96 weekly. The tribunal calculated the total nett sums received as salary, as evidenced from the pay slips produced at the hearing from the 21 May 2021, amounted to £3,475.22 nett. The tribunal determined that as the claimant was entitled to "damages" for breach of contract of a contractual wage of £37,000 per annum, it appeared more appropriate the calculation of loss be upon the nett sum, given tax deductions were deductions required by law. It was also clear that some taxes were paid during this period of employment.
20. The tribunal calculated the nett amount the claimant should have received over the nine weeks for the period 21 May to 30 July 2021 amounted to £4,940.64. The total nett amount paid to the claimant during that period was £3,475.72. The underpayment of £1,464.92 owed and not paid upon the termination of the claimant's employment falls within the tribunal's breach of contract jurisdiction. The tribunal is satisfied that the claimant complied with the procedural requirements of that jurisdiction. Accordingly, the tribunal orders the respondent to pay to the claimant £1,464.92 in respect of damages for breach of contract.
21. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

### **Employment Judge:**

**Date and place of hearing: 28 April 2022, Belfast.**

**This judgment was entered in the register and issued to the parties on:**