



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **Respondent**
Mr Robert Ashpital AND Amaranta Restaurants Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 5 July 2019

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Did not attend

JUDGMENT

The judgment of the tribunal is that:

1. The claimant succeeds in his claim for breach of contract and the respondent is ordered to pay the claimant the net sum of £477.37; and
2. The claimant succeeds in his claim for unlawful deduction from wages and the respondent is ordered to pay the claimant the gross sum of £3,384.62; and
3. The claimant succeeds in his claim for accrued holiday pay and the respondent is ordered to pay the claimant the gross sum of £507.68.

REASONS

1. In this case the claimant Mr Robert Ashpital brings monetary claims for breach of contract, unlawful deduction from wages, and accrued but unpaid holiday pay against his ex-employer Amaranta Restaurants Ltd. The respondent entered a response denying the claims, but has apparently gone out of business, and did not attend today.
2. I have heard from the claimant. No one from the respondent attended today.
3. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.

4. The respondent is a restaurant business and traded as the Villa Amaranta in Plymouth. The claimant was employed as its General Manager from 20 September 2018 until his summary dismissal on 7 January 2019. The respondent contends that the claimant was dismissed for dishonesty, but the claimant disputes this. I have heard from the claimant and I accept his evidence rather than the version put forward by the respondent who did not attend today.
5. The claimant was employed on a salary of £33,000 per annum gross which is £2,750.00 gross per month and £126.92 gross per day for his five-day week. His take-home pay was £2,053.00 per month net which is £473.77 net per week.
6. The respondent failed to pay the claimant for the month of December 2018, and for the first week of January 2019 before his dismissal on 7 January 2019. The respondent failed in breach of contract to give the claimant his contractual and statutory one week's notice. The respondent also failed to pay the claimant any accrued but unpaid holiday pay as at the termination of his employment. At that stage the claimant had accrued approximately 3.5 days holiday, which is rounded up to 4 days.
7. Having established the above facts, I now apply the law.
8. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.
9. The claimant also claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
10. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3).
11. The claimant succeeds in his claim for breach of contract in respect of one week's notice, and the respondent is ordered to pay the claimant the net sum of £473.77.
12. The claimant also succeeds in his claim for unlawful deduction from wages for December 2018 and the first week of January 2019 and the respondent is ordered to pay the claimant the gross sum of £3,384.62.
13. The claimant also succeeds in his claim for accrued but unpaid holiday and the respondent is ordered to pay the claimant four days holiday pay in the gross sum of £507.68.

Employment Judge N J Roper

Dated: 5 July 2019

Judgment sent to Parties: 2 August 2019

FOR THE TRIBUNAL OFFICE