



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Joshua Griffiths

**Respondent:** Smart Dough Ltd

**Heard at:** Remotely by video

**On:** 11 November 2022

**Before:** Employment Judge S Moore

## Representation

Claimant: Ms A Griffiths

Respondent: Did not attend

# JUDGMENT

## Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of £739.20.
2. The respondent has failed to pay holiday pay due to the claimant in the gross sum of £3427.20.
3. The claimant is not entitled to a redundancy payment.
4. The claimant's claim for unfair dismissal does not succeed.
5. The respondent breached the claimant's contract with regard to notice of termination and shall pay £403.20 gross notice pay by way of damages.

# REASONS

## Background and introduction

1. The ET1 was presented on 23 May 2022. This followed a period of early conciliation with the date of receipt by ACAS of the early conciliation notification being 6 May 2022, and the date of issue by ACAS of the early conciliation certificates being 19 May 2022. The claimant brought claims of unfair dismissal, redundancy pay, notice pay, holiday pay and arrears of pay.

2. The response was due from the respondent by 15 July 2022. The respondent did not present a response to the claim. The hearing today was listed to consider and determine the claimant claims.
3. The claimant did not attend this hearing and was represented by his mother Ms Griffiths who explained that the claimant had unable to get time of work to attend this hearing. I was satisfied based on the documentary evidence before me that I had sufficient evidence to reach a decision.

### Findings of fact

4. The claimant worked for the respondent as a bakery operative from 9 August 2018. His gross hourly pay was £8.40 per hour, and he worked an average of 48 hours per week. The claimant was not provided with a statement of terms and conditions of employment either at the beginning of his employment or at all. His holiday year ran from 1 April to 31 March. On 10 March 2022, the claimant emailed the respondent and gave notice of his resignation. The claimant had secured alternative employment. The respondent acknowledged receipt of the resignation on 12 March 2022 and replied by email stating his final pay date will be 26 March which will include any outstanding holiday. It was not possible to say, as I did not have the attached resignation letter how much notice the claimant had provided the respondent in his resignation letter. However, from the respondent's reply stating his final payday would be 26 March 2022, and that the claimant stated on his ET1 that he started a new job on 18 March 2022, I find that the claimant gave the respondent one week's notice and as such this is the notice pay that I shall award. On this basis I find that the effective date of termination with notice was 17 March 2022.
5. On 21 March 2022, the claimant contacted the respondent to ask what the process was for him to receive the money that was owed to him and his P45. The respondent informed the claimant that liquidators would be in touch and made reference to the insolvency service. The current position with the respondent limited company according to Companies House is that there are no insolvency proceedings against their record. There was a proposal to strike off the respondent from the register with the first Gazette noticed issued on 29 March 2022. This was discontinued with a new notice being issued on 12 July 2022. That compulsory strike of action was suspended on 9 August 2022.
6. The Claimant did not receive wages from 27 February 2022 until 13 March 2022. He worked the following hours during this period:

27 February 2022 to 5 March 2022 -40 hours @ £8.40 per hour = £336.00

6 March 2022 to 12 March 2022 - 36 hours @ £8.40 per hour = £302.40

13<sup>th</sup> March 2020 - 12 hours - @ £8.40 = £100.80

7. In the two years leading to the claimant's termination of employment, he had only been able to take five days holiday. He was prevented from taking leave due to the operational needs of the business. The Claimant had asked about holiday that had been accrued that he had been unable to take and the respondent informed the claimant he would not lose the holidays as they could be carried over for two years.

### Conclusions

8. The claimant's claim for unfair dismissal and redundancy payment does not succeed as the claimant resigned from his employment on 10 March 2022 to start another job.

9. In respect of the unpaid wages due to the claimant for work he performed between the 27 February 2022 until 13 March 2022 I award the sum of £739.20 gross.
10. In respect of untaken holiday accrued on the termination of his employment on 17 March 2022, I award the sum of £3427.20. This has been calculated on the claimant's calculation by averaging eight hours per day at £8.40 per hour based on the statutory minimum holiday provided under the Working Time Regulations 1998 of 28 days per annum. The claimant had taken five days leave during the two years as such this left a shortfall of 51 days.
11. In respect of notice pay, reward the claimant one week's pay which based on 48 hours average at £8.40 an hour amounts to £403.20 gross.

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Employment Judge S Moore

Date: 11 November 2022

JUDGMENT SENT TO THE PARTIES ON 14 November 2022

FOR THE TRIBUNAL OFFICE Mr N Roche