

3. The Tribunal had before it the Claimant's Claim Form to which the Claimant testified under oath as to its contents. There were no other witnesses nor any documentation but the Claimant was required to verify his claim and to answer enquiries from the Employment Judge.

THE ISSUES

4. The Issues are whether the Respondent has made unlawful deductions from wages by withholding the majority of the Claimant's wages for the months of April and May 2018 amounting, after ad hoc advances of miscellaneous sums during that period totalling £920, to a balance of arrears of £1,885.35.
5. Although the Respondent paid the Claimant in respect of bank holidays and for four days of holiday booked with the Respondent there is an amount of holiday entitlement outstanding as at the date of the Claimant's resignation which falls for calculation and payment.
6. The Claimant resigned his employment with immediate effect on 24 May 2018 when he was satisfied that the Respondent was incapable of honouring payment of his wages for the preceding two months in respect of his full-time work as a Kitchen Porter. The issue is whether the Claimant was entitled to resign in response to a fundamental breach of contract by the Respondent and any consequent eligibility for an award of notice pay.

THE FACTS

7. The Claimant commenced work with the Respondent on 15 November 2017 as a Kitchen Porter.
8. The employment relationship was satisfactory until March 2018.
9. Doing the best the Tribunal can on scant information, the Respondent unhelpfully disregarding these proceedings, it appears that at the material times the Claimant was earning in the region of £10 an hour and working 8 hours a day.
10. It became apparent to the Claimant and his colleagues, some of whom have issued proceedings similar to these proceedings but without the proceedings being consolidated, that the Respondent had insolvency, or at least liquidity, problems and could not pay wages to its employees or to pay supplier invoices.
11. In April and May 2018 the Claimant was not paid although he worked his full-time hours.
12. Ms Sherafat made occasional lump sum payments to him totalling £920 during that period but by 24 May 2018 the Claimant had £1,885.35 due and outstanding to him and had lost any confidence that the Respondent would pay him.
13. The loss of income had caused the Claimant difficulties, understandably enough, with paying his rental obligations to his landlord and meeting other personal expenditure and he felt obliged to resign and seek employment elsewhere, which he did after a number of weeks of job-searching.
14. As at 24 May 2018 the Claimant had a statutory entitlement to a minimum of one week's notice of termination and had accrued annual leave entitlement of 11.5 days plus bank holidays (for which he had been paid). Having taken four days of paid holiday there

remained an outstanding entitlement to be compensated for 7.5 days of holiday accrued but not taken.

15. Initiatives to obtain payment of the amounts due to him from the Respondent were unsuccessful. The Claimant understands that Ms Sherafat may have ceased trading through the Respondent and is opening a new cake business through a different legal entity.

16. SUBMISSIONS

The Claimant submitted that there is no basis for withholding the payments from him and that he is entitled to the statutory minimum notice payment of one week's pay i.e £400. He resigned his employment only because the Respondent had fundamentally breached his contract of employment by taking the benefit of his full-time services in the kitchen for 8 hours a day for a period of two months but withheld his wages over that period making only a partial contribution to what he was owed.

17. THE LAW

It is unlawful for an employer, by virtue of Part II of the Employment Rights Act 1996 to withhold wages which have been earned in the absence of any lawful excuse for withholding them.

The Employment Rights Act also provides for a statutory entitlement to a minimum period of notice of one week in respect of the Claimant's employment.

The Working Time Regulations 1998 provide a statutory entitlement based on European law of a minimum of 20 days paid holiday per annum.

18. CONCLUSIONS

- (1) The Tribunal is satisfied the Claimant has been underpaid wages by the sum of £1,885.35.
- (2) The Tribunal is also satisfied that the Claimant has 7.5 days outstanding accrued holiday entitlement at £80 per day (8 hours x £10 per hour) which can be lawfully commuted into a lump sum for payment by the Respondent, £600 of which remains outstanding and unpaid since May this year.
- (3) The Claimant was unlawfully constructively dismissed by the Respondent and the Claimant was entitled to accept the Respondent's fundamental breach of contract, i.e non-payment of wages for April and May 2018, to bring the contract to an immediate end entitling him to damages in respect of one week's notice pay namely £400 (40 hours x £10 per hour).
- (4) The Judgment of the Employment Tribunal is to award the following sums payable by the Respondent to the Claimant:
- Arrears of wages of £1,885.35
Outstanding holiday pay of £600
Pay in lieu of notice of £400
- (5) The time for compliance by the Respondent with a Judgment for the payment of awards of money is normally 14 days from the date of the Judgment but, bearing in mind the Claimant's apprehension that the Respondent may cease, or has ceased trading, with a consequence that creditors such as the Claimant may have their financial interests

defeated, and bearing in mind also the Overriding Objective in Rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. I exercise my discretion under Rule 66 and Order the Respondent to pay the above amounts within 7 days of the date of this Judgment.

- (6) The Claimant is aware of the option of appointing online a High Court Enforcement Officer in the event that the Respondent defaults in honouring this Judgment and that he can make an application online to the Department of Works & Pensions in respect of certain payments which may be available in respect of arrears of wages, holiday pay and notice pay from the Insolvency Fund maintained by HM Government.

Employment Judge Hemmings

Date 14 December 2018

JUDGMENT AND REASONS SENT TO THE
PARTIES ON

19 December 2018

.....
FOR THE TRIBUNAL OFFICE