



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr C Coulthard

v

Simon O'Driscoll;  
t/a HS Precision Engineering

**Heard at:** Bury St Edmunds

**On:** 28 January 2020

**Before:** Employment Judge Tynan

**Appearances For the Claimant:** In person

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

## JUDGMENT

1. The Tribunal declares that the Respondent made an unlawful deduction from the Claimant's wages, alternatively that the Respondent dismissed the Claimant in breach of contract by not paying to the Claimant his wages in lieu of six weeks' notice to which he was entitled under the terms of his contract of employment.
2. The Tribunal Orders the Respondent to pay to the Claimant the sum of **£2,040** (subject to deductions as appropriate for Income Tax and employee National Insurance contributions).

## REASONS

1. By a claim form presented to the Employment Tribunals on 6 June 2019, the Claimant claims that he is owed notice pay and arrears of pay by the Respondent. His complaint that he was unfairly dismissed was not accepted by the Tribunal as it had no jurisdiction to deal with the complaint given the Claimant had less than two years' continuous service when his employment terminated.
2. Pursuant to a Case Management Order dated 12 July 2019, the Claimant wrote to the Respondent on 27 July 2019 setting out in writing the remedy that he was seeking. He calculated that he was owed arrears of wages of

£3,585.89 and a further sum of £2,040 in lieu of notice. The Claimant's calculations were supported by various documents, including in the case of the claimed arrears of wages a pay slip comparison table.

3. On 15 May 2019, the Respondent wrote to the Claimant. On the issue of payment in lieu of notice, he wrote,

*"As you had not been fully employed for a whole year, (pilon) does not come into effect for redundancies. This was highlighted to me by the Accountant.*

*You mentioned in your letter that you could not have been let go for gross misconduct. This is correct, you were **not** dismissed for gross misconduct."*

4. The Respondent's letter concluded,

*"I know this is not what you will want to hear, but I will not be able to pay any outstanding monies all in one lump sum. I will try and get this resolved as soon as I can."*

5. Those comments indicate that as at 15 May 2019 the issue was not whether or not monies were owing to the Claimant, rather that the Respondent lacked the necessary means to pay whatever sums were owing to the Claimant. That is confirmed in the Respondent's response form in which he stated that he was experiencing cash flow issues and acknowledged that the Claimant had been understanding of the situation. The Respondent did allege that wages had been withheld in lieu of "time missed" by the Claimant. At the end of Section 6.1 of Form ET1 the Respondent wrote,

*"As I am currently in such financial difficulty, I couldn't afford to make this payment."*

The reference to 'this payment was a reference to payment in lieu of notice.

6. The Respondent did not attend the hearing on 28 January 2020. On the morning of the hearing his wife emailed the Tribunal to advise that the Respondent was suffering from a severe anxiety attack which had started in the early hours of the morning and accordingly that he would be unable to attend the hearing. She stated that it was part of a deeper pre-existing condition for which the Respondent had been prescribed medication. Mrs O'Driscoll requested that the hearing be postponed. At my request further enquiries were made of her, as a result of which the Tribunal received a copy of a prescription which had been issued to the Respondent that morning confirming that he had been prescribed Citalopram, medication for anxiety.

7. At Tribunal, the Claimant was able to show me a copy of his contract of employment with the Respondent. It confirms that he was entitled to receive six weeks' notice of termination of his employment. As noted already, the Respondent's letter of 15 May 2019 acknowledges that there were no grounds to dismiss the Claimant for gross misconduct and indeed the response form acknowledges that the Claimant is entitled to payment in lieu of notice, albeit initially the Respondent may have been incorrectly advised otherwise. His ongoing failure to pay the Claimant in lieu of notice is solely on account of his financial difficulties. Notwithstanding therefore that I accept the Respondent was genuinely unfit to attend the hearing on 28 January 2020, I am satisfied that the Claimant is entitled to a declaration that the Respondent made an unlawful deduction from his wages, alternatively that the Respondent breached the terms of the Claimant's contract by not paying him in lieu of his contractual notice period of six weeks. The Respondent has not disputed the Claimant's calculation of the notice monies that are due to him, namely the sum of £2,040 reflecting six weeks' notice at £340 gross per week (£8.50 per hour x 40 hours per week). Accordingly, I shall Order the Respondent to pay that sum to the Claimant.
8. As regards the balance of the Claimant's claim, namely his complaint that he is owed arrears of wages, it seems from the response form that the Respondent acknowledges that wages are owed to the Claimant, albeit the amount in question is unclear. The Respondent claims that he is entitled to withhold wages "*in lieu of time missed*" from any sums otherwise due. The Claimant volunteered at the hearing that he had miscalculated the amount of the wages due to him. Whilst I am satisfied that the Claimant is entitled to a declaration that the Respondent made an unlawful deduction from his wages, there will have to be a further hearing to determine what, if any, award for compensation the Tribunal should make.
9. I shall list the matter for a further one hour hearing at Cambridge Employment Tribunal to determine the matter, the date to be notified separately to the parties.

---

Employment Judge Tynan

Date: 10 February 2020

Sent to the parties on: ...13/02/2020

.....  
For the Tribunal Office