



EMPLOYMENT TRIBUNALS

Claimant: Mr J Middleton

Respondents: (1) Bright Hospitality Operations Ltd
(2) Ditto Payroll Ltd

Heard at: Bristol (by video-VHS) **On:** 30 April 2021

Before: Employment Judge Livesey

Representation:

Claimant: In person

Respondents: Did not attend

JUDGMENT

1. The Claimant suffered unlawful deductions from his wages and is entitled to compensation in the sum of £3,323.25.
2. The Claimant is entitled to unpaid holiday pay in the sum of £541.80.
3. The Claimant did not receive written terms and conditions of his employment and it is just and equitable for him to receive an award of 4 weeks' pay in accordance with s. 38 of the Employment Act 2002, being £1,311.50.

REASONS

1. The claim

- 1.1 By a Claim Form dated 29 August 2020, the Claimant brought complaints of unpaid holiday pay and unlawful deductions from wages.

2. Background

- 2.1 The Claim was initially brought against the First Respondent only. It responded on 21 September 2020 to say that the Claimant was employed by the Second Respondent. The Second Respondent was therefore joined at the Claimant's request on 27 January 2021. It was served at its registered address, but did not respond to proceedings.
- 2.2 The hearing was listed on 14 December 2020 with directions. It was then converted to a video hearing on 7 April 2021 and the parties were asked to supply their contact details on a form. The Claimant did so but there was no response from either Respondent. The contact details on the First

Case Number: 1404544/2020 (V-VHS)

Respondent's Response were used for the hearing, but neither Respondent joined or attended.

- 2.3 The Bristol Employment Tribunal has seen a significant number of claims arising out of the Cheltenham Regency Hotel. Claimants have pursued a variety of respondents including these two named Respondents, the Regency Hotel, Super Hospitality Group Limited, Clough North Limited and Mr Zishan Zaman in person.
- 2.4 In one claim brought by a Mr Bryan against Mr Zaman in person (No. 1400110/2020), the Tribunal found that he had not been Mr Bryan's employer. Mr Zaman attended and gave evidence at that hearing and stated that the hotel building was owned by M Zaman Holdings Ltd and it was that company which held a Best Western franchise. He stated that it was a holding company and that the hotel was leased to Clough North Ltd which, in turn, out sourced operations to Ditto Payroll Ltd. Mr Zaman himself denied any involvement in any of the companies, whether as a shareholder, employee or director. He stated that he was a self-employed contractor who provided services to M Zaman Holdings Ltd. needless to say, the position was vague it was hardly surprising that so many Claimants who had issued proceedings had been unclear as to the identity of their employer. This claim, of course, had to be addressed on its own facts.

3. Evidence

- 3.1 The Claimant give evidence in support of his case and produced a number of timesheets and payment notifications from his bank. The Judge took into account the contents of the First Respondent's Response.

4. Facts

- 4.1 The following factual findings were reached on a balance of probabilities.
- 4.2 The Claimant was employed as a Housekeeper at the Cheltenham Regency Hotel on 23 January 2020. His managers were Mr Carter and Mr Doherty.
- 4.3 The Claimant was not given any documentation when he started work; no contract, no employee handbook, no payroll information or any other documentation which might have indicated who his employer was. He had been interviewed by Mr Doherty and he understood that he was being employed by Mr Zaman who was operating on behalf of either the First or Second Respondent. That was information which he discovered through a former colleague's contact subsequently.
- 4.4 The Claimant was not informed what his rate of pay was, but he understood that he was engaged on a zero hours basis and was promised payslips and a contract, both of which never materialised.
- 4.5 The Claimant worked for the last week in January and then the entirety of February. The timesheets showed that he worked 122 hours in that month and he was paid £1,112.18. He understood that that was a net payment of tax and national insurance.

Case Number: 1404544/2020 (V-VHS)

- 4.6 The Claimant then worked for the entire month of March before the first government lockdown. His first timesheets (he did not have a complete set) showed that he was working for the same level of hours as he had in February. He was, however, only paid £611.25 in three payments on 6, 16 and 29 April.
- 4.7 Mr Doherty and Mr Carter agreed with the Claimant that he would be furloughed. He also received a promise that his pay would be topped up to 100%. He never received the balance of his pay for March or any pay for April or May. When he tried to visit the Hotel on a second occasion in June, his treatment led him to the view that he was dismissed. He never received a P45.
- 4.8 The notifications from his bank showed that the payments of wages made in February and March came from 'Super Hospit' and those in April from 'Ping Hosp Ltd SW F'. Neither of those entities were familiar to him.

5. Conclusions

Identity of employer

- 5.1 There is an irresistible inference to be drawn from the pattern of conduct which has emerged from this employer; that it has woven a deliberately complex and vague structure in order to hide the position and thus make claims of this sort difficult to bring and pursue.
- 5.2 The Claimant gave evidence that Mr Zaman, whilst acting through Mr Doherty and Mr Carter, was acting as an agent for either of the Respondents. The Claimant was clearly employed by somebody or some corporate entity and, on the basis of the evidence given, the two Respondents identified in this case would appear to be the most likely. The Claimant can pursue his judgment jointly and severally.

Wages

- 5.3 The Claimant was paid £1,112.18 for 122 hours work in February. That equated to £9.12 per hour net, approximately £10.75 per hour gross, having grossed up. His average weekly pay would therefore have been £302 gross.
- 5.4 Given that he was due to have been paid a similar amount for work undertaken in March as he had been in February (the equivalent of £1,311.50), that appeared a reasonable basis for calculations for other months. He was paid £611.25 in March, a shortfall of £700.25. He was not paid in April or May and ought to have received £1,311.50 in both months.
- 5.5 For the avoidance of doubt, the Claimant was ready and willing to work and was entitled to recover his full pay because, although he had agreed to be furloughed, there had been a contractual agreement for his pay to have been topped up to 100%.

Holiday pay

- 5.6 The Claimant was employed for 4 months. He was entitled to 1.8 weeks' holiday by the time that his employment ended. Working on the basis of 122 hours per month, that would have been an average of 28 hours per week.

Case Number: 1404544/2020 (V-VHS)

At £10.75 gross per hour, the Claimant was entitled to £541.80 for unpaid holiday.

Terms and conditions of employment

- 5.7 The Claimant had not received written particulars of his employment at the date upon which these proceedings were commenced. He was entitled to a further award under section 38 of the Employment Act 2002. He was entitled to the lower figure (two weeks' pay) in any event but it was just and equitable to award the higher figure (four weeks' pay) in view of the Respondents' failure to address any of the most fundamental duties that they had as an employer.

Employment Judge Livesey

Date: 30 April 2021

Judgment and Reasons sent to the Parties: 05 May 2021

FOR THE TRIBUNAL OFFICE