



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Conti

**Respondent:** UKRO Ltd

**At:** Central London Employment Tribunal

**Before:** Employment Judge Andrew James

**Note:** This matter has been dealt with remotely. The form of remote hearing was P - paper. It was not necessary to determine the case at a hearing since all of the issues could be dealt with on the papers.

## JUDGMENT

- (1) The respondent has failed to file a Notice of Appearance (ET3) in this case.
- (2) Having considered the ET1, and the email of 26 February 2021 from the claimant's solicitors, EJ A James has decided that a determination of the claim can properly be made without a hearing.
- (3) The Judgment of the Tribunal, made under rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, is that the respondent has unlawfully failed to pay wages and holiday pay to the claimant.
- (4) The tribunal orders the respondent to pay to the claimant unpaid wages of £4,069.84; unpaid holiday pay of £885.50; unpaid accrued holiday pay of £223.25; and notice pay of £317.96; and to account to HMRC for tax and NI as necessary.
- (5) The hearing listed for 4 March 2021 has been vacated and the parties should not attend.**

# REASONS

## Amounts claimed

1. Following a consideration of the papers in this case, I requested further clarification from the claimant's solicitors in relation to the amounts said in the ET1 to be owed by the respondent to the claimant. Clarification was provided in an email sent on 26 February 2021. That is the source for the figures below and the evidence contained within it is accepted.
2. In respect of unpaid furlough wages owed the amount is calculated as follows: £5,087.30 - £1,017.46 = **£4,069.84**. According to HMRC's website, Buddha Bar has declared itself to have made ten payments of £508.73 to the claimant totaling £5,087.30 (gross). To-date, the claimant has only received two net payments of £480.11 on 14 May 2020 and 2 June 2020, totaling £960.22 (£1,017.46 before the deduction of Income tax and National Insurance). The balance due is therefore £4,069.84 gross.
3. Unpaid holiday pay: £733.80 + £152.00 = **£885.80**. According to HMRC's website, Buddha Bar has declared itself to have made two payments for holiday pay on 21 March 2020 and 4 April 2020 for £733.80 and £152.00, respectively, totaling £885.80 gross.
4. Unpaid accrued holiday wages owed: **£223.25**. the claimant began employment with Buddha Bar on 20 July 2019. Taking the holiday year as beginning on 20 July 2020, the claimant accrued 23.5 hours of holiday from 20 July to 22 August 2020 (23.5 x £9.50 = £223.25).
5. Unpaid notice pay: **£317.96**. During the furlough period, Buddha Bar has declared itself to have made payments of £508.73 (gross) to the claimant every two weeks, accounting for 80% of his wages for that period. Calculating the payment the claimant is entitled to receive for this one week notice period based on Buddha Bar's calculation of 80% of his wages under the furlough scheme, the claimant is entitled to payment of £317.96 for this one week notice period ( $£508.73 \times 1.25 / 2 = £317.96$ ).

## Failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures

6. Under paragraph 32 of the ACAS Code of Practice on Disciplinary and Grievance Procedures ("**ACAS Code**"), if it is not possible for a grievance to be resolved informally, employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance. Under paragraph 33, employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. Under paragraph 40, following the meeting, the employer should decide on what action, if any, to take. Decisions should be communicated to the employee, in

writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance.

7. I am told that the claimant first informally raised his grievance regarding his unpaid furlough and holiday wages with Dimitar Hadziev, a manager at Buddha Bar. After he failed to respond, it is argued that the claimant formally raised his grievance in writing over WhatsApp (the accepted form of communication used between managers and employees at Buddha Bar) with Mr Christiaan Malan, operation manager at Buddha Bar, on 6 April 2020. Further messages were then sent to Ms Julia Stefanov, another manager at Buddha Bar, on 28 April 2020 and afterwards but the claimant did not receive a response. I have considered copies of the messages referred to which were attached to the email of 26 February 2021 referred to above.
8. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 2002 gives discretion to an Employment Tribunal to order an uplift to compensation, or a reduction in compensation, where a respondent or claimant respectively have failed to comply with a provision of the ACAS Code on Disciplinary and Grievance Procedures. It is submitted on behalf of the claimant that the later WhatsApp messages amounted to a formal grievance. I have not been referred to the grievance procedure, but doubt that it provides that the way of raising a formal grievance is to send messages over WhatsApp. It appears that a formal grievance was not raised by the claimant, although for understandable reasons, in the light of the failure of the respondent's employees to respond to the claimant in reply to his WhatsApp messages. Had the respondent tried to argue that there should be a reduction in compensation due to the claimant I would have rejected that. Equally however, I do not consider, in the absence of a formal grievance, that this is a case where there are proper grounds to apply an uplift. Judgement is therefore given for the gross amounts due, without any uplift.

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**Employment Judge A James**

**Dated: 1 March 2021**

Sent to the parties on:

2 March 2021

For the Tribunal: