



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr Odhran Kerr

**AND**

Stripes Mayfair Lola Foods Ltd

## OPEN PRELIMINARY HEARING

**Heard via CVP:**

**Before:** Employment Judge Nicolle

**For the Claimant: in person.**

**For the Respondent: did not take part in the proceedings.**

## JUDGMENT

1. The Claimant is awarded £511.30 for accrued holiday entitlement and £2,671.23 for an unauthorised deduction of wages in respect of TRONC payments.

### The Hearing

1. The Hearing was listed to take place in person, but no representative of the Respondent attended, and the Claimant was under the expectation that the hearing would take place by CVP. I therefore decided to convert the hearing to a remote one.

### Procedural History

1. The open preliminary hearing took place using the cloud video platform (CVP) under Rule 46.
2. The Claimant was told that it is an offence to record the proceedings.
3. From a technical perspective, there were no major difficulties.

### Non Participation by the Respondent

4. The Respondent failed to file a response to the claim form received on 2 September 2022 by the due date of 11 October 2022 or at any point thereafter. This failure was notwithstanding various attempts made by the Tribunal to contact appropriate representatives of the Respondent to include an email seeking a reply by 4pm, 2 March 2023. Further, emails were sent, but were undeliverable, to [f.verrasi@icloud.com](mailto:f.verrasi@icloud.com). An email was also sent to the Respondent care of its accountants seeking a reply by 4pm on 6 March 2023 but they replied saying that they were the incorrect contact for the Respondent.

5. The Claimant had advised that the premises at which he had worked were closed when he visited approximately two weeks after he left the Respondent's employment on 30 June 2022. He stated that he believes that the Respondent's owners are involved in other restaurant businesses in London but it is not clear whether they are operating under the same legal entity.

6. Having checked the position on Companies House the Respondent appears to be a dormant company with overdue accounts. Its registered address is the company accountants to whom the Tribunal sent an email but they have stated that they are not the relevant contact.

7. In the circumstances I considered it appropriate to proceed with the hearing in the absence of the Respondent on the basis that they had been given all reasonable opportunities to participate but had failed to do so.

#### The Claimant's Evidence

8. The Claimant gave evidence in response to questions I put to him. He confirmed that his claim related to accrued holiday entitlement and a failure to pay him the TRONC to which he had an expectation.

9. He said that he was typically working between 60 and 70 hours per week for the entirety of his employment with the Respondent between 17 April 2022 and 30 June 2022. He took no holiday during this time.

10. He said that when he commenced that Nad Ray, General Manager, (Mr Ray) advised him that he would be entitled to receive a TRONC payment which typically averaged £250 per week. He did not receive this during his employment. This applied to all staff within the restaurant. He questioned the General Manager; Mr Ray was replaced by Jodie Connolly, and the Operations Manager who he knows as Walter. They both indicated that he would receive payment but this did not take place.

11. Whilst he received payments of TRONC in relation to cash tips these were nominal as virtually all service charges were taken at 10% on card payments.

12. At no point did he receive an itemised pay slip.

13. The Claimant commenced employment as a waiter but after about three weeks was promoted to Restaurant Supervisor. He believes that as a result his

TRONC payment would have gone up but he confines his claim to £250 per week in accordance with the expectation following his conversation with Mr Ray.

**Decision and discussion**

14. The Tribunal awards the Claimant the sum of £511.30 as accrued holiday entitlement in accordance with the Working Time Regulations 1998 (the Regulations). This is calculated based on gross monthly pay of £2,592 and an annual entitlement under the Regulations to 28 days' paid leave. This figure does not include TRONC payments.

15. I find that the Claimant had a legitimate expectation, which acquired contractual effect, that he would receive TRONC payments. I find that the expectation of a TRONC payment was communicated to the Claimant at the beginning of his employment and periodically thereafter.

16. Given that the Claimant does not have any evidence of actual service charges taken by the Respondent on a week to week basis during his employment I have accepted the figure of £250 per week which multiplied by 52 gives £30,000 and when divided by 365 gives an average daily figure of £35.62. When multiplied by the 75 days of the Claimant's employment this gives a figure of £2,671.23.

17. I find that the failure to pay the Claimant TRONC constituted an unauthorised deduction from his wages in accordance with Section 13 of the Employment Rights Act 1996.

18. The Tribunal orders the Respondent to pay unpaid wages and accrued holiday entitlement to the Claimant of £3,182.53.

19. Where payments are made gross the Claimant will be responsible for all applicable tax and employee national insurance contributions.

Employment Judge Nicolle

Dated: 13 March 2023

Sent to the parties on:

13/03/2023

For the Tribunal Office