



EMPLOYMENT TRIBUNALS

Claimant(s): Mr D Rice

Respondent(s): Creative Cooking Limited (in place of 'Chef Byung')

Heard at: London South Employment Tribunal (via CVP) **On:** 19 February 2024

Before: Employment Judge Hanning

Appearances

For the Claimant(s): Mr Rice (In Person)

For the Respondent(s): Did Not Attend

JUDGMENT

- 1) Creative Cooking Limited is substituted for 'Chef Byung' as Respondent.
- 2) The Claimant's complaint of an unauthorised deduction of wages is well founded. The Respondent must pay the claimant the sum of **£655.52**. This amount is gross (consistent with all other payments made by the Respondent and the Claimant must account for any tax and NIC payable).
- 3) The Claimant's claim for unpaid annual leave is well founded. The Respondent must pay the claimant the sum of **£420.96**. This amount is gross (consistent with all other payments made by the Respondent and the Claimant must account for any tax and NIC payable).
- 4) The Claimant's claim for unpaid notice is well founded. The Respondent must pay the Claimant the sum of **£423.08**. This amount is gross (consistent with all other payments made by the Respondent and the Claimant must account for any tax and NIC payable).
- 5) The Respondent is ordered to pay to the Claimant an award under section 38 of the Employment Act 2002 of an amount equivalent to 4 weeks' pay which is a total of **£1,692.32**.

REASONS

- 1) At the hearing the Tribunal heard oral evidence given on oath by the claimant including reference to documents uploaded during the hearing.

- 2) During the hearing the claimant indicated he was not pursuing a claim for failure to pay National Minimum Wage as he intended to pursue that with HMRC. He was however pursuing claims for unpaid wages (including notice pay) and annual leave
- 3) The respondent did not attend and was not represented. No ET3 had been filed but the office was able to confirm notice of the hearing had been received but the respondent did not intend to appear.
- 4) In spite of the absence of the Respondent or any response, I was satisfied that I was able to make determinations on the claims on the available material.
- 5) The Claimant confirmed that while he had agreed his engagement with Chef Byung he had been paid by Creative Cooking Limited and he recognised them to be his actual employer. He had notified ACAS of that and the reference to Chef Byung alone in the ET1 was an error.
- 6) The Claimant was employed by the Respondent at the Sushi Garden Restaurant in Brighton from 1 May 2023 as a chef on an annual salary of £22,000. He was to work 4½ days a week. Owing to the timing of the days in each month for which he was scheduled to work, his days and hours would vary slightly from month to month but his pay remained constant at £1,833.33 per month.
- 7) He was never provided with any Statement of Terms and Conditions, a written contract nor any payslips. The Respondent was therefore, at the time the proceedings were begun in breach of their duty under section 1(1) of the Employment Rights Act 1996.
- 8) Having decided the job was not to his liking, on 22 August 2023 he reported to his manager, San, that he was giving 2 weeks' notice at the end of which he would take what he believed to be 3 weeks accrued annual leave for the rest of his employment. He was told by San that the restaurant required 3 weeks' notice of any annual leave and so he would not be able to take any leave nor would he be paid any for annual leave in place of taking it.
- 9) The Claimant reflected and considered that this refusal to let him take or otherwise pay him for annual leave was a fundamental breach of contract so on 23 August 2023 he resigned treating himself as having been constructively dismissed.
- 10) Although he had intended to give 2 weeks' notice he confirmed that this was not required and that in fact he had been told he was not obliged to give any notice at all. He accepted that no other notice period had been discussed or agreed. Absent agreement, the Claimant had a statutory entitlement pursuant to s86 of the Employment Rights Act 1996 to 1 week's notice. A single week's pay where the annual salary is £22,000 is **£423.08**.
- 11) In correspondence with ACAS after the end of his employment, the Respondent had acknowledged that the Claimant was entitled to **£420.96** for accrued but untaken annual leave but this had not been paid.

- 12)The Claimant had worked up to and including 22 August 2023. This was 71% of a month which would entitle the Claimant to £1,301.67 but he had been paid only £646.15. No explanation had been tendered for the shortfall of **£655.52**
- 13)The Claimant's claims included a claim listed in Schedule 5 of the Employment Act 2002 (unauthorised deduction from wages). By s38(3) of Act, where an award is made in respect of that claim and, as here, the Tribunal is satisfied that when the claim was begun the Respondent was in breach of their duty under section 1(1) of the Employment Rights Act 1996, then the Tribunal must, absent exceptional circumstances, increase the award by an amount equivalent to 2 weeks' pay and may, if it considers it just and equitable in all the circumstances, increase the award by an amount equivalent to 4 weeks' pay instead.
- 14)There are no exceptional circumstances which would mean no award should be made. The period of employment was relatively short which might have militated in favour of a lower increase at least when the statement was not required right away. However, since April 2020, the statement has been required at the start of employment so there is no mitigation in a 'slight' delay. Moreover, the complete failure to provide payslips is indicative of a systemic failure to operate effectively as an employer. For those reasons the award is to be increased by an amount equivalent to 4 weeks' pay.

Employment Judge Hanning
Date:19 February 2024

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Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.