

THE INDUSTRIAL TRIBUNALS

CASE REF: 10/18

CLAIMANT: Dean Coppard

RESPONDENT: Tullylagan Country House Hotel Ltd

DECISION

The decision of the tribunal is that the claimant should be awarded the sum of £1,000.00 in respect of outstanding holiday pay and four weeks' pay amounting to £2,000.00 in respect of the respondent's failure to provide initial particulars of employment, totalling £3,000.00. The claimant is not entitled to a remedy in relation to the respondent's failure to provide payslips as set out in this decision.

Constitution of Tribunal:

Employment Judge (sitting alone): Employment Judge Crothers

Appearances:

The claimant was represented by Mr O Toner, Solicitor of GCS Solicitors.

The respondent, which had entered a response, did not appear and was not represented on either the 4 June 2018, or 29 June 2018.

TITLE OF RESPONDENT

1. The correct title of the respondent is shown above.

THE CLAIM

2. The claimant presented the claim to the tribunal claiming that he was owed an amount in respect of breach of contract and for unlawful deduction of wages. Furthermore the claimant alleged that the respondent failed to provide him with itemised pay statements and with initial particulars of employment.

BACKGROUND

3. At the hearing on 4 June 2018, certain issues arose regarding the correct respondent and the precise status of the winding-up petition in respect of the company. The potential issue of an illegal contract was also raised. After affording Mr Toner some time with the claimant, it was decided to postpone the hearing until 29 June 2018 in order to afford Mr Toner and his client time to clarify the various issues. At the resumed hearing, the tribunal decided to dispose of the matter in accordance with Rule 27 of the Industrial Tribunal Rules of Procedure 2005 and to consider any information in its possession which had been made available to it or on behalf of the respondent. It was also decided that a winding-up petition was no longer an issue as it had been dismissed. Moreover, the respondent's response alleged that the claimant was self-employed and that he was not owed any monies. The tribunal also noted correspondence from Smart Solicitors dated 25 April 2018 and the fact that the respondent had not replied to Notices for Additional Information and Discovery. The claimant had presented his claim to the tribunal on 13 December 2017.

ISSUES

4. The issues before the tribunal were as follows:-
 - (1) Was there an illegal contract?
 - (2) If not, was the claimant an employee of the respondent?
 - (3) If the answer to (2) above is "yes", was the claimant owed an amount in respect of breach of contract and unlawful deduction of wages? Furthermore, did the respondent fail to provide the claimant with itemised pay statements and initial particulars of employment?

SOURCES OF EVIDENCE

5. The tribunal heard evidence from the claimant and from Christopher Joseph Black, a previous employee of the respondent and colleague of the claimant.

FINDINGS OF FACT

6. Having considered the evidence insofar as same related to the issues before it, the tribunal made the following findings of fact, on the balance of probabilities:-
 - (i) The claimant had been engaged by the respondent from 13 June 2017 until 5 November 2017 as Head Chef. He was offered £500 per week after discussion with the respondent's Mr Adrian Martin. The tribunal is satisfied that hours of work were also discussed and that there was never any discussion on the claimant being employed on a self-employed basis. It also appears that Mr Martin directed the claimant as to what he should be doing and when he should be in the premises. Furthermore there were discussions with Mr Martin regarding holidays. The claimant was not allowed to take holidays during busy periods in the summer time, during the wedding seasons, around the Christmas/New Year period, and other important days. The tribunal is satisfied that the respondent agreed 28 days holidays with the claimant. He claimed an amount for 10 days outstanding holidays before the tribunal. Although the claimant did not receive any verbal warnings, Mr Martin

did discuss issues with him arising out of matters which were not to his liking. There was no question of the claimant's services being substituted by Mr Martin during his period of engagement with the respondent.

- (ii) Upon leaving the respondent the claimant sought his P45 as he had commenced employment with another employer afterwards. The tribunal was shown correspondence from HMRC and from the claimant's accountant. There was evidence that the claimant also spoke to his accountant about the fact that the respondent had not provided payslips. However, the respondent did not co-operate in resolving these matters. The tribunal was satisfied that the claimant was an employee of the respondent. He had been paid in cash without deductions. Mr Black had obtained payslips from the respondent. He also did not have a written contract and was also paid weekly in cash. The tribunal also considered certain texts exchanged between the respondent and the claimant and with the general manager of the respondent in relation to outstanding monies and holiday pay. The tribunal is not satisfied that there is sufficient evidence of an illegal contract. Moreover, although the claimant made a claim in respect of the non-provision of itemised pay statements, there was no evidence of any un-notified deductions for the purposes of Articles 40 and 44 of the Employment Rights (Northern Ireland) Order 1996 ("the Order").
- (iii) It appears that the respondent is still trading and advertised for a chef to cover a wedding on 30 June 2018.

THE LAW

- 7. The tribunal considered the relevant provisions in the Order relating to unlawful deductions from wages, and failure to provide itemised pay statements, together with the relevant provisions in the Industrial Tribunal's Extension of Jurisdiction (Northern Ireland) 1994, Article 27 of the Employment (Northern Ireland) Order 2003, (in relation to failure to give the statement of employment particulars etc), and the law in relation to illegal contracts which would include contracts designed to defraud the HMRC by not paying income tax and/or national insurance.

SUBMISSIONS

- 8. The tribunal considered brief submissions by the claimant's counsel in relation to the issue of an illegal contract and the generality of the claimant's claim before the tribunal and the supplemental written submission dated 4 July 2018 (copy attached).

CONCLUSIONS

- 9. The tribunal, having carefully considered the evidence before it and having applied the relevant principles of law to the findings of fact, concludes as follows:-
 - (i) Although the claimant was not provided with payslips, there is no proof of un-notified deductions to entitle him to a remedy before the tribunal.
 - (ii) The claimant is entitled to two weeks' outstanding holiday pay, totalling £1,000.00.
 - (iii) The tribunal is also satisfied, under Article 27 of the Employment (Northern

Ireland) Order 2003, that the respondent pays the claimant four weeks' pay in the sum of £2,000.00.

(iv) Any application for costs will be the subject of a separate hearing and, should the claimant wish to pursue the same, a detailed application setting out the particulars and the specific grounds relied on must be forwarded to the tribunal office within 14 days of this decision being issued.

10. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 4 & 29 June 2018, Belfast.

Date decision recorded in register and issued to parties: