



EMPLOYMENT TRIBUNALS

Claimant: Paulo De Lucca

Respondent: Il Sorisso Ristorante Ltd.

Employment Judge Hargrove sitting at Croydon remotely by CVP on 7 December 2020.

Appearances: – For the claimant: – Ms Charlotte Goodman of Counsel,
For the respondent: – No attendance, contents of ET3 considered.

JUDGMENT AND REASONS.

It is adjudged as follows: –

1. The claimant was unfairly dismissed for redundancy and is entitled to a redundancy payment of £2362.50, and a compensatory award totalling £9071.87 (including a 5% uplift of £431.99 for breach of the ACAS code).
2. The respondent has failed to pay full notice pay due in breach of the Employment Tribunals (extension of jurisdiction) England and Wales Order 1994, And the respondent is ordered to pay one weeks notice pay amounting to £684.96 gross.
3. Pursuant to the working time regulations that responded to sort it paid to the claimant the sum of £1119.30 as holiday pay accrued and unpaid on termination.

REASONS.

1. By an ET1 received on 18th of March 2020 the claimant claimed unfair dismissal from his employment as a pizza chef, the balance of one week's notice pay due, and holiday pay due and unpaid on termination on 7 January 2020.
2. In its response the respondent claimed that he was fairly dismissed for redundancy. It did not admit the claimant's entitlement to notice pay or holiday pay.
3. There was a bundle of each side's documents, with excessive duplication, containing 170 pages. There was a witness statement from the claimant,

but none from the respondent. The respondent had written to the tribunal on the 13th of October 2020 indicating that the respondent was in the process of being wound up; and confirmed on the 2nd of November that it would not be attending the hearing listed for today. A Company search today indicates that the company remains Active.

4. In the absence of the respondent the employment tribunal considered the claimant's witness statement, the bundle of documents, the contents of the ET3 and Counsel's submissions.
5. I am satisfied that even on the assumption that the principal reason for dismissal was redundancy, the decision was procedurally and substantively unfair; that the claimant was entitled to a Redundancy payment, one week's unpaid notice pay, and unpaid holiday pay due on termination.
6. The awards are calculated as follows: –
 - 6.1. For unfair dismissal, a redundancy payment calculated at 4.5 weeks at £525 per week amounting to £2362.50, and a compensatory award calculated as follows: – Loss of earnings from 14th January 2020 to 19 March 2020, £4815.72; loss of furlough pay from 20th of March to 1st of June 2020, 80% of net pay amounting to £4494.64, less £1633.33 in alternative employment which ended in March 2020, plus £500 for loss of statutory rights, £412.82 for loss of the employers pension contributions, £50 for Expenses of finding alternative employment, and an uplift of 5% of the total compensatory award, amounting to £431.99, for failing to comply with the ACAS code of conduct for grievances, the claimant not being permitted to be attended by his Trade union representative at Grievance hearings.
 - 6.2. For notice pay, One weeks pay amounting to £684.96 gross.
 - 6.3. For holiday pay due and unpaid on termination under the working time regulations 1998, £1804.30, calculated on the basis of 4.5 days carried forward from the holiday year ending 31st of December 2018, +36 days holiday including bank holidays in 2019, less 21.5 days holiday pay paid in 2019, calculated at the rate of £137 per day net of tax and NI, and taking into account and deducting other (underpayments) of holiday pay made amounting to £1072.20, leaving a total due of £1804.30.

Employment Judge Hargrove
Date 7 December 2020.