



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms F Cani

**Respondent:** Ms S Ukaye (1)  
Firnam Limited (2)

**Heard at:** Birmingham

**On:** 26 November 2021

**Before:** Regional Employment Judge Findlay

## Representation

Claimant: representing herself

Respondents: Ms Ukaye, Director of Firnam Limited

The Tribunal was assisted by Ms M Kiose, Albanian Interpreter

# RESERVED JUDGMENT

1. The claims against the first respondent are dismissed.
2. The second respondent is in breach of the claimant's contract of employment and must pay the claimant £480 (representing one month's pay whilst on furlough) and in addition has made an unauthorized deduction from the claimant's wages of £20 and must pay the claimant that amount, a total sum of £500 (net).

# REASONS

1. **Issues** : the claimant's claim, as set out in her claim form dated 19<sup>th</sup> of February 2021 is for unauthorised deduction of wages or alternatively breach of contract in respect of unpaid wages whilst on furlough (£480) and a further £20 which she says was outstanding when her employment ended on (or about) 13 February 2021. The 1<sup>st</sup> respondent asserts that all sums have been paid, although today Ms Ukaye said that she did not understand what the additional £20 referred to.

2. There is a further issue as to whether the first or second respondent employed the claimant. In addition, in the response form, the respondent refers to an alleged loan to the claimant, but this has not been pursued in the evidence (no evidence was produced of payment or amount) and there is no evidence before

me to suggest that the loan, if it was made, had any connection to the employment.

3. The case was previously listed for a telephone preliminary hearing on 22 September 2021. At that stage, the first respondent was asserting that the claimant was not employed by herself but by the second respondent company. It was also apparent from the file that the claimant was having difficulty understanding the tribunal proceedings.

4. I heard that telephone case management hearing, where it was apparent that the claimant did not fully understand English. The claimant was unable to explain to me whether or not she would be able to join a video hearing, and so I listed the final hearing in person, and directed provision of an Albanian interpreter.

5. At the final hearing, Ms M Kiose attended to assist the Tribunal by interpreting for the claimant, and I am grateful to her for doing so.

6. Although I gave directions on 22 September for the parties to send each other any relevant documents, including as to the identity of the employer, any written contract of employment, wage slips, bank statements et cetera, the claimant did not send any documents to the respondents, and the respondent produced very limited documentation – witness statements from two members of staff and a copy of the claimant's P45.

7. Although I had directed that the parties should exchange written witness statements by 11 November 2021, the claimant had not produced a written witness statement and the first respondent had not produced a statement from herself.

8. In the interests of the overriding objective, I allowed both the claimant and first respondent to give evidence orally, and each of them was given time to think of questions to put to the other.

### **Findings of Fact**

9. Although the claimant's dates of starting or ending her employment were not apparent from the claim or response, the parties were in agreement that the claimant had been employed since at least December 2019 until February 2021. I say "at least" from December 2019, because both parties referred to a previous employer at the same business (a restaurant), and they seem to be in agreement that the employment transferred to either the first or the second respondent in December 2019.

10. According to the P 45 which was produced by the first respondent the claimant's employment ended on 13 February 2021. I find on the evidence before me that this was the date upon which the employment ended, and that the last date upon which the claimant had attended the premises to carry out work-related activity was approximately seven days earlier. I use the term "work-related activity" because there is something of a dispute as to whether the claimant was carrying out training or some other types of work.

11. The claimant was unclear as to the identity of her employer, although she said that she saw the name of the second respondent on payslips by January 2020. The first respondent, who is a director of the second respondent, gave

evidence (which I accept) that after taking over the business, there was a meeting at which she told staff that the employer was called Firnam Ltd, and that the name of the company would appear on payslips when the staff were paid. I consider that the claimant has either forgotten that she was told this or never understood the significance of what she was being told. The claimant continued to work after receiving payment in the name of Firnam Ltd, and I find on the balance of probabilities that she was employed by the second respondent at the relevant time.

12. According to the claim form and the evidence given by the claimant, the sum of £480 refers to a period between March and 20 August 2020 when she was on furlough but was not paid the correct amount of wages. In her claim form she said that she was only paid for the first two months that she was on furlough in that period. She said that she has been out of the country for part of the time during that period and that the unpaid amount related to a period after she came back to Birmingham, but before she started attending the workplace for 2 hours per week from 20 August 2020.

13. The 1st respondent said in evidence that the claimant had been paid two payments of £1200 each, which covered all of the amounts due to her during the period of furlough between 22<sup>nd</sup> March and 20 August 2020. She was unable to explain how these sums had been calculated. The claimant disputed that she had been paid the full amount of the furlough money, as above.

14. The first respondent said that the claimant had also been given payslips for payments made in March, and that the claimant had signed two pieces of paper showing the amounts paid “for furlough” during the period 22<sup>nd</sup> March to 20<sup>th</sup> of August 2020. Despite this (and the directions I had given), the first and second respondents had not produced either any payslips or any other evidence, whether by means of signed receipts or bank statements or accounting documents, to show how much had been paid to the claimant during that period.

15. I did not accept the first respondent’s evidence that the respondents did not retain the receipts (which the claimant says she signed) for furlough money received in the period March to August 2020 because they did not think it was important to do so. There would seem to be little point in requiring the claimant to sign these receipts for any reason other than to keep a record of payment (and of how much was paid). Likewise, I did not accept the first respondent’s evidence that the reason that she had produced no payslips to show the amounts paid to the claimant either during that period or towards the end of the claimant’s employment (in respect of the disputed sum of £20) was that her accountant had been on holiday. There was a period of two months between the telephone hearing on 22<sup>nd</sup> September and the final hearing on 26 November when the respondents could have obtained copies of payslips, bank statements or other accounting records showing what had been paid to the claimant, but no evidence of any steps taken to do so.

16. The claimant, with the help of the Citizens Advice Bureau, contacted ACAS within a week of the end of her employment and made her claim to the tribunal asserting that she was owed a total of £500 on the day the certificate was issued. The respondent has not responded directly to those complaints of underpayment until very recently, when a partial and unsubstantiated explanation has been given (that full payment was made as above), referring instead to an apparent fracas which erupted on the day the claimant’s employment ended. I accept the

claimant's evidence (which was not seriously challenged by the respondent) that, approximately a week before 13 February 2021, she was unable to attend at the restaurant to collect a payment of £20 (which was due to her for training other staff) because of her husband's ill health and returned to obtain it on 13 February, when her employment ended.

17. I also accept, on the balance of probabilities, that the claimant has been underpaid the sum of £480 in respect of furlough money. The claimant has maintained that she was underpaid throughout.

18. The respondents accept that the claimant was on furlough, and entitled to be paid, during the period in question (22 March to 20 August 2020). They have not produced any documentation to show how much was paid, nor have they given any details of how they calculated any payments. Such documentation should have been readily available to them, not least because they will have claimed furlough money from the government in respect of wages paid to their staff.

19. It is true that the claimant has not produced documentary evidence of what she was paid either, but I accept her evidence that, although the CAB were available to help her lodge her claim she has not been able to get such assistance since the last preliminary hearing. She said she was unable to understand all of the order which was given. The 1<sup>st</sup> respondent suggested that the claimant's daughter can speak English, but accepted that the claimant's daughter is aged 13. I accepted the claimant's evidence that, as she is thirteen years old, she did not think her daughter would be able to help her with her Tribunal claim.

## **RELEVANT LAW**

20. Under section 3(2) of the Employment Tribunals Act 1996 and article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order"), Employment Tribunals have jurisdiction to consider claims for damages for breach of contract of employment, or other contract connected with employment, or sums due under such a contract, which arises or is outstanding on termination of employment. It is not suggested that the claim is out of time under article 7 of the Order.

21. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make a deduction from the wages of a worker employed by him unless the deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

22. Subsection 13(3) of the 1996 Act provides that where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

## **APPLICATION OF LAW TO FACTS**

23. The respondents do not dispute that the claimant was an employee during the relevant period. It is common ground that the claimant was entitled to be paid furlough pay during the period 22nd March to 20th of August 2020. It is also agreed that the claimant would attend work for two hours per week (the respondents say this was to provide training to others), for which she was entitled to be paid £20 per week, from the 20th of August 2020 until the end of her employment.

23. I have found that the claimant was employed throughout the relevant period by the 2nd respondent, and the claims against the 1st respondent are therefore dismissed

24. The claimant has maintained throughout that whilst on furlough, one month's wages, which she calculates at £480(net), was not paid to her during the period March to the 20th of August 2020 when she was in Birmingham and available to work if required. The respondent asserts that the case is "a lie" but has made no attempt to provide documentary evidence to show how much was paid to the claimant (or how much they say was due and how that was calculated) during that period. They have provided no written statement of terms and conditions. In the circumstances, I find that during the period 22nd March to the 20th of August 2020 the claimant remained employed by the second respondent whilst on furlough, and that it was an express or implied term of her contract of employment with it that she would continue to be paid according to furlough rules whilst available and willing to work during that period. The respondents did not dispute that. I do not accept that, as alleged, the 2<sup>nd</sup> respondent paid the claimant the full amount due during that period. In breach of contract, the 2nd respondent underpaid the claimant the sum of £480 pounds (net). She is therefore entitled to be compensated for that amount. This could, alternatively, have been said to be an unauthorised deduction but, although the respondent did not take the point, it is arguable that such a claim (as opposed to a claim of breach of contract) would be out of time.

25. I have accepted that, approximately a week before the claimants contract of employment ended, she attended at work to train others for two hours, for which she was entitled to be paid the sum of £20. She was unable to attend work on the following day to collect her payment due to her husband's ill health. There was an incident at the claimants workplace on the 13th of February in respect of which the police were later involved, and as a result of that the claimant was not paid the outstanding sum of £20.

26. That sum of £20 pounds should have been payable to the claimant no later than 13th of February 2021. There was no relevant provision of the claimant's contract authorising deduction, and she had not signified her consent to any deductions in writing.

27. The second respondent has therefore made an unauthorised deduction from the claimant's wages of the sum of £20 pounds and must pay that amount to the claimant in addition to the £480 pounds referred to above.

**Regional Employment Judge Findlay  
31 December 2021**