



EMPLOYMENT TRIBUNALS

Claimant: Mr M Abousif

Respondent: Al Khayma Lebanese Restaurant

Heard at: East London Hearing Centre

On: 15 July & 13 September 2021,
17 December 2021 (in chambers)

Before: Employment Judge O'Brien (sitting alone)

Representation:

Claimant: Mr E Eluwa, solicitor

Respondent: Mr A Miah of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaint of unfair dismissal for asserting a statutory right fails and is dismissed.
2. The claimant's complaint of unfair dismissal on the grounds of protected disclosure fails and is dismissed.
3. The claimant's claim for damages for wrongful dismissal fails and is dismissed.
4. The claimant's complaint of unauthorized deductions from wages fails and is dismissed.
5. The claimant's claim for payment in lieu of accrued but untaken holiday fails and is dismissed.

REASONS

1 On 8 January 2021, the claimant presented complaints of unfair dismissal on the grounds of asserting a statutory right and/ or making a protected disclosure, wrongful dismissal, unauthorised deductions from wages and a failure to make a payment in lieu of accrued but untaken holiday. The respondent resists the claims.

ISSUES

2 On 24 April 2021, Employment Judge Massarella ordered the claimant to provide particulars of the statutory rights he claimed to have asserted to the respondent together with the dates on which it was said that he had done so. The claimant confirmed on 3 May 2021 that he had asserted the following statutory rights: the right to have an employment contract; the right to be issued with (correct) payslips; the right to be paid correctly and regularly; and the right to take and be paid for holiday leave. He alleged that he had raised these matters with both Mr Khan and Ms Syed on a number of occasions, including raising the first three at meetings in or around March 2019 and May 2019, the latter at a meeting in or around August 2019, and all of them in early September 2020.

3 On the first day of the hearing, the parties agreed with me that the allegation in the particulars of claim that the claimant had been victimised for standing up to slave labour was an allegation of automatic unfair dismissal for making a protected disclosure. The details of that aspect of the claimant's claim are set out in paragraphs 32 to 41 of his witness statement.

4 Consequently, the issues to be decided by the tribunal are as follows:

Automatically unfair dismissal

- 4.1 Was the claimant dismissed?
- 4.2 If so, did the claimant assert the statutory rights set out in paragraph 2 above on the occasions similarly set out in that paragraph?
- 4.3 Further or alternatively, did the claimant make the disclosures of information to the respondent as alleged in paragraphs 32 to 41 of his witness statement?
- 4.4 If so, did the claimant reasonably believe that they tended to show that the respondent was in breach of a legal obligation?
- 4.5 If so, did the claimant reasonably believe that the disclosure was in the public interest?
- 4.6 Was the reason or principal reason for the claimant's dismissal any of the assertions of statutory rights or protected disclosures found to have occurred?
- 4.7 If so, to what compensation is he entitled?

Wrongful dismissal

- 4.8 Was the claimant dismissed?

- 4.9 If so, was he given, or paid in lieu of, his contractual period of notice.
- 4.10 If not or not fully, for how long and at what rate should he be compensated?

Unauthorised deductions from wages

- 4.11 Did the claimant work after 31 August 2020?
- 4.12 If so, until when, and was he paid for that period of work?
- 4.13 At what rate should he have been paid?

Holiday pay

- 4.14 What accrued but untaken entitlement to holiday did the claimant have at date of termination?
- 4.15 Was the claimant paid in lieu of any or all of that entitlement?
- 4.16 If not, at what rate should the balance be paid?

EVIDENCE

5 Over the course of this hearing, I heard evidence on the basis of written witness statements. The claimant gave oral evidence on his own behalf and relied on statements from a number of witnesses who did not attend. I shall explain below the weight I was able to place on the latter witnesses' evidence. On behalf of the respondent, I heard oral evidence from: Mr Khan, the owner and director of the respondent and Ms Syed, manager.

6 The Tribunal was also provided with several bundles of documents, one accompanying an additional witness statement from Ms Syed, and a number of loose documents provided during proceedings. No serious objection was taken by either side to the other's additional documents save for those provided by the claimant after the final day of the hearing and before my chambers day. However, in that regard, the table of payments said to have been received by the claimant from the respondent had been ordered by me, in the presence of and without any objection from Mr Miah, and the remaining documents were ultimately immaterial. Therefore, I took the claimant's additional documents into account insofar as they were relevant.

7 The parties each made oral submissions, which I took into account when determining the issues as stated above.

FINDINGS OF FACT

8 In order to determine the issues as agreed between the parties, I made following findings of fact, resolving any disputes on the balance of probabilities.

9 None of the live witnesses was particularly impressive or reliable. Each sought to assert as fact matters which were demonstrably false. For instance, the claimant claimed that he had attempted to restrain Ms Syed when she had been arguing with a colleague on 14 September 2020 only to accept, when provided with the proof, that she had been out of the country that day. Ms Syed's evidence about the date on which the claimant had ceased working for the respondent was inconsistent with a subsequent Whatsapp exchange

between her and the claimant, and her explanation for that exchange simply begged belief. Mr Khan gave an utterly incredible explanation for why the sums received by the claimant were inconsistent with his pay slips and claimed to keep a record for reconciliation purposes, only to fail to produce any such reconciliation calculations when ordered to do so. On other occasions, the witnesses' evidence was unclear or inconsistent. I was unable to take much if anything of what they said at face value and based my findings principally on the contemporaneous documentation.

10 I was unable to place any weight on the statements of the witnesses who failed to attend. Mr Eluwa argued that the witnesses had been intimidated from attending by the respondent and that I should therefore give them significant weight. However, it was clear from the claimant's own evidence that these witnesses never intended to attend Tribunal. I do not in any event accept that the witnesses had in fact been intimidated. They made allegations of illegal behaviour on the part of the respondent and should have been made available for challenge.

11 In any event, the issue which I had to determine was not whether the respondent had in fact acted in breach of a legal obligation but rather whether the claimant had disclosed information which in his reasonable belief tended to show that that was the case. Regrettably, both parties wasted no small amount of time failing to distinguish between these two propositions.

12 The claimant is an Egyptian national whose right to work in the United Kingdom arises from his status as a family member of an EEA national. He is an experienced chef.

13 The claimant claims to have commenced working for the respondent, in November 2018, for a brief initial period on a part-time basis. He was working at the time for another restaurant, Maison du Mezze, and had to give two weeks' notice. He claimed to have started working full time for the respondent in December 2019. However, the respondent insists that he started with it part-time in May 2020 and full-time from June 2020. The claimant's P45 from Maison du Mezze shows his leaving date as 25 May 2019. Consequently, I find the respondent's account to be preferable. The claimant started working for the respondent part-time in or around mid-May 2020 and full-time from 3 June 2020. I should add that the claimant has not in his schedule of monies received from the respondent identified anything before July 2020.

14 The respondent's job offer to the claimant was made in the following terms, 'Just want to confirm. £800 per week salary. We will put you on payroll 20 hours per week. Timings 3 to 11, 6 days in a week.' Plainly, 8 hours a day for 6 days a week is 48 hours and not 20.

15 Ms Syed's explanation for the discrepancy appeared to be that the claimant would be paid £800 per week once he started full-time but would work 20 hours a week until then. However, part-time work would, she said, be paid at or near minimum wage rather than at his full-time rate. According to the payslips, the claimant worked 86.66 hours per month (20 hours per week) until he was furloughed in April 2020. The claimant claims that he did in fact work full time from soon after starting and was paid a total of £800 net per week, although part of it would be paid after a short period into his bank account in accordance with his payslips and the rest cash in hand.

16 The respondent says that the payments of £800 represent payments in respect of the salaries of both the claimant and Mr Saleh (who it is asserted is the claimant's brother)

and additional financial assistance given by Mr Khan to the pair. However, if that were true there would be some record of how the sums actually paid were reconciled with the sums due to the claimant and Mr Saleh, and as I have noted above no reconciliation calculations have been disclosed. Moreover, there is evidence that the respondent's employees were used to being paid at least partly cash in hand, such as a Whatsapp message on the work group from Ms Syed on or around 22 June 2020 saying, 'Have to be clear at this time. It's not about Corona, it depends on customers, even if we will open full-time, everyone has to be on payslip max 35 to 40 hours. And extra hours will be cash in hand. How you were working before all cash in hand won't be any more'

17 All in all, I am satisfied on balance that the claimant was indeed paid a basic salary of £800 net per week for working 48 hours each week, from shortly after he started working for the respondent.

18 It follows that the question of whether Mr Saleh is the claimant's brother is a red herring. However, for the sake of completeness, I make the following observations. Whilst the fact that the claimant and Mr Saleh seem to have referred to each other as 'brother' reflects a not uncommon practice amongst Muslim men, there are a number of reasons why they might well be so related. For instance, it is an undisputed fact that Mr Saleh was known by everyone at the restaurant as Hameda' rather than Abid or Ali. His name was given in his Islamic marriage certificate as Hameda Abousif (and his nationality given as Egyptian). Additionally, Mr Saleh's right to work documentation bears curious anomalies: it is an application registration card on which the right to work endorsement is different on the front and back, and the endorsement on the back is misspelt (it says 'employment permitted').

19 Nevertheless, Mr Saleh is not one of those the claimant alleges worked illegally for the respondent or about whom he claims to have raised a complaint to the respondent. There are other authorities to whom the respondent should address these allegations if it pursuing the point.

20 The claimant recounts how, in August 2019, he asked for two weeks leave to visit family in Egypt and was allowed the time off but refused any holiday pay. This does not appear to be in dispute; however, the respondent alleges that it was entitled to refuse to pay holiday pay because the claimant was not at that stage contractually entitled to it.

21 The claimant claims that he complained at the time that he was entitled to paid holiday. That would be unsurprising, and I accept that that is likely to have happened; however, he continued to work for the respondent thereafter without suffering any apparent adverse effects.

22 The claimant claims that he complained in a number of occasions about the fact that his wage slips did not match his pay and that he had not been given a written contract of employment. However, none of the extensive WhatsApp communications provided various stages by the parties suggest any complaint at the time. Indeed, in respect of the wage slips I consider it more likely than not that the claimant was well aware that he was being paid in part on the books and in part by cash in hand and was happy with that arrangement. I note below that he appears to have similarly split his subsequent earnings as a security officer in a similar manner.

23 As for the lack of contract, it is notable that, when the respondent sought to impose fresh written terms on its employees in July 2020, the claimant did not respond with any complaint about the time it had taken for such a document to be produced.

24 Consequently, I do not accept that the claimant asserted at the times alleged his statutory right to itemised payslips or to a written statement of particulars of employment. Even if he had, again his employment appears to have continued thereafter without any adverse consequences.

25 I should add that the claimant did not, at the time that the written contract was offered to all employees expressly refuse to accept it. This is perhaps understandable: the employees had been told in terms that they would be dismissed if they refused to accept the contract. Instead, he never returned a signed copy of the contract.

26 The claimant claims that the respondent routinely employed individuals without a right to work in the United Kingdom and exploited their status in such ways as underpaying them or dismissing them without cause. He has provided a number of witness statements from individuals claiming to have been treated that way by the respondent. In each witness statement, there are complaints of being required to pay a deposit in order to be taken on by the respondent, being made to work long hours, and being dismissed without notice or return of the deposit. The statements are all structurally very similar and, despite making serious allegations of unlawful behaviour, their authors did not attend to give evidence. Some of the statements are inconsistent about the claimed dates of employment.

27 For instance, Mahrous Mohammed claims in paragraph 3 of his witness statement to have been interviewed in December 2019 but in paragraph 5 says that he started work in January 2019. Ali Obeid claims in paragraph 2 of his witness statement to have been employed from 11 November 2018 until 5 September 2020 when he was dismissed. However, in paragraph 8 he says that he was dismissed on 20 October 2020. Yasin Ahmed says in paragraphs 2 and 5 of his witness statement that he started work on 11 May 2020 but in paragraph 9 gives his dates of employment as 10 November 2018 to 5 September 2020.

28 The respondent claims that one of the individuals, an Egyptian national by the name of Abdu Mahmoud, is in fact called Mohammed Abdu, and produced the Italian EEA Residence card he had provided for the relevant right to work checks. Weighing all of these factors together, I concluded that I should place very little weight on these statements.

29 I should add that the respondent accepts that two of the individuals named by the claimant worked briefly for it without any right to work checks having been completed during the brief period of engagement. In one case, Yassin Ahmed, it was said that the individual was a trainee who was not taken on but instead let go after a week. The other, Medhat Ibrahim, was said to have been a contractor who was paid from petty cash.

30 All in all, I have no reliable evidence that the respondent routinely employed and exploited individuals who had no right to work in the United Kingdom. However, it does appear, on its own evidence about Medhat Ibrahim and Yassin Ahmed as well as the visibly suspicious right to work documentation and ambiguity of the true name of Abid Ali Saleh, that the respondent took a less than punctilious approach to checking the right to work of its workers.

31 Nevertheless, the question is whether the claimant disclosed information to the respondent tending to show, in his reasonable belief, that it was breaking the law by employing people without the right to work in this country. He claims to have done so to Mr Khan on 14 August 2020 and that Mr Khan's reaction, to threaten to sack him if he continued to talk about the undocumented members of staff, was what caused the claimant to resign.

However, the claimant's Whatsapp notice of resignation makes no mention of misbehaviour by Mr Khan. Rather, the claimant apologised for his own behaviour:

'Hi I am sorry for everything I have done it I don't have any problem Al Khayma Strand
I will be so happy when you find another chef
On this as my notice and I'm sorry again
My last day in work 31/8/2020
Thank you
Bashir

32 Nor does any of the subsequent WhatsApp correspondence between the claimant and Ms Syed refer to either the claimant's claimed concerns about the workforce or Mr Khan's reported threats. Consequently, I do not accept the claimant's account of an exchange with Mr Khan on 14 August 2021. I am not persuaded on balance that the claimant complained to Mr Khan on that or any other day about the respondent's use of illegal workers.

33 Indeed, the WhatsApp correspondence (of which I have been provided with a great many pages, not arranged in chronological order) does not appear to corroborate the respondent's claims of poor conduct on the claimant's behalf or vice versa. It is fair to say that Ms Syed's communications to the staff in general does appear on occasion to be abrupt or high handed but, by and large, her relationship with the claimant seems to have been cordial.

34 The only significant issues to which I was taken or have found are as follows. On 5 May 2020, when the respondent wanted photographs of the employees' debit cards to confirm that furlough was being paid into the correct accounts, messages were sent from the claimant's WhatsApp account complaining that the request was unlawful. However, it does not appear to be controversial that this message was sent by Mr Saleh, using the claimant's phone. The other was a statement on 14 September 2020 on the restaurant's WhatsApp group by Ms Syed that she found something the claimant and Mr Saleh to be disappointing and disrespectful and a WhatsApp reply the same day to the claimant asking how she was, saying:

'No need to ask me how me how I am
If anything about work u can text me or call me
If u can't give me respect in front of that idiot, I can't expect anything from u anymore
So please
If anything about work then text me
Thank you'

35 The claimant claims that this latter incident arose from his intervening in a serious argument between Ms Syed and a member of staff. He says in his witness statement that he did his best 'to restrain' Ms Syed. However, he subsequently accepted that Ms Syed had been abroad for about a week by that date. Instead, it appears from the Whatsapp messages the incident related to someone invited to the restaurant in connection with Mr Saleh's engagement.

36 The claimant claims that he was begged by Mr Khan on 15 August 2021 to withdraw his resignation and agreed to do so. However, he claims that Mr Khan and Ms Syed became increasingly hostile to him after the 14 September incident and that Mr Khan eventually

dismissed him without notice or justification on 20 September 2020. The respondent alleges that the claimant's employment ended on 31 August 2020.

37 It is utterly clear to me that the claimant did in fact continue working for the respondent after 31 August 2020. For instance, WhatsApp messages from early September between the claimant and Ms Syed see her referring to Mr Khan as 'boss' and the claimant as 'chef'. On 13 September, when the claimant was not in, Ms Syed says to him, 'Boss doesn't allow head chef off on Sunday'. However, as set out above, I do not accept the claimant's account of how and why he resigned.

38 It would appear that Mr Saleh intended to visit his mother in Egypt in October 2020. She had been in hospital. However, he needed money to buy the ticket and does not appear to have obtained replacement employment until the last week of September. It appears likely to me, therefore, that that is why he decided to stay on at the restaurant for a few more weeks and then left to start that job. Moreover, there is no independent evidence of any deterioration in the relationship between Mr Khan and the claimant after 14 September 2020.

39 The claimant admitted in evidence that he had undertaken security work after leaving the respondent for which he been paid both into his bank account and cash in hand.

40 The claimant received £400 into his bank account from the respondent on 7 September 2020. He does not appear to have taken any leave in his final leave year or been paid any further sum in lieu of his accrued but untaken leave.

THE LAW

Unfair Dismissal

41 Pursuant to s94 of the Employment Rights Act 1996 (ERA), an employee is entitled not to be unfairly dismissed by his employer.

42 Section 43A ERA ('Meaning of 'protected disclosure') provides:

'In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any sections 43C to 43H.'

43 Section 43B ERA ('Disclosures qualifying for protection') provides:

'(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- ...

44 Section 43C ERA ('Disclosure to employer or other responsible person') provides:

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure—

(a) to his employer,...

45 Section 103A ERA provides:

‘An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.’

46 Section 104 ERA provides:

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

...
(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

...

(4) The following are relevant statutory rights for the purposes of this section—

(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal,

...

(d) the rights conferred by the Working Time Regulations 1998...

47 The right to a written statement of particulars of employment and to itemised payslips, the right not to suffer unauthorised deductions from wages are rights conferred by the ERA for which the remedy for infringement is a claim to this Tribunal.

48 Where a claimant has less than 2 years’ continuous service and relies on a ground for claiming unfair dismissal to which the 2-year qualifying period does not apply, the claimant bears the burden of proving the reason for dismissal.

Breach of Contract

49 Pursuant to art 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, a claim may be brought in the Employment Tribunal for damages in respect of a breach of contract arising or outstanding on termination of employment.

50 An employer is only entitled to dismiss an employee without sufficient contractual notice (or pay in lieu, the contract so permits) if dismissing in acceptance of a repudiatory breach on the part of the employee.

51 Whether misconduct is sufficient to justify summary dismissal is a question of fact; conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master

should no longer be required to retain the servant in his employment (**Neary v the Dean of Westminster [1999] IRLR 288**).

52 The burden lies on the employer to prove that the employee was in fundamental breach of contract.

53 Pursuant to art 4 of the 1994 Order, an employer can, if any employee has brought a claim under the Order, bring a counterclaim for damages for breach of contract.

Unauthorised Deductions from Wages and Holiday Pay

54 Pursuant to s13 ERA, an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised 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. Unless the employee's contract provides for a more generous entitlement, an employee is entitled to 5.6 weeks' paid leave every year (regulations 13 and 13A of the Working Time Regulations 1998). The employee is entitled on termination of employment to payment in lieu of accrued but untaken holiday (regulation 14).

Written Statement of Particulars of Employment

55 Pursuant to s1(1) ERA, where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment. The law prior to 6 April 2020 required the statement to be given within 2 months of commencement of employment. Where an employee succeeds in respect of certain claims before the Employment Tribunal and, when the proceedings were begun, the employer was in breach of its duty under s1(1) ERA or s4(1) ERA (duty to give a statement of changes of particulars of employment), then the Tribunal must increase the award by a certain amount dependant on the circumstances (per s38 of the Employment Act 2002).

CONCLUSIONS

Unfair and/or Wrongful Dismissal

56 As is clear from my findings of fact above, I find that the claimant gave notice on or around 14 August 2021, withdrew or deferred that notice and eventually resigned with effect from 20 September 2020. He was not expressly dismissed as alleged nor, for the sake of completeness, do I accept that he resigned in response to a fundamental breach of contract on the respondent's part. Instead, he resigned to begin work in the security sector, work he had obtained in advance of his effective date of termination.

57 It follows that he was not dismissed either for making a protected disclosure or for asserting a statutory right. In any event, as I have set out above, I do not accept that the claimant did make the disclosure claimed about the respondent's alleged use of illegal workers. Nor do I accept that he complained about his (lack of) contract, the inaccuracy of his payslips or the manner of his pay. Instead, I find on balance that he was well aware of and in agreement with the way in which he was paid: a modest fraction via PAYE and the remainder by cash in hand. The claimant may well have complained in or around August 2019 that the respondent was not going to provide holiday pay for his planned leave but not thereafter. There is no basis whatsoever to find that the complaint in August 2020

influenced in any material way (let alone was the reason or principal reason for) any behaviour towards him over a year later.

58 Consequently, even if I had accepted that the claimant was dismissed, he would not have been automatically unfairly dismissed. He lacked sufficient continuous service to bring a claim for ordinary unfair dismissal.

59 Even if I had found that the claimant was unfairly dismissed, I would have had to take into account my finding above that the claimant was well aware of and in agreement with the way he was paid by the respondent. Those arrangements were for only part (20 hours per week at or just above minimum wage) to be paid via PAYE and the rest to be paid cash in hand.

60 Realising during my deliberations that illegality might well be in issue, I invited submissions from the parties as to:

60.1 Whether, if I did indeed find that the claimant was paid £800 net per week of which only a fraction was paid via PAYE, it followed that the contract of employment was illegal if a) he agreed to those arrangements or b) he did not object to those arrangements.

60.2 If so, whether any of the causes of action (unfair dismissal, wrongful dismissal, unauthorised deductions, and holiday pay) could succeed.

60.3 Further or alternatively, whether the contract of employment was severable, such that an action could be brought on some provisions of the contract if not on all of them and, if so, which part or parts of the contract were severable.

61 The claimant's representative's submissions did not address those points, save to accept that the claimant's contract was not severable. Instead, it was reasserted that the claimant had objected to the manner in which the respondent had paid him, and that all of his claims should succeed.

62 The respondent on the other hand made submissions on each of the points I raised. In short, it submitted that the claimant would be unable to enforce an employment contract which was illegal on creation or even one that was lawful when made but where there was illegality of performance. That was the case even if the claimant was aware but unhappy with the illegality, provided that he acquiesced to it. Consequently, the contract was not severable and all of the claimant's claims must fail.

63 I have found that the claimant was aware of and agreed to being remunerated in part via PAYE and in cash for the balance. It is tolerably clear that that is what was being proposed before he started and, even if he had not initially appreciated that that was intended, I find that he became aware shortly after starting work full-time for the respondent. I have found that he did not thereafter object to the arrangement. Consequently, I find that the claimant agreed to terms which were plainly intended to and/or had the effect of defrauding the exchequer and so his contract was illegal on creation. Even if I had accepted that the contract as originally agreed was lawful, it was unlawfully performed from when the claimant began working full-time, with his knowledge and active participation. In other words, I find that the claimant had knowledge of the circumstances giving rise to the illegality in question and also, in either event, actively participated. Given the public interest in preventing fraud on the exchequer, the extent of the illegal activities (the majority of the

claimant's salary was to be paid 'cash in hand') and the public interest in not condoning such illegal behaviour, and given that both parties agree that the claimant's employment contract was not severable, I consider it proportionate to deny the claimant the right to bring any claim under the contract.

64 For the same reasons, the claimant's wrongful dismissal claim must fail.

Unauthorised Deductions from Wages, Holiday Pay and Written Statement of Particulars

65 The claimant worked for 3 weeks in September 2020. He was, it would appear, paid only £400 in September 2020. However, given my findings above regarding the illegality of the contract, the parties' agreement that the contract was not severable, and my conclusions on the claimant's right to bring a claim under the contract, I find that the claimant cannot recover the shortfall, whether that be to bring his earnings up to 3 weeks at the full £800 net or three weeks at the amount agreed to be paid via PAYE.

66 Similarly, he is not entitled to recover any payment for accrued but untaken holiday in his final leave year (which appears to have totalled some 2.1 weeks pay, being his pro-rata share of 5.6 weeks for working 4 ½ months of his final leave year).

67 For the same reasons, and because he has not succeeded on any substantive claim, the claimant is not entitled to any award in respect of the respondent's failure to provide him with a written statement of particulars of employment.

**Employment Judge O'Brien
Dated: 1 March 2022**