



THE EMPLOYMENT TRIBUNALS

Claimant

Mr Gary Branton

Respondent

Muss Media Ltd (in creditors voluntary liquidation)

AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON

ON 14th August 2018

JUDGMENT (Liability and Remedy) Employment Tribunals Rules of Procedure 2013 –Rule 21

1. The name of the respondent is amended to that shown above and its address to c/o Mr A.D. Haslam and Mr G. S. Goldie , Suite 5 , 2nd Floor, Bulman House , Regent Centre , Gosforth , Newcastle –upon –Tyne, NE3 3LS.
2. The claim of unlawful deduction of wages is well founded. I order the respondent to repay to the claimant £ 3873.29 gross of tax and National Insurance (NI).
3. The claim for compensation for untaken annual leave is well founded. I order the respondent to pay compensation to the claimant of £ 739.74 gross of tax and NI
4. The claim of breach of contract is well founded . I order the respondent to pay damages to the claimant of £2823 on which no tax is payable .
5. The claimant is not entitled to a redundancy payment.
6. The Hearing listed for 28th August 2018 is vacated.

REASONS

1. The claim was presented on 14th June 2018 and served on served by post to a trading address of the respondent. on 29th June On 22nd June the respondent entered creditors voluntary liquidation and its registered office has now been changed to that of its liquidators. There is no injustice in the amendment at paragraph 1 of the judgment as arrangements should always be made for mail addressed to a company which enters liquidation to be forwarded to the liquidators (see Zeitsmann and Du toit –v-Stubbington)
2. The response was due by 27^h July 2018 but none was received. I am required by Rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and , if so, obliged to issue a judgment which may determine liability and remedy. I have in the claim form sufficient to enable me to find the claims proved on balance of probability and determine sums to be awarded.
3. The law relating to unlawful deduction of wages is in Part 2 of the Employment Rights Act 1996 (the Act) and that relating to compensation for untaken annual leave is in The Working Time Regulations 1998. The reason I am awarding different sums from

those claimed in the claim form is that compensation for these two elements is always awarded gross of tax and NI. The wages owed are for one full month of May 2018 and one day in June. The holiday pay is based on accrued but untaken entitlement of 6 days.

4. At common law, a contract of employment may be brought to an end only by reasonable notice. Unless the respondent shows on balance of probability gross misconduct has occurred, the dismissal is wrongful and damages are the net pay for the notice period. Statutory minimum periods of notice are set out in Section 86 of the Act and in this case would be one week, but the claimant is entitled to the benefit of a longer contractual notice period of one month.

5. In an email to the Tribunal the claimant asks if the liquidation means his claim is not worth pursuing. It is for two reasons. First, subject to certain limits, the Secretary of State will pay the debts of insolvent companies to employees if the claimant makes application to the Redundancy Payments Office. The claimant is not entitled to a redundancy payment as such because he has not been employed for two years, but the same office deals with the unpaid wages, notice and holiday pay. Second, there may be some funds available in the liquidation for unsecured creditors like him.

TM Garnon Employment Judge
Date signed 14th August 2018