

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102379/17

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Held in Glasgow on 11 October 2017

Employment Judge: Robert Gall

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Mr Jamie Chrystal

**Claimant
In Person**

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1. Dialadeal UK Ltd

**1st Respondent
Not Present
& Not Represented**

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2. Discount Trade Windows Ltd

**2nd Respondents
Not Present
& Not Represented**

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3. Barrie Knox

**3rd Respondents
Not Present
& Not Represented**

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E.T. Z4 (WR)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

As stated at the Hearing, in terms of Rule 62 of the Employment Tribunals
5 (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be
provided unless they are asked for by any party at the Hearing itself or by written
request presented by any party within 14 days of the sending of the written record
of the decision. No request for written reasons was made at the Hearing. The
following sets out what was said, after adjournment, at the conclusion of the
10 Hearing. It is provided for the convenience of parties.

The Judgment of the Tribunal is:-

- 15 (1) The employer of the claimant under a modern apprentice training
agreement was Dialadeal UK Ltd.
- (2) There was no statement of employment particulars or any equivalent within
the modern apprentice training agreement issued to the claimant.
- 20 (3) There was no itemised pay statement issued to the claimant by Dialadeal
UK Ltd.
- (4) Dialadeal UK Ltd is ordered to pay to the claimant:-
 - 25 (a) Monies in respect of unauthorised deductions from wages
comprising:-
 - (i) payment for one day of work on 12 June 2017 being £42.
 - 30 (ii) payment in respect of two weeks pay due when the claimant
was attending a training course amounting to £396.
 - (b) Monies in respect of holiday leave accrued but untaken at date of
termination of employment, being 5 days, and amounting to £198.

(c) Monies in respect of breach of contract as no notice of termination of employment or apprenticeship was given, being one week's pay, £198.

5 (d) Monies in respect of 11 weeks pay being the period from termination of the apprenticeship contract with the claimant until the claimant secured an alternative contract of apprenticeship. The sum due is £1,674.46 comprising 11 weeks pay under deduction of 2 payments of Universal Credit received by the claimant.

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(e) Monies in respect of failure to provide a written statement of employment particulars comprising 4 weeks pay at £792.

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(f) An uplift in respect of an unreasonable failure by Dialadeal UK Ltd to follow the ACAS Code of Practice in relation to a grievance lodged by the claimant. That uplift is 10%. It is applied to the monies due in terms of paragraph 4 (a) to 4 (d), a total of £2,508.46, of which 10% is £250.85.

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REASONS

1. This case called for Hearing at Glasgow on 11 October 2017. The claimant
25 appeared in person and gave evidence. He lodged productions.

2. The claimant entered into a modern apprenticeship training agreement with Dialadeal UK Ltd. Although the claimant was paid through another source at times, I was satisfied that Dialadeal UK Ltd was the employer.

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3. An apprentice is entitled in terms of Section 230 of the Employment Rights Act 1996 to be treated as an employee for the purposes of the Act. The claimant is therefore entitled to receive a statement of particulars of

employment. That can be contained within the apprentice training contract. The apprentice training contract, however, issued to the claimant does not cover all of the items required in a statement of initial employment particulars. It does not specify holiday entitlement, sick pay entitlement or notice for example.

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4. The absence of such a statement of initial employment particulars results in the claimant being entitled to an award in terms of Section 38 of the Employment Act 2002. That award can be for 2 weeks or 4 weeks pay. I could see no reason why 4 weeks pay was not appropriate. Had the statement been issued the claimant would have been clear as to his holiday entitlement for example and also as to his notice entitlement. It would also have been clearer in my view that the identity of the employer was Dialadeal UK Ltd.

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5. I accepted the claimant's evidence that he had not been paid in respect of one day being 12 June 2017. The sum of £42 is therefore due to him in that regard.

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6. I also accepted that the claimant had not been paid during the 2 week period when he was training. The sum due in that regard is £396.

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7. The claimant had not taken holidays during the time of his employment with the respondents. His evidence was that 5 days had accrued in that regard. That translates to £198 in monetary terms.

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8. The contract of apprenticeship was brought to a sudden end without any period of notice being given to the claimant. I accepted that he was due one week's notice, having not been given notice or paid in lieu of notice. He is therefore £198.

9. The contract of apprenticeship was due to last for 14 months. It was terminated well prior to the expiry of that time. On its termination on 12 June 2017 the claimant sought to obtain alternative employment and in particular an alternative training or apprenticeship contract. He obtained Universal Credit in the interim. He obtained 2 payments each of £251.77 by way of Universal Credit. He then secured an alternative apprenticeship training contract 11 weeks after the contract with Dialadeal UK Ltd had been terminated by them. In my view therefore he is entitled to payment for that 11 week period under deduction of the payments in respect of Universal Credit. The net sum is therefore £1,674.46.
10. A grievance was lodged by the claimant in relation to non-payment of the various amounts by him. That grievance was lodged on 26 June 2017. It was not acknowledged or dealt with the respondents. They did not therefore adhere to the ACAS Code of Practice in relation to grievances. There was no evidence to explain why no acknowledgement of the grievance had been sent, far less the absence of the grievance being dealt with.
11. I concluded in the circumstances that there was an unreasonable failure to comply with the Code. The grievance was lodged after termination of employment. I have no knowledge of the particular circumstances as to why it was not dealt with.
12. I came to the view that it was appropriate to uplift the compensation awarded by 10%. That applies to all elements save for the monies in respect of the failure to provide a written statement of employment particulars. It applies therefore to the payment in respect of one day of work, the wages for 2 weeks spent training, the money in respect of holiday leave and the money in respect of notice pay. It also applies to the payment in respect of the 11 weeks payment. The total of those amounts is £2,508.46. The ACAS uplift amounted to 10% of that, it therefore amounts to £250.85.

13. The respondents are ordered to pay these amounts to the claimant.

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Employment Judge: Robert Gall
Date of Judgment: 12 October 2017
Entered in register: 13 October 2017
and copied to parties

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