



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4103861/2018

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Held in Glasgow on 20 June and 4 September 2018

Employment Judge: Michelle Sutherland

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Mr Craig Baillie

**Claimant
In person**

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Mark Ward - Power 1 Cellular

**Respondent
No appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is that the complaint of unauthorised deductions from wages is well founded and the Respondent is ordered to pay the Claimant the sum of £1,213.00 (gross) from which tax and national insurance requires to be deducted and remitted to HMRC.

REASONS

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1. The complaint is of unlawful deduction from wages.

2. A Final Hearing had been fixed for 20 June 2018 but the nature and extent of the preliminary discussions meant that the Final Hearing could not be concluded on the date and within the time allocated and a continued hearing was arranged for 4 September 2018.

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3. The Claimant appeared in person and gave evidence on his own behalf. The Respondent lodged an ET3 Response, appeared in person at the hearing on 20 June 2018 but did not respond to the orders for additional information issued on 20 June 2018 and did not enter an appearance at the continued hearing on 4 September 2018. Both parties lodged bundles of documents.

E.T. Z4 (WR)

4. Prior to the continued hearing, the Respondent made a late application to postpone the continued hearing which was to be considered at the start of that hearing. When Respondent failed to appear at that hearing, the Clerk telephoned the Respondent to ascertain whether he required a brief adjournment to allow him to attend but the Respondent advised that he was not proposing to attend the hearing.
5. As part of preliminary discussions at start of the hearing the Claimant explained that following the hearing on 20 June 2018 he had an opportunity to check his calculations and his claim for unlawful deduction from wages paid on 31 January 2018 was as follows:-
1. 4 x food allowance of £15 accrued in weeks ending 5, 12 and 19 January 2018 in respect of which the Claimant was paid 3 x food allowance of £15
 2. Travel time of 54.25 hours accrued in the period 27 November 2017 to 23 January 2018 (£802.39) in respect of which the Claimant was paid 29.25 hours (£429.39)
 3. Deduction of £825.00 ("Rework cost ESN0112")
6. The Respondent initially asserted that the Claimant received additional ex gratia monies in December 2017 but at the hearing on 20 June 2018 the Respondent accepted that these payments were not paid in satisfaction of the sums claimed.

Findings of fact

7. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved:-

5 1. The Claimant’s employment with the Respondent commenced on 16 October 2017 and terminated on 23 January 2018.

10 2. The Claimant was contracted to work a 42 ½ hour core week which was paid at the basic hourly rate. Travel time (minus 1 hour per return journey) was paid at the basic hourly rate. Overtime was paid at time and a half. A food allowance of £15 was paid per night away from home. The basic hourly rate was £14.68 an hour until 1 January 2018 when it increased to £15.05 an hour.

15 3. Core hours and food allowance were paid in arrears at the month end. Overtime and travel time were paid in arrears at the end of the following month.

20 4. After deduction in each case of 1 hour per return journey, the Claimant incurred the following travel time –

| Week ending | Travel Time (hours) | Rate of Pay | Travel Pay |
|--------------------|----------------------------|--------------------|-------------------|
| 1 December 2017 | 14.25 | £14.68 | £209.19 |
| 8 December 2017 | 9.5 | £14.68 | £139.46 |
| 15 December 2017 | 8.75 | £14.68 | £128.45 |
| 22 December 2017 | 5.5 | £14.68 | £80.74 |
| 5 January 2018 | 3.75 | £15.05 | £56.43 |
| 12 January 2018 | 8.00 | £15.05 | £120.40 |

| | | | |
|-----------------|------|--------|----------------|
| 19 January 2018 | 4.00 | £15.05 | £60.20 |
| 26 January 2018 | 0.5 | £15.05 | £7.52 |
| Total | | | £802.39 |

5. The Claimant was due to be paid £802.39 in respect of that travel time on 31 January 2018. The Claimant was instead paid £429.39 in respect of travel time on 31 January 2018.

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6. The Claimant was entitled to food allowance of £15 in respect of nights away on 4, 8, 9 and 15 January 2018. The Claimant was therefore due to be paid £60 food allowance on 31 January 2018. The Claimant was instead paid £45 in respect of food allowance on 31 January 2018.

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7. A deduction from the Claimant's wages of £825.00 was made by the Respondent on 31 January 2018 in respect of an alleged failure by the Claimant to properly carry out work on 15 and 16 January 2018 and the alleged cost incurred by the Respondent of remedying that failure (described as "Rework Cost ESN0112"). However there was no evidence which signified that the Claimant previously agreed or consented in writing to that deduction.

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Observations of the Evidence

8. With the exception of the agreed facts, the findings of fact are based upon the uncontested evidence of the Claimant. The travel time and food allowance claimed is noted upon the time sheets handed by the Claimant to the Respondent on a weekly basis and exhibited to the tribunal.

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Discussion and decision

9. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or a provision in the workers contract, or the worker's prior written consent. A worker means

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an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to perform personally any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230 ERA).

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10. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.

10 11. Under Section 27(1) of the ERA “wages” means any sums payable to the worker in connection with their employment.

12. A complaint for unlawful deduction from wages must be made within 3 months beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.

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13. The total amount properly payable by the Respondent to the Claimant on 31 January 2018 was less than the amount paid. The Claimant suffered deductions from wages in sum of £15.00 in respect of food allowance, £373.00 in respect of travel time and £825.00 in respect of Rework Cost ESN01. There was no evidence that the deductions were either authorised deductions under Section 13 or excluded deductions under Section 14. The Claimant therefore suffered an unauthorised deduction from wages in sum of £1,213.00 (gross) from which tax and national insurance requires to be remitted to HMRC.

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14. An unrepresented party may apply for a preparation time order at any stage up to 28 days after the date on which this judgment is sent to the parties. (The parties were not represented and are not therefore entitled to a costs order.) A preparation time order may be made where a party has acted vexatiously, abusively, disruptively or unreasonably, or the claim or response had no reasonable prospects of success. Preparation time is time spent working on the case having regard to what is reasonable and proportionate but excludes

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time spent at the final hearing. If granted preparation time is paid at £38 an hour. No such order may be made unless the paying party has had reasonably opportunity to make representations in response to any application.

- 5 15. Parties and witnesses may be paid allowances in respect of the expense and losses which they have incurred in attending the hearing. Such allowances are paid by the Secretary of State on a fixed scale and an application form is available from the tribunal office and online.

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Employment Judge: Michelle Sutherland
Date of Judgment: 10 September 2018
Entered in register: 15 September 2018
and copied to parties

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