



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4103865/2018**

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**Held in Glasgow on 20 June 2018**

**Employment Judge: Michelle Sutherland**

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**Gulfraz Ahmed**

**Claimant  
Represented by:  
Douglas Jaap  
Solicitor**

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**Woodside Calder Limited**

**Respondent  
No appearance**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgement of the Tribunal is that the complaint of unauthorised deduction from the wages is well founded and the Respondent is ordered to pay the Claimant wages in sum of £38,599.30 (net). This net figure falls to be grossed up to allow tax and national insurance to be remitted to HMRC.

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**REASONS**

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1. The Claimant presented a complaint of unlawful deduction from wages. That complaint was validly served upon the Respondent in terms of Rule 15 by letter of 12 April 2018 sent from the Employment Tribunal to the Respondent's then Registered Office address c/o D A Accountants, Spiersbridge Business Park, 1 Spiersbridge Way, Glasgow Lanarkshire G46 8NG. No response was presented and no application for reconsideration was made by the Respondent.

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2. On 24 April 2018 the Respondent's Registered office address changed to 98 West George Street Glasgow G2 1PJ. On 25 April 2018 the Respondent's

**E.T. Z4 (WR)**

Registered office address changed to 31 Sandalwood Avenue East Kilbride Glasgow G74 4UX. The Claimant's home address is now 17 Norbreck Drive, Glasgow G46 6AF.

- 5 3. The Claimant clarified that despite having ticked the box on his ET1 which indicated that he was owed notice pay and holiday pay, any such claim does not form part of this claim.
4. The Claimant clarified that despite the suggestion that his earnings were less  
10 than the National Minimum Wage, any such claim does not form part of this claim.
5. The tribunal heard evidence from the Claimant.
- 15 6. The Claimant lodged 3 separate sets of documents referred to as Sets 1, 2 and 3 respectively.
7. Written submissions were lodged by the Claimant's representative.

### Findings in Fact

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8. The tribunal makes the following findings in fact based upon evidence of the Claimant –

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- 1) The Claimant is a qualified as a solicitor with a particular focus on immigration. He trained with J R Rahman, Solicitors. His traineeship concluded in December 2015. He is now employed as a solicitor at Jones Whyte LLP.

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- 2) During the course of his traineeship, the Claimant entered into discussions with Rizwan Liaquat and Shkoor Anwar with a view to setting up a law firm specialising in immigration. Rizwan Liaquat is a solicitor with then 12 years immigration experience. Shkoor Anwar was then not yet qualified but had significant

business experience in the restaurant trade. The Claimant was newly qualified but had significant connections with potential immigration clients through his voluntary work.

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3) The Claimant, Rizwan Liaquat and Shkoor Anwar (referred to collectively as 'the business partners') were all closely involved in the setting up of the law firm and intended to be equal partners. During its first year of trading monies were loaned to the law firm by Shkoor Anwar.

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4) The business partners were advised that they could not practice as managers or be a member or a director of an incorporated practice unless they had been employed as a solicitor for at least 3 years under the Law Society Practice Rules 2011. Accordingly it was agreed between the business partners that they would incorporate to form the Respondent, that Rizwan Liaquat would be the shareholder and director of the Respondent, that the Claimant would be employed as a solicitor by the Respondent and that Shokoor Anwar would be employed as a trainee solicitor by the Respondent. They would each be paid a minimum net monthly payment of £2,200 from the business regardless of its performance. The intention of the parties was that the Claimant would be employed by the Respondent as a solicitor for three years to enable him to become a member and director of the Respondent.

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5) The Respondent was incorporated on 7 December 2015. The sole shareholder and sole Company Director of the Respondent was and remains Rizwan Liaquat, Solicitor.

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6) On 7 January 2016 the Respondent began trading under the name of Anderson Rizwan. The legal services were provided by the business partners.

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7) On 11 January 2016 the business partners met to discuss their business relationship. In February 2016 the business partners continued to seek to enter into a formal written agreement regulating their business relationship. In March 2016 the business partners sought to extend the shareholding in the Respondent to include the Claimant and considered when to start payment of salaries.

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8) The Claimant commenced paid employment with the Respondent on 1 May 2016 with an agreed net monthly salary of £2,200 to be paid in arrears.

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9) On 9 June 2016 the Claimant received from the Respondent his first payment of wages in sum of £2,576.77 (gross), £2,200 (net) in respect of work undertaken in May 2016.

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10) On 30 June 2016 the Respondent paid to the Law Society the Commission Levy in respect of the Claimant.

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11) In August 2015 there were discussions surrounding a Loan Agreement between the business partners.

12) The Claimant received the following payslips and the following payments in respect of his employment with the Respondent–

Period of work	of	Date of payslip	of	Amount of gross pay	Amount of net pay	Paid or unpaid
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May 2016	5 June 2016	£2567.77	£2,200.00	Paid 9 June 2016
June 2016	5 July 2016	£2847.00	£2,075.00	Paid 4 July 2016
July 2016	5 Aug 2016	£2846.77	£2,076.00	Remains unpaid
September 2016	5 Oct 2016	£2846.77	£2,443.00	Remains unpaid
April 2017	5 May 2017	£800.00	£785.60	Paid 28 April 2017
May 2017	5 June 2017	£800.00	£785.60	Paid 30 May 2017
June 2017	5 July 2017	£500.00	£500.00	Paid 6 July 2017
July 2017	5 Aug 2017	£500.00	£500.00	Paid 29 July 2017
Aug 2017	5 Sept 2017	£1,270.91	£1,200.00	Paid 31 Aug 2017
Oct 2017	5 Nov 2017	£750.00	£741.60	Paid 31 Oct 2017
Nov 2017	5 Dec 2017	£750.00	£741.60	£1,000 on 30 Nov 2017
Dec 2017	5 Jan 2018	£500.00	£500.00	Paid
Jan 2018	--	---	£750.00	Paid
Feb 2018	--	--	£750.00	Paid
<b>TOTAL NET WAGES PAID</b>				<b>£11, 787.80</b>

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13)As set out above, the Claimant did not receive payment of wages in respect of each payslip and did not receive payslips in respect of each payment. Any payments of wages which were made by the Respondent were paid by bank transfer into the Claimant's account number 03207457 sort code 91-01-27.

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14)The Claimant regularly raised the issue of the non-payment of wages with the Respondent. Despite the ongoing and material failure to pay wages, the Claimant elected to remain in employment with the Respondent

with a view to him to becoming a member and director of the Respondent following three years of service a solicitor per the terms of the agreement between the business partners.

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15)The Claimant continued to be employed by the Respondent until his dismissal effective 23 March 2018.

### Observations on the evidence

10 9. The findings in fact are based upon the uncontested evidence of the Claimant.

10. No documentary evidence was produced regarding –

15 a. any agreement or communication between the business partners or otherwise regarding the terms of the business relationship between the business partners.

b. any agreement or communication between the Claimant and the Respondent regarding the terms of the contract between them.

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c. the financial trading or accounts of the Respondent.

11. The Claimant advised that his personal circumstances and commitments meant he was unwilling and unable to accept a standard newly qualified role attracting a salary of around £21,000 and he required a significantly higher income. However the Claimant subsequently advised that he stayed at home and his family were of sufficient means such that he was able to manage on the income of only £4,275 (net) paid to him during his first year of employment with the Respondent.

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12. The Claimant insists that the verbal agreement with his employer stipulated a net rather than a gross monthly income.

13. The claim form asserts that the Claimant commenced employment with the Respondent on 1 May 2016. At the bar that start date was amended to 11 January 2016. Whilst it is accepted that the business partners met to discuss their business arrangements on 11 January 2016 it is not accepted that the Claimant's employment started on that date. There were on-going discussions between the business partners regarding the regulation of their business arrangements until at least March 2016. The limited documentary evidence indicates that the Claimant's employment in fact commenced on 1 May 2016.
14. The Claimant asserted a belief that the payments made to him were backpay for arrears of wages rather than a payment of wages for work undertaken the previous month. However the payslips produced indicate that the payments pertained to work undertaken the previous month. It is not therefore accepted that the payments were intended as backpay or that there was no approbation of the payments.
15. The Claimant asserts that he was not paid wages in respect of June 2017 but his bank account shows that he was paid £500 on 6 July 2017 in respect of work undertaken in June 2017. The Claimant asserts that he was not paid wages in respect of November 2017 but his bank account shows that he was paid £1000 on 30 November 2017 in respect of work undertaken in November 2017.
16. The Claimant undertook to provide a copy of his letter of dismissal but despite repeated requests from the tribunal no copy was provided.

### **Claimant's submissions**

17. The Claimant lodged written submissions which in summary asserted –
- The Claimant was employed by the Respondent from 11 January 2016 to 28 March 2018 on a monthly salary of £2,200 (net).

- The Claimant received sporadic payment of wages in sum total of £9,787.80 over the period of his employment.
- Under the general law of debt, where there an employer is partially in arrears with payment of (monthly) wages, the employee may elect to appropriate any part payment of wages to the earliest month of arrears (rather than to the month of payment). Accordingly the arrears of wages arising prior to 4 April 2016 in sum of £6,600 (net) (i.e. prior to the 2 year limitation period under Section 23(4A)) were satisfied by the sporadic payment of wages over the course of his employment.
- Alternatively, any sums affected by the 2 year limitation period, amount to a breach of contract arising or outstanding on termination of employment.

**Decision**

- 15 18. Under Section 13 of the Employment Rights Act 1996 ('ERA') an employer may not make a deduction from the wages of any worker employed by him or receive a payment from such a worker unless –
- it is required or authorised to be made by virtue of any statutory provision (s 13(1)(a));
  - it is required or authorised to be made by virtue of any relevant provision of the worker's contract (s 13(1)(a));
  - the worker has previously signified in writing his agreement or consent to the making of the deduction (s 13(1)(b)), or
  - the deduction is an excluded deduction by virtue of s14 or s23(5).
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19. Under Section 27(1) of the ERA "wages" "means any sums payable to the worker in connection with his employment".
20. 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.
- 30 "That wording implies, in our opinion, that, in a case like this where a salary



is payable by regular monthly instalments, each occasion on which wages are due to be paid in terms of the contract has to be considered separately and the amount properly due on that occasion has to be ascertained and compared with the amount actually paid on that occasion” (**Murray v Strathclyde Regional Council [1992] IRLR 396, EAT**). A late payment therefore still constitutes a deduction albeit the tribunal may not order payment where the worker has already been paid (s25(3)).

21. A complaint may be brought in respect of a deduction, or series of deductions, within 3 months beginning with the date of the deduction, or the last date of a series of deductions (s23(2)). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.
22. For there to be a series of deductions there requires to be a sufficient factual link (similarity of subject matter) and a sufficient temporal link (frequency of repetition) between the deductions (**EAT, Bear Scotland Ltd v Fulton; Hertel (UK) Ltd v Woods; Amec Group Ltd v Law [2015] IRLR 15**). A temporal gap of more than 3 months between deductions breaks the series (Bear Scotland).
23. Any deductions made before the period of two years ending with the date of presentation of the complaint are excluded from consideration (s23(4A)).
24. Earnings for working a part month should be calculated with reference to calendar days (as opposed to working days) where the Apportionment Act 1870 has not been expressly or impliedly excluded (**Supreme Court, Hartley v King Edward VI College [2017] UKSC 39, [2017] 4 All ER 637**).
25. Where a debtor is making payment to a creditor, the debtor may appropriate the payment (specify which debt the payment is to be discharged against). The appropriation may be expressly stated or implied in the circumstances (e.g. by agreement to pay wages monthly or by reference on a payslip). If the debtor does not appropriate the payment then the creditor may do so. Where neither party does so the payment is applied to the oldest debt first (**Devaynes**

**v Noble ('Clayton's Case') (1816) 1 Mer 572).** Contrary to the Claimant's submissions a debt is due by a debtor (here the Respondent) to a creditor (here the Claimant).

- 5 26. The Claimant was employed by the Respondent from 1 May 2016 until 28 March 2018 on a net monthly salary of £2,200. As set out in the following table, the wages properly in some months were less than the wages paid that month either because no wages were paid or because the wages paid were less than the sum due –

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Period of work	Date payment due	Net wages properly payable	Net wages paid	Deduction from wages
May 2016	5 Jun 2016	£2,200	£2,200.00	£0
June 2016	5 July 2016	£2,200	£2,075.00	£125.00
July 2016 To March 2017	5 Aug 2016 To 5 Apr 2017	£2,200 X 9 months	£0 X 9 months	£19,800
April 2017	5 May 2017	£2,200	£785.60	£1414.40
May 2017	5 Jun 2017	£2,200	£785.60	£1414.40
June 2017	5 July 2017	£2,200	£500.00	£1700.00
July 2017	5 Aug 2017	£2,200	£500.00	£1700.00
Aug 2017	5 Sep 2017	£2,200	£1,200.00	£1,000.00
Sept 2017	5 Oct 2017	£2,200	£0	£2,200.00
Oct 2017	5 Nov 2017	£2,200	£741.60	£1458.40
Nov 2017	5 Dec 2017	£2,200	£1000.00	£1,200.00
Dec 2017	5 Jan 2018	£2,200	£500.00	£1700.00
Jan 2018	5 Feb 2018	£2,200	£750.00	£1450.00
Feb 2018	5 Mar 2018	£2,200	£750.00	£1450.00
March 2018	5 Apr 2018	£1,987.10	£0	£1,987.10
<b>TOTAL DEDUCTION FROM WAGES</b>				<b>£38,599.30</b>

27. The Claimant did not work a full month in March 2018 but instead worked from 1 to 28 March. He was therefore due wages in sum of £1,987.10 (28/31 x £2,200) on 5 April 2018.

5 28. There is a sufficient factual link (similarity of subject matter) between the deductions all of which pertain to a failure to pay basic salary. There is also a sufficient temporal link (frequency of repetition) between the deductions, there being no gap of greater than 3 months between the deductions. The deductions therefore amount to a series of deductions ending on 5 April 2018.  
10 The complaint was lodged on 5 April 2018 and was therefore raised timeously. The series of deductions commenced on 5 July 2016 and accordingly the 2 year limitation does not apply.

15 29. There was no evidence that the deductions were either authorised or excluded deductions. The Claimant therefore suffered an unauthorised deduction from wages in sum of £38,599.30 (net). This net figure falls to be grossed up to allow tax and national insurance to be remitted to HMRC.

20 Employment Judge: Michelle Sutherland  
Date of Judgment: 14 August 2018  
Entered in register: 20 August 2018  
and copied to parties