

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106678/2017

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Held in Glasgow on 7 February 2018

Employment Judge: Mary Kearns

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Mr A Miller

**Claimant
In person**

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James Cowie & Co Ltd

**Respondent
Represented by:
Mr A Munro
Scottish Engineering**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was to dismiss the claims.

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REASONS

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1. The claimant was employed by the respondent as a blacksmith erector from 3 June 2013 until 20 June 2017. Having complied with the early conciliation requirements he presented an application to the Employment Tribunal on 21 November 2017 in which he claimed arrears of pay and holiday pay.

Evidence

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2. The claimant gave evidence on his own behalf and lodged documents. The respondent also lodged documents and called Mr James Tait, its General Manager.

Findings in Fact

3. The following material facts were admitted or found to be proved:-

4. The respondent specialises in the manufacture and installation of metalwork and structural steel. It was engaged as a subcontractor on the Queensferry Crossing contract in June 2017, charged with manufacturing and installing the pedestrian parapet. The installation of the parapet by the respondent was scheduled to begin on 12 June 2017. A squad of the respondent's blacksmith erectors had been identified to work on the installation on the Queensferry Crossing site. That squad included the claimant. The respondent and the main contractor are required to take health and safety very seriously given the nature of the site. Prior to commencing the installation work on 12 June the squad was required to attend a week-long induction beginning Monday 5 June. On that date, the claimant reported to the site and was required to provide a sample to be tested for ingestion of controlled substances.

5. The claimant tested positive for cocaine. As a result, he was removed from the site. The respondent suspended the claimant without pay pending a disciplinary hearing which was held on 19 June 2017. The claimant was summarily dismissed on that date. His appeal against dismissal was unsuccessful.

6. The respondent subsequently received advice that suspension without pay was unlawful and they sought to make payment to the claimant for the period of his suspension. However, before paying him the sums due to him in respect of wages and holiday pay the respondent applied certain deductions, some of which the claimant contested.

7. The respondent's holiday year runs from 1 September to 31 August. Their staff handbook, which is contractual, provides that holiday entitlement may not be carried over from one holiday year to the next. The claimant had taken 18 days' holiday in the 2016/17 holiday year. Pro-rating the year to his leaving date of 19 June 2017, his entitlement was 22.5 days. He was accordingly entitled to be paid for 4.5 days' holiday accrued but untaken at termination.

The respondent erroneously added three days from the previous holiday year, making 7.5 days and paid the claimant in respect of this on 23 June 2017 (R40). The respondent's calculation was 59 hours @ £10.50 per hour which brought out basic gross holiday pay of £619.50. Added to this was a gross holiday pay supplement of £73.83. The net sum after tax and National Insurance was £528.63. However, the respondent also deducted from this the cost of three training courses it had paid for the claimant to attend.

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8. On 29 March 2016 the claimant had signed a training agreement with the respondent (R36). This stated that the respondent would meet the cost of training undertaken by its employees but that if an employee failed to complete a course or left the service of the respondent prior to completion or within 12 months of completing it, then the employee agreed to repay 100% of all course fees to the respondent. The agreement signed by the claimant stated: *"The employee agrees to the deduction from his wages of any monies owed under this agreement."* The claimant attended all or part of three courses for which the respondent paid in or about May 2017. The total course fees came to £265. This sum was deducted from the claimant's holiday pay of £528.63 and he received the net sum of £263.63 on 23 June 2017.

9. Prior to presenting a tribunal application in respect of wages unpaid during his suspension, the claimant contacted ACAS for early conciliation and this prompted the respondent to take some advice. They realised at this stage that they ought to have paid the claimant while he was suspended and indicated their willingness to do so. The correct sum owed was £819 gross, less tax of £109.60, National Insurance of £47.01 and an employee pension contribution of £4.35. However, the respondent also realised that when they had paid the claimant's holiday pay on 23 June 2017, they had mistakenly overpaid him 3 days' holiday from the previous holiday year to which he was not entitled. The over payment was £270.25. After clawing this back from the suspension pay, the net sum owed to the claimant was £387.79. The claimant accepts that this sum has now been paid to him electronically.

Discussion and Decision

10. In this case, the claimant claims arrears of pay and holiday pay. On the facts set out in paragraphs 4 to 9 above which were mostly not disputed by the claimant, he has been paid all sums to which he is entitled and his claim does not succeed.

11. An issue was raised by the claimant at the hearing in relation to the sum of £1.30 per week, deducted from his wages as a contribution to the laundering of work overalls by the respondent. It was unclear what basis the respondent had in law for deducting this sum. However, no claim in respect of this deduction is contained in the claimant's ET1 Tribunal application and I am not, therefore permitted to make any judgment in respect of it. Chapman v Simon 1994 IRLR 124 CA.

12. As the claimant has now been paid all sums claimed to which he is entitled, the case is dismissed.

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Employment Judge:	Mary Kearns
Date of Judgment:	08 February 2018
Entered in register:	16 February 2018
and copied to parties	

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