



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4123879//2018

Hearing Held at Aberdeen on 29 March 2019

Employment Judge: Mr A Kemp (sitting alone)

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Mr Fraser Simpson

**Claimant
In person**

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Deeside Inns Limited

**Respondents
No appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Respondent made unlawful deductions from the wages of the Claimant in the sum of £542.43, and the Respondent is ordered to pay the Claimant that sum.

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REASONS

Introduction

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1. The Claimant made a claim for unlawful deduction from his wages. The Respondents in their Response Form did not dispute that wages had been earned, but alleged that they had been paid on 31 October 2018.

2. The Claimant appeared for the Final Hearing, and produced documents. There was no appearance by or on behalf of the Respondent. After waiting for fifteen minutes to see if there was to be any attendance, and after noting that there was no telephone number provided for the Respondent on the Response Form, the hearing proceeded in their absence.

The issue

3. There was only one issue before the Tribunal, which was whether unlawful deductions from the wages of the Claimant had been made, or whether the Respondent had made the payment they alleged.

The evidence

1. The Tribunal heard from the Claimant himself. A bundle of documents had been prepared for the hearing, which was spoken to by him. He gave evidence clearly and candidly, and I accepted him as a credible and reliable witness.

The facts

2. The Tribunal found the following facts to have been established:
3. The Claimant is Mr Fraser Simpson.
4. He was employed by the Respondents from the week commencing 6 August 2018 until the last date on which he worked for them, being 9 September 2018.
5. During that period he was paid for the period to 24 August 2018 by way of a payment directly into his bank account on 31 August 2018.

6. Under his contract of employment, wages earned for the period to the 24th of each month were paid at the end of that month, and wages earned in the period of a month thereafter paid in the following month.

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7. The Claimant worked a total of 73.5 hours in the period from 25 August 2018 to 9 September 2018. He was paid at £7.38 per hour. Under his contract, payment of the sum of £542.43 was due to him and payable by 30 September 2018.

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8. That payment was not paid to him.

9. The Claimant has not received payment of that sum by other means, including by cheque from the Respondent.

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10. The Respondent stated in an email to the Claimant on 6 November 2018 that “final payments to staff are not made by bank/transfer payments but by cheque”. It alleged that a cheque payment “will have been issued by our Accountant who processes our wages. This is likely only to have been issued late last week”.

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11. No such cheque was received by the Claimant.

The Law

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12. Wages are defined under section 27 of the Employment Rights Act 1996 (“the Act”). They include payment of wages for work carried out.

13. The right not to suffer unauthorised deductions is provided by section 13 of the Act.

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14. A complaint may be made to a Tribunal for unauthorised deductions under section 23 of the Act.

Discussion

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15. I accepted the evidence of the Claimant. There was no evidence from the Respondent who did not appear. The only dispute, from the terms of the email of 6 November 2018 and the Response Form, was whether payment of the sum sought had been made by the Respondent, as they alleged. I was satisfied that it had not been. The Claimant explained that he had not received any cheque from the Respondent, and produced his bank records which established that no payment in to either of his accounts had been made by the Respondents of the sum referred to. I was also satisfied from his evidence that the work he referred to had been carried out, and noted from the contract of employment that the hourly rate was as he stated it to be. There was no evidence from the Respondent, who could have produced any paid cheque if such a payment was made as had been referred to in an email from them.

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Conclusion

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16. The Respondent made unlawful deductions from the Claimant's wages under the statutory provisions referred to, and he is awarded the amount due.

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Employment Judge:
Date of Judgment:
Entered in the Register:
And Copied to Parties

Alexander Kemp
03 April 2019
03 April 2019