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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4118256/2018

Held in Glasgow on 16 November 2018

Employment Judge: David Hoey (sitting alone)

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Mr A Smillie

**Claimant
In Person**

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**ABEXX Limited
(formerly)
Kvr Compliance Electrical Testing Services Ltd**

**Respondent
Not Present &
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. As the respondent changed its name and address prior to the date of issuing of this judgment, the respondent's name and address is changed to ABEXX Limited, 272 Bath Street, Glasgow G2 4JR
2. The respondent is ordered to pay the claimant the following:-
 - (1) Two Thousand, Six Hundred and Six Pounds, Sixty Seven Pence (£2,666.67 gross) in respect of notice pay

E.T. Z4 (WR)

- (2) Twenty Nine Pounds, Forty Five Pence (£29.45) in respect of the respondent's agreed contribution that ought to have been paid into the NEST pension scheme in respect of the claimant for the month of March 2018
- 5 (3) Forty three Pounds, Twenty eight Pence (£43.28) in respect of the respondent's agreed contribution that ought to have been paid into the NEST pension scheme in respect of the claimant for the month of April 2018.
- 10 (4) Forty Three Pounds, Twenty Seven Pence (£43.27) in respect of the respondent's agreed contribution that ought to have been paid into the NEST pension scheme in respect of the claimant for the month of May 2018.
- 15 (5) Twenty Three Pounds, Fifty Six Pence (£23.56) in respect of the claimant's contribution that the respondent deducted from the claimant's salary but did not pay into the NEST pension scheme in respect of the claimant for the month of March 2018.
- 20 (6) Fifty One Pounds, Ninety Four Pence (£51.94) in respect of the claimant's contribution that the respondent deducted from the claimant's salary but did not pay into the NEST pension scheme in respect of the claimant for the month of April 2018.
- (7) Fifty One Pounds, Ninety Three Pence (£51.93) in respect of the claimant's contribution that the respondent deducted from the claimant's salary but did not pay into the NEST pension scheme in respect of the claimant for the month of May 2018.
- 25 (8) Eighty Hundred and Eighteen Pounds, Forty Six Pence (£818.46) in respect of 1.33 week's holiday pay due to the claimant.
- (9) Sixty Four Pounds, Forty Eight Pence (£64.48) in respect of expenses the claimant paid on behalf of the respondent.

REASONS

- 1 This case called as a final Hearing to determine the claims that had been
raised. The claimant was in attendance. The respondent had not lodged a
5 Response Form and was not in attendance. The claimant had brought a
bundle of productions with him to the Hearing.
- 2 The Hearing began by firstly clarifying the identity of the respondent. The
claimant had lodged a claim against KVR Compliance Electrical Testing
Services Limited. He noted, however, that the company had changed its name
10 while he was in employment (his employer being KVR Compliance Limited).
It appeared that the company had again changed its name. From companies
house it appeared that the company which had that company name (which
had company number SC54977) appeared to have changed its name on 4
October 2018 to ABECC Limited. The claimant was given 14 days to write to
15 the Tribunal to confirm the position.
- 3 The claimant wrote to the Tribunal by email dated 28 November 2018. In that
email he stated that the respondent, which was his employer, was a company
with company number SC549770. That company had changed its name by
resolution on 3 October 2018 and on 8 November 2018 the respondent
20 became ABECC Ltd with a registered address at 272 Bath Street, Glasgow.
As this is the correct name and address of the respondent, the respondent's
name and address is changed accordingly. Only the name has changed, the
legal entity that was the claimant's employer has not altered.
- 4 The claimant's claims related to sums that were outstanding upon cessation
25 of his employment. He maintained that he was due to be paid certain sums
and these were not paid by the respondent. He also argued that the
respondent had retained sums that it ought to have paid to the relevant
pension scheme in the claimant's name.

5 The claimant gave evidence and the Tribunal makes the following findings in fact in light of the evidence it heard and the productions to which reference was made.

Findings in fact

5 6. The Tribunal makes the following findings in fact in light of the evidence it heard and the productions to which reference was made.

7. The claimant was employed by the respondent from 5 June 2017 to 31 March 2018.

10 8. The claimant entered into a contract of employment with the respondent which required the respondent to give the claimant one month's notice of termination in the event it wished to terminate the claimant's employment (absent a fundamental breach of the contract by the claimant).

9. The claimant was not in material breach of contract.

15 10. The respondent brought the claimant's employment to an end summarily (i.e without any notice). No notice pay was accordingly paid to the claimant.

11. The claimant earned £32,000 gross a year which amounted to a monthly sum of £2,666.67.

12. The claimant did not secure another job within the month following the ending of his employment.

20 13. In terms of the claimant's contract of employment the respondent had agreed to pay a sum into a pension scheme in the claimant's name. The respondent paid a sum into the scheme and the respondent also remitted a % of the claimant's gross monthly salary into the scheme. The claimant had agreed that the respondent deduct from his salary the relevant pension contribution and pay that into the pension scheme.
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14. For the month of March 2018 the respondent's contribution into the pension scheme was £29.45 and the claimant's contribution was £23.56. The

respondent claimed (in the claimant's pay slip) that these sums were paid into the relevant pension scheme. The sums were not paid into the pension scheme. Instead the respondent retained these sums. These sums were outstanding and due as at the end of the claimant's employment.

5 15. For the month of April 2018 the respondent's contribution into the pension scheme was £43.28 and the claimant's contribution was £51.94. The respondent claimed (in the claimant's pay slip) that these sums were paid into the relevant pension scheme. The sums were not paid into the pension scheme (and instead the respondent retained these sums). These sums were
10 outstanding and due as at the end of the claimant's employment.

16. For the month of May 2018 the respondent's contribution into the pension scheme was £43.27 and the claimant's contribution was £51.93. The respondent claimed (in the claimant's pay slip) that these sums were paid into the relevant pension scheme. The sums were not paid into the pension
15 scheme (and instead the respondent retained these sums). These sums were outstanding and due as at the end of the claimant's employment.

17. The claimant was entitled to overtime at the daily rate of £192 gross in terms of his contract of employment.

18. On 19 and 20 May the claimant worked overtime. This was a weekend. He
20 was due to be paid 2 x £192 (i.e. £384) in his wages that were paid at the end of May 2018. The overtime payment was not paid to the claimant by the respondent.

19. In terms of the claimant's contract of employment with the respondent, he was entitled to 5.6 weeks' holiday a year. As at the date his employment
25 ended, 5/6th of the holiday year had passed. He was therefore entitled to 5/6 x 5.6 weeks which is 2.33 weeks as at the end of his employment. He had taken one week's holiday as at the date of termination. He was therefore due to be paid in lieu of 1.33 weeks which amounts to £818.46 (as a week's pay for the claimant is £615.38). The respondent did not pay this sum which was
30 due to the claimant.

20 The claimant had also tried to pay for fuel for his company vehicle using the
company credit card. This was declined and he required to use his own credit
card. He paid £64.48 in respect of fuel for the respondent's vehicle from his
own account. This was not repaid to the claimant by the respondent.

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Law

21 Section 13 of the Employment Rights Act 1996 makes it unlawful to pay to a
worker a sum less than that which is properly payable under the contract of
10 employment. Section 23 of the Employment Rights Act 1996 gives the
Tribunal the power to consider a complaint that there has been an unlawful
deduction of a wage. Deductions are only permitted where consent has been
obtained.

15 22 In terms of the Employment Tribunals Extension of Jurisdiction (Scotland)
Order 1994 a Tribunal has the power to award damages in respect of breach
of a contract of employment where the claim arises or is outstanding upon
termination of employment.

20 23 Regulation 13 and Regulation 13A of the Working Time Regulations 1998
together entitle a worker to 5.6 weeks' paid holidays each year. Regulation
14 states that where a worker's employment ends and holidays have accrued,
the employer should pay the worker a sum that represents the value of the
accrued leave.

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Submissions

30 24 The claimant submitted that he should be paid each of the sums that he is
owed. These are sums that were outstanding upon termination of his
employment and had been deducted from the salary that was due to him. He
maintained that these were sums due to him under his contract.

Discussion and Decision

25 The sums the claimant seeks are sums due to be paid to him in terms of his
contract of employment. The pension contributions were sums that the
claimant had consented to being deducted from sums due to the claimant for
5 the purpose of paying into his pension. The respondent's failure to do that
amounts to an unlawful deduction (since the deduction that took place did not
have the claimant's consent – the deduction was made for the respondent's
benefit and the sums retained by the respondent). The sums that are
outstanding are sums that stem from the respondent's failure to pay sums due
10 to the claimant (a breach of contract) and result in the claimant receiving a
sum of money in his wages which was less than the sum properly payable
(which amounts to an unlawful deduction of wages). The claimant is
contractually due each of the sums sought. They are sums that are
outstanding upon termination of the claimant's contract of employment.

15 26 The respondent is therefore ordered to pay the claimant the following sums:

- (1) £2,666.67 gross in respect of notice pay.
- (2) £29.45 in respect of the respondent's agreed contribution that ought
to have been paid into the NEST pension scheme in respect of the
claimant for the month of March 2018.
- 20 (3) £43.28 in respect of the respondent's agreed contribution that ought
to have been paid into the NEST pension scheme in respect of the
claimant for the month of April 2018.
- (4) £43.27 in respect of the respondent's agreed contribution that ought
to have been paid into the NEST pension scheme in respect of the
25 claimant for the month of May 2018.
- (5) £23.56 in respect of the claimant's contribution that the respondent
deducted from the claimant's salary but did not pay into the NEST
pension scheme in respect of the claimant for the month of March
2018.

(6) £51.94 in respect of the claimant's contribution that the respondent deducted from the claimant's salary but did not pay into the NEST pension scheme in respect of the claimant for the month of April 2018.

5 (7) £51.93 in respect of the claimant's contribution that the respondent deducted from the claimant's salary but did not pay into the NEST pension scheme in respect of the claimant for the month of May 2018.

(8) £818.46 in respect of 1.33 week's holiday pay due to the claimant.

10 (9) £64.48 in respect of expenses the claimant paid on behalf of the respondent

27 The relevant tax due should be deducted from the above gross sums.

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Employment Judge: David Hoey
Date of Judgment: 11 December 2018
Entered in register: 14 December 2018
20 **and copied to parties**