



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: S/4122814/2018**

**Hearing Held at Dundee on 10 April 2019**

**Employment Judge: Mr A Kemp (sitting alone)**

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**Mrs K Shand**

**Claimant  
In person**

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**Stand Strong Limited**

**Respondents  
No appearance**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The Tribunal holds that**

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**(i) the Respondents made unlawful deductions from the wages of the Claimant in the sum of Three Hundred and Seventy Five Pounds (£375), under the terms of section 13 of the Employment Rights Act 1996, which the Respondents are ordered to pay the Claimant, and**

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**(ii) the Claimant was dismissed by the Respondents on 30 April 2018 on grounds of redundancy, that the Claimant is entitled to a statutory redundancy payment under section 135 of the said Act, and the Respondents are ordered to make payment of the sum of One Thousand, Two Hundred and Sixty Five Pounds Sixty Two Pence (£1,265.62) to the Claimant accordingly.**

## REASONS

### Introduction

- 5 1. The Claimant made a claim for unlawful deduction from her wages and for a redundancy payment. The Respondents did not enter a Response Form.
2. The Claimant appeared for the Final Hearing. There was no appearance by or on behalf of the Respondents.

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### The issue

3. There were three issues before the Tribunal, which were (i) whether unlawful deductions from the wages of the Claimant had been made, (ii) whether the Claimant was redundant, and (iii) whether the claim for the former had been made timeously such that the Tribunal had jurisdiction. If the Claimant succeeded an issue as to remedy arose.

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### The evidence

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4. The Tribunal heard from the Claimant who gave evidence clearly and in a straightforward manner, and I accepted her as a credible and reliable witness.
5. There was one issue that remained outstanding which was written evidence of the pay that she received. The Claimant said that she would send to the Tribunal the pay slips that she had. There was a delay whilst that letter, which was promptly sent, was received by the Tribunal, but that was duly received and confirmed the evidence which had been given orally.

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### The facts

6. The Tribunal found the following facts to have been established:

7. The Claimant is Mrs Karen Shand. Her date of birth is 24 January 1966.
8. She was employed as a cleaner on a part-time basis. Her employment  
5 commenced on 1 January 2009, when she was employed by Kingdom  
Taverns Limited. She worked at Eddie's Bar in Kirkcaldy.
9. She worked for 2.5 hours per day on five days per week. She was paid at the  
level of the national minimum wage.
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10. On 23 April 2017 her contract of employment was transferred by virtue of the  
Transfer of Undertakings (Protection of Employment) Regulations 2006 to the  
Respondents.
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11. The Respondents are Stand Strong Limited, a limited company under  
company number SC560856, with a registered office at Balmalcolm Sandy  
Brae, Kennoway, Leven Fife KY8 5JN.
12. The business of the Respondents was run by a Director Corroll Pereira.
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13. The Claimant was latterly paid by them at the rate of £7.50 per hour, the sum  
which was the equivalent of £93.75 per week for the hours worked each  
week. In light of the level of earning there were no statutory deductions.
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14. On 30 April 2018 the Respondents ceased to trade. They did so without  
formal notice to the employees including the Claimant.
15. Kingdom Taverns Limited offered the Claimant employment with effect from  
1 May 2018. They stated to her that they did not consider that there was a  
30 relevant transfer under the said Regulations. They did not offer continuity of  
employment.

16. The Claimant sought to contact Mr Pereira by email and telephone but had no answer.
17. She had not been paid her wages for the month of April 2018, in the sum of £375, being four weeks' pay. No payment of that sum was made to her in the period that followed.
18. She contacted Companies House in about June 2018 to seek to ascertain the position of the Respondents company. She was advised by the person she spoke to to wait to ascertain whether they went into administration or liquidation.
19. She continued to call Companies House intermittently thereafter to seek to ascertain the position, but the advice remained to wait as there had been no change in status. That remains the position, with no change in the status of the Respondent company
20. On 7 October 2018 when the position remained unresolved she commenced Early Conciliation through ACAS. A Certificate was issued by ACAS on 7 November 2018.
21. The present Claim was presented to the Tribunal on 14 November 2018.

### **The Law**

22. Wages are defined under section 27 of the Employment Rights Act 1996 ("the Act"). They include payment of wages for work carried out.
23. The right not to suffer unauthorised deductions is provided by section 13 of the Act.

24. A complaint may be made to a Tribunal for unauthorised deductions under section 23 of the Act. It must be commenced within three months unless not reasonably practicable to have done so under section 23(4).
- 5 25. Redundancy is defined in section 139 of the Act, and includes the fact that the employer has ceased to carry on the business for the purposes of which the employee was employed. There is a statutory presumption of redundancy under section 163(2). For the purposes of redundancy a dismissal is defined by section 136, and includes where the contract is terminated by the employer  
10 with or without notice. The right to receive a redundancy payment is provided for in section 135.
26. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the Regulations”) make provision for a relevant transfer, which, where  
15 engaged, does not serve to terminate a contract of employment, but transfers it from transferor to transferee.

### **Discussion**

- 20 27. I accepted the evidence of the Claimant. There was no evidence from the Respondents who did not appear.
28. The evidence was clear that the Respondents ceased to trade on 30 April 2018. Whilst employment with another company then commenced, that  
25 company has not applied the terms of the 2006 Regulations. It offered a contract without preserving continuity of service. It directed the Claimant to her former employers to seek payment of any sums due.
29. There was no contrary evidence put forward. In light of that, I concluded that  
30 the contract of employment between the Claimant and the Respondents terminated on 30 April 2018, when the Respondents ceased to trade and that gave rise I consider to a dismissal under section 136 of the Act. That dismissal

was on the ground of redundancy, that being the presumption in terms of section 163(2).

5 30. There was a possibility of the events on or around 1 May 2018 being a relevant transfer under the Regulations, but there was no evidence on matters which would require to be proved were that conclusion to be reached. The Claimant was employed as a cleaner on a part-time basis and was not aware of the matters relevant to such an issue. On that basis I could not make finding on which to determine whether or not a relevant transfer had taken place, but it was clear that Kingdom Taverns Limited did not accept that it had done.

10 31. The Claimant has pursued a claim for redundancy within the statutory period of six months. I make an award for the statutory redundancy payment, based on her weekly wage of £93.75, and 9 years of service all over the age of 41. The sum due I calculate to be £1,265.62.

15 32. Her claim for unpaid wages, taken as one of unlawful deduction from wages, was outside the three month time period for pursuit in a Tribunal. The question was whether it was not reasonably practicable for her to have commenced the claim earlier. I accepted her evidence that she had been in touch with Companies House, and had been informed that she should wait until the company went into liquidation or administration. That did not then happen. It appeared to me that the situation was not dissimilar to that in **DHL Supply Chain Ltd v Fazackerley EAT 0019/18** in which the Claimant was dismissed on 15 March 2017 but an appeal not heard until 22 June 2017. Following the intimation of the outcome of the appeal the Claimant took advice and the Claim was presented on 19 July 2017. The Claimant stated that a few days after he had been dismissed he contacted ACAS and was advised to exhaust the internal appeal process before considering action such as a Tribunal claim. The Judge held that it was reasonable for him to act as he did, with the ACAS advice “tipping the balance”, and the EAT did not hold that that was perverse such that the decision was sustained.

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33. I therefore accepted that the Claimant had established that it had not been reasonably practicable to have presented her claim timeously and that it was presented within a reasonable period of time thereafter. I therefore have jurisdiction to consider her claim for unlawful deduction from wages, hold that wages were unlawfully deducted, and award the sum of £375.

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<b>Employment Judge:</b>	<b>Alexander Kemp</b>
<b>Date of Judgment:</b>	<b>02 May 2019</b>
<b>Entered in Register:</b>	<b>03 May 2019</b>
<b>Copied to Parties</b>	

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