



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case no. 4123463/2018

Held at Edinburgh on 20 February 2019

Employment Judge: W A Meiklejohn

Mrs Jean Jaffray

**Claimant
In person**

Two Palms Hotel and Events Limited

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows –

- (1) The Claimant's application to amend her ET1 to include a claim for holiday pay is granted.
- (2) The Respondent is ordered to pay to the Claimant the sum of ONE THOUSAND ONE HUNDRED AND SIXTEEN POUNDS AND SIXTY TWO PENCE (£1116.62) in respect of unpaid wages in the period up to 20 September 2018.
- (3) The Respondent is ordered to pay to the Claimant the sum of NINE HUNDRED AND SEVENTY SEVEN POUNDS AND SEVENTY SIX PENCE (£977.76) in respect of unpaid wages in the period 21 September 2018 to 17 October 2018.

- (4) The Respondent is ordered to pay to the Claimant the sum of THREE HUNDRED AND TWENTY ONE POUNDS AND TWENTY NINE PENCE (£321.29) in respect of pension contributions deducted by the Respondent from the Claimant's pay but not remitted to the pension provider.
- (5) The Respondent is ordered to pay to the Claimant the sum of ONE THOUSAND ONE HUNDRED AND TWENTY FOUR POUNDS AND FORTY TWO PENCE (£1124.42) in respect of holiday pay.
- (6) The Respondent is ordered to pay to the Claimant the sum of ONE THOUSAND EIGHT HUNDRED POUNDS (£1800.00) in terms of section 38 of the Employment Act 2002.

REASONS

1. This case came before me in Edinburgh on 20 February 2019. The Claimant appeared in person. The Respondent did not participate in the proceedings, no ET3 having been lodged.
2. The Claimant sought to amend her ET1 to include a claim for holiday pay. This had been foreshadowed in correspondence between the Claimant and the Respondent prior to the submission of the ET1 but the Claimant had not ticked the holiday pay box when completing the ET1 form. I was satisfied that this was an oversight on the Claimant's part and I allowed her to amend her ET1 to include a claim for holiday pay.

EVIDENCE AND FINDINGS IN FACT

3. The Claimant was employed by the Respondent from 21 February 2018 until 17 October 2018 when she left because she was not receiving payment of her wages.

4. According to her ET1 the Claimant worked an average of 50 hours per week and was paid at the rate of £9.00 per hour. The Claimant confirmed this in her evidence before me. Her gross weekly pay was accordingly £450.
5. The Claimant was told by the Respondent that their holiday year ran from 1 April to 31 March. The Claimant did not receive any holiday pay between 1 April 2018 and her termination date of 17 October 2018.
6. The Claimant calculated her holiday pay entitlement to be 184 hours at £9.00 per hour equalling £1606.32 gross. From this there required to be deducted income tax and employee's National Insurance contributions which the Claimant understood to equate to 30% of her gross pay. Accordingly the net amount of holiday pay sought by the Claimant was £1124.42.
7. The Claimant calculated that the amount owed to her by the Respondent in respect of unpaid wages in the period up to 20 September 2018 was £1116.62. This figure was calculated net of income tax and employee's National Insurance contributions and took into account payments by the Respondent to the Claimant to account of wages due to her.
8. The Claimant calculated that the amount owed to her by the Respondent in respect of unpaid wages in the period between 21 September 2018 and her employment ending on 17 October 2018 was £1396.80, equating to approximately 160 hours at £9.00 per hour. From this there required to be deducted income tax and employee's National Insurance contributions which the Claimant understood to equate to 30% of her gross pay. Accordingly the net amount of unpaid wages for the said period was £977.76.
9. The Claimant produced a letter from Creative Pension Trust dated 4 December 2018 advising her on behalf of the Trustees of the Creative Pension Trust (being the pension scheme selected by the Respondent to meet their Automatic Enrolment responsibilities) that the Respondent had failed to pay pension contributions

deducted from her wages into the Scheme. The Claimant calculated that the amount of pension contributions so deducted was £321.29.

10. The Respondent had not issued the Claimant with a compliant statement of main terms and conditions of employment in accordance with Part 1 of the Employment Rights Act 1996.

COMMENT ON EVIDENCE

11. I found the Claimant to be a credible witness.

APPLICABLE LAW

12. Section 13 of the Employment Rights Act 1996 provides that an employer must not make deductions from the wages of a worker unless (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or (b) the worker has previously signified in writing his/her consent to the making of the deduction. Failure to pay to a worker the total amount of wages due is to be treated (to the extent of the deficiency) as a deduction.

DISCUSSION AND DISPOSAL

13. The Respondent's failure to pay to the Claimant the amounts specified in paragraphs 6, 7 and 8 above constituted unlawful deductions of wages in respect of which the Claimant was entitled to the orders for payment set out in the Judgment.
14. The employee pension contributions referred to in paragraph 9 above were deductions which the Respondent was obliged to make, but only on the basis that the amounts so deducted would be timeously remitted to the pension provider. The Respondent's failure to remit in my view rendered the deductions unlawful and the Claimant was accordingly entitled to the order for payment set out in the Judgment.

15. Section 38 of the Employment Act 2002 applies where the Employment Tribunal makes an award to an employee and, when the proceeding began, the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996. Those sections apply to the issuing to the employee of a statement of main terms and conditions of employment and the notification of changes thereto.
16. Where, as in this case, section 38 applies the Tribunal must make an award in favour of the employee of a minimum amount of two weeks' wages and, if the Tribunal considers it just and equitable in all the circumstances to do so, it must increase the award to the higher amount of four weeks' wages.
17. In this case there had been no compliance with section 1(1) of the Employment Rights Act 1996 and I therefore considered that it was just and equitable to award the higher amount.

Employment Judge:	Sandy Meiklejohn
Date of Judgement:	01 March 2019
Entered in register:	06 March 2019
And copied to parties:	