



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4122123/2018

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Held in Glasgow on 18 January 2019

Employment Judge: F Jane Garvie

10 **Miss A Howie**

**Claimant
In Person**

RBG Security Solutions Ltd

**First Respondent
Represented by:
Mr M Mabon -
Director**

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Secura Scotland Ltd

**Second Respondent
Represented by:
- as above**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that

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1. the second respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay to the claimant the sum of £105.70 being outstanding wages due to her and
2. the claim insofar as it is directed against the first respondent is dismissed.

REASONS

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1. In her claim, (the ET1) presented on 29 October 2018, the claimant directed her claim against the first respondent. She indicated that she was looking for £131 monthly under section 6 of the ET1. She also indicated at section 8.2 that she had worked for the first respondent on three separate occasions, these being on 4 August, 9 August and 18 August 2018. She explained that she had not received any wages from them despite contacting the company but had received no reply and nor had Acas. The Acas Early Conciliation

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certificate date of receipt is 8 October 2018 and date of issue is 23 October 2018.

2. The claim was acknowledged and sent to the respondent on 31 October 2018
5 for a response, (the ET3) to be submitted by 28 November 2018. By email dated 26 November 2018, Mr Mabon submitted a response in which, on behalf of the first respondent, he said that it was not trading although it was registered in Companies House in May 2018. The ET1 went on to explain that, to date it has never traded and no business invoices were generated.
10 Above the box marked, "Do you defend the claim?" this was ticked at "Yes".
3. No further information was provided.
4. The parties had already been notified that the Final Hearing would take place
15 on 18 January 2019 at 2pm. By letter of 3 December 2018, the claimant was asked to clarify her position. Was she was bringing a complaint against a limited company namely the first respondent or against the first respondent trading as a trading name?
- 20 5. The claimant replied by email of 3 December 2018 enclosing what she said were "photos of proof that the company exists". She also enclosed copies of bank statements showing that she had previously worked for Mr Mabon's company but these referred to the second not the first respondent.
- 25 6. Employment Judge Mary Kearns directed that the correspondence be put on file and that the attachments would be sent directly by the Tribunal to the first respondent. The claimant was again asked to clarify the correct name of the respondent and to do so by 14 December 2018. No reply was received.
- 30 7. In an email of 17 December 2018, Mr Mabon indicated that the claim was brought against the first respondent which had never traded and there were references to Security Steward which he said was incorrect. He stated that the claimant had worked for the second respondent on three shifts over a period of two years for which she had been paid.

8. This correspondence was acknowledged on 28 December 2018 on the direction of Judge Whitcombe who reminded the parties they must copy correspondence to the Tribunal to the other side.

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9. Miss Howie replied on 3 January 2019, indicating she was not clear what she was being asked to provide.

10. Employment Judge Muriel Robison directed that the Final Hearing should proceed on 18 January 2019. There was then an issue as to the arrangement for the time of the hearing but this was then left in place as 2pm on 18 January 2019.

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11. At the Final Hearing the claimant and Mr Mabon were both present.

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12. At the start of the Final Hearing Mr Mabon accepted that the correct respondent is the second respondent, Secura Scotland Limited and that the claim should have been defended on the basis that it was the company which contracted with the claimant and not the first respondent. I therefore directed that I was prepared to add Secura Scotland as a second respondent and to accept this was the position, there being no objection taken by the claimant to my doing so and in effect adding on the second respondent as a further respondent. It was accepted there was no need to hold a preliminary hearing into the correct identity of the respondent since Mr Mabon accepted it was the second respondent as did the claimant.

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13. The claimant gave evidence as did Mr Mabon. No other witnesses were called.

30 **Findings of fact**

14. The Tribunal found the following essential facts to have been established or agreed.

15. The claimant worked on three occasions for the second respondent, these being on 4, 9 and 18 August 2018. She maintained that she was entitled to be paid at the rate for a SIA steward which would be payable at £8.75 per hour as that was what she understood was the going rate. However, the claimant accepted that while she had previously held a licence to act as an SIA steward, this licence had expired in May 2018. It had not been renewed.
16. The claimant indicated that she had contacted SIA which is the organisation that oversees the use of such stewards. She maintained that it would be a breach of contract for her not to be paid at the higher rate as an SIA steward although she accepted that her licence had expired in May 2018 and so it was unclear on what basis she would then have been entitled to be paid at the higher rate. Mr Mabon was adamant that she was working as a Safety Steward which role does not require a licence and is paid at a lower hourly rate.
17. The claimant accepted that Safety Stewards are paid at a rate of £7.83 which was the figure given by Mr Mabon and which is in accordance with the national minimum wage.
18. The claimant maintains that she was doing more than acting as a safety steward but Mr Mabon disputed this was the case.
19. Even if the claimant were correct, the Tribunal was not satisfied that the claimant was entitled to be paid at the higher rate since, in doing so she would have been a breach of the regulations, given she was no longer licenced as an SIA steward.
20. Both parties were in agreement that the correct rates would be £8.75 for the higher rate and £7.83 for a Safety Steward.
21. The claimant maintained that she was seeking £15 per hour for three shifts of 5 hours which at £8.75 amounts to £131.25 although the figure given in the claim form is £131.

22. Mr Mabon maintained that the correct rate was the national minimum wage of £7.83 x 13.5 hours giving a total of £105.70. He was clear the claimant worked 13.5 hours and not 15 hours.

5 23. After the conclusion of the evidence, Mr Mabon explained that he had copies of invoices that he had provided through the second respondent to those organisations which had booked the provision of both of SIA and Safety Stewards. One is an invoice for 4 August 2018 at Ayr United for 10 Stewards. There is no reference to SIA Stewards. The second is for a Firework Display
10 on 18 August 2018 which includes both a SIA supervisor, SIA Stewards and Safety Stewards while the third is for an event in Kilwinning on 9 August 2018. Copies of these invoices were provided to the claimant and the Tribunal by Mr Mabon.

15 24. Accordingly, the position for the claimant was that she considers that she is entitled to £131.25 in unpaid wages whereas Mr Mabon submits that the second respondent is due to pay £105.70.

20 25. Mr Mabon accepted that outstanding wages are due to the claimant but in the amount of £105.5. His explanation for failing to pay these was that the claimant had placed various posts on social network which he found unacceptable and that was his explanation for failing to pay the claimant the money due to her.

25 26. It was explained to him that is not a basis in law not to make payment of wages earned and that it is not a matter that the Tribunal can take into consideration in determining how much is due.

30 **Deliberation and determination**

27. The Tribunal concluded that the claimant was entitled to be paid at a rate of £7.83 per hour on the basis that she was no longer licenced to operate as an

SIA but as a Safety Steward which is an unlicensed role. In relation to how much should be paid, the Tribunal noted that she claimed she was entitled to 15 hours at £8.75 but, as explained above, she is not entitled to that amount given the hourly rate for her work as a Safety Steward was £7.83.

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28. Mr Mabon had provided information from the invoices referred to above about the event on 4 August 2018, indicating that the claimant was covering for a period of four hours whereas on 9 August 2018 it was five and a half hours and then on 18 August 2018 it was four hours giving a total of 13 and a half hours.

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29. Having considered both views the Tribunal concluded that Mr Mabon's evidence was to be preferred as to the number of hours worked, being 13 and a half hours rather than the claimant's assertion that it was an additional one and half hours and so a total of 15 hours.

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30. As explained above, the Tribunal concluded that the claimant was entitled to be paid for the 13 and a half hours at £7.83 per hour.

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31. The Tribunal concluded that the entitlement was to 13 and a half hours at an hourly rate of £7.83 which gives a total figure of £105.70. Accordingly, that is the amount awarded to the claimant and is to be paid to the claimant by the second respondent while the claim insofar as it is directed against the first respondent is dismissed.

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Employment Judge: F Jane Garvie
Date of Judgment: 23 January 2019
Entered in register: 24 January 2019
and copied to parties