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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: S/4123615/2018

Held in Glasgow on 27 February 2019

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Employment Judge: David Hoey (sitting alone)

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Mr S Greenan

**Claimant
In Person**

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S&K Heating Ltd

**Respondent
Not Present and
Not Represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the respondent is required to pay to the claimant the following sums:-

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1. The gross amount of **Three Hundred and Eighty Pounds (£380)** representing 4 day's wages (for the period 12 to 15 November 2018 for which no payment was made).
2. The gross sum of **Four Hundred and Seventy Pounds (£475)** representing a week's lying time due to the claimant.

E.T. Z4 (WR)

3. The sum of **Forty Pounds £40** which the claimant paid to fill the respondent's van with fuel.

The respondent is responsible for deducting tax from the above sums, as required by law.

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REASONS

1. This case called as a Final Hearing. The claimant appeared in person.
2. No-one from the respondent attended. After 15 minutes of waiting beyond the allocated start time, the clerk telephoned the respondent to ascertain the position. She was unable to get through to the relevant person. Ten minutes later she tried again but on this occasion the call was refused.
3. In terms of rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013, where a party fails to attend a Hearing, the Tribunal can proceed in their absence once reasonable steps are taken to ascertain why the party had not attended. The Notice of Hearing had been issued to the respondent. Two attempts had been made to contact them. In the circumstances, I decided that it would be appropriate for the Hearing to proceed.
4. The respondent has the right in terms of rule 70 of the above 2013 Rules to seek reconsideration of this Judgment in the event the respondent believes it is necessary in the interests of justice to do so. Clear reasons would need to be given by the respondent if this is something they wish to consider and the terms of the rules should be carefully followed in that event.

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Issues to be determined

5. The Hearing began by identifying the issues arising. The claimant sought three payments from the respondent, namely:-

- (1) A week's lying time in the sum of £475

(2) 4 day's wages for the period 12 to 15 November 2018 in the sum of £380

(3) £40 fuel payment.

6 The sums were sought as unlawful deductions of wages or as damages for
5 breach of contract. The claimant argued these were sums to which he was
entitled in terms of his contract of employment and which the respondent had
declined to pay.

7 The Tribunal therefore had to decide whether the claimant was entitled to
these sums. The respondent in the Response Form had stated that the
10 claimant had agreed a repayment provision whereby any losses sustained by
the respondent (as a result of his dishonesty and other failures) would fall to
be deducted from sums due to the claimant.

Findings in fact

8 The claimant gave evidence and I make the following findings in fact in light
15 of the evidence led before the Tribunal.

9 The claimant was engaged as a Central Heating Engineer by the respondent
from 29 October 2018 to 15 November 2018.

10 He earned £600 gross a week, which yielded a weekly net sum of £475. He
worked 40 hours a week.

20 11 He was not paid his weekly pay for the first week of his employment. This was
common within the industry and is commonly called "lying time" as the first
week of pay "lies" until the end of employment at which point the week's lying
time is reimbursed.

12 On 14 November 2018 the claimant was asked by the Director of the
25 respondent to work on a job that involved underfloor work. This involved
rerouting gas pipes and significant works. The claimant was an experienced
engineer and knew that the job required 2 workers and probably 2 days.

- 13 The claimant told the Director he could do the work but would need to be given the relevant support and time to complete the work safely and properly.
- 14 The Director told the claimant if he was unable to do the job, he (the claimant) was “of no use” to the respondent and he should drop his van off at the depot.
5 The claimant said that is what he would do. The claimant was told by the Director that the work would be outsourced to a contractor (which had happened before).
- 15 At or around midnight of 14 (going into 15) November 2018 the claimant received a call from the customer on whose property he had been working on
10 14 November. She had locked herself out the central heating control panel. Advice was given by telephone and the claimant attended that property on the morning of 15 November 2018 (en route to return the van). He carried out work and resolved the issues. That was the last day of his employment with the respondent.
- 15 16 Due to an accident and hospital visit, the claimant was unable to telephone the respondent until later in the day of 15 November. He had arranged for a friend to return the respondent’s van to its premises (together with the keys).
- 17 The claimant contacted the Respondent’s administrator to confirm that the van had been returned, as the respondent had told the claimant to do.
- 20 18 On 16 November 2018, when the claimant’s wages were due, he discovered his wages had not been paid into his account. He contacted the administrator of the respondent who advised that the claimant would need to speak with the Director. Despite trying to do so the Director did not return the claimant’s various calls. The Director then blocked the claimant’s number from his
25 phone.
- 19 The claimant had carried out work for the respondent up to and including 15 November 2018. He was entitled to be paid for that work.
- 20 He was also entitled to be paid for his week’s lying time which was outstanding.

21 The claimant had filled up the respondent's vehicle with fuel, to the value of £40, on 13 November 2018. He passed the receipt for this expense to the administrator. He had not been paid for that expense. He was entitled to be reimbursed for that sum.

5 **The Law**

22 In terms of section 13 of the Employment Rights Act 1996 a worker is entitled to be paid the sum properly payable in terms of the employment contract and if the sum actually paid is less than the sum properly payable, the Tribunal can award such a sum.

10 23 In terms of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994, a Tribunal can award an employee damages where the employment contract is breached, subject to certain conditions, including that employment has ended and that the sum ordered is less than £25,000 (amongst other restrictions, which do not apply in this case).

15 **Discussion and decision**

24 The claimant carried out work for the respondent for the 4 days for which no payment was made. He was due to receive £380 (four fifths of a week's pay). I put the respondent's position in the Response Form to the claimant, which appeared to be that the claimant had agreed that sums incurred by the respondent be deducted from any sums due to the claimant. The claimant denied that he had agreed to this. He had been asked to sign something upon starting but was not given a copy of anything. No evidence had been presented by the respondent showing exactly what had been agreed. Further the paragraph set out in the response form suggested that the claimant required to be at fault in some way for a deduction to be made. In any event no evidence was presented showing what the respondent had lost. The Tribunal is satisfied that no deductions can lawfully be made from the sums due to the claimant. In all the circumstances the claimant is entitled to pay for those 4 days worked. Failure to pay it is a breach of contract and amounts to an unlawful deduction of his wages.

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25 The claimant is due his week's lying time in the sum of £475. That is sum due
to be paid to the claimant and the failure to repay it is a breach of the
claimant's employment contract. That sum should be paid to the claimant.

26 He is entitled to be reimbursed for the £40 he paid to fill the respondent's van
5 with fuel. It is implied into every contract of employment in Scotland that an
employer will reimburse employees for reasonable expenses incurred in
carrying out their work. This sum should therefore be repaid to the claimant.

27 The respondent is responsible for deducting tax from the above sums, as
required by law.

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Employment Judge

David Hoey

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Date of Judgment

28 February 2019

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**Entered in register
and copied to parties**

04 March 2019

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