



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4110336 /2019**

**Held in Edinburgh on 6 November 2019**

**Employment Judge: M Sutherland (sitting alone)**

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**Yasmin Lizanec**

**Claimant  
In person**

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**Edinburgh Dental Limited**

**Respondent  
Represented by:  
Paul Bloch**

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The judgment of the Tribunal is that:

(1) the claim was presented within the time limit and should proceed to a final hearing, and

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(2) the name of the Respondent should be amended from Edinburgh Dental to Edinburgh Dental Limited.

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## **REASONS**

### **Introduction**

ETZ4(WR)

1. The Claimant presented a complaint of unlawful deduction from wages. The Respondent asserted that the complaint was presented out of time. A preliminary hearing on time bar was fixed for today.

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2. The Claimant appeared on her own behalf. The Respondent was represented by Paul Bloch who is a Director of the company.

3. The company name is Edinburgh Dental Limited rather than Edinburgh Dental and the name of the Respondent should be amended accordingly.

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4. The Claimant lodged productions and gave evidence on her own behalf.

5. The Respondent lodged productions and Paul Bloch gave evidence on behalf of the Respondent.

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#### Findings of Fact

6. The tribunal makes the following findings of fact –

7. The Claimant was employed by the Respondent from Thursday 21 March 2019 until Friday 26 April 2019. The Claimant was employed by them as a Dental Nurse.

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8. In terms of her written contract the Claimant was paid monthly in arrears on, or before, the 28<sup>th</sup> of each month. Under that contract she was to be paid for the period of the 26<sup>th</sup> of the previous month to the 25<sup>th</sup> of the current month.

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9. In terms of that contract the Respondent is entitled to make a deduction in respect of an overpayment of wages, excess holidays, failure to give contractual notice, theft of property and “if you fail to return to practice property and/or equipment (including keys or uniform) when your employment terminates”.

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10. On Friday 26 April 2019 Paul Bloch contacted the Claimant to advise that her wages would not be paid until she had returned her keys. (He had tried to contact

her earlier without success.) He considered that he was entitled to deduct the cost of replacing the keys from her wages if she failed to return them. He had calculated that the cost of the keys was in excess of her final wages. He asked her to drop off the keys on Monday 29 April in person. She explained that she was at the airport about to go on a week's holiday. She advised that the only time her mother could drop off the keys was on Monday 29 April at 8am or it would need to be Monday 6 May when she returned from her holiday. The keys were not dropped off on Monday 29 April and on 29 April Paul Bloch contacted the Claimant to advise that he had not received the keys. The Claimant replied advising that it would need to be Monday 6 May. She then asked when she would receive payment and he replied advising not until she had returned the keys. Whilst Paul Bloch hoped that the keys might be returned earlier than 6 May, he did not object to the keys being returned by Monday 6 May.

11. The Claimant returned the keys on Monday 6 May. The office was closed that day and the Respondent made payment of her wages in sum of £460.67 at the earliest opportunity on 7 May. The Claimant did not receive an itemised pay statement or "pay advice" as it is described in the contract. She did however receive an email from Paul Bloch detailing how that payment was calculated. No deduction was made in respect of tax or national insurance.

12. The Claimant believed that she had been paid less than her entitlement. She contacted Citizen's Advice for advice on or about 14 May 2019. They advised her to contact ACAS.

13. The Claimant contacted ACAS to commence early conciliation on 20 May 2019. The Claimant received the ACAS early conciliation certificate on 6 June 2019. ACAS advised her to lodge her complaint with the employment tribunal.

14. The Claimant has experienced problems with her mental health. She was signed off work with depression from 11 July 2019 to date and is on medication. She ceased to socialise from that date apart from going out on her birthday. The Claimant was able to complete and lodge her complaint in the period between 6 June and 11 July 2019 but did not do so. The Claimant experienced significant

difficulty completing and lodging her complaint thereafter because of her mental health problems.

15. The Claimant presented her complaint on 21 August 2019.

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### **Relevant law**

16. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.

17. A complaint for unlawful deduction from wages must be made within 3 months beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.

18. To allow time for early conciliation, Section 207B ERA 1996 provides for an EC extension. In working out when the time limit expires, the period beginning the day after Day A and ending with Day B is not to be counted. Alternatively, if the time limit would expire during the period beginning the day after Day A and ending one month after Day B, the time limit instead expires at the end of that period. Day A is the day the Claimant contacted ACAS to commence early conciliation. Day B is the day the Claimant received the ACAS early conciliation certificate.

### **Discussion and decision**

19. The Claimant was employed by the Respondent from the period from Thursday 21 March 2019 until Friday 26 April 2019. In terms of her written contract the Claimant was paid monthly in arrears on, or before, the 28<sup>th</sup> of each month. Under that contract she was to be paid for the period of the 26<sup>th</sup> of the previous month

to the 25<sup>th</sup> of the current month. According to the terms of her written contract the due date for payment for work until 25 April was 28 April and the due date for payment for work on 26 April was 28 May.

5 20. By discussion between them the parties agreed a change to the due date for payment. They agreed that the Claimant would be paid when she returned the keys either on 29 April failing which by 6 May 2019. This reflected the express and objective intention of the parties. The Claimant returned the keys on 6 May 2019 and was paid at the first opportunity on 7 May 2019.

10 21. The due date for payment was 7 May and accordingly the 3 month time limit would expire on 6 August but for any ACAS Early Conciliation extension.

15 22. The Claimant contacted ACAS to commence early conciliation on 20 May 2019 (Day A). The Claimant received the ACAS early conciliation certificate on 6 June 2019 (Day B). Accordingly the time limit falls to be extended by 17 days until 23 August 2019. The complaint was lodged on 21 August 2019 and accordingly is in time. The claim should proceed to a final hearing.

20 **Date of Judgment: 07 November 2019**  
**Employment Judge: Michelle Sutherland**  
**Entered Into the Register: 13 November 2019**  
**And Copied to Parties**