



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100077/19**

**Held on 13 December 2019**

**Employment Judge N M Hosie**

**Mr G Walker**

**Claimant  
In Person**

**Colin Evans and Mrs Jill Evans trading as  
Colins Tyres**

**Respondents  
No appearance**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that:-

1. the respondents have made an unauthorised deduction from the claimant's wages and are ordered to pay the claimant the sum of One Hundred and Four Pounds (£104), subject to appropriate deductions for Income Tax and National Insurance;

2. the respondents have failed to pay the claimant's holiday entitlement and are ordered to pay the claimant the sum of Eight Hundred and Thirty Two Pounds (£832), subject to appropriate deductions for Income Tax and National Insurance; and
3. the respondents have failed to provide the claimant with a written statement of his terms and conditions of employment and are ordered to pay the claimant the sum of One Thousand and Forty Pounds (£1,040).

### REASONS

1. Graeme Walker brought complaints of unauthorised deduction from wages, for outstanding holiday pay and for a failure by the respondents to provide him with written employment particulars. After various procedures, the respondents submitted a response form. The claim was defended on the basis of, "*no notice given*". A Final Hearing was fixed for 13 December 2019 in Aberdeen and was duly intimated to the parties.
2. However, on 6 December, the respondents sent the following email to the Tribunal:-

*"I write with regards to Case No 4100077/2019 which is being held on 13<sup>th</sup> December.*

*Mr Colin Evans and Mrs Jill Evans t/a Colins Tyres will not be appearing at the hearing as previously mentioned Mr G Walker was not an employee of theirs.*

*We have contacted the company whom we believe this Judgement is applicable to and they should be in touch in due course.*

*Can you please acknowledge safe receipt of this email."*

3. The Tribunal responded by email on 9 December as follows:-

*"The Employment Judge (J Hendry) has asked me to write to you in response to your email dated 6 December 2019 (below) in which you say*

*that the current respondents will not be appearing and that you have contacted the company 'whom we believe' is responsible. The Tribunal expects parties to be candid from the outset of proceedings. To be told a few days from a hearing that a different respondents should be called is not acceptable. You have not even said in the email (or in any defence put forward) who the correct respondents is alleged to be. A Tribunal can award expenses against a party who has acted unreasonably.*

*If the respondents who are cited do not appear then a Judgment may be entered against them."*

4. The claimant appeared at the Tribunal office on 13 December. He had prepared for the Hearing, submitted productions, and was ready to proceed.
5. A Notice of Hearing was sent to the parties on 27 September 2019 and it was clear from their email of 6 December that they were aware that the Final Hearing was due to take place on 13 December. However, there was no appearance by or on behalf of the respondents. Other than the email of 6 December, there had been no contact from the respondents to explain why no one would be appearing.
6. The Hearing was scheduled to start at 10.30 am. When there was no appearance by or on behalf of the respondents by 10.45 am I decided, in all the circumstances, and having regard to the "overriding objective" in the Rules of Procedure, to proceed with the Hearing in the respondents' absence.
7. I heard evidence, under oath, from the claimant. He spoke to a number of documentary productions. He gave his evidence in a measured, consistent and convincing manner and presented as entirely credible and reliable.
8. I deal with each of his complaints in turn. The claimant had, throughout the case, from the time he submitted his claim form on 3 January 2019, consistently maintained that these sums were due.

**Wages**

9. I was satisfied, on the basis of the claimant's evidence and the documentary productions, that the respondents had made an unlawful deduction of one day's wages amounting to **£104**. The respondents are ordered, therefore, to pay this sum to the claimant, under deduction of the appropriate amounts of Income Tax and National Insurance.

**Holiday Pay**

10. I was also satisfied that the claimant was due 8 days' accrued holiday pay in the sum of **£832**. The respondents are also ordered, therefore, to pay this sum to the claimant, under deduction of the appropriate amounts for Income Tax and National Insurance.

**Written Employment Particulars**

11. The respondents had submitted a written contract of employment. However, this was not signed by the claimant and he denied ever having received it. I preferred his evidence which was, as I recorded above, was both credible and reliable.
12. I observe, in passing, that the copy contract which the respondents submitted makes reference to the employer being "a partnership" which appears to be at odds with their contention in the email of 6 December that the claimant was employed by "a company".

13. I was satisfied, therefore, that the respondents had failed to provide the claimant with a written statement of his terms and conditions of employment. I decided, in all the circumstances, that he should be awarded 2 weeks' pay in respect of this failure which amounts to **£1,040**. The respondents are also ordered to pay this sum to him.

**Employment Judge:**

**Nicol Hosie**

**Date of Judgment:**

**03 January 2020**

**Date Sent to parties:**

**06 January 2020**