



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4118408/2018

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Held in Glasgow on 4 February 2019

Employment Judge: Michelle Sutherland (sitting alone)

10 **Linda Milroy**

**Claimant
In Person**

15 **Lisa McCabe t/a Stardust Doggy Care**

**Respondent
Represented by
**Mr P Maratos,
Consultant****

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The judgment of the Tribunal is that the complaints of unauthorised deduction from wages are well founded and the Respondent is ordered to pay the Claimant the sum of £2,868.39 (gross) from which tax and national insurance requires to be deducted and remitted to HMRC.

REASONS

25 **Introduction**

1. The Claimant presented a complaint of unlawful deduction from wages (arrears of pay and notice pay) which the Respondent denied. Her claim was conjoined with that of L Lawson Case Number 4118422/2018.
- 30 2. A preliminary hearing was held on 23 November 2018 and a final hearing was held on 4 February 2019.

3. No evidence was led by either party and facts were agreed by parties at the hearing following discussion between the parties having regard to the documents lodged by both parties.

5 4. Neither party made closing submissions.

Findings of Fact

5. Based on the information provided and the agreed facts the Tribunal makes the following findings –

10 6. The Claimant was employed by the Respondent from 3 April 2017 until 30 June 2018 as a dog walker.

7. She was paid £7.83 an hour and worked 35 hours a week. The Claimant was paid 1 month in arrears.

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8. The Respondent gave the Claimant 1 month's notice of termination of employment.

9. The Claimant was due payment of wages on 1 June 2018 in sum of £1,187.55 (gross) and 1 July 2018 in sum of £1187.55 (gross). The Claimant did not receive payment of these wages.

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10. At the date of termination of her employment the Claimant had 9 days of accrued but unused holiday. This generated wages in sum of £493.29 (gross)) also due to be paid on 1 July 2018. The Claimant did not receive payment of these wages.

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Discussion and Decision

11. A worker is entitled to 5.6 weeks annual leave in each leave year under Sections 13 and 13A of the Working Time Regulations 1998. Where a worker's employment is terminated during a leave year the worker is entitled to a proportion of that leave and a payment in lieu in respect of any leave not taken.

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12. 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.
13. A worker means an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to perform personally any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230 ERA).
14. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
15. Under Section 27(1) of the ERA "wages" means any sums payable to the worker in connection with their employment including holiday pay.
16. 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.
17. The Claimant did not receive payment of her wages of £1,187.55 (gross) due on 1 June 2018, her wages of £1,187.55 (gross) due on 1 July 2018 or her wages in respect of accrued but unused holidays of £493.29 (gross) also due to be paid on 1 July 2018 (totalling £2,868.39).

18. There was no written agreement or consent to the deduction of any debt and accordingly the deductions were not authorised or excluded deductions. The Claimant therefore suffered an unauthorised deduction from wages in sum of £2,868.39 (gross) from which tax and national insurance requires to be remitted to HMRC.

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Employment Judge:

Michelle Sutherland

Date of Judgement:

08 February 2019

10 Entered in Register,

Copied to Parties:

12 February 2019