



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: 4107831/2019 Held in Glasgow on 10 October 2019**

Employment Judge S MacLean

10 Mr C Pew

Claimant

KFA Commercials Limited

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the Tribunal does not have jurisdiction (1) under section 23 of the Employment Rights Act 1996 to hear the claimant's complaint of unauthorised deduction of wages; and (2) under section 7 of
20 the Employment Tribunal Extension of Jurisdiction Order 1994 to hear the breach of contract claim.

REASONS

Introduction

1. In the claim form presented to the Tribunal's office on 23 July 2019 the
25 claimant complains that the respondent made an unauthorised deduction from his salary. He also seeks damages for failing to give notice when his employment was terminated and making a payment in lieu.
2. The respondent sent a response to the Tribunal's office on 13 August 2019 denying that the claimant was dismissed; he left without giving notice. The
30 respondent admits making deductions but says that they are lawful. The respondent says that the claims are time barred.

E.T. Z4 (WR)

3. The claimant gave evidence on his own account. Ms Rae gave evidence for the respondent. The claimant produced a set of productions. The respondent showed the Tribunal and the claimant his wages slips for February and March 2019.

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

Findings in Fact

5. The respondent employed the claimant from 15 October 2018. His last day at work was 27 February 2019. He did not attend on 28 February 2019 and 1
10 March 2019. On 4 March 2019 the respondent instructed the claimant was not to enter the premises unaccompanied and to collect his tool box.

6. The claimant submits daily worksheets. The pay period runs from the first of day of each month until the last day of each month. Payment is made two weeks from the month's end. At the beginning of each month the claimant's
15 wages based on the worksheets submitted for the previous month are calculated and are paid into his bank account on or around the 15th day of the month.

7. On 15 March 2019 the claimant received a payment into his bank account. He did not receive a wage slip. The amount received was less than he
20 expected. The claimant emailed the respondent asking for his wage slip so that he could see what had been deducted. The claimant did not receive the wage slip which the respondent said was sent. The claimant knew that the respondent had made deductions from his wages which he disputed that the respondent was entitled to do.

25 8. On 20 March 2019 the claimant received a letter from the respondent dated 14 March 2019. It stated that the claimant's employment ended on 1 March 2019. As he failed to attend on 28 February 2019 and 1 March 2019 the respondent was not paying him for these days. The letter also said that the claimant failed to give notice and one week's pay was being deducted from
30 the claimant's accrued annual leave and any balance was being paid in the

final salary. Enclosed with the letter were four invoices that the respondent said related to items in the claimant's possession and these amounts were being deducted from his salary.

5 9. The claimant notified ACAS on 24 April 2019. The ACAS certificate was issued on 23 May 2019.

10. On 10 June 2019 the respondent sent an email ACAS which was forwarded to the claimant. In that email the respondent stated that it would resend the wage slip for February 2019 but as the claimant did not work any days in March 2019 there was no wage slip for March 2019.

10 *Witnesses and Observations on Evidence*

11. In the Tribunal's view the claimant gave his evidence in an honest straightforward manner. He said that the respondent had no authority in writing to make deductions from his wages but confirmed he said that in relation to the service tool box he has already repaid £200 cash in February 2019 and accepted that he had verbally agreed to the respondent making deduction of £200 from his salary in March.

12. Ms Rae gave her evidence candidly. She showed the Tribunal the wage slips for January 2019 and February 2019. She acknowledged that the February 2019 did not show what payments had been made respect on annual leave nor did it show the deductions that had been made from the claimant's wages.

13. In relation to the issue to be determined there was a dispute about whether any payment of wages was expected in April 2019. The claimant said that time sheets had to be submitted by 22nd day of each month and that the pay period was only up to that date. Ms Rae explained that employees are paid for the full calendar month. Payment is not until the middle of the next month to ensure that the work sheets are received and processed in time.

14. The Tribunal considered that on the information available the respondent's evidence on this point was more plausible. Even if that was the claimant's understanding he knew from the email sent on 10 June 2019 that the payment

on 15 March 2019 covered all days worked in February 2019, he did not work for the respondent in March 2019 and no further payment was due.

Deliberations

- 5 15. The Tribunal considered its findings. The unlawful deduction of wages claim related to deductions made from wages paid on 15 March 2019.
16. Section 23(2)(a) of the Employment Rights Act 2019 provided that the complaint must be presented to the Tribunal before the end of the three-month period beginning with the date of the payment of the wages from which the deductions were made.
- 10 17. There was no dispute that the claimant was paid monthly. He was entitled to wages for February 2019 for which he was due to be paid on 15 March 2019. On termination of his employment it was from these wages that the deductions were made.
- 15 18. The Tribunal found that the claimant did not do any work for the respondent after 27 February 2019. The payment made on 15 March 2019 purported to include pay for all work done in February 2019 (other than 28 February 2019 when the claimant was not present) and accrued holiday less a week's pay for failing to give notice. Also deducted were invoices which the respondent said the claimant was due to reimburse the respondent. The claimant knew
20 that deductions which he considered unlawful had been made albeit not how they were calculated. There was no payment on 15 April 2019 but no wages were due for March 2019. The Tribunal considered that there were no unlawful deductions from the claimant's wages after 15 March 2019.
- 25 19. The Tribunal does not have jurisdiction to consider a complaint that there has been a deduction from wages unless it is brought within three months of the deduction or the last in the series of deductions being made.
20. Before bringing a claim of unlawful deduction of wages there requires to be early conciliation. When calculating the time limit, the period beginning with the day after the early conciliation request is received up to and including the

when the certificate is received or deemed to have been received by the claimant is not counted. The claimant notified ACAS on 24 April 2019 and received the certificate on 23 May 2019. The Tribunal calculated that time limited is extended by a full calendar month from 14 June 2019, that is 13 July 2019. The claim was not presented until 23 July 2019. It was presented out of time.

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21. The reason for the time limit is to ensure that claims are brought promptly. There was no submission to the Tribunal that it was not reasonably practicable for the complaint to be presented with that three-month period.

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22. The Tribunal considered that under section 23 of the Employment Rights Act 1996 it did not have jurisdiction to hear the claimant's complaint of unauthorised deduction of wages

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23. Turning to the breach of contract claim, the three-month time limit starts from the effective date of termination or if none the last date on which the employee was employed.

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24. There is a dispute over whether the claimant was dismissed. From the evidence the date on which he was last employed was 4 March 2019. Considering the early conciliation period, the Tribunal calculated that the time limit for presenting the breach of contract claim is extended by a full month from 3 June 2019, that is 2 July 2019. The claim was not presented until 23 July 2019. It was presented out of time.

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25. There was no submission to the Tribunal that it was not reasonably practicable for the complaint to be presented within that three-month period.

26. The Tribunal considered that under section 7 of the Employment Tribunal Extension of Jurisdiction Order 1994 it did not have jurisdiction to hear the claimant's breach of contract claim.

Shona MacLean
Employment Judge

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11 October 2019
Date of Judgment

Entered in register and copied to parties

16 October 2019