



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

**Judgment of the Employment Tribunal in Case No: 4112152/2019 Heard at
Edinburgh on 29th of January 2020**

Employment Judge: J G d'Inverno

Mr R Wierzbicki

**Claimant
In Person
per Ms Anna Kocela
Polish Language
Interpreter**

Oscars Edinburgh Limited

**Respondent
Represented by
Mr H Murdochy
Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

(First) The Judgment of the Employment Tribunal is that the claimant's complaint of unauthorised deduction from wages contrary to the provisions of section 13 of the Employment Rights Act 1996 succeeds and the respondent shall pay to the claimant:-

- (a) the net sum of £301:60 being an amount equivalent to the deduction made from the claimant's wages in respect of the period 23rd February to 1st March 2019 (inclusive).
- (b) The net sum of £1,653 in respect of the period 21st July to 3rd August (inclusive).

(Second) That the claimant's claim for compensation in respect of accrued but untaken paid annual leave entitlement succeeds and that the respondent shall pay to the claimant the total sum of £829:92 in respect of the total of his accrued but untaken paid annual leave entitlement as at the date of termination of employment, 3rd August 2019.

REASONS

1. This case called for Final Hearing at Edinburgh on 29th January 2020. The claimant Mr Rafal Wierzbicki appeared on his own behalf with the assistance of a Polish language interpreter to whom the Employment Judge administered the oath *de fidei in administratione*.
2. The claims advanced by the claimant are complaints in respect of unauthorised deduction from wages contrary to the provisions of section 13 of the Employment Rights Act 1996 and breach of the Working Time Regulations in respect of paid annual leave entitlement. The claimant advances no claims invoking the Tribunal's contractual jurisdiction. There is no employer's contractual counter claim in the proceedings.
3. Each party lodged a bundle of documents to some of which reference was made in the course of evidence and or submission.
4. The claimant gave evidence on his own behalf, on oath. For the respondent its Director Mr H Murdochy did likewise.
5. In the course of Case Management Discussion conducted at the outset of the Hearing parties identified the following as the issues requiring investigation and determination by the Tribunal:-

(First) What was the start date of the claimant's employment with the Respondent Company.

(Second) At what gross hourly rates and from which respective dates did the parties agree the claimant should be paid.

(Third) Did the respondent make unauthorised deductions from the claimant's wages, contrary to the provisions of section 13 of the Employment Rights Act 1996 in the periods 20th to 27th and 28th, July, to 3rd August 2019 inclusive and in the period 02 to 08th March in what net amounts, which failing in respect of which gross amounts were any such deductions made.

(Fourth) How many hours did the claimant work in the business premises "the Boat House") to which he was seconded by the respondent in the periods 13th to 20th and 21st to 27th July and 28th July to 3rd August inclusive.

(Fifth) At what hourly rate was the claimant to be paid for work carried out by him at the Boat House business premises.

(Sixth) What cash payment was made by the respondent to the claimant in respect of wages for hours worked in the period 13th to 20th July 2020.

(Seventh) To what net, which failing gross, payment did the claimant have legal entitlement by way of wages in respect of the hours worked by him in the Boat House premises in the period 21 to 27th July inclusive.

(Eighth) To what net, which failing gross, payment had the claimant legal entitlement to receive by way of wages for the hours worked by him in the Boat House premises in the period 28th July to 3rd August 2020.

(Ninth) What was the claimant's proportionate statutory entitlement to paid annual leave accrued in the period 2nd to 29th March 2019 and the period 13th July to 3rd August 2019.

(Tenth) In respect of how many days accrued but as at 3rd of August untaken paid annual leave, if any, is the claimant entitled to be compensated for and in what amount.

Findings in Fact

6. On the largely inadequate documentary and limited oral evidence presented the Tribunal made the following essential Findings in Fact, restricted to those necessary and relevant to the determination of the issues.
7. The claimant was employed by the Respondent Company Oscars Edinburgh Limited from 23rd of February 2019 up to including the 03rd of August 2019 on which latter date the claimant terminated his Contract of Employment without notice.
8. The claimant was employed as a chef. The claimant's principal place of employment was the respondent's business premises at Portobello High Street.
9. In the period 13th July to 3rd August 2019 the Respondent Company seconded the claimant, with the claimant's consent to work in the restaurant premises known as the Boat House in Kings Road which were operated by another limited liability company; "Boat House Edinburgh Limited", the Director and shareholder in which it was also Mr H Murdochy, the Director and shareholder in the Respondent Company. During that period of secondment the claimant remained the employee of the Respondent Company and the Respondent Company remained liable for payment of the claimant's wages.
10. The claimant's Contract of Employment with the respondent was entered into on or about the 20th of February 2019 in the course of oral negotiations conducted between himself and the Manager of the Portobello High Street premises, Monica Oziabio. The respondent held Monica Oziabio out to the claimant as a person with authority to agree with him contracted hours of work and rates of pay she had ostensible authority to agree those matters with the claimant.

11. The claimant was initially contracted to work five days a week for 40 hours, Wednesday to Sunday, with start times of 3 or 4 pm and finishing times of 10 or 11 pm; and, with effect from on or about his fourth week of employment, to work 55 hours per week five days a week, with start times of 12 noon to 11 pm.
12. The claimant's contracted hourly rate was the national minimum wage rate of £7.83 gross per hour rising, with effect from 6th April 2019 to £8.21 gross per hour.
13. The respondent's, Manager Monica Oziabio, advised the claimant at the time of his initial negotiation that his hourly rate would rise to £9 per hour at some point in the future. That was a reference to the Respondent Company's intention to move all employees onto the "Living Wage" rate, something which did not occur during the course of the claimant's employment.
14. The claimant commenced employment with the respondent on 23rd of February 2019. He had a one day trial. He worked in the respondent's business in the period 23rd February to 1st March 2019. His work included preparing food dishes which were sold to and consumed by customers of the business. He worked a total of 40 hours in that week. He had legal entitlement to be paid at the gross national minimum wage rate of £7.83 and net National Minimum Wage rate of £7:54 for the 40 hours worked by him in that week in a gross amount of £313:20 and in the net amount of £301:60.
15. The respondent paid the claimant no wages in respect of his first week of employment 23rd February to 1st March 2019. The respondent made an unauthorised deduction from the claimant's wages in the period 23rd February to 1st March 2019, of £301.60 being the net sum due to the claimant after deduction of National Insurance contributions.]
16. Regarding the mechanism of payment, the claimant was advised that he would be paid by bank transfer in respect of 30 hours per week and would receive payment in cash in respect of the additional hours which he worked those being respectively

an additional 10 hours and subsequently, an additional 25 hours per week. Having no control over those matters the claimant agreed to receive his wages in that manner. The claimant asked his Manager Monica Oziabio why the pay slips given to him only reflected 30 hours of work whereas he actually worked initially 40 hours and after about the third week of employment 55 hours per week. The claimant's Manager Monica Oziabio did not provide the claimant with any response or explanation to that enquiry.

Paid Annual Leave Entitlement

17. In the period 23rd February to 5th April 2019 inclusive, the claimant worked an average of 45 hours per week across five days per week. In the period 23rd February to 5th April 2019 inclusive the claimant accrued a proportionate statutory entitlement to 29 hours of paid annual leave at a net hourly rate of £7.54 per hour. The claimant is entitled to be compensated by the respondent in respect of the 29 hours of accrued but untaken annual leave entitlement for the period 23rd February to 5th April 19, in the sum of £218.66.
18. In the period 6th April to 12th July 2019 the claimant received weekly holiday pay of £29.73 calculated on the basis that he would work 30 hours in each of those weeks at a net hourly rate of £7.54 per hour. The claimant in fact worked a total of 55 hours in each of those 14 weeks accruing an entitlement to 83.4 hours paid annual leave at the net rate of £7.54 per hour that is an entitlement to £628.84 of holiday pay for that 14 week period against which the respondent paid the claimant a total of only £416.22. The claimant is accordingly entitled to be compensated by the respondent in the sum of £212.62 in respect of the unpaid balance of accrued but untaken paid annual leave entitlement in that period.
19. On or about 15th July 2019 the respondent's Director Mr Murdochy spoke to the claimant in the Boat House premises and proposed that the claimant be paid at the gross rate of £12 per hour (which results in a net rate of £11.02/hr) was to be the period of a short, emergency, temporary secondment to work in those premises. The claimant agreed to that revised hourly rate in relation to work carried out by

him at the Boat House. The respondent's Director also advised the claimant that during his period of secondment at the Boat House his wages would be paid to him in cash. The claimant agreed to accept his wages in cash during the secondment.

20. In the period 13th July to 3rd August 2019 the claimant worked an average of 80.3 hours per week and accrued an entitlement to 27.1 hours at a net hourly rate of £11.02 resulting in an entitlement to net holiday pay of £298.64 in that period. Against that entitlement the respondent has made no payment and the claimant is entitled to be compensated by the respondent in the sum of £298.64 in respect of 27.1 hours of accrued but untaken holiday pay in the period 13th July to 3rd August 2019 inclusive.
21. As at the Effective Date of Termination of his Employment the claimant was entitled to be compensated by the respondent in the total net sum of £829:92 in respect of paid annual leave entitlement accrued but untaken in the course of his employment.
22. While working at Portobello High Street premises the hours which the claimant was asked to work in each week ("the rota") was produced by his Manager. During the period of his secondment at the Boat House premises the claimant produced his own rota. On Friday the 26th of July the respondent's Director Mr Murdochy attended at the Boat House to pay the kitchen staff. He paid the claimant while sitting at a table. The claimant produced his rota sheets and calculated his hours for the week 13 to 20th July. The claimant advised and Mr Murdochy acknowledged that the claimant had worked 91 hours in that week. The respondent's Director then calculated the claimant's pay and paid him in respect of those 91 hours at a gross rate of £12 per hour. The respondent's Director passed to the claimant a sum which was approximately and to the best of the claimant's recollection about £1,080. The respondent's Director did not provide the claimant with a pay slip in respect of that payment.
23. The claimant terminated his employment without notice on the 3rd of August 2019.

24. As at the date of termination of his employment the claimant had worked a further 87 hours in the week 21 to 26th July and a further 63 hours in the week 27th July to 3rd August all-inclusive.
25. The respondent did not pay the claimant for his two weeks worked in the period 21 July to 3rd August 2019 inclusive. The respondent's Director considered that the claimant had disrespected him by terminating his employment without giving notice. He accordingly decided to give the claimant's wages to a charity.
26. In the period 21st July to 4th August 2019 inclusive, the claimant had legal entitlement to be paid for a total of 150 hours worked at a contractually agreed net rate of £12 per hour gross and £11.02 per hour net. In that period the claimant had entitlement in law to receive wages in the sum of £1,653 net. Against that entitlement the respondent had made no payment to the claimant.
27. In the period 21st July to 3rd August 2019 inclusive the respondent made an unauthorised deduction from the claimant's net wages of £1,653 in respect of wages due for hours worked in the period. The claimant is entitled to be compensated by the respondent in a sum equivalent to the amount of that unauthorised deduction, that is in a net sum of £1,653 in respect of that period.

Notice

28. At the time of entering into his Contract of Employment with the respondent no discussion took place between the claimant on the one hand and the respondent's agent, the Manager Monica Oziabio, regarding notice. Neither party proposed nor agreed a period of contractual notice to be given and received in respect of terminating the Contract.
29. There was implied by law into the claimant's Contract of Employment an entitlement to receive and an obligation to give one week's notice of termination of employment in terms of section 86(1)(a) of the Employment Rights Act 1996. The

claimant failed to comply with that obligation to give one week's notice when he terminated his Contract without notice on the 3rd of August 2019.

30. The claimant stated in evidence that he did not give notice of termination of employment because he felt exhausted and unable to work any longer.
31. The respondent's Director stated in evidence that as a result of the claimant's termination of the Contract without notice, the Company had been caused considerable difficulty and had incurred financial loss. The respondent produced no evidence of financial loss incurred.

Discussion and Disposal

32. In this case the claimant seeks statutory remedies in respect of unauthorised deduction from his wages and compensation for accrued but untaken paid annual leave entitlement, outstanding at the termination of his employment. The complaint in respect of withheld wages related only to the claimant's first week of employment that is 23rd February to 1st March and his last two weeks of employment, that is the period 21st July to 3rd August, all 2019. Parties were at large and in dispute in respect of the following material issues of fact:-

- (a) When did the claimant's employment with the respondent begin?
The claimant asserted that his employment began on the 23rd of February. The respondent while accepting that the claimant worked in the premises from the 23rd of February asserted that the first week was a trial period and implied, by reason of the fact that it had not paid the claimant for that week, that he was not entitled to be paid.
- (b) What was the gross and net hourly rate of pay to which the claimant had contractual entitlement? Parties were agreed that the claimant was to be paid at the national minimum wage which, for those weeks of his employment which occurred prior to 5th April 2019, was £7.83 per hour and thereafter £8.75 per hour both gross. The claimant

asserted, however, that he had been told that his hourly rate would increase to £9 per hour after a few weeks. The claimant also asserted that in the last three weeks of his employment, during which he was seconded by the respondent to work in the "Boat House" premises which was operated by another limited company, that it was agreed between the respondent's Director and himself that he would be paid at an increased gross hourly rate of £12 per hour.

- (c) As to the number of hours worked by the claimant. The respondent asserted that the claimant was contracted to work and only worked 30 hours per week. In this regard the respondent relied upon copy pay slips provided which record payments made into the claimant's bank account in respect of a 30 hour week. The claimant maintained that he was contracted to work and initially worked 40 hours per week and that after the third week of his employment he agreed to work and thereafter did work 55 hours per week. The claimant, for his part, asserted that he had been advised by the respondent's Manager, at the outset of his employment, that he would be paid by two different methods; viz; that each week he would receive net payment into his bank account in respect of 30 hours worked after deduction of National Insurance contribution and, where appropriate, PAYE, but that he would receive an additional cash payment in respect of the balance of the ten additional hours worked by him and from which no mention was made of deduction. He stated that he received no pay slips in respect of the additional cash payments. He stated that he asked why he was being paid by these two different methods but was given no response. He stated that as he had no control over the matter he accepted the position.
- (d) The claimant asserted in evidence on oath that he continued to receive payment into his bank in respect of 30 hours worked per week with the balance of the 55 hours worked that is an additional 25 hours paid in cash.

- (e) With the exception of the fact that he did not receive pay slips for the cash payments the claimant was satisfied that he had received payment that was properly due to him in the name of wages in the period 2nd March to 12th July 2019. He also accepted that in the period 6th April to 12th July 2019 he had received a weekly payment of £29 of holiday pay an amount which was based on an assumption that he worked only 30 hours per week.
- (f) The respondent accepted that in the period from 2nd March, (or from 23rd February if the Tribunal were to hold that the claimant's employment commenced on the latter date) and up to and including the 5th of April 2019, the claimant had not received any holiday pay. The respondent also accepted that in the entire period of his employment the claimant did not take any paid annual leave.
- (g) The claimant asserted that there had been no discussion between himself and the respondent's Manager and no agreement reached between them regarding the giving or receiving of contractual notice. The respondent's Director asserted that the claimant was supposed to have given the respondent two weeks' notice. He was unable to offer any proof that went to show any such condition included in the Contract. He could not speak to the matter directly as he took no part in the negotiations nor had his Manager advised him that any such condition had been included. Neither party appeared to be aware that the law implies into the Contract, in terms of section 86(1)(a) of the Employment Rights Act 1996 a mutual obligation to give and right to receive, one week's notice of termination of contract.
- (h) Regarding rates of pay, the claimant while accepting that he was to be paid the national minimum wage, rate asserted that he had been told that his rate of pay would increase to £9 per hour. He was unable to be specific about when such an increase was to take place.

The respondent's Director, for his part, while accepting that a figure of £9 might well have been mentioned by his Manager, explained that he believed that would have been a reference to a planned introduction of the "living wage", something which had not yet occurred as at the time of the claimant's resignation.

- (i) In relation to the respondent's temporary emergency secondment of the claimant to work in the new Boat House premises operated by a separate limited company which the respondent's Director was also Director and shareholder, the claimant asserted that the respondent's Director had proposed to him, and he had agreed, that during that temporary secondment he would be paid at an increased gross rate of pay of £12 per hour. The respondent's Director denied that there had been any agreement to change the claimant's rate of pay notwithstanding the temporary and emergency nature of the secondment.
- (j) The claimant asserted that he was paid by the respondent's Director in cash, on or about the end of the second week of the secondment for the 91 hours worked by him in the first week of the secondment. He stated that the respondent's Director came to the premises and gave him a sum of money in excess of £1,000, to the best of his recollection around £1,080 as his wages for that first week. The respondent's Director, for his part, while accepting that he did pay the claimant in cash stated that he only gave him £250 and that that was a payment for his having worked only 30 hours in that week.
- (k) Regarding the terms agreed between the parties and relating to hourly rate of pay, the initial hours to be worked of 40 and subsequently 55 hours per week and the split mechanism for payment namely, 30 hours per week paid by bank transfer and the balance in cash, the only primary source of evidence presented was the claimant's oral evidence given on oath. No evidence was led by

the respondent from the other potential primary source namely the respondent's Manager Monica Oziabio. The respondent's Director had no factual basis upon which to rebut the claimant's evidence beyond the wage slips presented which of themselves were not incompatible with the claimant's version, the claimant in respect of 30 hours worked and the P60 End of Year Certificate informed by them. Those wage slips were consistent with what the claimant said was agreed by way of part of the mechanism for payment. They did not rebut nor were they incompatible with the operation of the second element of the alleged mechanism, namely cash payments unsupported by pay slips in respect of the balance of hours worked. I found the claimant's evidence to be credible and reliable in relation to these matters and in the absence of rebuttal evidence I accepted it as set out above, as regards:-

- the number of hours of work per week contracted for initially and subsequently; and,
- that the claimant was to be remunerated, for the work carried out by him at the Portobello High Street premises at the applicable national minimum wage.

33. While I accepted the claimant's evidence that the respondent's Manager had advised him that the hourly rate would increase to £9 at some point in the future the claimant was unable to provide specific or reliable evidence as to when that increase was to be effected. I considered that position to be compatible with the explanation tendered by the respondent's representative namely that the mention of £9 per hour was a reference to the intended introduction, by the respondent, of the living wage, something which did not occur during the period of the claimant's employment.

34. With the exception of the first week in which he worked in the respondent's premises, that is 23rd of February to 1st March 2019, the claimant's position was that he had been fully paid the sums due to him, through a combination of

payments into his bank, supported by pay slips for 30 of the hours worked each week, plus cash payments unsupported by pay slips for the balance of hours worked. I accepted the claimant's evidence both in respect of the hours which he worked at the Portobello High Street premises and in respect of the total combined bank and cash payments which he received in respect of those hours worked, that evidence again being the only primary evidence presented in relation to those issues.

35. On the issue of whether the claimant had received regular cash payments for working at the Portobello High Street premises and had been paid in cash for 91 hours worked in his first week of seconded work in the Boat House premises, I believed and accepted the evidence of the claimant. I did not believe and did not accept the evidence of, the respondent's Director on those matters.
36. I further accepted the claimant's evidence that in his second and third weeks of working in the Boat House premises he had worked 87 and 63 hours respectively. I did not believe and I did not accept the evidence of the respondent's Director which was to the effect that the claimant "would only" have worked 30 hours per week in respect of his second and last weeks.
37. In respect of the period of seconded service it was a matter of concession by the respondent's Director that he had proposed that the claimant be paid in cash. It was likewise a matter of concession that in respect of that secondment and the cash payments made to the claimant the respondent did not provide any pay slips.
38. That the claimant was likely to have worked in excess of 30 hours in each of the weeks of his seconded service was compatible with the description of how busy the Boat House was during that period provided both by the claimant and by the respondent's Director in evidence.
39. Regarding the claimant's first week of employment it was a matter of concession that the claimant had worked in the respondent's business during that week but had not been paid for it. The respondent's Director's explanation that this was a

trial period and by implication therefore work in respect of which the claimant was not entitled to be paid was a position which was unvouched and unsupported by any primary evidence. It was contradicted by the claimant's evidence that the trial period undertaken by him was in relation to the first day only and that there was no agreement that he would not be paid for the work. I accepted the claimant's evidence in this regard and it follows that the claimant is entitled to be paid at the agreed applicable national minimum wage rate for the 40 hours which I have found were worked by him in that week.

40. I preferred the evidence of the claimant over that of the respondent's Director in relation to whether an increased gross hourly rate of £12 per hour was agreed between the respondent's Director and the claimant in respect of what was to be his temporary urgent emergency secondment to work in the Boat House premises. I believed and accepted the claimant's evidence in this regard. Separately, and on the balance of probabilities, I considered it more likely than less likely, and considered it consistent with the emergency nature of the secondment and the increased hours which I have found in fact the claimant worked during it, that parties would negotiate and agree an uplifted premium hourly rate to temporarily apply during the period of the secondment. I did not believe the respondent's Director when he stated that no such premium hourly rate was agreed between the parties. I did not consider that the Schedule of hourly rates submitted by the respondent's Director, only in the course of submission, which did not show other members of staff paid at that rate to be inconsistent with the claimant's evidence far less to amount to a rebuttal of it. The rate being by its nature a premium temporary rate applicable to particular circumstances is not one likely to be one reflected in a Schedule of the normal routinely paid hourly rates.
41. On the acceptance of the claimant's evidence I further found in fact that the claimant had agreed an entitlement to be paid by the respondent at an increased gross hourly rate of £12 for the hours worked by him (respectively 97 and 63) in the last two weeks of his seconded service. It was a matter of concession by the respondent that it had paid the claimant nothing in respect of those weeks while also asserting that the claimant would only have been entitled to be paid for 30

hours worked in each of those weeks. The respondent's Director explained that he had deliberately withheld the claimant's wages and had told the claimant that he had given his wages to a charity (it was unclear from his evidence whether he had in fact so donated the claimant's wages) because he considered that in terminating his employment without notice the claimant had disrespected him. He went on to state that as a result of the claimant's summary termination of the Contract difficulties and cost had been caused to and incurred by the separate limited liability company which operated the Boat House premises. Although not expressly stating the same he appeared to imply that he considered that the Respondent Company, which was liable to pay wages to the claimant, was entitled to retain or set off those wages because of difficulties caused to the other limited liability company and or costs incurred by it. He presented no evidence that went to specify or vouch any financial losses incurred by the Respondent Company or by the separate limited liability company Boat House Edinburgh Limited or any authority for implied asserted Right of set off.

42. It was a matter of concession by the respondents that the claimant was entitled to have received holiday pay and or, on termination of his employment to be compensated for accrued but untaken statutory paid annual leave entitlement. It was a matter of concession by the claimant that in the period 5th April to 13th July 2019 he had received holiday pay included with his weekly wages but calculated only on an assumption that he had worked and been paid for only 30 hours per week. It was a matter of concession by the respondent that with the exception of those payments no other holiday pay or no other payment in compensation for accrued paid annual leave entitlement had been made by the respondent to the claimant. It was a matter of agreement between the parties that the claimant had not taken any actual leave during a period of his employment.
43. The claimant is entitled to have the hours worked by him in the week 23rd February to 1st March and the period 13th July to 3rd August 2019 included in the calculation of his statutory entitlement to paid annual leave. Further, as found in fact, the claimant is entitled to be compensated in respect of the entitlement accruing to the 40 hours worked by him in the period 23rd February to 1st March 2019 at his then

applicable net hourly rate of £7.54 per hour and in respect of the accrued apportionment arising from the 241 hours worked by him in the period 13th July to 3rd August 2019 inclusive at his then applicable net hourly rate of £11.66 per hour.

44. The claimant's claim in respect of unpaid wages is one which proceeds in terms of section 13 of the Employment Rights Act 1996 which makes it unlawful for an employer to deduct from or otherwise withhold wages of an employee except in specified circumstances including those of prior written authorisation by the employee.
45. The fact that the claimant, in leaving without notice, breached the term implied by statute into his Contract of Employment that he would be entitled to receive and was obliged to give one week's notice of termination of employment does not, provide the respondent with any lawful defence to the unauthorised deduction from wages claim. While, in the event that the claimant had been advancing a claim for damages for breach of contract or for performance of an obligation to pay him under contract, it would be possible for the Respondent Company to advance an employer's contract counter claim, there is no and could not have been any such employer's contract counter claim in the instant case. The same firstly, because the claim advanced by the claimant in respect of non-payment of wages is not one advanced in contract but rather a complaint of unauthorised deduction from wages in terms of section 13 of the 1996 Act and, secondly, for such a counter claim to be relevantly pled and, to ultimately succeed a number of factors require to exist and ultimately, if contested, to be proved:-

Firstly, there must be a concurrence between the debtor and creditor in the one claim and the creditor and debtor in the other claim. That does not exist in this case. In the claimant's claim the claimant is the creditor and the Respondent Company, Oscars Edinburgh Limited, is the debtor. In a potential claim arising in respect of alleged financial loss incurred in consequence of the claimant leaving without working his notice the claimant would be the debtor but the creditor would not be the Respondent Company but rather the separate limited liability company, "Boat House

Edinburgh Limited". Finally, the alleged losses would require to be liquid and ascertained and proved to have occurred in consequence of the claimant's failure to work his period of notice. Leaving aside the fact that any alleged loss would have been incurred by a different limited liability legal person, no evidence of a liquid and ascertained loss incurred in consequence of the claimant's failure to work notice was presented.

46. For the above reasons, and on the Findings in Fact made, the claimant's complaints of unauthorised deduction from wages and claim for compensation for accrued but untaken paid annual leave entitlement succeed; and the Respondent Company shall pay to the claimant the sums ordered in those regards and set out at paragraphs **(First)** and **(Second)** of the Tribunal's Judgment.

Date of Judgment: 18 February 2020
Employment Judge: Joseph d'Inverno
Entered into the Register: 18 February 2020
And Copied to Parties