



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102285/2020 (V)

Heard by Cloud Video Platform (V) on 31 August 2020

Employment Judge S. Walker

5

Mr C Lister

**Claimant
In Person**

10

Floricana Ltd

Respondent

15

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is as follows:

- (1) The claimant was dismissed on 21 April 2020 by reason of redundancy.
- (2) The claimant is entitled to a redundancy payment and the respondent is ordered to pay to the claimant the sum of £4166 in this respect.
- (3) The respondent made unauthorised deductions from wages and the claimant is entitled to a payment of £8121 in this respect.
- (4) The respondent was in breach of contract and is ordered to pay the following sums by way of damages:
 - (i) £5768.28 in respect of failure to give notice.
 - (ii) £3093.26 in respect of failure to pay pension contributions from November 2017.
 - (iii) £1080 in respect of failure to pay car allowance in February, March and April 2020.

- (5) The claim in respect of payment for accrued but untaken annual leave is withdrawn and is dismissed under rule 52.

REASONS

- 1 This claim was presented to the Tribunal on 24 April 2020. No response has been
5 presented.
- 2 Mr Lister attended and gave evidence under affirmation.
- 3 I find the following facts to be established:
- 4 Mr Lister was employed by a company called Nuparc Limited from 14 March
2014.
- 10 5 His date of birth is 14 March 1979.
- 6 His employment transferred to the respondent on, or around, 8 August 2017 by
operation of the Transfer of Undertakings (Protection of Employment)
Regulations 2006.
- 7 His gross monthly pay was £4166 and his net monthly pay was £3008.
- 15 8 He was paid a monthly car allowance of £400.
- 9 He had agreed with the respondent, when his employment transferred to them,
that he would not join their pension scheme but instead they would make an
payment to his personal pension pay. This was 2.5 % of his gross salary per
annum (£104.15 per month). This arrangement was to start in November 2017
20 but no payment has in fact been made by the respondent into the claimant's
pension scheme.
- 10 The claimant was paid on the last Friday of each calendar month. His last
payment was at the end of January 2020.
- 11 On 9 March 2020, the claimant was advised by Eamonn Connelly, the financial
25 controller of the respondent, that his position was redundant. He did not receive
notice of termination from the respondent and has not received his P45.

12 The claimant had no access to his company email from the beginning of April 2020.

13 He asked Mr Connolly on 21 April 2020 if he could have his P45 but his employer said that this could only be obtained if the claimant handed in his notice. The
5 claimant asked if he was going to be paid and Mr Connolly said he was not. The claimant asked if he was going to be furloughed and Mr Connolly said not.

14 After that conversation, the claimant did not resign but considered he was no longer employed by the respondent. He has received no further communication and no further payment from his employer.

10 **Relevant law**

15 If an employer is dismissed by reason of redundancy, having been employed for 2 years or more, he is entitled to a redundancy payment (s135 ERA), the amount of which depends on his age, length of service and gross weekly pay. There is a cap on the applicable “week’s pay”, currently £538.

15 16 An employee is entitled to make a claim under section 23 of the Employment Rights Act 1996 (ERA) if their employer has made an unauthorized deduction from wages. “Wages” for this purpose includes salary, commission and holiday pay.

17 Payment of a car allowance is considered as expenses and not wages and
20 therefore cannot be claimed as “wages”. However, a claim can be made for the sum, if unpaid, as damages for breach of contract under the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 where the claim is outstanding on the termination of employment.

18 Similarly, an agreement to make a payment to a third party, such as a pension
25 provider, is not “wages” (***Somerset County Council v Chambers*** UAEAT/0417/12/KN) but, again, a claim can be made for damages for breach of contract.

19 Section 86 of the ERA provides for minimum periods of notice, one week up to two years employment and then an additional week thereafter up to a maximum

of 12 weeks. If this notice is not given, an employee is entitled to pay in lieu of notice. Failure to pay is deemed to be a breach of contract,

Decision

20 In this case, although the respondent did not expressly terminate the contract of
5 employment, I am satisfied that the evidence demonstrates that the claimant's
employment had come to an end by the employer's actions. He had been told his
position was redundant, he was not being provided with work and he was not
being paid. His access to company emails had stopped. It can be implied from
10 these actions that the respondent had terminated his contract of employment
around 21 April 2020 and the reason for termination was redundancy.

21 The claimant is entitled to a redundancy payment. He was 30 years old when his
employment terminated and had 6 years' service. He is entitled to 6 weeks' pay
(capped at £538 per week). This gives a figure of £4166.

22 The claimant has not been paid his wages for January, February and March 2020.
15 He did not agree to this and these are therefore unauthorised deductions. For
February and March 2020, he should have been paid £3008 per month and for
21 days of April, he should have been paid £2105, giving a total of £8121.

23 The claimant was entitled to 6 weeks' notice which he has not been given. He is
entitled to 6 weeks gross pay by way of damages being £5768.28 (6 x £961.38)

20 24 The respondent failed to make payments to the claimant's pension scheme as
agreed from November 2017 until April 2020. This is 29 payments at £104.15
plus a payment for April 2020 of £72.91. The total figure awarded for damages
for this breach of contract is £3093.26.

25 25 The respondent failed to pay the contractual car allowance of £400 per month to
the claimant for February, March and £280 pro rata for April 2020. This gives a
figure of £1080 which is awarded in respect of damages for breach of contract.

26 Mr Lister very fairly stated that he could not detail how many days were due to
him in respect of accrued but untaken annual leave and so that complaint was

withdrawn. He also confirmed that no claim is made in respect of any bonus.

5 Employment Judge: S Walker
Date of Judgement: 31 August 2020
Entered in Register: 7 September 2020
And copied to parties