



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case Number 4105565/2020 (V)**

**Held on 11 January 2021 by Cloud Based Video Platform**

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**Employment Judge Neilson**

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**Mr T Okorodudu**

**Claimant  
In Person**

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**Cordant Recruitment Limited**

**Respondent**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that:-

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(a) it was not reasonably practicable for the Claimant to present his claim within 3 months of 22 May 2020 and that the claim was presented within a reasonable period of time in accordance with Section 23(4) of the Employment Rights Act 1996;

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(b) the claim under Section 23(1) of the Employment Rights Act 1996 is well founded and that the Respondent shall pay to the Claimant the sum of £348.33.

**REASONS**

1. The Respondent did not lodge a response and in accordance with Rule 21 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 Employment Judge MacLean directed that the case  
5 proceed to a hearing on 11 January 2020.
2. The Claimant attended the hearing by CVP on 11th January and was unrepresented. There was no appearance on behalf of the Respondent. The Tribunal determined that as the Respondent had been provided with notification of the hearing date and as a direction had already been made  
10 under Rule 21 (see paragraph 1 above) it was appropriate to proceed with the hearing. The Claimant lodged a number of documents by e mail during the course of the hearing.

### ***Findings in Fact***

- 15 3. The Claimant was engaged by the Respondent as an agency worker to work at the Bathgate premises of Amazon from 10 May 2020 through to 21 August 2020.
4. Prior to commencing work on 10 May 2020 the Claimant had been required to provide his personal details to the Respondent. He provided his  
20 personal details by submitting them through an on line form on the Respondents internet site. The Claimant provided his name, address and bank account details. The bank account details provided by the Claimant related to his Monzo bank account.
5. The Claimant was due to be paid by the Respondent in respect of his first  
25 weeks' work at Amazon, Bathgate on or about 22 May 2020. The Claimant was issued with a payslip by the Respondent. The payslip dated 22 May 2020 showed a payment of £370.88 due to the Claimant, less National Insurance of £22.55.
6. The Claimant did not receive payment on 22 May 2020 and immediately  
30 contacted the Respondents representative at the Bathgate site, Mr Ciprian Bontiu. Mr Bontiu explained to the Claimant that an error had been made

and that his wages had been paid in error to a different bank account. The wages had been paid to a Royal Bank of Scotland bank account previously used by the Claimant. The Claimant had provided details of the Royal Bank of Scotland bank account to an associated company of the Respondent, PMP Recruitment Limited, whilst working for them in 2019. The Claimant no longer used that bank account and had closed it prior to commencing work with the Respondent in May 2020. Mr Bontiu undertook to rectify the error within 6 days. The error was not rectified.

7. The Claimant sent an e mail to the Respondents Glasgow office to the manager there, Emma Brown, on 5th June 2020. He raised his concern about non-payment of his wages. Emma Brown confirmed the issue had been raised with payroll.
8. The Claimant did speak to a person at the Citizens Advice Bureau around June/July/August 2020. They recommended sending a written request for payment. The Claimant was not notified by Citizens Advice Bureau about the possibility of Employment Tribunal proceedings and was unaware of any time limits at this point.
9. On 16th June 2020 the Claimant wrote to the Legal Departments of both PMP Recruitment Limited and Cordant Recruitment Limited threatening legal action if payment of his wages was not made.
10. On 12 July 2020 the Claimant sent a further letter to the Legal Departments of both PMP Recruitment Limited and Cordant Recruitment Limited threatening legal action and stating:- "Please treat this as a letter of claim pursuant to pre-action protocol for Court Proceedings in line with the Scottish Common Law".
11. The Claimant wrote to the Royal Bank of Scotland on 27 August 2020 seeking their assistance in the repayment to him of the £348.33. The Royal Bank of Scotland notified the Claimant on 8 September 2020 that they could not assist and that the money would either be, or have been, returned to the Respondent.

12. The Claimant received payment of wages for his work for the Respondent at Amazon for all other weeks of work other than the first week. Payment was made into his Monzo bank account.
13. The Claimant spoke with a person at Glasgow Sheriff Court in or about the middle of September. The Claimant was seeking information about raising proceedings against the Respondent. He was notified that such a claim could be made to an Employment Tribunal. He was notified that such claims have a time limit of 90 days from the date of failure to pay.
14. Following the discussion with the Sheriff Clerk the Claimant sought advice from a friend who was training to be a lawyer, Mr John Thomas. Mr Thomas advised the Claimant to get formal advice as any mistake in submitting the claim could result in it being rejected. The Claimant sought legal advice from three different law firms. All declined to assist.
15. The Claimant drafted his claim form and asked Mr Thomas to review it. Mr Thomas took a week to review the form. Thereafter the Claimant contacted ACAS on 13 October 2020 to initiate his claim.
16. Date of receipt of the Early Conciliation notification by ACAS was 13 October 2020. Date of issue of the Early Conciliation Certificate by ACAS was 15 October 2020 (R205160/20/49). Receipt of ET1 by Glasgow Employment Tribunal 15 October 2020.
17. The Claimant is not working at the moment and was prescribed medication (Propananol Hydrochloride) by his GP on 3 July 2020.
18. The Claimant borrowed a sum of money from a friend and has been told he must pay back £1100. He has not yet made payment.

25 ***Submissions***

19. The Claimant is seeking payment of £348.33 from the Respondent in respect of his wages. The Claimant is also seeking £1100 in respect of the money he had to borrow and additional interest; £2,500 for mental and

psychological distress and £2,000 for family distress and humiliation leading to depression as a result.

### **The Law**

5 20. Section 23(1)(a) of the Employment Rights Act 1996 ("ERA") provides a  
"worker" with the right to make a complaint to an Employment Tribunal that  
an employer *"has made a deduction from his wages in contravention of  
section 13"*. Section 13 ERA provides a worker with a right not to suffer  
unauthorised deductions. Specifically Section 13(3) states *"Where the total  
10 amount of wages paid on any occasion by an employer to a worker  
employed by him is less than the total amount of the wages properly  
payable by him to the worker on that occasion (after deductions), the  
amount of the deficiency shall be treated for the purposes of this Part as a  
deduction made by the employer from the workers wages on that  
15 occasion."*

21. An "employee" under Section 230(1) ERA means *"an individual who has  
entered into or works under (or, where the employment has ceased,  
worked under) a contract of employment"*.

22. A "worker" under Section 230(3) ERA is defined as *"an individual who has  
20 entered into or works under (or, where the employment has ceased,  
worked under)—*

*(a) a contract of employment, or*

*(b) any other contract, whether express or implied and (if it is express)  
whether oral or in writing, whereby the individual undertakes to do or  
25 perform personally any work or services for another party to the contract  
whose status is not by virtue of the contract that of a client or customer of  
any profession or business undertaking carried on by the individual;*

*and any reference to a worker's contract shall be construed accordingly."*

23. Section 24(1)(a) ERA provides "*Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—*

5 (a) *in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,.."*

24. Section 24(2) ERA provides "*Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of."*

25. Section 23(4) ERA a complaint under Section 23 must be "*presented before the end of the period of 3 months beginning with ...the date of payment of the wages from which the deduction was made"*.

26. Under Section 23(4) ERA "*Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."*

### ***Discussion & Decision***

27. The Claimant considered he was engaged as an agency worker on behalf of the Respondent whilst working at Amazon, Bathgate. No evidence was led to suggest he was an "employee" under the terms of Section 230(1) of the ERA. Accordingly whilst the Claimant has the right to make a complaint under Section 23 ERA the Tribunal does not have grounds to consider any breach of contract claim as provided for by Section 3(2)(a) of the Employment Tribunals Act 1996 (as this applies only to "employees" and not to "workers").

28. A claim under Section 23 ERA should have been brought within 3 months of 22 May 2020. In fact the claim was not presented until 13 October 2020 when the Claimant notified ACAS. The complaint should have been presented by no later than 21 August 2020.
- 5 29. In the period from 22 May 2020 to September 2020 the Claimant was actively pursuing payment of his wages with the Respondent and/or the Royal Bank of Scotland. The Claimant was not aware of his right to bring a claim before the Employment Tribunal until speaking to the Sheriff Clerk's office at Glasgow Sheriff Court in mid September 2020. Until that point the  
10 Claimant considered that any remedy lay with the ordinary civil courts. Having become aware of the ability to bring a claim before the Employment Tribunal at that time the Claimant sought legal advice and assistance to bring his claim and brought it on 13th October 2020 by notifying ACAS on that date.
- 15 30. In the circumstances the Tribunal considers that it was reasonable for the Claimant to be in ignorance of both the right to bring his claim to the Employment Tribunal and of the time limit that applied prior to mid September 2020. It is not reasonably practicable for an employee to present a claim within the primary time limit if he was, reasonably, in  
20 ignorance of that time limit (*Marks and Spencer –v- Williams Ryan 2005 IRLR 562*). The Tribunal then went on to consider whether the time that elapsed between that day and notifying ACAS on 13 October 2020 was itself a reasonable period. The Tribunal concluded that it was in light of the fact that it represented approximately 4 weeks during which time the  
25 Claimant sought appropriate advice and with limited assistance prepared the necessary paperwork. Accordingly the Tribunal considers that it has jurisdiction to consider this complaint under Section 23(4) ERA (when taking into account Section 207B ERA).
- 30 31. The failure by the Respondent to make payment to the Claimant of his wages on 22 May 2020 is contrary to Section 13 of ERA. The amount of the deficiency under Section 13(3) is £348.33. The fact that payment may have been made in error to another account is irrelevant. Payment was

due to the Claimant and was not made to the bank account that he had specified. Accordingly the Tribunal makes a declaration to that effect and orders payment by the Respondent to the Claimant of £348.33.

5 32. The Tribunal considered whether it was appropriate to award any compensation under Section 24(2) ERA to compensate the Claimant for any financial loss sustained by him which is attributable to the matter complained of. The Claimant submitted that he was entitled to compensation to reflect his losses as set out at paragraph 18 above. The Claimant conceded that the claims for £2,500 and £2,000 essentially  
10 related to the same point. The Tribunal was not satisfied that there was any evidence to substantiate these losses. No medical evidence was produced and in any event such losses would not amount to "financial loss" within the scope of Section 24(2). With regard to the claim for the £1100 it was not clear to the Employment Tribunal how much of this  
15 related to principal and how much to interest or what other steps the Claimant might have taken to mitigate his financial position following the failure of the Respondent to make payment of his wages on 22 May 2020. The Tribunal accordingly does not consider it appropriate to make any order under Section 24(2).

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25 Employment Judge: Stuart Neilson  
Date of Judgment: 19 January 2021  
Entered in register: 20 January 2021  
and copied to parties