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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107430/2020

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Hearing Held by CVP on Tuesday 9 February 2021 at 11.00am

Employment Judge Russell Bradley

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Siobhan Randle

**Claimant
In person**

Tubbees Autoport Ltd

**Respondent
Represented by
Ryan Sutherland
HR Assistant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is:-

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1. To declare that the claimant's claim that the respondent has made deductions from her wages in contravention of section 13 of the Employment Rights Act 1996 is well founded; and

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2. To order the respondent to pay to the claimant
 - a. the sum of £418.56 less income tax and national insurance contributions due on that sum and
 - b. the sum of £39.04 less income tax and national insurance contributions due on that sum.

REASONS

Introduction

1. On 26 November 2020 the employment tribunal issued a Notice to the parties fixing 9 February 2021 at 11.00 by CVP as a final hearing. In the ET1 presented on 24 November, the claimant made a claim for £457.60 on the basis that it had been unlawfully deducted from wages due to her. That amount was made up of two parts. First, £418.56 deducted from pay paid on 11 September 2020 for leaving the respondent's employment without providing two weeks' notice of termination. Second, for £39.04 deducted from pay paid over three months, for discrepancies, summarised as follows:-

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|----|-------------------|--------|
| a. | 10 July 2020 | £15.04 |
| b. | 14 August 2020 | £8.50 |
| c. | 11 September 2020 | £15.50 |

2. The respondent's position was that (i) her contract of employment entitled it to deduct £418.56 as she had failed to provide the requisite notice when the contract ended and (ii) the claimant was fully aware of her responsibilities and had signed a Deduction from Pay Agreement allowing the deductions totalling £39.04. I clarified with the claimant that there was no claim in respect of holiday pay or in relation to pension contributions.

3. As required by a case management order dated 28 January 2021 a joint file was lodged. It contained (i) written witness statements from the claimant and

Pamela McColvin, bar manager and (ii) various documents which were relevant to the dispute.

4. The issues for determination were:-

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- a. what sums were properly payable by the respondent to the claimant as pay due to her in July, August and September 2020?
 - b. were any deductions made by the respondent from those payments either authorised to be made by virtue of a relevant provision of the contract, or ones to which the claimant had previously signified in writing her agreement or consent?

10 **Evidence**

5. I heard evidence from the claimant. She spoke to her witness statement and was cross-examined. I also heard evidence from Pamela McColvin, the claimant's line manager. She spoke to her witness statement and was cross-examined. I had seen email correspondence between the parties which suggested that other potential witnesses for the respondent would not be submitting statements as evidence but would be called to speak regarding "specific elements of the case." At the outset of the hearing, Mr Sutherland explained that his only witness was Ms McColvin.

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Findings in Fact

20 6. I found the following facts admitted or proved.

7. The claimant is Siobhan Randle. The respondent is Tubbees Autoport Ltd, St James Church, Underwood Road Paisley. The respondent trades from Tubbees Dessert Bar, 675 Paisley Road West, Glasgow. It sells desserts, ice creams and slushies. It is located next to a petrol station.

25 8. On 21 May 2020 the parties signed a written statement of terms and conditions of employment (**pages 7 to 9**). As per that statement, the claimant was employed from 21 May as a food retail assistant at the respondent's premises at 675 Paisley Road West, Glasgow. The statement recorded that;

the claimant was to serve a 3-month probationary period to be reviewed on 21 August; she was employed on a zero-hour contract and notice to terminate it (to be given by either party) was “*nil*”. The statement set out that if during the probationary period her work performance was not up to the required standard or she was considered generally unsuitable the respondent could take remedial action which could include the extension of the probationary period or the termination of the employment at any time. The claimant signed the statement at the start of her first shift. The claimant’s employment began on 21 May.

9. The claimant’s statement, under the heading of “***Deductions from Pay***”, said that as part of the respondent’s Deductions from Pay Agreement Policy she was to sign a declaration on commencing her employment which outlined her responsibilities. It continued that conditions relating to it were shown in a Deductions and Pay Agreement Form found in a New Starter Form. The statement advised her that reference should be made to the form. The claimant was not shown either form at the time. She did not sign either form on 21 May.

10. The claimant did not sign the deductions for pay agreement which is **pages 5 to 6** dated 12 May 2020. It is dated nine days before the start of the claimant’s employment. Its date is nine days earlier than the date of signing (by both parties) of her statement of employment terms (**see page 9**).

11. Within a couple of weeks of starting her employment the claimant was provided with a uniform. She signed an online document confirming that she had been given it and would need to return it laundered within 5 days of it ending or be charged £20 per item. She signed the form again later in her employment when she was provided with a face shield. In June or July, she was trained to use the tills. She signed an online document confirming that training. She was provided with log-in details. Those were the only instances when she signed documentation online. During one shift the claimant was told that if mistakes were made staff would be charged for wasted stock but would only be charged the cost of the ingredients not the retail price. The claimant

also understood that staff would be charged if tills were short money. However, she noticed and pointed out to her management on more than one occasion that if the till was short there was no way to show which particular member of staff was responsible.

5 12. On 1 July 2020 Sarah Bond, the respondent's HR administrator emailed to the claimant (**page 10**) an updated contract (**pages 11 to 13**) reflecting her latest contracted hours. The claimant replied by email that day. In her reply she said that she would read over the contract properly later, and asked for a copy of an employee handbook. The contract, or statement, said that; the
10 employer was then RT Management Bridgeton Ltd; as from 1 July the claimant's normal working hours were to be 24 per week; the probationary period was retained, to 21 August; and the notice to be provided by the claimant was a minimum of two weeks. The claimant was not provided with a copy of the handbook. As a result, she did not sign the statement.

15 13. With an email on 13 July (**page 14**) Sarah Bond sent a payslip to the claimant dated 10 July (**page 29**). The email said that it was for the claimant's hours in June. The payslip recorded her total gross hourly pay of £1146.68. The rate of pay is £8.72. The "*Units*" shown on the payslip (131.50) are thus the number of hours worked in June. As well as deductions for income tax,
20 national insurance contributions and pension, the sum of £15.04 was deducted for "*Discrepancies*." The claimant replied (**page 14**) that day. She asked for details of the discrepancies. She also asked if she could be told at the time so as to know what to expect. The next day Ms Bond advised the claimant to speak to her line manager regarding discrepancies in the first
25 instance as this was the source of her information. The claimant's line manager was Pamela McColvin.

14. On 31 July the claimant received an email to advise that her line manager had approved a holiday request. The request was for a period of 14 days, being 4 September to 18 September.

15. In August 2020 the “*totals function*” was removed from the tills. The effect was that when money in the till was counted, staff were unaware of how much was supposed to be in it.

5 16. On 14 August, and whilst on shift the claimant was asked to sign another statement of terms and conditions of employment, which she did (**pages 17-19**). The contract, or statement, said that; the employer was the respondent; the normal working hours were again to be 24 per week; the probationary period was retained, to 21 August; and the notice to be provided by the claimant was a minimum of two weeks. It further provided that if the claimant
10 terminated her employment without giving the required period of notice she would have two weeks’ pay deducted. The statement referred to conditions shown in a Deductions and Pay Agreement Form found in a New Starter Form. The statement advised her that reference should be made to the form. The claimant was not shown either Form at the time. Nor did she sign one
15 then. The claimant signed the statement notwithstanding the fact that even by that time she had not received a copy of the handbook. This statement bears to have been signed on 1 July by Pamela McColvin.

17. Also on 14 August, the respondent issued a payslip for the claimant (**page 30**). Her gross pay for the period was £1244.87 having worked 142.76 hours.
20 The sum of £8.50 was deducted from her gross pay for “*Discrepancies*”.

18. The claimant did not receive a letter dated 21st August 2020 from the respondent’s managing director confirming her successful completion of her probationary period.

19. The respondent did not issue to the claimant a first written warning on 27
25 August as a result of the incident to do with undercooked food.

20. On 28 August at about 3.00pm the claimant arrived at the premises for her shift. She met with Ms McColvin and the assistant manager, Nicola. The meeting took place in the office of the premises. The assistant manager was present to take notes. Ms McColvin raised an issue relating to undercooked
30 food from the claimant’s previous shift, on 26 August. The claimant

understood from what she was told that; a customer had returned to the premises after she had left following the end of her shift; the customer had complained and was refunded the cost of the food which had been purchased. The claimant was shown photographs of the food (crepes). In answer to the question as to what had happened, the claimant explained to Ms McColvin that they appeared to her to have been sufficiently cooked. The claimant apologised.

21. Ms McColvin then asked the claimant about her attitude to work. Ms McColvin suggested that; her attitude had changed; and the claimant was giving the impression that she no longer wanted to work for the respondent. Ms McColvin asked if there was a problem at work. The claimant explained that there was not. Ms McColvin said that if there were any personal issues they should be "*left at the door.*" The claimant was offended by any question or discussion of personal issues. As a result, the claimant said that she wanted to end her employment. The claimant asked if she would be required to work her period of notice. She did so because she believed that her probationary period had expired on 21 August. The claimant was told that her probationary period was being extended as a result of what had happened. The claimant again asked if she could leave immediately without having to work a notice period. She was told that she could do so. Had she been required to work her notice period to avoid the deduction, she would have done so. She needed the money.

22. The claimant asked if the ending of her contract that day would affect her entitlement to holiday. Ms McColvin advised that she did not know. She told the claimant to raise the issue with HR. On leaving the meeting, Ms McColvin reminded the claimant to return her uniform within five days, laundered. The meeting was short. It lasted no more than 15 minutes.

23. On 30 August, the claimant emailed Ms Bond. In that email she; advised that she had "*quit*" without giving notice as she believed she was entitled to do due to the fact that her probationary period was still ongoing; enquired about holiday pay; provided a detailed list of hours worked in the period 2 August to

28 August, totalling 104 hours and 40 minutes; asked for a detailed list of any discrepancies and for the previous two months; asked for a copy of the Declaration which she said she did not recall signing; and asked for a copy of the notes taken by Nicola at the meeting with her and Ms McColvin. The respondent did not provide the claimant with a copy of the notes.

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24. On 1 September, the claimant telephoned Ms Bond. In answer to a question about holiday pay, Ms Bond advised the claimant that it was to be forfeited because she had not worked in her notice period. The claimant advised Ms Bond that she had been told that she was not required to work in her notice period because her probation period had been extended. Ms Bond told the claimant that she would look into the question of holiday pay but would be paid for hours worked regardless of any notice period.

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25. On 11 September, the respondent issued a payslip for the claimant (**page 31**). Her gross pay for the period was £967.22 for 110.92 hours. The sum of £15.50 was deducted from her gross pay for "*Discrepancies*". The sum of £418.56 was deducted from gross pay for "*Leave without Notice*." The payslip was emailed to the claimant on 11 September by Amy Hurles, Recruitment Assistant.

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26. On Monday 14 September, the claimant replied by email to Ms Hurles and copied it to Ms Bond. She raised issues of; the location of pension contributions deducted from her salary; her entitlement to be paid in lieu of untaken holidays, and the fact that pay was deducted in relation to her notice period. In that email she said that she had expressly asked during her last shift if she needed to work her notice period and had been told that as her probationary period was extended there was no need to work her notice.

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27. The respondent's HR Team replied on 15 September. The email did not name its author. It was copied to Ms Hurles and Ms Bond. On the question of notice, the email set out that; there had been contact with her line manager (Ms McColvin); she had advised that there had been no verbal mutual agreement for the claimant to leave without notice; Ms McColvin had been unable to finish the discussion because the claimant had stood up and left

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“once they mentioned extending your probation”; and reference was made to the requirement in her contract to provide notice of two weeks to terminate the contract.

5 28. The claimant replied later that day, 15 September. In it, she set out her position on the issues of pension and holiday pay. The claimant recounted her recollection of the discussion which led to her resignation. She said that she had been told (while seated) that her probation period was being extended. She said that she had repeated the question as to whether she could leave without working her notice period and was told she could. She
10 said that despite her request, the notes from the meeting had not been provided to her.

15 29. The respondent’s HR Team replied the following day, 16 September. That email maintained that the respondent had done an investigation and had concluded that there was no verbal agreement that the claimant did not require to complete her notice period.

Comment on the evidence

30. In her brief cross-examination the claimant gave precise answers in an unhesitating way. She was not challenged on her evidence about her conversation on 1 September with Ms Bond.

20 31. In cross-examination and in questions from me, Ms McColvin appeared a little unsure. She was unable to explain one issue, which I deal with below.

Submissions

25 32. In a short submission, the claimant summarised her position. She had not been at work on 27 August. At the start of her shift on 28 August she had been immediately questioned. She had had no opportunity to take notes in the meeting with Ms McColvin. She felt the way she had been treated was unacceptable. She wanted to resign and leave. In the discussion with Ms McColvin her probationary period was extended. She was clear that there was no need for her to work in the notice period. She referred to her evidence

(page 2 penultimate paragraph) that in a telephone call with Sarah Bond on 1 September she had been assured that she would be paid for the hours that she had worked. Ms Bond had not subsequently sought to correct that position if it was indeed incorrect. She reiterated that she had not had confirmation of the ending of her probation period as was suggested by the letter of 21st August (page 20). On the issue of deductions for discrepancies, she had made several requests for clarification of the rationale for those deductions. None had been provided. The electronic signature on the deductions for pay agreement (pages 5 to 6) had not been done by her. In any event she had not been provided with any detail as to the respondent's rationale for making any of those three deductions.

33. In an equally short submission, Mr Sutherland dealt with the claims in turn. On the question of the three "discrepancies" deductions, he submitted that clarification as to their reasons had been sought. Information had been provided by the claimant's line manager. It informed that all of them resulted from till discrepancies. The deductions from pay agreement relied on by the respondent is not a fraudulent document. It had the claimant's signature on it albeit in electronic form. She had thus agreed to deductions for any cash shortages including discrepancies. On the question of the deduction for the failure to work in the period of notice, the claimant's contract expressly provided for the deduction which had been made. There was no dispute that she had signed the contract (pages 17-19) which permitted the deduction. The claimant was no longer in a probationary period (page 20). There was no agreement that she could leave, without giving notice and be paid in full.

The Law

34. Section 13 (1) and (2) of the Employment Rights 1996 provide that: *“(1) An employer shall not make a deduction from wages of a worker employed by him unless—(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or (b) the worker has previously signified in writing his agreement or consent to the making of the deduction. (2) In this section “relevant provision”, in relation to*

a worker's contract, means a provision of the contract comprised—(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”

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35. Section 13 (5) to (7) of the 1996 Act provide that:—“(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect. (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified. (7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

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36. Section 23(1) (a) of the 1996 Act provides that:—“(1) A worker may present a complaint to an employment tribunal —(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2))”.

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37. Section 24(1)(a) of the Act provides that “(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—(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”.

38. The total claim is in two parts. It is convenient to deal with them in turn.

39. On the issue of the deduction of £418.56 for leave without notice (**page 31**) it was a term of the contract that if the claimant terminated her employment without giving or working the required period of notice she would have 2 weeks' pay deducted from her (**see page 19**). This was contained in a statement which she had signed two weeks prior to the meeting at which she resigned. The conflict in the evidence between the claimant and Ms McColvin was on two questions. First, whether the probationary period was extended. Second whether Ms McColvin agreed that the claimant could leave without the requirement to give or work her 2-week notice period. On the first question, I preferred the claimant's evidence. In her witness statement (**page 2**) she was clear on the exchange with Ms McColvin. Ms McColvin's evidence was also clear and unequivocal, "*there was never any mention of a probationary period extension.*" (**page 4**) In my view Ms McColvin's understanding of the relevance of the issue to the claim was clear; that if the probationary period were extended then the claimant would not require to give 2 weeks' notice. I preferred the claimant's evidence for the following reasons. First, her email to Ms Bond on 30th August, two days after her meeting with Ms McColvin (**page 21**) was consistent with her version. She believed at that time that her probationary period was ongoing. If (as was her evidence) she believed that after 21st August her probationary period had ended, her most likely basis for understanding the opposite was what Ms McColvin had said to her on 28th August. Second, Ms McColvin could not explain (when asked in her evidence) how the HR Team's email of 15th September (**page 23**) had said that the claimant had stood up and left once they mentioned extending her probation. The whole sentence from that email reads, "*It has been brought to our attention that during your capability meeting, the manager was unable to finish discussing their points of concern because you stood up and left once they mentioned extending your probation.*" The meeting was with Ms McColvin and Nicola. "*They*" in that context means Ms McColvin and Nicola. Ms McColvin did not dispute that the reference to "*they*" included her. She was not able to explain how it was, if her witness statement were correct, that this email suggested (as it does) that Ms McColvin had mentioned

extending the claimant's probation. I therefore did not accept Ms McColvin's evidence that there was "*never*" any mention of extending it. On the question of whether Ms McColvin agreed that the claimant could leave without the requirement to give or work her 2-week notice period I preferred the claimant's evidence for the following reasons. First, I considered the claimant's evidence on the first question to be the more reliable. It was therefore more likely that her recollection of the exchanges on the second question would also be more reliable given that the two issues occurred in the same short exchange between them. Second, the claimant's evidence was consistent with her position on the question from her correspondence on 14th September (**pages 22 to 23**) and afterwards. I appreciate that that email was sent more than two weeks after the meeting with Ms McColvin. But it was sent shortly after receiving her wage slip when she saw the deduction. I accepted the claimant's evidence that she needed the two weeks' pay. I also accepted her evidence that if she had needed to work her notice to avoid it being deducted she would have done so. Her evidence was consistent throughout that she agreed with Ms McColvin that she could leave without the requirement to give or work the notice period. The more relevant of the two questions is the second. In my view, Ms McColvin agreed that the claimant could leave without the requirement to give or work her period of notice. Separately, Ms Bond had told the claimant on 1 September that she would be paid in full for the hours she had worked. The respondent led no evidence to contradict this. On that analysis the respondent gave up its right to deduct 2 weeks' pay. The condition which would have triggered the right to deduct it was not met because Ms McColvin and Ms Bond agreed that it did not apply. That being so, there was no relevant provision of her contract which authorised it. There was no prior written agreement or consent to the making of that deduction. It was therefore made in contravention of section 13 of the Employment Rights Act 1996. The claimant is entitled to a declaration to that effect and an order for the net version of that sum to be paid to her by the respondent.

40. The second part of the claim relates to the three deductions for "*deficiencies*" shown on the payslips dated 10th July 14th August and 11th September 2020. The respondent's position depended on a finding that the claimant had agreed

to deductions for any cash shortages including discrepancies by virtue of the signed deductions from pay agreement (**pages 5 and 6**). I found that the claimant had not signed the agreement. I did so for two reasons. First, her evidence was that she had not added her electronic signature to it. Second, it is dated nine days prior to the start of her employment. The respondent offered no explanation as to how it could have been signed then as opposed to 21 May, or later. Mr Sutherland suggested that on the claimant's case she was asserting or inviting me to infer that if she had not signed it, it was a fraudulent document. In my view, the claimant's case does not go that far, nor does it need to. I needed to decide whether the claimant added her signature to it on the date that it bears to have been signed. For the reasons given I decided that she had not signed it. I do not need to decide who else might have added her signature, or why it was done. The deductions were made from the claimant's gross pay. Income tax and national insurance contributions are liable to be deducted from all of the deductions before being paid to the claimant.

41. In the circumstances, both parts of the claim succeed, and I have made orders accordingly.

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Employment Judge: Russell Bradley
Date of Judgement: 29 March 2021
Entered in Register: 30 March 2021
and copied to parties

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