



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107117/2020**

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**Held via Cloud Video Platform (CVP) on 28 January 2021**

**Employment Judge R Bradley**

10 **Mr N Kaya**

**Claimant  
In Person**

15 **Professional Canine and Security Limited**

**Respondent  
Represented by:  
Ms S Harvey -  
Accounts Manager**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the employment tribunal is to declare that the claimant's claim that the respondent has made a deduction from his wages in contravention of section 13  
25 of the Employment Rights Act 1996 is well founded; and to order the respondent to pay to the claimant the sum of £634.11.

### **REASONS**

#### **Introduction**

1. This was the final hearing of a claim within an ET1 presented on 9<sup>th</sup> November  
30 2020. It was resisted. Parties had agreed in advance to proceeding by CVP. The claimant presented his own case. The respondent was represented by its accounts manager, Sarah Harvey.
2. The single claim was in respect of an alleged unlawful deduction from wages. The gross sum withheld represented the whole of the claimant's pay for the  
35 short period of his employment. It was agreed that the claimant's employment began on 2 September 2020 and he worked his last shift on 23 September.

3. In the course of the hearing it was agreed that if I found for the claimant, the sum due to him would be £634.11. If I found for the respondent it was agreed that the sum due to the claimant would be £156.83. The claimant agreed that the respondent is Professional Canine and Security Limited (as per the ET3) as opposed to "*Professional Canine and Security*" as per the ET1.
4. Prior to hearing evidence there was a discussion in which a number of facts were agreed based on the information within the tribunal forms.

### Evidence

5. The tribunal heard evidence from the claimant and from Ms Hunter. The tribunal considered a number of documents produced by both parties in the course of the hearing. In the discussions prior to hearing the evidence it became clear that Ms Harvey had not seen an Order of the employment tribunal dated 8 January. She was thus not aware of the order to produce documents 14 days prior to the hearing or to liaise on the preparation of a joint file. Neither party had any objection to the material produced by the other in the course of the hearing.

### The issues

6. I explained that I would require to determine what sum was properly payable by the respondent to the claimant, and then determine whether any deductions made by the respondent were 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 his agreement or consent.

### Findings in fact

7. The tribunal found the following facts admitted or proved.
8. The claimant is Nihat Kaya. He resides at 35 Marischal Street, Aberdeen, AB11 5AD. He began employment as a store detective with the respondent on 2 September 2020. His duties involved working at various stores in Aberdeen and Peterhead operated by the retailer, Lidl. Prior to that date, he completed an application form for the job. Also prior to starting work he had

received a lanyard and a facemask for use at work. On 24 August (10.37) the respondent's director of operations (Scotland) Jim Roberts emailed the claimant saying, "*As discussed we are now pleased to confirm your position as full time permanent roaming store detective for the Aberdeen area commencing on confirmation of your notice period from your existing employment.*" On 28 August (14.32), Mr Roberts emailed the claimant. In that email he advised that reports were to be completed and emailed at the end of a working week on a Sunday evening with his completed timesheet. An example of a timesheet was attached to the email. The email attached various other documents. A little later on 28 August (14.39) Mr Roberts emailed to the claimant the rota for the following weeks, numbered 36 to 41. The rota showed the claimant's days and hours of work for the period 2 September to 11 October. It also showed which of seven Lidl stores the claimant was to work at in that period. By 28 August, the claimant had attended "*in store induction*".

9. The claimant asked Mr Roberts by telephone or by text for a contract of employment. Mr Roberts did not send one to him. No written contract or terms of employment were issued by the respondent to the claimant before 23 September.

10. The claimant's pay was (gross) £9.15 per hour. In the period between 2 and 23 September the claimant worked 117  $\frac{3}{4}$  hours. The gross pay due to him for those hours was agreed as being £1074.67. The respondent's normal practice is to pay employees monthly, on the fifteenth of each month. The pay which is paid on each fifteenth of the month is for work done in the previous month.

11. At some time between 2 and 23 September the respondent paid the claimant an advance of £400. This was an advance of salary due to him. The parties agreed at the time that this sum would be repaid by the claimant when salary was paid. In his discussions with Mr Roberts the claimant had misunderstood that he would have been paid on 15 September.

12. On the gross pay of £1074.67 a sum of £40.56 was to be deducted for income tax and national insurance contributions on it.

13. The respondent's terms and conditions of employment contain the following provisions:-

- 5 a. The first three months of employment is a probationary period
- b. An employee is required to give a minimum of one month's written notice to terminate the employment. During the probationary period the notice period is reduced to the statutory notice on both sides
- 10 c. Upon completion of one month's continuous service an employee is statutorily entitled to receive one week's written notice. Upon completion of two years' service, an employee is statutorily entitled to receive written notice of one week for each complete year of continuous service up to a maximum of twelve weeks' notice on having twelve years' continuous service or more
- 15 d. If during or on termination of the employment the employee owes any money to the employer s/he agrees that the employer has the right to deduct this sum from wages or any other money it owes. By signing the terms, the employee expressly consents to any such deduction/s pursuant to part II of the Employment Rights Act 1996. Examples of
- 20 deductions which may be made by the respondent include but are not limited to thirteen circumstances. Those circumstances include (i) repayment of training costs; (ii) the cost of replacement or repair of equipment or uniform lost, stolen, damaged or not returned due to negligence during or after the employment (iii) other costs reasonably
- 25 incurred in connection with equipment not returned, returned damaged or unusable during or after employment (e.g. replacement of locks where keys are not returned) and (iv) costs incurred as a result of the employee not working the notice period.

14. The respondent's terms provide for the employee to acknowledge receipt of the statement of terms and conditions of employment. The acknowledgment

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contains a confirmation of having read and understood the contents and an acceptance that the statement and, where specified in it, the rules detailed in an employee handbook, form the contract of employment.

- 5 15. It is the respondent's practice to ask staff to print, sign and return a copy of the statement. The signed copy is ordinarily held by the respondent on a personnel (called a 'P') file.
16. The respondent does not have a copy of such a statement signed by the claimant.
- 10 17. The claimant's last shift worked was 23 September 2020. The effective date of termination was 24 September. The claimant did not give notice to terminate the contract. The claimant emailed to the respondent his last timesheet on 5 October and therefore later than had he had been instructed.
- 15 18. The respondent did not pay the claimant for any of the work done in the time of the employment between the parties. The respondent believed that it was entitled to deduct £477.28 from any wages otherwise due. That sum consisted of two parts. First, £366.00 representing 1 week of the claimant's work (40 hours in the week at £9.15 per hour). The respondent believed that it was entitled to do so as a result of the claimant's failure to provide notice of termination of the contract. Second, £111.28 representing the time and expense of supervisor in training the claimant and the cost of the lanyard and the facemask. The respondent did not make payment of any wages due to the claimant on 15 October (what would have been his first pay day) because it had been unable to agree with the claimant the deductions it proposed to make.
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25 **Comment on the evidence**

19. Both the claimant and Ms Harvey gave evidence that was credible and reliable. That said their evidence was short and of limited significance in resolving the dispute between the parties. Of note however was the claimant's evidence that he had not received and had thus not signed or agreed to the respondent's written terms of employment.
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20. It was unfortunate that the respondent had not seen the tribunal's case management order. This led to materials being emailed to the tribunal via the clerk by both parties in the course of the hearing. Both parties were willing to proceed with the hearing on that basis as both had seen the material prior to it. In answer to a question from the tribunal Ms Harvey said that she had decided against listing James Roberts as a witness for the respondent as he had been absent from work by reason of illness and because of the effect of lockdown.

### The law

21. 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.*

22. 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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23. 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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24. 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”.*

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25. Section 86(2) of the Act provides that *“The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.”*

### **Submissions**

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26. The claimant made no formal submission. He was content to leave matters based on the evidence that had been heard and the discussion at the outset of the hearing. Ms Harvey made no formal submission either. She did ask the extent to which the outcome could have been influenced by evidence that the claimant had received a copy of the respondent’s terms and conditions of employment. I deal with the point at paragraph 31 below.

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### **Decision and discussion**

27. It was agreed between the parties that the respondent had not paid the claimant for the period of his employment. The parties were agreed as to the rate of pay for that work. They were agreed as to the number of hours worked, and the gross pay for that work. There was also agreement as to the amount

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that required to be deducted from the gross pay for income tax and national insurance contributions.

28. As noted at paragraph 10 above the agreed gross pay due to the claimant was £1074.67. The total amount of the wages properly payable to (after deductions for income tax and national insurance contributions of £40.56) was therefore £1034.11. This was the sum properly payable to the claimant. The respondent had clearly paid him less than was properly payable in that it had paid nothing.
29. The question then became; was a deduction of £477.28 one which was either authorised to be made by virtue of a relevant provision of the claimant's contract or one which he had previously signified in writing his agreement or consent to the making of it?
30. There was self-evidently no evidence of his prior written agreement. In the period before the hearing the respondent appears to have relied on its belief that a relevant provision of the claimant's contract authorised the deductions. At the hearing, Ms Harvey did not seriously suggest that the claimant's contract contained such a provision. In my view, there was no relevant provision of the contract which authorised any of the deductions made by the respondent. There was no relevant provision because the claimant had not been issued with a statement which contained it. On that basis, the deductions were not authorised by a relevant provision of his contract.
31. My view is that even if the contract had contained the provision set out at paragraph 13d(iv) above, it would not have entitled the respondent to deduct an amount being the equivalent of the claimant's pay for one week. This is because there is no correlation between any costs incurred by the respondent as a result of the claimant not having worked in the notice period (on the one hand) and the pay due to him as a week's pay (on the other).
32. The claimant had not been employed for one month by the time the contract ended. He was not bound to give notice of termination as per the respondent's terms as he was not bound by them. Given his length of service, he was not



bound to give notice of one week as required by section 86(2) of the Employment Rights Act 1996.

33. The claimant is entitled to a declaration that his complaint is well founded. The tribunal also makes an order for payment of monies due to the claimant by the respondent. By agreement with the claimant the order is for payment of £634.11 to reflect the advance of wages of £400 which he received while employed.

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**Employment Judge****R Bradley**

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**Date of Judgment****1<sup>st</sup> of February 2021**

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**Date sent to parties****4<sup>th</sup> of February 2021**