



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No 4101951/2020 (V)**

**Held via Cloud Video Platform (CVP) on 19 March 2021**

**Employment Judge Murphy (sitting alone)**

**Mr D Pague**

**Claimant  
Represented by  
Mr. K Tiglao**

**KMS (Scotland) Ltd**

**Respondent  
No appearance and  
No representation**

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

1. The Respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and the Respondent is ordered to pay to the Claimant the sum of **£3,355** in respect of unpaid wages in respect of the period from 18 December 2019 to 16 February 2020.
2. The Respondent is ordered to pay to the Claimant the further sum of **£233.73** to compensate the Claimant for financial loss sustained by him attributable to the Respondent's unauthorised deduction.
3. The sum awarded in item 1 is expressed gross of tax and national insurance. It is for the Respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

**REASONS****Findings in Fact**

1. The tribunal made the following findings in fact.
2. The Claimant was employed by the Respondent from 18 December 2019 to 16 February 2020. He was employed as a Kitchen Porter in the Respondent's restaurant 'Taste' from the date it opened, but undertook other duties for the Respondent as required.
3. The Claimant and the Respondent's Director, Kyle Murray, agreed verbally on 18 December 2019 that the Claimant would be remunerated for his work at the rate of £10 per hour. Mr Murray told the Claimant that he would be paid weekly.
4. Throughout the period of his employment, the Claimant only received one payment from the Respondent around the end of January 2020. This payment was in the sum of £1,000. The Claimant received no pay slip from the Respondent and believes that no deductions may have been made in respect of income tax or national insurance contributions.
5. The Respondent did not prepare a staff rota throughout the period of the Claimant's employment to record the hours worked by the Claimant and other employees. The Claimant and other employees individually maintained their own private records of hours worked.
6. During December 2019, the Claimant worked many 11 hour shifts for the Respondent from 9 am to 9 pm with a one-hour break for lunch. During that month, he worked a total of 135 hours. He received no pay throughout December 2019.
7. During January, the Claimant worked generally worked slightly shorter shifts, broadly between 8 and 10 hours. During that month, he worked a total of 207.5 hours. He was, however paid only £1,000 at the end of that month.

8. The Claimant found himself increasingly in financial difficulty because of the lack of timeous payment by the Respondent. He frequently required to borrow money from his daughter in order to meet his expenses, including to pay for his bus fare to and from the Respondent's restaurant.
9. During February 202, before he ended his employment, the Claimant worked 93 hours for the Respondent. The Respondent did not pay the Claimant during February 2020.
10. Throughout the period of his employment, the Claimant pawned his phone and a number of personal items to raise money. He also borrowed money from his family. He found he could not afford his rent or the Council Tax due on the council house he had secured. He moved out to rent cheaper accommodation and moved to London for a spell. He incurred interest charges on the pawned items in the amount of £233.73.
11. A Notice of this hearing was sent to the Respondent by email on 9 March 2021 at 2.41pm. The Respondent indicated in the ET3 response that they preferred to be contacted by email. Additionally, the Respondent's Mr Murray participated in a preliminary hearing by telephone conference call on 5 February 2021. At this hearing, it is understood that Employment Judge McPherson gave verbal notice of the final hearing on 19 March 21 and confirmed it would be held by CVP. This was followed up with a written case management note and orders which gave notice of the hearing. This documentation was sent to parties on 10 February 2021 at 2.58pm by email. The email address used for the Respondent for these communications has been checked by the tribunal staff. The Tribunal Clerk made attempts to contact the Respondent by phone on the number provided by the Respondent to arrange a CVP test in advance of the hearing but received no response. The Respondent did not attend or participate in the hearing.

### **Relevant Law**

12. Under the section 13 of the Employment Rights Act 1996 ("ERA"), a worker has the right not to suffer unauthorised deductions from her wages. Under section

23 of ERA, a worker may complain to an employment tribunal that an employer has made a deduction from her wages in contravention of section 13. Where a tribunal finds such a complaint well founded, it shall make a declaration to that effect and order the employer to pay the amount of the deduction (section 24 ERA).

13. Where a tribunal makes such an order, it may order the employer to pay the worker such additional amount as it considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by her which is attributable to the matter complained of (section 24(2)). The tribunal may not award compensation in respect of financial loss such as upset and injury to feelings under section 24(2).

#### **Observations on the evidence**

14. The Claimant gave evidence in his own right and led evidence from his two daughters, Alex and Danielle Pague, and from a friend named Tommy Jack.
15. The Claimant spoke to a table which had been prepared by his representative in August 2020, setting out the dates he had worked. He explained that this had been based on his recollection as well as handwritten notes he had made at the time but which have subsequently been lost across various house moves. A screenshot of his record for part of December had previously been sent to the tribunal and the Claimant confirmed that this was one of the documents on which the table was based. Unfortunately, he no longer had a copy of the original and the screenshot was mostly illegible due to the poor quality of the image.
16. Support was lent to the Claimant's evidence regarding his hours of work by the evidence of his eldest daughter with whom he was in regular contact during the material time. His eldest daughter, Danielle Pague, described the Claimant's delight at securing the job, having previously been unemployed, and his growing disappointment as his wages did not materialize over the weeks and months.
17. It was put to the Claimant that the Respondent, in the ET3 and in a table lodged with the tribunal, disputed both his hours of work and his period of employment.

The Respondent's position in these documents was that the Claimant's employment ceased on 27 January 2021 and that throughout December 2019 and January 2020 he had worked shifts of no more than 5 to 7 hours. The Claimant refuted this evidence as simply untrue.

18. Danielle Pague gave evidence that the Claimant complained to her at the time of his employment about the lack of payment and informed her of the approximate sums due. She spoke to a series of text messages between her and the chef at the Respondent's restaurant, who she and her father both knew from previously working together at another employer. She sent messages to query the Claimant's pay situation on his behalf on 4 and 20 February 2020. The content tends to support the Claimant's position that he remained in employment at that time. Additionally, Ms Pague gave evidence of a call which took place on 23 February 2020 between her father and Mr. Murray in her presence. She recalled Mr. Murray, who was on speaker during the call, was querying the Claimant's absence and the Claimant pointed out that he couldn't get to work if he didn't have the money for his fare. Ms Pague recalled that Mr. Murray suggested the Claimant could message him to obtain his bus fare.
19. The Respondent did not participate in the hearing and did not lead any evidence to challenge the evidence of the Claimant. The tribunal found the Claimant and his witnesses to be credible, and accepted the Claimant's evidence and that of Danielle Pague regarding the Claimant's hours of work. The tribunal also accepted the Claimant's evidence regarding the discussion on 18 December 2020 between him and the Respondent concerning his rate of pay.

### **Discussion and Decision**

20. The Claimant's unchallenged evidence was that he was not paid fully during the period of his employment. The Claimant spoke to a table which had been prepared based on his recollection and handwritten records at the time. It was undisputed in the Respondent's ET3 that the Claimant had been paid only £1,000 throughout the period of his employment. The Claimant, therefore, and

suffered a deduction from his wages in the gross sum of **£3,355** (i.e. 435.5 hours @ £10 per hour LESS £1,000 received).

21. The Claimant suffered financial losses in consequence of the deductions made. The tribunal awards the sum of **£233.73** to compensate the Claimant for financial loss incurred attributable to the Respondent's deduction.

Employment Judge: L Murphy  
Date of Judgement: 30 March 2021  
Entered in register: 21 April 2021  
and copied to parties