



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5

**Case No: 4101442/2020 (V)**

**Held via Cloud Video Platform (CVP) on 26 March 2021**

10

**Employment Judge S Cowen**

**Mr C Davidson**

15

**Claimant  
Represented by:  
Mrs Buchanan -  
Grandmother**

20

**Archie McKinnon Painter and Decorator**

**Respondent  
Represented by:  
In Person**

25

**JUDGMENT** having been given orally on 26 March 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

30

**REASONS**

**Background**

35

1. The claim was issued on 13 March 2020 and the ET3 was received by the Tribunal on 22 June 2020. The case was heard via CVP due to the restrictions as a result of the Covid-19 pandemic. The claimant was represented by his Grandmother, Mrs Buchanan and the respondent represented himself.

E.T. Z4 (WR)

2. The parties provided the Tribunal with a bundle of payslips. During the hearing it became clear that the respondent had also produced a witness statement, but this was not shown to the Tribunal and was not therefore taken into account. The respondent gave oral evidence and acknowledged that this evidence covered all the matters contained in his written statement in any event and that he had raised all the matters he wanted to refer to the Tribunal. The claimant also gave oral evidence and was cross examined by the respondent.

### **The Facts**

3. The claimant started working for the respondent as an apprentice painter and decorator on 20 May 2019. He was employed under the terms of a Construction Industry Training Board Agreement between the respondent and the College which the claimant attended, as an apprentice. I have not seen a copy of the contract and neither has the claimant. Whilst the claimant started work in May 2019, he did not start college until September 2019.

4. The claimant worked well for the respondent to begin with and enjoyed learning a trade. The respondent felt that the claimant was a good apprentice and had aspirations for him. The respondent arranged for the claimant to be picked up and taken home each day. This eventually changed and the claimant was required to travel to work and to college by himself. By agreement, the costs of this travel were to be covered by the respondent, upon provision by the claimant of evidence of the cost of the travel. The claimant did so, mostly on a weekly basis and was repaid the money via bank transfer. However, at one point, the claimant grouped together nine tickets which he had used and sent them all to the respondent in one evening, to claim as expenses. The respondent became suspicious of the fact that these tickets were both child and adult tickets and that they did not travel directly between the claimant's home in Stirling and his destination. The claimant explained this on the basis that at times, when he did not have sufficient funds to cover the full journey, he bought a child ticket, or a ticket that did not cover his full journey. They were all tickets which were purchased in order to travel to and from work

and college. The respondent accepted at the hearing that the claims were all legitimate and the money was therefore owed.

5. The claimant asserted he was not provided with payslips. The respondent's evidence was that these were produced by his accountant and emailed to him on Thursday each week. He distributed them on a Friday, having printed them off. The respondent produced a set of payslips to me which show the basic pay of the claimant during his employment. However, a number of anomalies were pointed out by the claimant between the payslips and the amount credited to his bank account. Some of the payments were rounded down to the nearest pound. Some were overpayments. The claimant also indicated that none of the overtime he worked was listed on the payslips and that his pay over the Christmas and New Year period was listed on the payslip as an 'advance'. This did not amount to a full two weeks of pay. That was in accordance with the claimant's evidence that he was told to take an extra three days off after New Year, but was then not paid for those days. Some of the overpayments may include repayment of travel expenses, but as they are not itemised on the payslips, this cannot be established clearly.
6. The claimant chose to resign from his employment with the respondent on 27 January 2020, for reasons which were not made clear to me, but which are not relevant to this claim. I have not seen evidence of the letter of resignation but accept that it was sent as a photograph to the respondent, indicating that the claimant was giving one week's notice. By this time the respondent had changed his view of the claimant and did not consider him to be a good worker. The respondent was annoyed with the claimant for resigning. He decided not to pay the claimant for his notice period. He did not want the claimant to work his notice period, as he would not be present himself to supervise the claimant's work, as he was going on honeymoon.
7. The respondent's holiday year ran from 1 January each year and employees were told that holidays could not be carried over from the previous year. The claimant worked for one complete month prior to his resignation and accrued 1/12 of the annual holiday entitlement.

8. The claimant also claimed that he was not given all of the tools he required to do his work and therefore bought his own paintbrushes, which were stored in the respondent's van. At the end of his employment the claimant was not allowed to return to retrieve his belongings and lost a set of brushes. No receipts were produced to show the value of the brushes. Furthermore, there was no evidence of any agreement between the parties that the respondent would pay for tools purchased by the claimant.

### The Law

9. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA:

“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.”

10. Sums payable to the worker in connection with their employment include emoluments referable to their employment “whether payable under the worker's contract or otherwise”. There needs to be some legal entitlement to the sum in question, although the entitlement need not necessarily arise in contract (**New Century Cleaning Co Ltd v Church** [2000] IRLR 27).

11. Section 13(3) ERA provides:

“Where the total 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 worker's wages on that occasion.”

12. A deduction is therefore, a complete or partial failure to pay what was properly payable on a particular occasion.

13. Section 1 Employment Rights Act 1996 sets out the right to be provided with written statement of terms and conditions. At the time of the claimant's employment in 2019, the relevant provision stated;

5 “(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

(2) The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.”

10 13. Under section 11, a claim arises where such a statement is not provided;

15 “(1) Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.

(2) Where—

20 (a) a statement purporting to be a statement under section 1 or 4, or a pay statement or a standing statement of fixed deductions purporting to comply with section 8 or 9, has been given to a worker, and

25 (b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the worker may require the question to be referred to and determined by an employment tribunal.

(3) For the purposes of this section—

30 (a) .....

(b) a question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars.”

## Decision

14. The claimant started working for the respondent in May 2019. At that time the responsibility of the respondent was to provide terms and conditions within 2 months of starting work. There was no evidence to suggest that the claimant had been provided with any written record of his terms and conditions. The respondent therefore breached this section and the claimant is entitled to compensation under s. 11(1)ERA. The claimant is awarded the equivalent of two weeks' net pay in compensation in the sum of £296.40.
15. Further, I am satisfied that the claimant was not provided with his payslips at the time, as is required by s. 11(2) ERA. Although they were provided for the purposes of the tribunal hearing, they were not an accurate reflection of the amounts paid to the claimant as they do not record all the payments made. I make no separate award to that outlined above for lack of terms and conditions.
16. As set out above, the contract was not provided to the claimant, nor to the tribunal hearing. I cannot tell whether the contract contained an express term of pay in lieu of notice. In any event the claimant ought to have been allowed to work his notice; he was not and this amounts to a breach of contract by respondent. If there was a term for pay in lieu of notice in the contract then the respondent was within his rights to tell the claimant not to attend work, but should have paid him for the week and is therefore in breach of contract for not doing so. Either way, the respondent ought to have paid the claimant for the week of notice and has not. In evidence the respondent accepted that he ought to have done this. I therefore find that notice was not paid and that the respondent must pay £148.20.
17. The claimant claimed for the outstanding balance of travel expenses which were claimed, but not reimbursed by the respondent. There was a clear agreement that these would be paid by the respondent, who failed to honour this agreement, or to clarify with the claimant why the amounts and destinations varied. The claims were legitimate, the respondent acknowledged this during the hearing and must pay the claimant the outstanding balance of £30.

18. The claimant further claimed pay for holidays which were accrued but not taken. I have seen no documentary evidence to support that claim. On the basis that the claimant resigned on 27 January 2020 and would have worked a week of notice he is entitled to 1/12 of the annual holiday allowance. Statutory holiday entitlement is for 28 days in total – thus the claimant is entitled to two days' pay. On the basis of £148.20 per week, this amounts to £59.28.

19. The claimant also claimed repayment for the cost of brushes which he bought and which were not returned to him. I have seen no evidence of the value of the brushes, nor evidence of their loss. There is no evidence of a contractual entitlement to be reimbursed for any such expense and the parties are not agreed on this point. The claim is therefore not proved and no award is made.

15

20

<b>Employment Judge:</b>	<b>S Cowen</b>
<b>Date of Judgment:</b>	<b>09 June 2021</b>
<b>Date sent to parties:</b>	<b>09 June 2021</b>

25