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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107899/2020

Final Hearing Held by Cloud Video Platform (CVP) on 1 May 2021

Employment Judge A. Jones

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Ms V Lough

**Claimant
Represented by:
Mr T Pacey, of counsel
Instructed by Friends
Legal**

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Taaks of Scotland Limited

**First Respondent
Not present and
Not represented**

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Mr G Singh

**Second Respondent
Not present and
Not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The first respondent made unlawful deductions from the claimant's wages of £1327.34 by paying her 80% of her normal wages during a period of furlough without obtaining her consent to either being placed on furlough leave or a reduction in her pay, and by failing to pay her accrued holiday pay on termination of her employment of £289.44 and is ordered to pay compensation to the claimant of those deductions.

2. The first respondent breached the claimant's contract of employment by failing to pay her the notice pay to which she was entitled amounting to £180.92 and is ordered to pay her those sums.
3. The first respondent failed to provide the claimant with a statement of particulars compliant section 1 Employment Rights Act 1996 and is ordered to pay to the claimant the sum of £723.68 as compensation
4. The first and second respondents subjected the claimant to detriments including that of dismissal on the ground of her making protected disclosures and are ordered to pay the claimant, on a joint and several basis compensation and injury to feelings (including interest to the calculation date) of £18,032.63.
5. The compensatory award is subject to a recoupment period of 28 August to 28 December 2020. The prescribed element of the compensation is the sum of £4781.87.

REASONS

1. A final hearing took place in this case on the Cloud Video Platform. The claimant was represented by Counsel. Neither respondent had submitted a response to the claim form served on them and neither was present nor represented.
2. The claimant claimed unlawful deduction from wages, breach of contract, that she had been subjected to detriments in terms of section 47B and section 44 of the Employment Rights Act 1996 and section 100(1)(c) and/or section 103A of that Act. She also claimed that the respondent had failed to provide her with a statement of terms and conditions of employment in satisfaction of section 1 of that Act.
3. The claimant gave evidence on the circumstances which led to her raising proceedings and also her losses since her dismissal. A bundle of documents

was also lodged. The Tribunal found the claimant to be a reliable and credible witness.

4. The Tribunal accepted that the first respondent had not sought the claimant's agreement to any variation of her contract in relation to placing her on furlough leave or reducing her pay during any such period of leave. The deductions made amount to unlawful deductions from wages. The claimant incurred £1327.34 losses as a result for which the first respondent is liable.
5. The Tribunal accepted that the claimant had been subjected to a detriment at a meeting on 11 August 2020 at which the claimant and her colleagues raised various concerns –
 - a. about the first and second respondent's failure to comply with Scottish Government guidelines in relation to COVID,
 - b. that the first respondent had required the claimant and her colleagues to work while the first respondent claimed funds from the Scottish Government in relation to the furlough scheme, and
 - c. that the first and second respondent had failed to take any steps to ensure that there was a safe working environment for her, as a disabled person for the purposes of the Equality Act 2010, in that she had been diagnosed with and had been undergoing treatment in relation to cancer, which did not expose her to considerable danger.
6. These amounted to protected disclosures in terms of section 43B of the Employment Rights Act 1996. They were allegations that a criminal offence had been committed and that the respondent had failing and was likely to fail to comply with a legal obligation in that no steps were being taken to protected the health and safety of the claimant and her colleagues in relation to the transmission of COVID 19. The second respondent became angry at that meeting and reacted badly to being challenged. He did not accept that he had done anything wrong.

7. The Tribunal also accepted that the second respondent took a decision to dismiss the claimant as a result of her having made these protected disclosures. That was a further detriment.
8. The first respondent then failed to pay the claimant notice pay or accrued holiday pay on termination of her employment. The first respondent had, at no time, provided the claimant with a statement of terms and conditions of employment as is required by section 1 Employment Rights Act 1996.
9. The claimant lodged a detailed schedule of loss and provided vouching in that regard.
10. The claimant had no income for a period of 9 weeks. This was from 14th August until she obtained alternative employment on 10th October. She received Universal Credit between September and December 2020. Although the claimant has obtained alternative employment, she has an ongoing loss of income, including that she is not entitled to any pension contributions. She is also incurring additional travel expenses.
11. Her normal income was £180.92 per week and £2.75 per week was paid into a NEST pension on her behalf. Her new employment has resulted in additional travel costs of £16.50 per week. She has ongoing losses in relation to the difference in pay from her new employment of £40.92 per week and, as her earnings mean she cannot join the pension scheme, pension losses of £2.75 per week.
12. Therefore, losses from termination of her employment until she obtained new employment amount to £1653.03. She has ongoing losses of £60.17 per week. The Tribunal accepts that the claimant, given her age and medical history, is unlikely to obtain alternative employment. Therefore, it is appropriate to award her 52 weeks' ongoing loss.
13. The Tribunal considered what compensation should be awarded to the claimant arising from the injury to feelings she suffered. The Tribunal was mindful of the claimant's health, that it must have been reasonably foreseeable to the second respondent that his actions towards her in failing

to address her concerns that she was being put in a potentially life endangering situation by him, by requiring her to work without any protective measures being put in place, and then advising her that she was 'no longer suited to the company', when she complained about her treatment would have had a significant impact on the claimant. In addition, the claimant had been concerned at being required to work when she believed that the first respondent may have been fraudulently claiming furlough funds from the Scottish Government.

14. The impact on the claimant was exacerbated by her having to try and find alternative employment during a pandemic. Therefore, an award of injury to feelings in the mid band of Vento is appropriate and the Tribunal awards the sum of £12,500 with interest from the date of the first detriment, 11 August 2020 to the calculation date.

15. The Tribunal determined that it was the second respondent who took the decision to dismiss the claimant and subjected her to the detriment of dismissal. The second respondent was a director of the first respondent. Therefore, the Tribunal finds that the first respondent is vicariously liable for the second respondent's action.

16. Following the judgment of the Court of Appeal in *Timis v Osipov* [2019] I.C.R. 655), the Tribunal is satisfied that an award of losses for subjecting an employee to detriment for having made a protected disclosure, including arising from the detriment of dismissal, can be made against a co-worker. The second respondent was a co-worker who was the CEO and founder of the first respondent. The employer and first respondent are therefore joint and severally liable to the claimant for that award.

17. Therefore, the first respondent is ordered to pay to the claimant:

Unlawful deduction from wages	£1327.34
Holiday pay	£289.44
Notice pay	£180.92

Award in respect of failure to provide

Statement of terms and conditions

(being 4 weeks' pay) £723.68

Total £2554.94

5 18. In addition, the second respondent is ordered to pay to the claimant an
award in respect of losses suffered by the claimant and injury to her
feelings. The first respondent is vicariously liable for the actions of the
second respondent and therefore liability to pay these sums is on a joint and
several basis. The following sums are to be paid to the claimant in
10 compensation.

9 weeks' pay @ £180.92 £1628.28

9 weeks' pension contributions £2.75 per week £24.75

Ongoing loss of income £40.92 per week – 52 weeks £2127.84

Ongoing pension loss £2.75 per week – 52 weeks £143.00

15 Ongoing additional expenses £16.50 per week – 52 weeks £858.00

Total £4781.87

Injury to feelings £12,500.00

274 days interest at a daily rate of £2.74

from the date of the first detriment to the calculation date) £750.76

Total **£18,032.63**

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Employment Judge: Amanda Jones

Date of Judgment: 12 May 2021

Entered in register: 12 May 2021

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