



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100312/2021

10

**Final Hearing Held by Cloud Video Platform on 25 June 2021 and then on
consideration of further written information
Employment Judge Russell Bradley**

Matthew Keith

**Claimant
In person**

MacDonald Hotels

**Respondent
Not present
or represented**

15

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the employment Tribunal is: -

20

1. To dismiss the claim of unfair dismissal in terms of Rule 52, it having been withdrawn by the claimant in terms of Rule 51.
2. To declare that the claimant's claim that the respondent has made a deduction from his wages in contravention of section 13 of the Employment Rights Act 1996 for his period of suspension is well founded; and to order the respondent to pay to the claimant the sum of ONE THOUSAND AND EIGHT POUNDS (£1008.00) after deduction of any income tax due on that sum;

25

3. To declare that the claimant's claim that the respondent has made a deduction from his wages in contravention of section 13 of the Employment Rights Act 1996 in respect of his hours worked in August 2020 is well founded; and to order the respondent to pay to the claimant the sum of TWO
5 HUNDRED AND SIXTEEN POUNDS (£216.00) after deduction of any income tax due on that sum;
4. That the claim for accrued entitlement to paid annual leave (due upon termination) is well-founded. The respondent is ordered to pay to the claimant the sum of ONE THOUSAND AND EIGHTY POUNDS (1080.00) after
10 deduction of income tax;
5. The claim in respect of an overcharge for live in costs is not well-founded and dismissed
6. The claim for an order for payment of income tax to HMRC is dismissed.

REASONS

15 Introduction

1. In an ET1 presented on 1 February 2021 the claimant made a claim of unfair dismissal. It says that his employment ended on 26 August 2020. In the ET1 he also alleged that he was owed arrears of pay and other payments. No ET3 was lodged. By email on 15 March to the tribunal he said that he was not
20 making a claim of unfair dismissal. He confirmed to me that this was the case. I have therefore dismissed it under Rule 52.
2. On 6 April 2021 standard orders for a CVP hearing were made. Thereafter, a notice of hearing fixing a full hearing was issued.
3. The claimant's email of 15 March and a letter from him to the tribunal received
25 on or about 13 May provide further detail on the claims for pay and payments. They can be summarised as follows:-
 - a. Wages for a period of two weeks calculated on the basis of that period being 14 days in which the claimant being due to be paid £10 per hour for 8 hours each day (a period of suspension)

- b. Wages for a separate period of three days calculated on the basis of the same rate of pay and for the same number of hours per day
- c. Accrued and untaken holidays at the time of the termination of the contract and not paid by the respondent
- 5 d. In respect of an “overcharge” allegedly made by the respondent for accommodation provided by it to the claimant while he was employed.
4. The claimant also asserted that in the period between November 2019 (the start of his employment) and July 2020 no income tax was paid by the respondent from his earnings which has resulted in a liability of £500 now
10 being claimed from him by HMRC.
5. At the hearing on 25 June the claimant gave evidence. It became apparent that an amount of documentation existed which was relevant to the claims. I asked him to provide it. On 26 June he provided some material. On reviewing it, further information from him was necessary. By email on 15 July the tribunal
15 clerk asked the claimant to provide information and documentation in answer to 8 questions. On 30 August, I received further documentation from the claimant via the clerk. Some of it was a copy of material previously provided. The claimant did not provide answers to any of the questions posed. To the extent relevant I refer to that documentation below. I have decided the issues
20 based on the material that has now been provided.
6. After the hearing the claimant produced the following payslips, some of which were duplicated:-
- a. 10 December 2019
- b. 7 January 2020
- 25 c. 31 March 2020
- d. 28 April 2020
- e. 26 May 2020
- f. 23 June 2020
- g. 21 July 2020

7. The issues for determination were; (i) had the respondent failed to pay wages to the claimant for a period of suspension between 11 and 26 August 2021 and if so to what remedy is he entitled? (ii) had the respondent failed to pay wages to the claimant in respect of three days worked by him in August 2021 and if so to what remedy is he entitled? (iii) by 26 August 2021 to what period of paid leave was the claimant and in respect of that period to what remedy was the claimant entitled? (iv) had the respondent overcharged the claimant in respect of “*live in*” costs and if so to what remedy is he entitled and (v) is the claimant entitled to any remedy in respect to his allegation that the respondent has not paid an amount of income tax due by him in respect of his employment with it?

The evidence

8. I heard evidence from the claimant.

Findings in fact

9. I found the following facts admitted or proved.
10. The claimant is Matthew William Richard Keith.
11. On or about 16 November 2019 the claimant began employment as a *chef de partie* with the respondent. His employment ended on 26 August 2020. In the intervening period he spent time working at Leeming House Hotel, Penrith, Cumbria and at the Cardrona Hotel, Peebles. He was employed on the basis that he would work 40 hours per week. He was entitled to 28 days paid leave.
12. The respondent paid salary 4 weekly. In a calendar year, employees including the claimant therefore received 13 payments.
13. The payslip dated 10 December 2019 shows basic hours of 103.32 at the rate of £9.00 per hour. It shows deductions for income tax and national insurance contributions as well as £100 for “*live in*”. The payslip dated 7 January 2020 also shows income tax deductions.

14. Between 7 and 13 February 2020 the claimant took holidays. They were treated as paid leave of one week.
15. Until the end of February 2020, the claimant was working (and living in) at Leeming House. He then moved to the Cardona Hotel. He maintained that instead of deducting the agreed amount for living at Leeming House (£200) for two months, they deducted, separately, £150 and £200 more than that amount.
16. The payslip dated 31 March shows a repayment of income tax to him of £916.60 along with pay and other various deductions. It shows "*Tax to date*" of £00.00.
17. On 28 April 2020 the claimant received basic pay and furlough pay of £90.76. The following three payslips show a consistent rate of furlough pay of £1084.04 in each period.
18. The payslip dated 23 June 2020 shows a payment of "*HolidayAmt*" of £67.75. At £9.00 per hour this equates with 7.5 hours.
19. The payslips dated 23 June and 21 July show deductions for income tax.
20. On or about 7 August 2020 the claimant returned to work after a period of furlough. He returned to the Cardrona Hotel. He worked 8 hour shifts for each of 7,8 and 10 August. The hours worked per day are detailed in his email on 15 March and the letter to the tribunal received on 13 May. He had 9th off. He worked on Tuesday 11 August between 6.00am and 9.15am at which time he was suspended until Wednesday 26 August on which date he was summarily dismissed. The claimant was not paid by the respondent for any of the three days of work in August. He was not paid in the period of his suspension. He did not receive a payslip for August 2020.
21. All of the payslips produced and dated 7 January 2020 and later show a deduction of £200 for "*live in.*"

22. The claimant challenged the manager of the Cardona Hotel about the live in charges which had been made in February and March.

23. After his dismissal, the claimant contacted ACAS. Early conciliation began on 12 November 2020. The certificate was issued on 26 December. Prior to his
5 dismissal, he had never heard of ACAS. Someone told him about the Service. He “googled” legal representation for help about his situation. He was unaware of any set period within which his claims should have been started.

24. The claimant contacted HMRC to find out about income tax and rebates. He was told that he had paid no tax in the period November 2019 to April 2020.
10 He has since been told that he is liable to pay income tax of £500.

Comment on the evidence

25. The claimant’s evidence was credible. He gave clear answers to questions relating to matters going back about 18 months. His evidence was that in the days immediately prior to his suspension he had had a day off, a concession
15 which he did not require to make where he knew his evidence would not be challenged by the respondent. However, his evidence was not in all respects reliable. For example, some claims rely on an hourly rate of pay of £10.00 but the material that I have records it as £9.00. Separately, his ET1 makes a claim of £150 for the live in overcharge which now appears to be £350.

Submissions

26. The claimant did not made a submission. I decided the issues based on his evidence, oral and documentary.

The law

27. 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
5 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
10 to the worker in writing on such an occasion."

28. 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
15 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
20 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."

29. Regulation 13(1) of the Working Time Regulations 1998 provides that a worker is entitled to four weeks' annual leave in each leave year.

25 30. Regulation 13(3)(b)(ii) of the Working Time Regulations 1998 provides that a worker's leave year, for the purposes of an entitlement to annual leave, begins.... where there are no provisions of a relevant agreement which apply ... if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.

31. Regulation 13A of the 1998 Regulations provides that a worker is entitled in each leave year to a period of additional leave which in this case (as per Regulation (2)(e)) is 1.6 weeks.
32. Regulation 14(2) of the 1998 Regulations provides that where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3). Paragraph (3) provides that where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to a formula which is set out in it.
33. Regulation 16(1) of the 1998 Regulations provides that a worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A, at the rate of a week's pay in respect of each week of leave.
34. Regulation 30 (1)(b) of the Regulations provides that a worker may present a complaint to an employment Tribunal that his employer has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

Discussion and decision

35. I accepted the claimant's evidence that in the period from 9.15am on 11 August until his dismissal on 26 August he was suspended on full pay. He was clear as to his worked shifts immediately prior his suspension. His claim is for 14 days' pay on the basis of an 8 hour day. I accepted his evidence that the respondent had not provided him with a wage slip for the period that included his employment in August. On the papers available, it appears to me that his rate of pay was £9.00 per hour. In that 14 day period, the claimant should have been paid £1,008.00 gross. He was not. Given that income tax had been deducted from the claimant's pay in June and July, it is likely that it would have been due also in August. There was no relevant provision of his

contract which authorised that his pay be withheld or not paid. There was no prior written agreement or consent either. It was therefore not paid 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 him by the respondent.

5

36. I also accepted the claimant's evidence that the respondent did not pay his wages for the three day period worked immediately prior to his suspension. I accepted his evidence that he worked 8 hours each of those days. I therefore accepted that he was due gross wages of £216.00 based on his rate of £9.00 per hour. There was no relevant provision of his contract which authorised that it be withheld or not paid. There was no prior written agreement or consent either. It was therefore not paid 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.

10

15

37. Applying Regulation 13(3)(b)(ii) of the Working Time Regulations 1998 the claimant's leave year began on 16 November 2019. He was entitled to 5.6 weeks or 28 days leave. By the time of his dismissal and applying the statutory formula, he had a right to paid leave of 9/12s or 21 days. On his evidence, he had taken one week or 5 days of that entitlement in February 2020. The payslip dated 23 June 2020 appears to vouch pay for a further day's leave. One question asked of the claimant on 15 July was for his understanding of what that payment represented. The claimant has not answered it. Without further evidence from him, I find that this was one day's pay. By 26 August, the claimant had taken or been paid for 6 days of the 21 days due to him. There is thus a balance of 15 days due. The respondent has not paid him in lieu of it. That sum is due to him by virtue of Regulation 14(2) of the 1998 Regulations. On the basis that he worked 40 hours per week at the rate of £9.00 per hour, a week's (gross) pay would have been £360.00. The sum of £1080.00 (gross) is due to the claimant by the respondent in respect of the 15 days paid leave accrued and untaken. I have found that the

20

25

30

respondent is liable to pay this sum net of income tax which is ordered in the judgment.

5 38. There was no written evidence that the respondent overcharged the claimant for any sum for "*living in.*" The evidence such as it is suggests a consistent charge of £200 in the period January to July 2020. This claim is not vouched or well founded.

10 39. On the question of income tax, I make no award. Two points occur. First, the claimant appears to have received a tax rebate on 31 March 2020 of £916.60. By that time, according to his payslip he had paid no tax in that tax year. If there were tax due then he has been reimbursed some (or all) of it at the time. Second, there is no basis for a tribunal to make an order of the type sought by the claimant in this case, which as per his ET1 was for the income tax due by him to be paid by the respondent. I make no order on this issue.

15

20 Employment Judge: Russell Bradley
Date of Judgment: 01 October 2021
Entered in register: 05 October 2021
and copied to parties