



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107270/2020

Hearing Held by Cloud Video Platform (CVP) on 2 December 2021

Employment Judge: L Murphy

Ms R Martin

**Claimant
represented by
Ms J Stevenson,
Solicitor**

The Greenhouse Community CIC

**Respondent
Not present
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

(i) The respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of ONE THOUSAND SIX HUNDRED AND SIX POUNDS STERLING AND FIFTEEN PENCE (£1,606.15) in respect of wages relating to untaken holiday accrued between 1 August 2019 and 19 August 2020. This sum in item (i) 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;

(ii) the respondent is ordered to pay to the claimant the sum of TWO HUNDRED AND TWENTY-EIGHT POUNDS STERLING AND SIXTY EIGHT PENCE (£228.68) as damages for breach of contract in respect of

unpaid employer pension contributions outstanding on the termination of the claimant's employment;

5 (iii) the respondent is ordered to pay to the claimant the sum of TWO HUNDRED AND EIGHTY EIGHT POUNDS STERLING AND TWENTY EIGHT PENCE (£288.28) as damages for breach of contract in respect of employee pension contributions outstanding on the termination of the claimant's employment which had been deducted from the claimant's pay but not paid into the claimant's pension scheme;

10 (iv) the claimant was unfairly dismissed. The respondent shall pay to the claimant, subject to the Employment Protection (Recoupment of Benefits) Regulations 1996, a monetary award of FIFTEEN THOUSAND FIVE HUNDRED AND THIRTY-SEVEN POUNDS STERLING AND TWENTY FIVE PENCE (£15,537.25). The prescribed element is TWELVE
15 THOUSAND NINE HUNDRED AND SIXTY POUNDS STERLING AND THIRTY-TWO PENCE (£12,960.32) and relates to the prescribed period from 19 August 2020 to 31 August 2021. The monetary award exceeds the prescribed element by TWO THOUSAND FIVE HUNDRED AND SEVENTY-SIX POUNDS STERLING AND NINETY THREE PENCE
20 (£2,576.93); and

(v) the claimant's claim for a protective award is dismissed pursuant to rule 52 of the Employment Tribunal Rules 2013, the claimant having informed the Tribunal of its withdrawal in the course of the hearing.

25 **REASONS**

1. The claimant presented claims for unfair dismissal, a protective award, unauthorized deductions from wages relating to holiday pay and breach of contract relating to pension contributions. She also sought an uplift in any unfair dismissal award under section 38 of the Employment Act 2002 on the
30 basis that the respondent had failed to provide a compliant statement of employment particulars. The claims were originally lodged against two respondents, but it was determined at a Preliminary Hearing that the

Greenhouse Community CIC was the claimant's true employer, and the other respondent was dismissed from the proceedings.

2. The respondent entered a response, but it was subsequently dismissed following the respondent's failure to comply with an 'Unless' Order. The respondent failed to attend the two earlier preliminary hearings. The respondent was not present or represented at the final merits hearing. A Notice of the Final Hearing was sent to the respondent on 22 October 2021.
3. Having considered all information available to the Tribunal, it was determined to proceed with the hearing in the absence of the respondent pursuant to Rule 47 of the Employment Tribunal Rules 2013. When the claimant joined, she provided a telephone number for the respondent's café and the hearing was briefly adjourned to allow the Clerk to attempt to make contact with the respondent in order to provide the respondent with details of the link for the CVP hearing, the respondent being entitled to attend the hearing. However, no answer was obtained. No other enquiries were practicable on the morning, the respondent not having provided an email address or phone number in their (dismissed) response.
4. The hearing went ahead on 2 December 2021 via cloud video conferencing, there being no objection to this format by the claimant.
5. During the hearing, the claimant confirmed that she was withdrawing her claim for a protective award.
6. The remaining claims presented by the claimant were determined. Oral reasons were given at the hearing. Written reasons will not be provided unless they are asked for by a party within 14 days of the sending of this written record of the decision.

Employment Judge: Lesley Murphy
Date of Judgment: 03 December 2021
Entered in register: 06 December 2021
and copied to parties