



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4123038/2018**

5

**Held in Glasgow on 18 July 2019**

**Employment Judge M Sangster**

10

**Mr A Crosthwaite**

**Claimant  
In Person**

15

**The White Ivy Club Limited**

**Respondent  
Not Present**

20

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is as follows:

25

1. The name of the respondent is changed from The White Ivy Club to The White Ivy Club Limited, as stated above. It is however noted, for completeness, that the respondent's registered office is 76 Port Street, Stirling, FK8 2LP.

2. The claimant's claim under section 23 of the Employment Rights Act 1996 (**ERA**) is successful and the respondent is ordered to pay to the claimant the sum of £1,509.54 which was unlawfully deducted from his wages, contrary to s13 ERA.

30

3. The respondent failed to furnish the claimant with a written statement of changes to his employment particulars as required by s4 ERA.

4. The respondent failed to furnish the claimant with written itemised pay statements in accordance with s8 ERA.

**E.T. Z4 (WR)**

5. In consequence of the claimant succeeding in a claim of a kind mentioned in Schedule 5 of the Employment Act 2002 (namely unauthorised deductions from wages), and the respondent having failed to issue the claimant a written statement of changes to his employment particulars, the Tribunal awards the claimant two weeks' pay, that is £522.34, in accordance with s38(3) of the Employment Act 2002.

## REASONS

### Introduction

1. The claimant presented a complaint of unauthorised deductions from wages, a claim for failure to provide a statement of changes to his employment particulars and a claim for failure to provide itemised pay statements. His claim was lodged with the Employment Tribunal on 20 November 2018 and stated the address of the respondent as being 7 Viewfield Place, Stirling, FK2 9XY. The claim was served on the respondent at that address. No ET3 was received. The claim was considered by an Employment Judge under Rule 21 of the Rules of Procedure, but it was not possible to make a determination of the claim on the basis of the available material. A hearing was accordingly fixed for 4 April 2019.
2. On 20 March 2019 one of the respondent's directors, Chris Wardrope, sent an email to the Tribunal in relation to the claim. He indicated that he had been made aware of the claim, but had not received any paperwork in relation to it. He confirmed that the business address for the respondent was 7 Viewfield Place, Stirling, FK7 1NQ and that the registered office was 7 Port Street, Stirling, FK8 2LP.
3. On 25 March 2019, the Tribunal sent an email back to Chris Wardrope, on the email address he had contacted the Tribunal on, stating that a copy of the ET1 would be provided by email and that, if the respondent wished to defend the claim, they should submit an ET3 together with an explanation as to why it is lodged late.

4. Later that day a separate email was sent to Chris Wardrope, indicating that there were technical issues which meant the documentation could not be scanned, so was being sent to the respondent's registered office at 76 Port Street, Stirling, FK8 2LP. This was duly done.
5. On 26 March 2019 a further email was sent to Chris Wardrope indicating that the hearing which had been fixed for 4 April 2019 was cancelled.
6. By 15 April 2019 no ET3 had been received, so a further letter was sent by email to Chris Wardrope, stating that if the respondent wished to defend the claim they should submit a response by 22 April 2019.
7. No ET3 was received and this was confirmed in a further email from the Tribunal to Chris Wardrope on 30 April 2019.
8. Other than the email of 20 March 2019, no further email correspondence was received from Chris Wardrope.
9. A final hearing took place on 18<sup>th</sup> of July 2019, notices of Hearing having been sent to the parties on 24 May 2019. The respondent was not present or represented at the Hearing.

#### **Issues to be Determined**

10. Did the respondent make unauthorised deductions from the claimant's wages (Section 13 ERA) and, if so, how much was deducted?
11. Did the respondent fail to provide the claimant with written statements of changes to his employment particulars in accordance with s4 ERA?
12. Did the respondent fail to provide the claimant with written itemised pay statements in accordance with s8 ERA?
13. If the claim for unauthorised deductions from wages is successful, is it appropriate to make any award under section 38 of the Employment Act 2002?

**Findings in Fact**

14. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.
15. The respondent runs a bar/restaurant in Stirling. The claimant commenced employment there on 18 June 2018. He was provided with an unsigned contract of employment on the commencement of his employment. He required to purchase his own uniform on the commencement of his employment, at a cost of £90, which was reimbursed to him in his first payment from the respondent.
16. The claimant was initially employed as a bar tender. Whilst his contract stated an hourly rate of £7.25, it was identified from the outset of his employment that this was below the applicable national minimum wage rate of £7.38, so he was paid initially at that rate instead.
17. With effect from 1 August 2018, the claimant was promoted to supervisor and his hourly rate was increased to £7.50 per hour.
18. With effect from 1 September 2018 the claimant was promoted to assistant manager and his hourly rate was increased to £8.00 per hour.
19. The claimant requested written confirmation of the changes to his contractual terms following each promotion, but these were not provided.
20. The claimant resigned at the start of October 2018 and his employment terminated on 10 October 2018.
21. During his employment, the claimant worked the following hours and became entitled to the following payments:
- a. In the period from 18 June to 31 July 2018 - 222 hours. At that time he was engaged as a bar tender and his hourly rate was £7.38. The total sum due to him for the hours worked was accordingly £1,638.36.

- b. In the period from 1 -31 August 2018 - 185.5 hours. At that time he was employed as a bar supervisor and his hourly rate was £7.50. The total sum due to him for the hours worked was accordingly £1,391.25.
- c. In the period from 1 September to 10 October 2018 - 156.5 hours. At that time he was employed as assistant manager and his hourly rate was £8.00. The total sum due to him for the hours worked was accordingly £1,252.00.
22. The total amount earned by the claimant during his employment was accordingly £4,281.61.
23. The average amount the claimant earned per week during the last 12 weeks of his employment with the respondent was £261.17.
24. During his employment, the claimant received the following payments from the respondent, on the following dates:
- a. 7 August 2018 - £1,080.22 (including £90 reimbursement for his uniform);
- b. 3 September 2018 - £225.67 and £704.92;
- c. 1 October 2018 -£851.26.
25. The total amount the claimant received from the respondent in respect of wages and reimbursement for his uniform was accordingly £2,862.07
26. The claimant requested payslips itemising the sums paid to him, but these were not provided in respect of any payments he received from the respondent during his employment. The claimant has since contacted HMRC and has been informed that they have no record of him working for the respondent and accordingly no record of income tax or national insurance contributions being paid in respect of his employment with the respondent.

**Relevant Law**

27. S4 ERA provides that where an employee's particulars of employment (as referred to in s1-3 ERA) change, the employer shall provide the employee with a written statement containing particulars of that change, within 1 month  
5 of the change occurring.
28. S8 ERA provides that workers have the right to receive written itemised pay statements on or before the time at which any payment of wages or salary is made.
29. S13 ERA provides that an employer shall not make a deduction from a  
10 worker's wages unless:
- a. The deduction is required or authorised by statute or a provision in the worker's contract; or
  - b. The worker has given their prior written consent to the deduction.
30. A deduction occurs where the total wages paid on any occasion by an  
15 employer to a worker is less than the amount of the wages properly payable on that occasion. Wages are properly payable where a worker has a contractual or legal entitlement to them (***New Century Cleaning Co Limited v Church [2000] IRLR 27***).
31. S38(3) of the Employment Act 2002 provides that where an award is made to  
20 an employee in respect of relevant proceedings specified in Schedule 5 of that Act (unauthorised deductions from wages falling within the scope of that), and where, when the proceedings began the employer was in breach of his duty under s1 or s4 ERA, the Tribunal must increase the award by an amount equal to 2 weeks' pay and may, if it considers it just and equitable, increase  
25 the award by a sum equal to four weeks' pay.

**Discussion & Decision**

32. The Tribunal found that the claimant was initially entitled to the sum of £7.38 per hour on the commencement of his employment and that his particulars of employment changed when he was promoted to supervisor (when his hourly

rate increased to £7.50) and thereafter when he was promoted to assistant manager (when his hourly rate increased to £8.00).

33. The Tribunal concluded that, given the hours worked by the claimant, he was entitled to be paid £4,281.61 during his employment. He was also entitled to reimbursement for the cost of his uniform. He was therefore entitled to a total of £4,371.61. He was in fact paid £2,862.07, leaving a shortfall of £1,509.54. That sum was unlawfully deducted from the claimant's wages.
34. The claimant ought to have received written statements detailing the changes to his terms and conditions when he was promoted, but did not.
35. The claimant ought to have received written itemised pay statements whenever he was paid by the respondent, but did not.
36. Given that the Tribunal uphold the claimant's claims for unauthorised deductions, and also finds that the respondent failed to provide statements of changes to terms and conditions, the Tribunal is required to make an award equivalent to 2 weeks' pay, namely £522.34. The Tribunal did not consider that it was just and equitable to award a higher sum.

Employment Judge: M Sangster  
Date of Judgment: 24 July 2019  
Entered in register: 29 July 2019  
and copied to parties

20

25

*I confirm that this is my judgment in the case of Crosthwaite v White Ivy  
4123038/2018 and that I have signed the judgment by electronic signature.*