



EMPLOYMENT TRIBUNALS (SCOTLAND)

**Case No: 4100300/2019
Held in Glasgow on 12 April 2019
Employment Judge: David Hoey**

Mr Ross McGhee

**Claimant
In Person**

Simon Driscoll Consultancy Limited

**First Respondent
Not present and
Not represented**

Simon Driscoll

**Second Respondent
Not present and
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the Tribunal orders:

- 1) the claim against the second respondent to be dismissed in terms of rule 52 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013; and
- 2) the first respondent pay the claimant the gross sums of:
 - a. £2,833.33 (in respect of December 2018 wages); and
 - b. £1 ,676.71 (in respect of January 2019 wages).

The first respondent is obliged to make such deductions as required by law from said sums.

REASONS

1 . This case called on 1 2 April 201 9 in respect of a final hearing following a claim raised by the claimant against two respondents for unpaid wages. The claimant was in attendance. No

response form had been lodged by either respondent and neither was represented. The claimant gave evidence in course of the hearing and referred to a number of productions.

2. The issues to be determined in this case were firstly who the correct employer was and secondly what sums, if any, were due to the claimant.

3. The claimant began the hearing by confirming that his employer was Simon Driscoll Consultancy Limited, the first respondent. He advised the Tribunal that he was withdrawing the claim against the second respondent and that the claim as against the second respondent is therefore dismissed.

4. The second issue which arose was in what sums, if any, are due to the claimant.

Findings in fact

5. I make the following findings in fact following the evidence that was presented to the Tribunal.

6. The claimant was employed by the first respondent and was paid a monthly gross salary of £2,833.33 a month.

7. The claimant was paid his salary in full up to and including 30 November 2018.

8. The claimant attended work or was on annual leave for the period of December 2018. He was entitled to be paid his full monthly wage for December 2018.

9. No payment was paid to the claimant in respect of December 2018.

10. The claimant was ready, willing and able to work up to and including the communication of his resignation (which was with immediate effect) on 18 January 2019. The claimant was entitled to be paid his salary for the period up to and including 18 January 2019. The claimant was not paid his salary for the period up to and including 2019.

11. The claimant's employment ended on 18 January 2019.

The law

12. In terms of section 13 of the Employment Rights Act 1996, an employer shall not make a deduction from wages unless any deduction is authorised.

13. Under section 13 (3) where the total amount of wages paid on any occasion by an employer to a worker is less than the total amount of the wages properly payable, the amount of the deficiency shall be treated as a deduction from wages.

14. Section 23 allows an Employment Tribunal to order payment of any deficiency in wages.

Decision

15. In all the circumstances, the claimant was due to be paid his December wages and 18 days' pay in January. Those were sums properly payable under his contract of employment. The first respondent's failure to pay these sums amounts to an unlawful deduction in terms of section 13 of the Employment Rights Act and the claimant is entitled to an order in respect of those sums.

16. The claimant is therefore entitled to be paid the sum of £2,833.33 (his December salary) together with 18 days' pay (£34,000 divided by 365 x 18) in the sum of £1,676.71.

17. The respondent is responsible for making such deductions as required by law.

Employment Judge: David Hoey
Date of Judgment: 12 April 2019
Entered in register: 17 April 2019
and copied to parties