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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103547/2020 & 4103556/2020

Hearing Held in Glasgow by Cloud Video Platform (CVP) on 9 April 2021

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Employment Judge B. Beyzade

Mr Kenneth Allan

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**First Claimant
In Person**

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Mrs Hazel Morgan

**Second Claimant
In Person**

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The Stein Inn Limited

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**Respondent
Represented
Paul Rankin
Head Chef**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35 **The Judgment of the Tribunal is that:**

1. the complaint of unauthorised deduction from wages in respect of unpaid wages between 1 - 31 March 2020 made by the first claimant is not well founded and is dismissed.

2. the complaint of unauthorised deduction from wages in respect of unpaid wages between 1 - 31 March 2020 made by the second claimant is not well founded and is dismissed.

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REASONS

Introduction

1. On 30 June 2020, the claimants presented complaints of unlawful deduction from wages (arrears of pay) in relation to which the respondent entered its Responses on 26 July 2020 and 29 July 2020, respectively.
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2. A final hearing was held on 9 April 2021. This was a hearing held by CVP video hearing pursuant to Rule 46. I was satisfied that the parties were content to proceed with a Cloud Video Platform (CVP) hearing, the parties did not raise any objections, that it was just and equitable in all the circumstances, and that the participants in the hearing were able to see and hear the proceedings.
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3. The parties did not file an agreed Bundle of Productions. The Tribunal had in its possession a copy of the Tribunal file which included the claimants' Claim Forms, the respondent's Response Forms, Notice of Hearing/standard directions, 24 pages of documents prepared by the Claimants within a PDF file including standard Terms of Employment and handwritten record of hours worked and wage slips (March 2020 for Hazel Morgan and Kenneth Allan). During the hearing, the second claimant also forwarded by email copies of 68 screenshots to some of which reference was made during the parties' evidence and the respondent sent a further screenshot (these screenshots were invariably messages sent between the parties) and copy furlough correspondence.
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4. At the outset of the hearing the parties were advised that the Tribunal would investigate and record the following issues as falling to be determined, the parties being in agreement with these:

5 (1) Is the first claimant entitled to be paid his pay arrears in respect of March 2020 and if so in what amount?

(2) Is the second claimant entitled to be paid her pay arrears in respect of March 2020 and if so in what amount?

10 5. Both claimants confirmed that their respective claims for arrears of pay were brought pursuant to section 13 of the Employment Rights Act 1996.

6. The claimants gave evidence at the hearing on their own behalf and Mr. Paul Rankin, Head Chef and Ms. Charlotte Haddock, Director gave evidence on
15 behalf of the respondent.

7. The parties made closing submissions at the end of the proceedings.

Findings of Fact

8. On the documents and oral evidence presented the Tribunal makes the
20 following essential findings of fact restricted to those necessary to determine the list of issues -

First Claimant

9. The first claimant was employed by the respondent from 1 February 2020 until
25 9 September 2020 as a Bar and Restaurant Manager. The first claimant was employed by the respondent, The Stein Inn Limited, a private limited company with its registered office at McLeod's Terrace, Waternish, Isle of Skye, IV55 8GA.

10. The first claimant was paid £25,000 per annum gross. His normal working hours were initially agreed at 48 hours per week. The first claimant was not paid in respect of any lunch break. The first claimant was paid monthly in arrears.
- 5 11. When the first claimant initially started working for the respondent in February 2020, on average, he worked 48 hours per week. The first claimant's pay amounted to £2083.33 per month before tax and national deductions were made. His daily salary before tax was £96.15 (based on a 5-day working week).
- 10 12. Between the end of February and 12 March 2020 the public house at which the first claimant worked was closed. Charlotte Haddock and Paul Rankin were away from the business during this time. However, the first claimant were assigned a number of duties to carry out during the relevant time.
- 15 The respondent complained that several of these duties were not carried out and subsequently advised the first claimant that he would not receive his full pay in respect of March 2020.
- 20 13. The first claimant was provided with a standard Statement of Terms of Employment (his salary and job title were not completed) and the contract were not signed or dated. Nonetheless, the first claimant agreed to the said terms and started employment and accepted his salary following receipt of the same. The terms provided, inter alia *"we shall be entitled to deduct from your salary or other payments due to you any money which you may owe to the Company at any time and this includes (but is not limited to) theft or misappropriation of funds; salary advances or loans; payment errors resulting in overpayment of pay or expenses; company loans; excess holiday; damage to company property; and the equivalent market value of any unreturned company property."*
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- 30 14. The first claimant received a pay slip relating to March 2020 stating he was due £761.87 (salary) and £476.04 (holiday pay). The first claimant received these payments from the respondent.

15. The first claimant was sent a letter from Charlotte Haddock on 1 April 2020 proposing that he were placed on furlough leave from 23 March 2020. This was a scheme introduced by the UK Government after a national lockdown were imposed as a result of Coronavirus. The first claimant accordingly agreed to be placed on furlough leave, inclusive of the period 23 March 2020 – 31 March 2020. The first claimant was paid in respect of the furlough leave period 23 March 2020 – 31 March 2020 in April 2020.

10 *Second Claimant*

16. The second claimant was employed by the respondent from 1 February 2020 until 9 September 2020 as General Manager. The second claimant was employed by the respondent, The Stein Inn Limited, a private limited company with its registered office at McLeod's Terrace, Waternish, Isle of Skye, IV55 8GA. Prior to these dates the second claimant worked for the respondent on an ad hoc consultancy basis from 1 December 2019 to 31 January 2020.

17. The second claimant was paid £26,000 per annum gross. Her normal working hours were initially agreed at 48 hours per week. The second claimant was not paid in respect of any lunch break. The second claimant was paid monthly in arrears.

18. When the second claimant initially started working for the respondent in February 2020, on average, she worked 48 hours per week. The second claimant's pay was £2166.67 per month before tax and national deductions were made. Her daily salary before tax was £100.00 (based on a 5-day working week).

19. Between the end of February and 12 March 2020 the respondent's public house was closed. Charlotte Haddock and Paul Rankin were away from the business during this time. However, the second claimant were assigned a number of duties to carry out in this period. The respondent complained that several of these duties were not carried out and subsequently advised the second claimant that she would not receive her full pay in respect of March 2020.
20. The second claimant was provided with a standard Statement of Terms of Employment (her salary and job title were not completed) and the contract were not signed or dated. Nonetheless, the second claimant agreed to the said terms and started employment and accepted her salary following receipt of the same. The terms provided, inter alia "*we shall be entitled to deduct from your salary or other payments due to you any money which you may owe to the Company at any time and this includes (but is not limited to) theft or misappropriation of funds; salary advances or loans; payment errors resulting in overpayment of pay or expenses; company loans; excess holiday; damage to company property; and the equivalent market value of any unreturned company property.*"
21. The second claimant were on paid leave between 9 - 11 March 2021.
22. The second claimant received a pay slip relating to March 2020 stating she was due £396.28 (salary), £166.67 (wages owed) and £495.30 (holiday pay). The second claimant received these payments.
23. The second claimant was sent a letter from Charlotte Haddock on 1 April 2020 proposing that she were placed on furlough leave from 23 March 2020. The second claimant accordingly agreed to be placed on furlough leave, inclusive of the period 23 March 2020 – 31 March 2020. The second claimant was paid in respect of the furlough leave period 23 March 2020 – 31 March 2020 in April 2020.

November 2020 correspondences

24. In around November 2020 the respondent made an open offer (via ESP Management) to resolve both claimants' claims for the sum of £500.00 each (5 £1000.00 in total). It was the respondent's expectation that this would fully resolve both claimants' claims.
25. On 02 November 2020 at 11.45pm the second claimant sent an email to ESP Management (who were supporting the respondent with their Tribunal claim) and copied in Charlotte Haddock. The email was signed off with both the first and second claimants' names and was sent from the email address that appears on page one of both claimants' Claim Forms. The email stated:
10 *"As previously offered by Laurence we'll accept £1,000 under the following circumstances:*
15 *The full amount is transferred via BACs to Kenneth Morgan's account within the next few days.*
And that we recieve(sic) both our August's and September's payslips and P45's via email within the next few days.
- 20 *The only reason we are accepting such a low settlement is due to the rental debt we are in.*
Warm regards
Hazel & Kenneth"
26. The second claimant sent a further email to ESP Management and Charlotte Haddock on 22 November 2020 at 11.20am advising there had not been any response, confirming that the claimants accepted the settlement sum of 25 £1000.00, that there was no point in putting together the court documents as they were accepting the respondent's offer, and if the payment could be made by Monday 23 November 2020 she will "... *then email the court and close both*
30 *cases.*"

27. On 24 November 2020 at 4.15pm the second claimant sent a WhatsApp message to Charlotte Haddock indicating that she sent an email to her and Laurence accepting the settlement offer of £1000.00, that the payment needed to be made to the claimants, and that the Tribunal deadline was approaching the next day. Charlotte Haddock replied at 4.26pm “*no problem. I thought he was doing it. I will chase now.*” The second claimant replied at 4.27pm “*thank you so much. I know you have to be on his side Charlie as he is your partner, but please know I would never have done this if it wasn’t for how Paul was.*” Accordingly, the sum of £1000.00 was paid by the respondent on 25 November 2020 to the first claimant’s bank account.

Observations

28. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

General

29. Both the first and second claimants received standard Terms of Employment, albeit some fields such as job title and salary were not completed. The claimants accepted that they received the standard terms prior to starting employment and thereafter they carried out work and received salary, signifying their consent to the same. During the hearing, the claimants did not seek to argue that the terms were not accepted, and indeed, the claimants asked questions in cross examination putting to the respondents’ witnesses that there was no express written provision entitling the respondent to make deductions from their pay in the circumstances.

30. It was clear nonetheless to the Tribunal that the express provisions of the standard Terms of Employment that the claimants were provided with did not entitle the respondent to make any deductions from the claimants’ salaries on the basis that the claimants did not carry out any work or any sufficient work.

31. It was agreed at the outset of their respective employments that the claimants were to be paid a salary. This is reflected on the claimants' pay slips provided in March 2020. The claimants' salary was not dependent upon the amount of work that was carried out by the claimants.

5 32. There was a written agreement between the parties setting out the applicable furlough arrangements and both claimants agreed to be placed on furlough leave from 23 March 2020.

33. The Tribunal accepted the respondent's evidence that the claimants were paid their furlough pay in respect of the period 23 March 2020 – 31 March 2020 in April 2020 and that this was because it took time to set up the furlough scheme and payments. The claimants did not dispute this. Neither claimants clearly set this out or gave credit for this in their respective Claim Forms.

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First Claimant

34. The first claimant explained that he had only received £761.87 salary in respect of work performed by him in March 2020 and £476.04 holiday pay. He stated he was therefore owed £845.52. The first claimant's calculation and methodology of his outstanding salary was not clear. However, his position was that he was due to be paid £2083.33 in March 2020 and he was only paid £1237.91, thus leaving the sum of £845.42 due.

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35. Whilst the first claimant confirmed that the sum of £1000.00 had been paid by the respondent in November 2020, when the Tribunal questioned why this payment was made by the respondent he replied, "*I don't actually know in respect of what that payment was for*" and that all correspondences were with the second claimant. This explanation was inherently implausible. Not only were the details of the settlement communicated using the email contact address provided on his Claim Form, but the relevant emails contained email signatures on his and the second claimant's behalf, and the payment was made into his bank account. In any event the Tribunal was left in no doubt that the second claimant was acting on behalf of herself and the first claimant in all settlement correspondences that took place in around November 2020.

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36. Additionally, a document was provided to the Tribunal claiming that the first claimant worked 73.5 hours in March 2020. He accepted that he was not assigned any duties by the respondent during the period in question, albeit the second claimant gave him tasks. He was unable to explain why these hours had been submitted for the relevant period and he simply advised that the document were prepared by the second claimant. The Tribunal were concerned that the first claimant was not able to confirm whether his working hours were correct or what his actual hours worked were.

Second Claimant

37. The second claimant explained that she had only received £396.28 salary in respect of work done in March 2020 and £495.30 holiday pay. She stated she was therefore owed £1,275.09. The second claimant's calculation and methodology of her outstanding salary was not clear. However her position was that she was due to be paid £2166.67 in March 2020, she was only paid £891.58, thus leaving the sum of £1275.09 due.

38. Whilst the second claimant confirmed that the sum of £1000.00 had been paid by the respondent in November 2020, when the Tribunal questioned why this payment was made by the respondent she replied, "*At no point did we say that was the end of it.*" This was at odds with the email dated 22 November 2020 in which the second claimant indicated that upon receipt of the settlement payment she would "*...then email the court and close both cases.*" The second claimant advised that she had no understanding of what the £1000 was for and that it was money they were owed, and there was no official letter from a lawyer or correspondence sent to the Tribunal. The Tribunal found these aspects of the second claimant's evidence to be difficult to decipher.

39. Additionally, a document was provided to the Tribunal claiming that the first claimant worked 73.5 hours in March 2020 and the second claimant worked 35 hours in the same month. The Tribunal were not provided with a detailed list of work carried out or hours worked on particular days. The 73.5 hours relating to the first claimant on this document (which was prepared by the second claimant) was not adequately explained.

November 2020 Settlement Correspondences

40. The respondent's clear expectation was that the settlement payment of £1000.00 paid in November 2020 would be in full satisfaction of the claimants' claims. Charlotte Haddock indicated that this was purely a goodwill gesture to settle the matter and to close it off, and she felt the matter was closed and had been agreed after the settlement payment was made. Charlotte Haddock's perspective was that the sum of £1000 was agreed as a settlement payment (£500 for each claimant) and was accordingly paid, and the second claimant did not email the Tribunal to close the claim. On the balance of probabilities, the Tribunal found the respondent's evidence in relation to this matter to be persuasive and consistent with the contemporaneous correspondences which indicated a clear offer and acceptance, and the settlement terms and obligations had been discharged by the respondent accordingly.

Relevant law

41. To those facts, the Tribunal applied the law –

42. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.

- 5 43. A worker means an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to perform personally any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230 15 ERA).
44. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
- 10 45. Under Section 27(1) of the ERA “wages” means any sums payable to the worker in connection with their employment including unpaid wages and holiday pay.
- 15 46. A complaint for unlawful deduction from wages must be made within 3 months beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.
- 20 47. Under Regulations 13 and 13A of the Working Time Regulations 1998 a worker is entitled to 5.6 weeks annual leave in each leave year. Where a worker’s employment is terminated during a leave year the worker is entitled to a proportion of that leave and a payment in lieu in respect of any leave not taken. Less than half a day’s leave is rounded up to half day’s leave and if more is rounded up to a whole day. The holiday year begins on the date when employment begins unless a relevant agreement provides otherwise. A worker is entitled to leave paid at the rate of a week’s pay calculated under the Employment Rights Act 1996.

Discussion and decision

48. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

First Claimant

5 49. The first claimant explained that he had only received £761.87 salary in respect of work carried out by him in March 2020 and £476.04 holiday pay. The first claimant's position was that he was due to be paid £2083.33 in March 2020 and he was only paid £1237.91, thus leaving the sum of £845.42 due.

10 50. This did not take into account the fact that the first claimant was placed on furlough leave between 23 March 2020 – 31 March 2020 in respect of which he received payment in April 2020. The first claimant is entitled to full payment of his salary in respect of the 16 normal working days between 1 March 2020 – 22 March 2020 amounting to £1538.40 gross. The first claimant was paid £1237.91 gross which meant that there was an underpayment of the first
15 claimant's salary by the respondent in the sum of £300.49 gross.

51. The said deduction was not required or authorised by statute or a relevant provision of the first claimant's contract. The first claimant did not previously signify his consent in writing to the making of the deduction.

20 52. The Tribunal finds that the respondent made an unauthorised deduction of the first claimant's wages contrary to section 13 of the ERA 1996. However, the first claimant was paid £500.00 by the respondent in November 2020 (by way of settlement) which the Tribunal finds based on the parties' correspondences and evidence given at the final hearing as summarised above was a legally binding settlement (which the first claimant agreed to)
25 and the first claimant accepted the said sum from the respondent in full and final settlement of his claim. There was a clear offer and acceptance, and the terms of settlement were fully discharged by the respondent.

53. Even if the Tribunal did not conclude that the settlement between the parties concluded in November 2020 were in full and final settlement of the first claimant's claim, the Tribunal would have been required to give appropriate credit for the settlement sum of £500.00 paid to the first claimant in November 5 2020 which would mean that no sum of money would be due and owing to the first claimant by the respondent.

Second Claimant

54. The second claimant explained that she had only received £396.28 salary in respect of work performed by her in March 2020 and £495.30 holiday pay. 10 Her evidence was that she was due to be paid £2166.67 in March 2020, but she was only paid £891.58, thus leaving the sum of £1275.09 due.

55. This did not take into account the fact that the second claimant was placed on furlough leave between 23 March 2020 – 31 March 2020 in respect of which she received payment in April 2020. The second claimant is entitled to full 15 payment of her salary in respect of the 16 working days between 1 March 2020 – 22 March 2020 amounting to £1600.00 gross. The second claimant was paid £891.58 gross which meant that there was an underpayment by the respondent of the second claimant's salary in the amount of £708.42 gross.

56. The said deduction was not required or authorised by statute or a relevant 20 provision of the second claimant's contract. The second claimant did not previously signify her consent in writing to the making of the deduction.

57. The Tribunal finds that the respondent made an unauthorised deduction of the second claimant's wages contrary to section 13 of the ERA 1996. However, the second claimant was paid £500.00 by the respondent in 25 November 2020 (by way of settlement) which the Tribunal finds based on the parties' correspondences and evidence given at the final hearing as summarised above was a legally binding settlement (which the second claimant agreed to) and that she accepted the said sum in full and final settlement of her claim. There was a clear offer and acceptance, and the 30 terms of settlement were fully discharged by the respondent.

58. Even if the Tribunal did not conclude that the settlement between the parties were in full and final settlement of the second claimant's claim, the Tribunal would have been required to give credit for the £500.00 paid to the second claimant in November 2020 which would have meant that the sum of £208.42
5 subject to any required deductions in respect of tax and national insurance would have been due and owing to the second claimant by the respondent. However as there was a legally binding settlement, no sum of money is due to the second claimant.

Conclusion – First and Second Claimant

10 59. The first claimant's claim that the respondent has made an unlawful deduction of wages in the sum of £845.42 fails for the reasons set out above and it is accordingly dismissed.

60. The second claimant's claim that the respondent has made an unlawful deduction of wages in the sum of £1275.09 fails for the reasons set out above
15 and it is accordingly dismissed.

I confirm that this is my judgment in the case of Mr Kenneth Allan and Mrs Hazel Morgan -v- The Stein Inn Limited 4103547/2020 & 4103556/2020 and that I have signed the order by electronic signature.

20 Employment Judge: Beyzade Beyzade
Date of Judgment: 07 May 2021
Entered in register: 11 May 2019
and copied to parties

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