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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111426/2021

Final Hearing Held by Cloud Video Platform on 7 December 2021 at 11.00am

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Employment Judge Russell Bradley

Michael Allan

**Claimant
In Person**

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McTear Contracts Limited

**Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

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1. to declare that the claimant's claim that the respondent has made deductions from his wages in contravention of section 13 of the Employment Rights Act 1996 is well founded; and
2. to order the respondent to pay to the claimant the sum of ONE THOUSAND TWO HUNDRED AND TWENTY EIGHT POUNDS AND EIGHTY FOUR PENCE (£1,228.84).

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REASONS

Introduction

1. In an ET1 presented on 22 September 2021 the claimant made a claim for arrears of pay. In it, he says that his employment began on 10 May and ended on 28 May 2021. No ET3 was lodged.
- 5 2. On 28 September 2021 a notice fixed this final hearing.
3. On 5 December and after some correspondence from the tribunal office, the claimant provided further details of the claim and some documentation about it. In the course of his evidence he referred to an email that he had sent to the respondent in the period immediately after the end of the contract. It was
10 forwarded to the clerk and to me before the end of the hearing. Insofar as relevant I comment on those details and that documentation below in my findings.

The issue

4. The issues for determination were; (i) had the respondent failed to pay wages
15 to the claimant for the two week period ending 28 May 2021; and if so (ii) to what remedy is he entitled?

The evidence

5. I heard evidence from the claimant. He spoke to some of the material which accompanied his email of 5 December.

Findings in fact

6. I found the following facts admitted or proved.
7. The claimant is Michael Allan.
8. The respondent is McTear Contracts Limited.
- 25 9. On or about 10 May 2021 and as per a written statement of terms and conditions signed by him, the claimant began employment as an electrician with the respondent. His employment ended on 28 May 2021. In the

intervening period he worked on site as

an electrician. That work was for Aberdeen City Council. It entailed electrical and other work to do with rewiring and installation of new kitchens in some of its housing estate. In the three weeks of his work, the claimant worked about
5 40 hours each week. His line manager was Steven Gilmour. Mr Gilmour's supervisor, a senior contracts manager, was Calum McCann.

10. As per the written statement, the agreed gross salary was £39,808 per annum. It was agreed prior to 10 May that the claimant would work a week's 'lying time.' The effect of that agreement was that for week commencing
10 Monday 10 May the claimant was not paid until the end of the following week, Friday 21 May. On that date he received net pay of £614.42.

11. For week commencing Monday 17 May the claimant did not receive any pay.

12. For week commencing Monday 24 May the claimant did not receive any pay.

13. By prior agreement with the respondent, the claimant was due to take
15 Monday and Tuesday 21 May and 1 June off as unpaid leave. The claimant did so as he was married on Saturday 29 May.

14. On Monday 31 May the claimant contacted Mr Gilmour by telephone. He did so because he had not received any pay on 28 May. Mr Gilmour did not know why. He told the claimant that none of his four colleagues had been paid
20 either.

15. On Tuesday 1 June the claimant drove from home to site. He returned to the respondent certain of its goods which he had in his possession. He spoke to Mr Gilmour about his pay. Mr Gilmour implied that he was powerless to help. He told the claimant that he should get in touch with the respondent's
25 accounts department at its office in Wishaw, which he did without success. In that conversation the claimant told Mr Gilmour that he would not be returning to work unless he was paid what was due to him.

16. On Friday 4 June the claimant arranged to collect certain work related items belonging to him from the respondent's works van.
17. On Monday 7 June the claimant emailed to alan@mctearcontracts.co.uk. In that email he said,
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- a. *"Hi Alan I don't have Callums email but can you please cc him into this.I have received no payment since the 21st of may and am now due two more weeks pay. I've tried continually to contact Steve my line manager and have had no reply, on Tue the 1st of June I took time out of my pre booked holiday to return all mctears materials and equipment and to see Steve when I informed him I would not be returning without payment. Since then I've been completely ignored even when simply asking if the welfare van was still on site as I believe I left some personal tools and ppe in the van and as I returned all property belonging to the company I would hope you could extend the same favour.I don't know why wages have been ceased but as I informed you I was off to get married early last week, and not recieving due payment has put ridiculous unnessesary strain on my finances and what should have been one of the happiest times of my life. I am aware others were not paid and I am am aware some others were paid last Friday but I can not play with my earnings in this manner and so have started new employment as of today.During my short time with mctears I did nothing to deserve this maltreatment I gave my own money and materials to complete jobs and had all electrical works asked of me covered as I proved to the electrical foreman it wasn't my work causing delays and so I don't understand no paying but if possible can you let me know of your intent i.e. wether or not the two full weeks worked will be paid or not and wether my belongings can be organised to be collected. Thank you"*
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- 30 18. On Monday 14 June the claimant began alternative employment elsewhere.

19. The claimant understands that he was not the only employee engaged by the respondent on that work who was not paid (and has still not been paid) by the respondent.

20. A week's net pay was £614.42.

5 **Comment on the evidence**

21. The claimant's evidence was confident and clear. He provided direct answers to questions. His demeanour was calm. He provided screenshot evidence of the single payment he did receive from the respondent. He provided a copy of the written statement, signed by him. I had no reason to disbelieve that he received only one week's pay. He volunteered information about others who similarly had not been paid which could have been foolhardy to do were it untrue.

Submissions

22. The claimant did not make a submission as such. I decided the issues based on his evidence, oral and documentary. In his email of 5 December the claimant maintained a claim for pay for his two weeks of work (weeks ending 21 and 28 May) and also for 2 weeks "forced unemployment" those weeks being weeks commencing 31 May and 7 June.

The law

23. 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 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 to the worker in writing on such an occasion.”

- 5 24. 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 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 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.”*
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Discussion and decision

25. I accepted the claimant’s evidence that for the two week period beginning on Monday 17 May and ending on Friday 28 May he worked for the respondent.
- 20 I also accepted that he had not been paid for that period. The claimant helpfully accepted that the one sum received by him (£614.42) was a week’s net pay. There was no basis on which it could be said that pay for the two weeks in question were liable to deductions *“required or authorised to be made by virtue of a statutory provision or a relevant provision”* of the claimant’s contract, or that he had previously signified in writing his agreement or consent to the making of the deductions. The deductions were thus made in contravention of section 13 of the Employment Rights Act 1996. I have made a declaration accordingly.
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26. The claim for a further two weeks’ pay is not well founded. In the first place,
- 30 in his ET1 the claimant indicated that his contract ended on Friday 28 May.

On that basis it is not possible to say that he was due any pay after that date. Second, and even if I were to find that the contract did not end on that date, it is not possible to say that he is entitled to receive pay for the two weeks following. This is because (i) the first two of those days (31 May and 1 June) were agreed as unpaid leave (ii) the claimant did no work in either of the weeks in question and (iii) by Friday 4 June having returned and collected work related goods, it was clear that the claimant was not willing to work until paid for the period to 28 May. There was therefore no “pay” as such for this latter two week period which was “deducted” by the respondent.

27. A sum representing the deductions in contravention of section 13 is due to the claimant and I have made an order for payment of it (£1,228.84) by the respondent to him.

15 Employment Judge: Russell Bradley
Date of Judgment: 08 December 2021
Entered in register: 15 December 2021
and copied to parties

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