



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4106968/2020**

**Final Hearing Held by Cloud Video Platform on 24 February 2022**

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**Employment Judge A Kemp  
Tribunal Member E Coyle  
Tribunal Member A Shanahan**

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**Ms R Brindley**

**Claimant  
Represented by:  
Ms C Curran,  
Friend**

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**ITX UK Limited**

**Respondent  
Represented by:  
Ms M Bayoumi,  
Barrister  
Instructed by:  
Mr D Lyons,  
Solicitor**

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**WRITTEN REASONS**

**Introduction**

1. On 24 February 2022 the Tribunal gave oral reasons for its Judgment on the claims made by the claimant that were the subject of a Final Hearing on that date, under Rule 62. A summary written judgment was issued on that date.

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2. The claimant has made an application for written reasons by email dated 25 February 2022, which this document provides.
3. As was stated when the oral Judgment was given, the reasons then given were a summary and the terms of these full written reasons prevail.
- 5 4. The present Final Hearing was arranged following an earlier Final Hearing that took place in October 2021 on which a Judgment was issued to parties on 5 November 2021. The claims were dismissed, but an amendment by the claimant in respect of an amount said to be “undertime” was allowed, both as a claim for breach of contract and unlawful deduction  
10 from wages. That was subject to the respondent being entitled to challenge the issue on the merits, and a hearing on remedy.
5. The respondent then confirmed that it did not wish to challenge the issue of liability, but the matter of remedy was outstanding. A Notice of the present hearing was then issued.

#### 15 **Issue**

6. The sole issue before the Tribunal was: to what remedy is the claimant entitled for the admitted unlawful deduction from wages and breach of contract?

#### **Preliminary Matters**

- 20 7. The Judge noted the terms of a Bundle of Documents produced by the claimant, and the respondent’s reply to it. He referred to paragraphs 81, 233 then 228 and 229 of the Judgment, and stated that the issue before the Tribunal was as to the undertime deduction, admitted as an unlawful deduction and breach of contract, and what remedy was appropriate for  
25 that.
8. The Judge asked whether the sums admitted to be due had been paid. Ms Bayoumi said that sums had been paid in May 2021 at a gross amount of £338.68, and it was admitted that the balance was due but had not been paid as the claimant disputed matters.

9. The Judge outlined the principles of law that are summarised below, without referencing to the authorities. He indicated that a claim for injury to feelings, as the claimant referred to in those documents, was not in his view competent in such claims, such terminology being appropriate for a claim as to discrimination under the Equality Act 2010 but those claims having been dismissed, and that the issue of the reason for suspension and the allegation of theft was not before the Tribunal. It was indicated that the matter would be argued on the basis of inconvenience.
10. Although this was a Final Hearing on the issue of remedy, the claimant herself did not attend it. Ms Curran her representative explained that the claimant was at work. She said that she had not appreciated that the claimant required to be present, and that the claimant had not been “ordained” to appear. She sought an adjournment of the hearing to another date to allow the claimant to attend and give evidence. That application was opposed by Ms Bayoumi.
11. The following is a summary of the submission by Ms Curran. She said that the claimant had not had Covid but that others had, including Ms Curran herself and her family, and that it was difficult to arrange time off and changes to rotas at work because of the effects of the pandemic. There had been offers of settlement made with the caveat that if not accepted the respondent would seek expenses of £3,000. That was the reason the claimant wished to proceed, as she had no faith in the respondent. Her reasons were Covid, timetabling and work. No-one could dictate if someone can or cannot attend when things are so uncertain. The correspondence to her did not say that she had to attend. Ms Curran believed that she would be able to argue the case. Medical records indicated that there were three if not four dates when medical support was needed as support for false allegations. As Ms Bayoumi opposes the application she asked the Tribunal to accept that the claimant did not wish to pursue the claims further at the Tribunal and would take the other avenue of a civil action. Ms Curran was asked by the Tribunal if she wished to withdraw the claims of breach of contract and unlawful deduction from wages. She said that she would if there were not penalties to the claimant or a threat of expenses. Ms Bayoumi confirmed that the respondent would

seek expenses if the claim was withdrawn. Ms Curran was asked whether she wished to withdraw the claims or proceed with them at the Tribunal, and that if she did wish to proceed the Tribunal would discuss the arguments over adjournment. Ms Curran said that she thought that it may  
5 be that the claim could be withdrawn after a hearing on unlawful deduction from wages at some stage today but that she did not wish to withdraw the claims at this stage. The Tribunal then indicated that it would retire to consider the competing arguments on postponement.

12. The Tribunal retired to consider that application and opposition to it. It  
10 issued an oral decision to refuse the application. It referred to the overriding objective in Rule 2, the terms of Rule 30A as to applications to postpone a hearing, and the Guidance issued by the President in 2014 in relation to such applications. It noted that Rule 30A required any application to be made as soon as possible after the need for  
15 postponement becomes clear, and that it required, for the circumstances of the present case, exceptional circumstances to grant it. The Guidance refers to providing supporting documents. The Tribunal considered that the claimant ought to have known of the requirement to attend to give evidence from the terms of the Notice of the present hearing, and the  
20 Judgment issued earlier. It also considered that that ought to have been clear from the terms of the email sent to Ms Curran by the Tribunal on 19 November 2021. It did not consider that the claimant or her representative did not appreciate that was an exceptional circumstance. It noted that the claimant herself was not ill, had not had Covid, and was at  
25 work that day. It took account of the fact that the claim was moderate in value. It said nothing on the merits of the issues, although the respondent had argued that the claim made was without merit beyond the balance of the deduction due.

13. There was then a discussion as to whether Ms Curran wished to proceed.  
30 Initially she stated that there was no possibility she could continue with the claim if the claimant needed to give evidence. She asked whether she could withdraw the claim if the decision was against her, and was told that such a conditional position was not competent. The claimant required either to proceed with the claims or, if she preferred, to withdraw them.

5 The Tribunal indicated that it could not give advice as if a representative, including on tactical decisions such as whether to proceed with the hearing or not (Ms Curran had said that she may seek to pursue a remedy in Dundee Sheriff Court). Ms Curran was asked how she wished to proceed, and whether or not she wished to withdraw the claims. She then stated that she would proceed with the hearing, and said that if the end result was not in the claimant's favour she would appeal. Ms Curran then gave evidence..

### **Evidence**

10 14. Evidence was given solely by Ms Curran. Both parties had prepared a Bundle of Documents, but save as to the amount of payments made it was not referred to during the evidence. In submission Ms Bayoumi confirmed that the respondent accepted that the sum due, after deducting payments made in May 2021, was £892.13.

### **Facts**

- 15 15. The Tribunal found the following facts, material to the claim before it, proved:
16. On 28 September 2020 the respondent deducted from the claimant's wages the sum of £1,046.40.
- 20 17. In May 2021 the respondent paid gross sums totalling £338.68, net sums to the claimant totalling £154.27 to account of that deduction.
18. No further payment has been made by the respondent.
19. The sum of £891.13 remains outstanding.
20. The claimant did not have the use of the funds to which she was entitled  
25 from 28 September 2020 to the present date, and until the sum awarded is paid.

### **Claimant's submission**

21. Ms Curran said that the claimant sought the money owed which was an underpayment. She should be compensated for the inconvenience as she

had been unable to use the funds. She left the amount of the award to the Tribunal.

### Respondent's submission

22. Ms Bayoumi stated that based on the mathematics the sum due for  
5 unlawful deduction from wages was £892.13 and that she did not oppose  
an award of that amount. She argued that the case on inconvenience did  
not get off the ground. Ms Curran had made bare assertions. There was  
no evidence such as a witness statement from the claimant. There was  
nothing in the Bundles of Documents. The original claim had been for a  
10 far larger sum. There had not been enough proved for inconvenience. If  
the claimant had discharged the burden and it was appropriate for an  
award, it should be no more than £100.

### Procedure

23. For reasons we shall address below, we should record that having heard  
15 submissions the Tribunal stated that it would adjourn to consider them and  
issue its decision. The representatives left the hearing, held remotely, at  
around 11.30am whilst that took place, and rejoined it at noon.

### Law

24. The Tribunal has jurisdiction over a claim of breach of contract by virtue  
20 of the Employment Tribunals (Extension of Jurisdiction) (Scotland) Order  
1994. It does not extend to a claim in respect of personal injury under  
Regulation 3.

25. A breach of contract arises if a party fails to fulfil a contractual obligation.  
If so there is the possibility of an award of damages for the loss caused by  
that breach. It is a basic principle of Scots Law that if a sum due is not paid  
timeously no general damages are due – *Erskine* III 3.86 and *Bell's  
Principles* s. 32. If there is no loss or inconvenience no damages not  
even nominal damages should be awarded – *Wilkie v Brown 2003 SLT  
573*. Damages may be awarded for inconvenience as a breach of  
30 contract – *Mack v Glasgow City Council 2006 SC 543*, and

consequential loss can also be claimed – ***Scott Lithgow Ltd v Secretary of State for Defence 1989 SC (HL) 9.***

26. The measure of loss for what was admitted as an unlawful deduction from wages was in the course of submission agreed by the respondent. The law relating to such deductions is found in Part II of the Employment Rights Act 1996, particularly sections 13 and 27.

### **Discussion**

27. The evidence we heard was solely from Ms Curran. She is someone who has known the claimant all her [the claimant's] life. We accepted that Ms Curran was seeking to give honest and reliable evidence. There were three difficulties with the evidence as it appeared to us. Firstly it was not the best evidence, as that was obviously evidence from the claimant herself. That is not fatal to success, but is a factor to consider in the balance. Secondly, Ms Curran gave evidence on the emotional reaction of events from the claimant's perspective, in being what she considered to be an unfounded allegation of theft, that led to a suspension, and then included a deduction from wages. She sought to argue that there had been an injury to feelings. That was not however a matter that we considered could be before us, for the reasons given above, and as a personal injury claim is not a matter over which we have jurisdiction. We did however allow Ms Curran to give the evidence to give her the opportunity to state whatever she wished to. In any event, it is very hard indeed to see how a failure to pay a sum, which net would have been less than £1,000 could cause any form of injury or non-pecuniary loss. The medical records which were produced by the claimant, but not in the event spoken to in evidence in any detail by Ms Curran, refer to attendances and medication but where the issue at that stage appeared to be the allegation of theft, and not at all an underpayment of wages of less than £1,000. Even if such a claim were to be competent, there was not sufficient evidence to make any finding. Thirdly in so far as inconvenience is concerned, all the evidence amounted to was that the claimant had been deprived of the use of funds she was entitled to have had. The Judge asked Ms Curran specifically if there was anything particular that occurred because of the lack of use of funds. The answer was that there was a lack of use of the funds she was entitled to.

28. It appeared unanimously to the Tribunal that the lack of an amount of the sum deducted, subject then to statutory deductions, did not by itself sound in damages. In the absence of evidence of a particular event or issue that caused inconvenience, such as the inability to pay for something whether  
5 that be an essential cost such as rent, or a non-essential one such as a holiday, that had an effect that can be described as a sufficient inconvenience as might lead to an award of damages, it appeared to the Tribunal that the claimant had not discharged the onus of proof of loss or inconvenience that would sound in damages, and therefore that no award  
10 of damages could be made.

### Conclusion

29. The Tribunal informed the parties orally that it made the award for unlawful deduction from wages in the admitted sum, and dismissed the claim for breach of contract as no loss or inconvenience sounding in damages had  
15 been proved. It stated that either party could apply for written reasons within 14 days of the formal Judgment being issued to them.

30. Having informed the parties of that decision, Ms Curran then applied to withdraw the claims. She said that her intention had been to withdraw the claims after the evidence had been heard. The assumption she said she  
20 had been under was that if the claimant wished to withdraw the claims she could do so. Ms Bayoumi stated that she did not see a basis to do so once a decision had been made. Ms Curran stated that the claimant and her were of the opinion that no matter what was put to the Tribunal it would be interpreted against them, and that she did not feel that she had been given  
25 a fair hearing. She said that she may not have made herself clear, she had intended to continue with the claims and give evidence on inconvenience but she had stated that after that the Tribunal could make a decision if the evidence she had given was satisfactory. She had gone ahead as she was under the impression that no decision would be made  
30 and she could withdraw at any stage. She had decided to proceed so that the respondent would not claim expenses.

31. The Judge noted that Ms Curran had, after the evidence was given by her, made her submissions, that having heard both submissions the Tribunal



had indicated that it would retire to consider its decision, and that no application to withdraw had been made at that or any earlier stage. The Judge stated that having issued an oral decision he considered that the claims before the Tribunal had been determined. He did not consider it competent for the claimant to withdraw a claim that had been dismissed. The claimant's application to do so was refused on the basis that, the Judgment having been given to dismiss the Claim, there was no Claim to withdraw.

32. The respondent then made an application for expenses, which has been addressed by separate Judgment.

<b>Employment Judge:</b>	<b>A Kemp</b>
<b>Date of Judgment:</b>	<b>01 March 2022</b>
<b>Date sent to parties:</b>	<b>02 March 2022</b>