

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102382/2017

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Held in Glasgow on 25 October 2017

Employment Judge: Iain F. Atack

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Mr S Richards

**Claimant
In Person**

Bee Jay Mobility

**Respondents
Represented by:-
Mr James Nisbet**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the claimant be awarded the gross sum of £750. The respondent shall deduct from that sum such amounts of income tax and employee national insurance contributions (if any) as it may be required by law to deduct from a payment of earnings of that amount to the claimant, remit the sums deducted to HM Revenue and Customs and pay the balance to the claimant.

REASONS

Introduction

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1. In this case the claimant seeks payment of £600 in respect of holiday pay accrued until 30 June 2016. The respondent denies liability alleging that payment of that sum was paid in cash to the claimant on 30 June.
2. The claimant gave evidence on his own behalf and Mr James Nisbet gave evidence on behalf of the respondent.

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3. The claimant produced printouts from his bank account with Nationwide from 20 June 2016 until 27 June 2017. The respondent produced a payslip dated 14 July 2017 relating to the claimant.

4. From the evidence which I heard and the documents to which I was referred
5 I made the following material findings in fact.

Facts

5. The claimant was employed by the respondent from about May/June 2016 until 30 June 2017.

6. His annual salary was £18,000. This was paid after deduction of tax by
10 monthly instalments into his account with Nationwide.

7. It was agreed between the parties that the amount of accrued holiday pay due to the claimant up to 30 June 2017 was £638. 85.

8. The sum of £1,313.55 was paid into the claimant's bank account with Nationwide on 27 June 2017. That was his normal net monthly salary.

15 9. The sum of £38.85 was paid into the claimant's bank account about the middle of July 2017. That was a payment in respect of holiday pay.

Decision

10. The issue in this case is very simple, namely did the claimant receive the sum of £600 cash or did he not.

20 11. The parties were agreed as to the amount of holiday pay due to the claimant but where they differed was regarding the payment of it. The claimant denied he had ever received payment of £600 from the respondent whilst Mr Nisbet alleged he had paid the claimant in cash. If I accepted Mr Nisbet's position then nothing would be due to the claimant as he would have been
25 paid in full in respect of his holiday pay.

12. Mr Nisbet claimed that the claimant had asked him for £600 in cash on the afternoon of 30 June for the purpose of buying Euros to go on holiday. In his (Mr Nisbet's) evidence he said that the payment of the £600 was in respect of a bonus but then three or four days later he decided to dismiss Mr Richards and treat that payment as being a payment in respect of holiday pay-
13. All previous payments to the claimant had been made direct into his bank account. Mr Nisbet also alleged that during the course of his employment he had paid the claimant bonuses amounting to approximately £1,500. No proof of such payment was offered and there was no mention in the response form, ET3, of any prior payments having been made in cash by way of a bonus.
14. Mr Richard's bank account showed a payment being made by the respondent on 27 June of £1,313.55. Mr Nisbet alleged the claimant said to him on 30 June that he needed money for his holiday but he did not question the claimant as to why more money was needed given the fact that his salary had just been paid.
15. Mr Nisbet did not ask for a receipt for the cash he allegedly paid over, giving as an explanation that he did not think he required to. He did accept that the payment he claimed to have made was of a significant magnitude not to be classed as petty cash.
16. Although Mr Nisbet claimed to regard the payment as being in the nature of a bonus he stated he did not inform the claimant on 30 June that it was of such a nature.
17. I had to consider which, on the balance of probabilities, was the most likely scenario. I accepted the evidence of the claimant that he had not been paid the £600 as was alleged.
18. I reached that conclusion because I considered it improbable that Mr Nisbet would not have queried why the claimant required funds to go on holiday

only a very few days after receiving payment of his month's salary. Mr Nisbet said he regarded, at least at the stage when he claimed to have paid the money, that it was in the nature of a bonus. Although he claimed to have paid bonuses to the claimant in the past he offered no evidence as to
5 how such payments had been made, or of what amount or when they had been paid. I considered that if Mr Nisbet's evidence regarding payment of bonuses in the past was correct it was more likely than not he would have mentioned to the claimant that the claimant of £600 was in respect of a bonus. That however was not Mr Nisbet's evidence. His evidence was that
10 he simply gave the money to the claimant without asking any questions or making any comment. I formed the view that on balance that was unlikely.

19. I also found it remarkable that Mr Nisbet did not ask for a receipt from the claimant for the payment he said he had made. It would have been a simple matter to have asked the claimant to have signed for the payment in cash
15 and I found the failure to do so in a businessman of Mr Nisbet's experience to be highly relevant.

20. Mr Nisbet produced a payslip dated 14 July 2017 purporting to show a payment of £638.85 being made to the claimant. The payslip described that payment as being "holiday pay". It also stated that payment had been made
20 by BACS. That payslip is blatantly incorrect as Mr Nisbet himself accepted that full payment was not made by BACS, as he alleged the claimant had been paid in cash with the sum of £600. It was only the sum of £38.85 which had subsequently been paid into the claimant's bank account.

21. I also found Mr Nisbet's evidence that he having paid the claimant a sum
25 which, when it was allegedly paid, was in his view in the nature of a bonus but then was changed to being a payment in respect of holiday pay to be unsatisfactory

22. For all these reasons I did not accept Mr Nisbet's evidence as being credible and formed the view on the balance of probabilities that payment of the sum
30 of £600 had not been paid to the claimant. The claimant is entitled to

payment for accrued but untaken annual paid leave of £600 in terms of regulation 16 of the Working Time Regulations 1998.

23. That sum is a net sum and requires to be grossed up to ensure that the claimant is not under compensated. The sum of £600 must be grossed up
5 by a sufficient amount that, after deduction of the tax payable, leaves the claimant with the net amount of the loss. The grossed up sum is £750 and that is the sum the respondent is ordered to pay under deduction of tax.

Employment Judge: Iain Atack
Date of Judgment: 31 October 2017
Entered in register: 08 November 2017
and copied to parties

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