

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102358/2017

Held in Glasgow on 16 November 2017 (Final Hearing);

5 and 24 November 2017 (Written Representations)

Employment Judge: Ian McPherson

Mr Twaha Abdulrahim Said

Claimant
In Person

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15 Proficient Security Ltd

First Respondents
No Appearance

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Grangewood Solutions Payroll Company

Second Respondents
No Appearance

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:-

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- (1) Having heard from the claimant in person, at the assigned Preliminary Hearing on identity of employer, neither respondent having lodged an ET3 response defending the claim, and neither appearing, nor being represented, at this Hearing, the Tribunal, having taken evidence from

the claimant, finds and declares that his employer was the first respondents, Proficient Security Ltd;

5 (2) Having addressed the preliminary issue of identity of employer, and given oral judgment to that effect, the Tribunal dismisses the second respondents from these proceedings, in terms of Rule 34 of the Employment Tribunal Rules of Procedure 2013, being satisfied that Grangewood Solutions Payroll Company was not the claimant's employer, and that having been wrongly included in the claim by the claimant identifying them as second respondents, it is appropriate that
10 they now be removed from these proceedings, as there are no issues between the second respondents and the claimant that it is in the interests of justice require to be determined by this Tribunal as falling within its jurisdiction;

15 (3) Thereafter, the claimant having agreed to do so, the Tribunal, in terms of Rule 48 of the Employment Tribunal Rules of Procedure 2013, converted the Preliminary Hearing into a Final Hearing, as the Tribunal was properly constituted for that purpose, and it was satisfied that no party would be materially prejudiced by that change, in circumstances where (a) neither of the two respondents had defended the claim, and so
20 the Tribunal could consider issuing a Judgment under Rule 21, on the available information, and (b) it was consistent with the Tribunal's overriding objective to deal with the case fairly and justly, under Rule 2, including avoiding delay and saving of expense, to proceed there and then, within the allocated two hour sitting of the Tribunal, and proceed to
25 take the claimant's evidence as to the first respondents' liability, if any, for the heads of complaint set forth in the ET1 claim form, and, if appropriate, proceed to determine the appropriate remedy for any successful heads of complaint;

30 (4) Having now further considered the evidence led by the claimant at the Final Hearing, together with his productions, and additional information and documents produced to the Tribunal, within 7 days of the Final

Hearing, as ordered by the Tribunal in terms of Rule 29 of the Employment Tribunal Rules of Procedure 2013, the Tribunal upholds the claimant's complaint of automatically unfair dismissal by the first respondents, contrary to Section 104 of the Employment Rights Act 1996, for the claimant having asserted a statutory right, namely the right in terms of Section 13 of the Employment Rights Act 1996 not to suffer unlawful deductions from his wages;

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(5) In respect of that unfair dismissal, the Tribunal awards the claimant compensation, and orders the first respondents to pay to the claimant a monetary award in the sum of Nineteen thousand, seven hundred and sixty two pounds, Fifty pence (£19,762.50);

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(6) In terms of the Employment Protection (Recoupment of Benefits) Regulations 1996, the claimant having been in receipt of State benefits after his dismissal by the first respondents, the recoupment provisions apply to this monetary award, and the prescribed element is £11,160, and relates to the period from 30 May 2017 to 16 November 2017, and the monetary award exceeds the prescribed element by £8,602.50;

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(7) Further, the Tribunal upholds the claimant's complaint against the first respondents complaining of breach of contract, for failure to pay him notice pay, but makes no award to him in respect of notice pay, having regard to the compensatory award payable to the claimant for his unfair dismissal;

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(8) In respect of the claimant's claim for unpaid holiday pay, the Tribunal finds that the first respondents failed to pay the claimant his accrued holiday pay, and in respect of his holiday pay entitlement, the Tribunal accordingly orders the first respondents to pay to the claimant the sum of Four hundred and sixty five pounds (£465.00);

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(9) Further, in respect of the claimant's claim for arrears of pay, the Tribunal finds that the first respondents made an unlawful deduction from the claimant's wages, and the Tribunal accordingly orders the first

respondents to pay to the claimant the sum of Four thousand, seven hundred and ninety four pounds, Thirty four pence (£4,794.34);

5 (10) Further, in respect of the first respondents' failure to issue the claimant with all his payslips, the Tribunal finds that the first respondents have breached Section 8 of the Employment Rights Act 1996, except in relation to the payslips issued dated 25 February and 25 March 2017, and the Tribunal makes a declaration to that effect, but there is no monetary compensation awarded by the Tribunal for that failure to comply with the employer's statutory duty to issue itemised pay statements to the claimant;

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(11) The claimant's complaints of unfair break deduction, and TUPE compensation, are both not well-founded, and those parts of the claimant's claim against the first respondents are accordingly dismissed by the Tribunal;

15 (12) Further, in respect of the first respondents' failure to issue the claimant with written statement of employment particulars, either at the point of starting employment, or during his employment, or after the claimant's written grievance to the first respondents' Head of HR seeking a copy of his written particulars, the Tribunal finds that the first respondents have breached Section 1 of the Employment Rights Act 1996, and that part of the claim being well-founded, the Tribunal accordingly orders the first respondents to pay to the claimant two weeks' gross pay, in terms of Section 38 of the Employment Act 2002, in the sum of Nine hundred and thirty pounds (£930.00);

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25 (13) In respect of the first respondents' failure to address the claimant's written grievance to the first respondents' Head of HR, the Tribunal finds that that failure by the first respondents was an unreasonable failure by them to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, as they failed to reply to his grievance, and failed to set up a grievance meeting to discuss matters with the claimant, and, in terms of Section 207A of the Trade Union & Labour Relations

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(Consolidation) Act 1992, the Tribunal accordingly orders the first respondents to pay to the claimant the further sum of Four thousand, nine hundred and forty pounds, Sixty three pence (£4,940.63), being a 25% uplift on his compensatory award for unfair dismissal; and

- 5 (14) Further, the clerk to the Tribunal is instructed to send a copy of this Judgment to HM Revenue and Customs, Pay As You Earn and Self Assessment, BX9 1AS, for such investigation, if any, as HMRC might consider appropriate in the public interest into the first respondents' deductions of income tax and national insurance contributions for the
10 claimant's earnings with his employment by them, between 16 January and 29 May 2017.

REASONS

Introduction

1. This case called before me on the morning of Thursday, 16 November
15 2017, at 10.00am, for a 2 hour Preliminary Hearing, set aside to determine a preliminary issue previously noted by the Tribunal, namely "*identity of employer*", as previously assigned by Notice of Preliminary Hearing issued to all parties by the Tribunal dated 10 October 2017.
2. On 19 August 2017, following ACAS early conciliation between 15 June and
20 15 July 2017, for Proficient Security Ltd, and between 22 June and 5 July 2017, for Grangewood Solution Ltd, the claimant, acting on his own behalf, presented an ET1 claim form to the Glasgow Tribunal office against the two named respondents, alleging that he was unfairly dismissed, and owed notice pay, holiday pay, arrears of pay, and other payments by them, arising
25 out of the termination of his employment, with Proficient Security Ltd, as a Security Officer/Guard, on 29 May 2017.
3. At Section 3.1 of his ET1 claim form, the claimant stated that his claim was one of a number of claims against the same employer arising from the same, or similar, circumstances, and he named a Hishima M Saidi as

another claimant. No ET1 claim form was lodged on behalf of that other claimant at the same time as the claimant lodged his own claim with the Tribunal. At this Hearing, the claimant advised me that he knew Mr Saidi to be a security guard formerly employed by Proficient Security Ltd, and that
5 Mr Saidi had already been to a Hearing at the Glasgow Tribunal, but he did not know the outcome.

4. On investigation by the clerk to the Tribunal, on my instructions, I was advised, and so I informed the claimant, that Mr Saidi's case was not combined with this case, but had been heard at a Preliminary Hearing
10 before Employment Judge Mary Kearns on 9 November 2017, where she had made certain Orders and that case had been set down for a Final Hearing on 5 December 2017. I was also advised that the first respondents had lodged an ET3 response in that other case, through a Mr West of Avensure Ltd, Manchester. In writing up this Judgment, I update matters by
15 recording that Mr Saidi's case did not proceed to Hearing, on 5 December 2017, due to a postponement, and it is currently to be relisted for Hearing, on a date yet to be fixed by the Tribunal.

5. In the event that his case before the Tribunal was to be successful, the claimant here, in the present case, Mr Said, stated that he sought an award
20 of compensation only from the Tribunal. In Section 9.2 of the ET1 claim form, the claimant quantified the amount he was seeking by way of financial compensation at £16,405.59.

6. His claim was accepted by the Tribunal on 11 August 2017, and Notice of Claim was served on that date to both respondents, at the addresses
25 provided by the claimant, stating that the respondents were required to lodge a response which must be received at the Tribunal office by 8 September 2017 at the latest.

7. In that Notice of Claim, the respondents were advised that if a response was not received by that date, and no extension of time had been agreed by an
30 Employment Judge, then they would not be entitled to defend this claim, and where no response was received or accepted, an Employment Judge might issue a Judgment against them without a Hearing.

8. No response resisting the claim was received from either of the respondents by the due date of 8 September 2017, or at all. Accordingly, on 15 September 2017 Employment Judge Jane Garvie noted that no acceptable response to the claim had been received, and she stated that it was unclear why the claimant was claiming against two separate respondents. The claimant was instructed to clarify in writing, by 22 September 2017, why the claim is brought against the second respondents.
9. By letter received at the Tribunal, on 21 September 2017, the claimant replied stating that he had been told by the Glasgow Proficient Security line manager, Jerry McElhinney, that he had been transferred to Grangewood Solutions Payroll Company, and while he had telephoned a Nigel Leggatt, the Grangewood manager about his claim, Mr Leggatt had told him that he had nothing to do with his claim, and as Proficient Security had never responded to his claim, the claimant stated that he believed only this Tribunal (which he referred to as "*the court* ") would decide who was his employer and who is responsible to pay for his claim.
10. While it was possible for an Employment Judge to issue a Default Judgment, without the need for a Hearing, in terms of Rule 21 of the Employment Tribunal Rules of Procedure 2013, Judge Garvie considered that there was a preliminary issue requiring determination by the Tribunal, namely identity of the claimant's employer, and so Judge Garvie directed that the case be listed for a Preliminary Hearing to determine that preliminary issue.

Preliminary Hearing before this Tribunal

11. When the case called before me, the claimant was in attendance, in person, but neither of the respondents, neither of whom had lodged an ET3 response defending the claim, appeared, nor were they represented. I heard evidence from the claimant, and received from him a bundle of documents, comprising Proficient Security Ltd employee timesheets and rosters, copy payslips issued by Proficient Security Ltd to the claimant, dated 25 February and 25 March 2017, and copy letters to the claimant dated 31 May and 31 October 2017 from HM Revenue and Customs, Pay

As You Earn and Self Assessment BX9 1AS, concerning the claimant's employment history.

12. In the course of this Hearing, the claimant also produced further documents, which he e-mailed to the Tribunal office, from his mobile phone, and which the clerk to the Tribunal then printed off and provided hard copies for use at this Hearing, and these additional productions from the claimant comprised his e-mail of 2 June 2017 enclosing his formal grievance to the Head of HR at Proficient Security Ltd, e-mail of 15 June 2017 to Nigel Leggatt at Grangewood Solutions, and emails of 30 May and 9 June 2017 to Mr Leggatt.

Proper identity of Claimant's employer: Preliminary Issue

13. At this Preliminary Hearing, I heard evidence from the claimant, and considered documents lodged by him, in regard to the preliminary issue before the Tribunal for determination, in respect of the identity of the claimant's employer.
14. Documents produced by him, including timesheets, rosters, and payslips, were in the name of Proficient Security Ltd. So too was a grievance letter submitted by the claimant to the first respondents, and they were also identified in copy letters the claimant produced from HM Revenue and Customs showing Proficient Security Ltd as his employer in the tax year ended 5 April 2017.
15. While the documentation produced by the claimant also included e-mails, of 30 May and 9 June 2017, with a Nigel Leggatt from Grangewood Solutions, concerning the claimant's wages queries, the claimant was clear in his evidence that they were a payroll provider to Proficient Security Ltd, and they were not, and had never been, his employer, albeit, for reasons unknown by him, they had, as a one-off, remitted funds of £191.60 to his bank account on 26 May 2017, as a part payment towards his outstanding wages due from the first respondents.

16. As such, I was satisfied, and gave Oral Judgment finding and declaring, that the claimant's employer was the first respondents, Proficient Security Ltd.

17. In issuing this Judgment, I have amended the address for service for the respondents, as , following an online Companies House web search, instructed by me, at the time of the Hearing, I discovered that while the claimant had cited them at their registered office address, of Proficient House, 63 Tallon Road, Brentwood, Essex, CM13 1TG, the first respondents (company No. 05413020), were still showing on the public record, with that same registered office address, but the public record also showed that, as approved at a creditors' meeting held on 20 July 2017, the company was now subject to a Corporate Voluntary Arrangement (CVA), and Messrs Simon Harris and Ben David Woodthorpe of ReSolve Partners, 48 Warwick Street, London, W1B 5NL, were acting as joint supervisors of that CVA. The claimant advised me that, as a creditor of the first respondents, being owed monies from his former employers, he was not aware of the CVA.

Second Respondents dismissed from the Tribunal Proceedings

18. Having addressed the preliminary issue of identity of employer, and given Oral Judgment finding and declaring the first respondents were the claimant's employer, I then proceeded to consider the position of the second named respondents, Grangewood Solutions Payroll Company, in terms of Rule 34 of the Employment Tribunal Rules of Procedure 2013.

19. Being satisfied that they were not the claimant's employer, and that having been wrongly included in the claim by the claimant identifying them as second respondents, it was appropriate that they should now be removed from these proceedings, as there are no issues between them and the claimant that it is in the interests of justice require to be determined by this Tribunal as falling within its jurisdiction, I decided, in terms of Rule 34, to dismiss the second respondents from these proceedings. My Judgment so orders.

Preliminary Hearing converted into a Final Hearing

20. Thereafter, the claimant having agreed to do so, I decided, in terms of Rule 48 of the Employment Tribunal Rules of Procedure 2013, to convert the listed Preliminary Hearing into a Final Hearing, as the Tribunal was properly constituted for that purpose.

5 21. I was satisfied that no party would be materially prejudiced by that change, in circumstances where (a) neither of the two respondents had defended the claim, and so the Tribunal could consider issuing a Judgment under Rule 21, on the available information, and (b) it was consistent with the Tribunal's overriding objective to deal with the case fairly and justly, under Rule 2,
10 including avoiding delay and saving expense, to proceed there and then, within the allocated 2 hour sitting of the Tribunal, and proceed to take the claimant's evidence as to the first respondents' liability, if any, for the heads of complaint set forth in the ET1 claim form and, if appropriate, proceed to determine the appropriate remedy for any successful heads of complaint.

15 Findings in Fact

22. On the basis of the oral evidence from the claimant heard by the Tribunal, and the information provided in his ET1 claim form, and copy documents produced by him at this Final Hearing, and in correspondence with the Tribunal thereafter, he having been allowed 7 days to lodge additional
20 information, with supporting documentation, in respect of his claims for unfair dismissal compensation, and in respect of his claim for unlawful deduction from wages, the Tribunal has found the following essential facts to be established.

(1) The claimant aged 30 years at the date of Final Hearing, is a
25 Somalian citizen, living and working in Scotland, having come to the United Kingdom about 9 years ago.

(2) He was formerly employed by the first respondents, Proficient Security Ltd, as a Security Officer/Guard, between 16 January 2017 and 29 May 2017. While he advised the Tribunal that he
30 recalled signing a Working Time Regulations 48 hours Opt-Out document, and some other document, which may have been

written particulars of employment, he was not provided with a copy of any written particulars of employment from the first respondents.

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- (3) The claimant's work was directed and controlled from the first respondents' control room in Brentwood, Essex, and the claimant worked at the Caledonian Water Alliance site at Road Crossing 2, Barrhead, G77 6RX.
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- (4) According to his ET1 claim form, at Section 6.1, the claimant worked, on average, around 65 hours each week for the first respondents. He advised the Tribunal that he had no set contractual weekly hours, and he also spoke of being paid at the rate of £7.20 per hour before April 2017, and at £7.50 per hour after April 2017,
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- (5) Again, as per Section 6.2 of his ET1 claim form, the claimant stated that he received monthly gross pay before tax of £2,300, and monthly, normal take home pay of £2,000 from the first respondents.
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- (6) The claimant produced to the Tribunal two copy payslips issued to him by the first respondents, Proficient Security Ltd, being (1) dated 25 February 2017, showing gross pay of £1,649.40 (for 233.25 hours @ £7.20 per hour), less deductions for PAYE Tax, National Insurance and Pension, producing net pay of £1,396.51, and (2) dated 25 March 2017, showing gross pay of £2,615.40 (for 329.75 hours @ £7.20 per hour, producing £2,374.20, plus prior period adjustment of £241.20), less deductions for PAYE Tax, National Insurance, Pension, Student Loan and Advance,
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- producing net pay of £1,728.67.
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- (7) Contrary to the information provided to the claimant, in letters to him dated 31 May and 31 October 2017 from HM Revenue and Customs, Pay As You Earn and Self Assessment, BX9 1AS, concerning the claimant's employment history, which show his start and end dates with Proficient Security Ltd, from 16 January to 28

February 2017, and pay of £1,667 and tax of £150, the copy payslips produced to the Tribunal record, as at 25 March 2017, total gross pay to date of £4,294.80 and tax paid to date of £485.20, being amounts at odds with the amounts provided to the claimant by HM Revenue and Customs.

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(8) The claimant did not work, nor was he paid, for any period of notice, following the termination of his employment with the first respondents, on 29 May 2017, and, while employed by them, he was advised the Tribunal that he was not in their pension scheme, nor did he receive any other employment benefits from them, albeit the copy payslips produced to the Tribunal show employee pension contribution deductions.

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(9) Since his employment with the first respondents ended, on 29 May 2017, the claimant has not yet secured another job. He is unemployed, in receipt of State Benefits, and actively seeking to be re-employed in another job as soon as he can find a suitable appointment.

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(10) Within the seven day period allowed by Order of the Tribunal, the claimant produced to the Tribunal, in the additional documentation provided by him after the close of this Final Hearing, by e-mail from him dated 20 November 2017, with attachments, as placed on the casefile on 24 November 2017, and referred to the Judge on that date, vouching of his attempts to mitigate his losses, and to secure new paid employment, with a new employer, post termination of his employment with the first respondents.

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(11) In particular, in that additional documentation produced to the Tribunal, the claimant produced copy of his personal bank statements showing payments made to him, on 26 May 2017, from Grangewood Solutions, in the sum of £191.80; and on 8 May 2017 from Proficient Security Ltd for £2,287.20, with further amounts paid to him by Proficient Security Ltd on 24 March 2017 at

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£1,728.67. £192.96 on 2 March 2017, and £1,396.51 on 28 February 2017.

- 5 (12) Further, the claimant also included, in that additional documentation produced to the Tribunal, activity history from Jobsearch.Direct.Gov.UK of all his job search activity, including CV updates and interviews, as well as some job interview confirmation e-mails, vouching his attempts to mitigate his losses.
- 10 (13) The Tribunal is satisfied, from the available information, that the claimant has made reasonable attempts to find new employment, albeit without success to date of this Hearing.
- 15 (14) The claimant was paid monthly by the first respondents, on the twenty fifth day of each month. On 25 April 2017, he did not receive his salary, and he waited a couple of days then, on 28 April 2017, he telephoned his Proficient Security line manager in Glasgow, a Jerry McElhinney, to enquire about his pay.
- 20 (15) The claimant was advised that the person who organised pay had been out of the country and that he would be paid shortly. He waited some days then, on 4 May 2017, he telephoned his line manager again, and he got some pay on 8 May 2017, but it took two weeks to get paid from his normal pay day.
- 25 (16) On 25 May 2017 again the claimant did not receive his salary, and he telephoned his new line manager, Andy (surname unknown), to enquire about his pay, but he was given no explanation for the failure to pay him but Andy told the claimant that he would be paid shortly. On 27 May 2017, the claimant telephoned Andy again asking about his wages, and he was told that he had been paid £191.80.
- 30 (17) The claimant was surprised to get that amount of money, as he had worked 267 hours for that month. Andy, the line manager, asked the claimant to send his timesheets from 16 April to 15 May

2017, which the claimant duly sent to the respondent's HR/Finance Department, and Andy, but still he was not paid the outstanding sum that he believed he was due.

5 (18) Thereafter, on 30 May 2017, the claimant again telephoned his line manager, Andy, who gave him no explanation for the failure to pay him. The claimant stated that their conversation became heated and, from that day, the claimant never received any working roster and Andy told him that he was no longer working with Proficient Security.

10 (19) However, the claimant advised the Tribunal that he was working for the first respondents from 16 May to 29 May 2017, for 132 hours, and he was still supposed to be paid in his June 2017 salary, but sums were left unpaid, and he telephoned Jerry McElhinney again regards two months' salary, but he was advised
15 that he was not responsible for paying staff, and so the claimant sent a letter to the first respondents' main office at Brentwood, Essex, to investigate the situation, and provide him with details and provide him with his payslips and P60.

20 (20) In his formal grievance letter to the first respondents' Head of HR, the claimant also asked the first respondents to provide him with details of when he would be paid the outstanding wages due to him.

25 (21) The claimant produced to the Tribunal his e-mail, sent on 2 June 2017, at 12:24, to the respondents, attaching his formal grievance letter. That grievance letter, dated 30 May 2017, was addressed to the first respondents' Head of HR.

30 (22) Having obtained advice from his local Citizens Advice Bureau, in Easterhouse, the claimant had written this grievance letter, with the benefit of CAB advice, believing that as an employee, wishing to raise a formal grievance, in terms of the ACAS Code of Practice on Disciplinary and Grievance Procedures, he should ask the first

respondents to investigate his situation and provide him with details and provide him with all his payslips and P60, as also details of when he would be paid the outstanding wages due to him.

5 (23) He also asked them to provide information about his terms of employment as he had never been given a copy of the terms and conditions of employment under which he was employed by the first respondents, as from 16 January 2017.

10 (24) The claimant's formal letter of grievance stated that these matters were of some urgency to him, and he asked the first respondents' Head of HR to provide a response within five days. He received no response, whatsoever, from the first respondents, nor from their Head of HR.

15 (25) On 30 May 2017, the claimant e-mailed a wages query to Grangewood Solutions, stating that he had not received his wages, and asking them to advise him on that matter, and provide his payslips.

20 (26) By e-mail sent at 10:42, on 30 May 2017, a Nigel Leggatt, from Grangewood Solutions, replied to the claimant, stating he had checked their account and his wages were paid into his account on 26 May 2017, a total sum of £191.80, and further stating that if he believed this to be wrong then he should e-mail Finance at Grangewood Solutions explaining what the problem is and also attach any evidence, for example wage slips/timesheets.

25 (27) In those circumstances, by e-mail sent to Mr Leggatt, at Grangewood Solutions, at 19:17, on 9 June 2017, the claimant referred to Mr Leggatt's e-mail sent to him, he advised that as at that date he had still not received his remaining wages, and he asked Mr Leggatt to explain to him what was the problem, stating
30 that he had a lot of bills to pay.

(28) The claimant received no response to his e-mail of 9 June 2017 to Mr Leggatt, either from Grangewood Solutions Payroll Company, or from the first respondents.

5 (29) As at the date of this Final Hearing, the claimant produced a summary document showing sums received, and sums outstanding from the first respondents, as follows:-

Summary

Month	Hours	Unlawful Deductions
16 Jan - 15 Feb 2017	307.75 hours = £2,215.80 Paid - £1,396.51	54 Hours - (Unpaid -£388.80)
16 Feb - 15 Mar 2017	402.75 hours = £2,899.80 Paid -£1,728.67	73 hours - £525.60 + £589.17 (Unpaid -£1,115.17)

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Proficient Security Stop to send Payslip

16 Mar - 15 April 2017	485 hours = £3,564 Paid -£2,287.20	86 Hours - £645 + £631.80 Unpaid -£1,276.80
16 April - 15 May 2017	267 hours = £2,002.50 Paid £191.90	Unpaid -£1,810.70
16 May - 29 May 2017	132 hours - £993.75	Unpaid - £993.75
		Total Unlawful Deduction = <u>£5,585.22</u>
	Notice Pay	1 week 62 hrs - £465
	Holiday Pay	1 week 62 hrs - <u>£465</u>
		Total - £930
	TOTAL CLAIM	<u><u>£6,515.22</u></u>

Tribunals Assessment of the Evidence heard at the Final Hearing

23. The only evidence heard by the Tribunal at this Final Hearing was from the claimant himself. He spoke to the narrative of his claim, as set forth in the

ET1 claim form previously lodged with the Tribunal, and he provided, by correspondence with the Tribunal, additional information, and supporting documentation for the assistance of the Tribunal in determining (a) the proper identity of his employer and (b) matters related to liability and remedy in respect of his claim against the first respondents. He gave his evidence clearly, and confidently, and I found him to be a credible and reliable witness.

Issues for the Tribunal

24. I deal now with each of the issues before the Tribunal for determination, as follows:-

Automatically Unfair Dismissal

25. As the claimant did not have two years' continuous employment with the first respondents, having only been employed by them between 16 January and 29 May 2017, he did not have sufficient qualifying service to bring a complaint of ordinary unfair dismissal to the Employment Tribunal.

26. As detailed at Section 9.2 of his ET1 claim form, it was there explained that he was complaining of automatic unfair dismissal for having been dismissed for asking for his salary. Such a complaint forms a complaint of automatically unfair dismissal for seeking to assert a statutory right under Section 104 of the Employment Rights Act 1996.

27. As the claimant explained, at the end of his narrative of the claim, at Section 8.2 of his ET1 claim form: - *'7 decided to go to Citizens Advice Bureau, Easterhouse to intervene on my case. We wrote letters to the company about the matter, but the company failed to respond. The Bureau advised me to contact ACAS in order to intervene my case. The ACAS contacted them about the case, but the company failed to respond then I decided to take claim to Tribunal for Judge to find out about this matter. "*

28. The first respondents did not lodge any ET3 response defending this claim, neither did they appear, nor be represented, at this Preliminary Hearing,

converted to Final Hearing. The onus of proof is on the claimant, having less than two years' qualifying service (as ordinarily required by Section 108 of the Employment Rights Act 1996), and I am satisfied that the claimant, from the evidence provided at this Final Hearing, has satisfied me that the reason for his dismissal was that he asserted his statutory right, by seeking payment of wages due and outstanding to him from the first respondents.

29. They have not appeared, they have not defended the claim, and they have not offered any alternative reason as being the reason for the claimant's employment with them coming to an end on 29 May 2017. As such, I am satisfied, on the available information, that the first respondents are liable to the claimant for his automatically unfair dismissal for having asserted a statutory right, in terms of Section 13 of the Employment Rights Act 1996, not to suffer an unlawful deduction from his wages. As the claimant stated to me, in his oral evidence at this Hearing, he got dismissed by the first respondents because: *1 had been complaining about my wages not being paid in full.* "

Breach of Contract: Failure to pay Notice Pay

30. In his ET1 claim form, the claimant states that he is owed notice pay by the first respondents. At Section 9.2 of his ET1 claim form, he states, in this regard, that he is seeking unpaid notice pay for one week, quantified at £465. As per my findings in fact, while I was advised by the claimant that there was no letter of dismissal issued to him by the first respondents, I am satisfied, from the claimant's oral evidence, that, on 30 May 2017, he was told by his line manager, Andy, that he was no longer working for Proficient Security Limited.

31. In these circumstances, I have decided to uphold the claimant's complaint against the first respondents complaining of breach of contract, for failure to pay him notice pay, but I make no award to him in respect of notice pay, having regard to the compensatory award payable to the claimant for his unfair dismissal, which I deal with later in these Reasons.

Claim for Unpaid Holiday Pay

32. Further, in his ET1 claim form, at Section 8.1, the claimant indicated that he was owed holiday pay and, at Section 9.2, he quantified that as being unpaid holiday pay for one week, quantified at £465.

5 33. In considering this part of the claim, I noted that the claimant did not raise the failure to pay holiday pay, as part of his written grievance to the respondents, yet it has been included in his ET1 claim form. The first respondents have not defended the claim, in whole, or in part, and, accordingly, they have not disputed his claim for one week's unpaid holiday pay-

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34. His claim proceeds as a complaint under Regulation 30 of the Working Time Regulations 1998. On the information available to the Tribunal. I have decided to award the claimant the sum of £465.00 in respect of his claim for unpaid holiday pay, finding that the first respondents failed to pay the claimant his accrued holiday pay, amounting to one week's pay.

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Claim for Arrears of Pay: Unlawful Deduction from Wages

35. In his ET1 claim form, at Section 8.1, the claimant complained that he was owed arrears of pay by the first respondents, and he provided narrative of that matter at Section 8.2, quantifying his claim for financial compensation in this respect, at Section 9.2 of the ET1 claim form, where he sought two months' unpaid wages quantified at £2,804.70.

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36. His complaint of unlawful deduction from wages is made in terms of Section 13 of the Employment Rights Act 1996, and constitutes a complaint to the Tribunal under Section 23. From his summary document lodged with the Tribunal, it is clear that he has received part payment of wages for some months, but not full payment.

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37. At this Final Hearing, the claimant advised me that the sums due and unpaid to him by the first respondents remain outstanding. On the basis of the available information, I am satisfied that that is so, and that the first

respondents should be ordered to reimburse him accordingly. I have so ordered.

5 38. However, in calculating the sum properly due and payable to the claimant in this regard, I have had some difficulty, arising from the calculations set forth in the claimant's summary, and what he stated in Section 8.2 of his ET1 claim form that he was seeking two months' unpaid wages quantified at £2,804.70.

10 39. In his summary document, reproduced earlier in these Reasons, the claimant refers to the total unlawful deductions being £5,585.22, being the grand total of earlier specified amounts unpaid of £388.80, £1,115.17, £1,276.80, £1,810.70 and £993.75.

15 40. While, the claimant refers to a first payment due of £2,215.80, compared to paid of £1,396.51, I compute that to be a difference of £819.29, and not the £388.80 shown by the claimant as being unpaid. Similarly, while he then refers then to the next payment due of £2,899.80, compared to paid of £1,728.67, I compute that to be a difference of £1,171.13, yet £1,115.17 is shown by the claimant as being unpaid.

20 41. Further, in that calculation, the claimant then refers to two sums of £525.60 and £589.17 being unpaid totalling £1,115.17, but I add those two amounts as being £1,114.77. It is not clear, at least not to me, where those two amounts come from to give the 73 hours claimed as unpaid. 73 hours at £7.20 per hour gives £525.60, so I am prepared to order that sum to be paid to the claimant, but not the unexplained further sum of £589.17.

25 42. Also, in the next calculation, where the claimant refers to a payment of £2,287.20, compared to an amount due for 485 hours at £3,564, showing an unpaid amount of £1,276.80, which is arithmetically correct, it is not clear, at least not to me, where the two sums of £645 and £631.80, totalling £1,276.80, shown come from to give 86 hours claimed as unpaid. 86 hours at £7.50 per hour gives £645.00, so I am prepared to order that sum to be paid to the claimant, but not the unexplained further sum of £631.80

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43. Finally, for the next payment of £191.90 shown, against £2,002.50 due for 267 hours, leaving unpaid of £1,810.70, the payment received has been wrongly stated, as it should read £191.80. The arithmetical calculation is however correct as regards the amount unpaid.

5 44. Accordingly, doing the best I can, from the information available to me, I compute that the total unlawful deductions amounts to the sum of £4,794.34, being the total of £819.29, £525.60, £645.00, £1,810.70 and £993.75. I have ordered the first respondents to pay that sum to the claimant.

10 Other Payments

45. In the narrative to his ET1 claim form, at Section 8.2, the claimant referred to the first respondents' failure to provide him with all his payslips. At Section 9.2, he stated that he needed all his payslips, P60, and P45. The Tribunal has no power to order an ex-employer to issue a P60, or P45, to an
15 ex-employee. The claimant should pursue those matters directly with the first respondents.

46. In relation to the first respondents' failure to issue the claimant with all his payslips, I find that the first respondents have breached Section 8 of the Employment Rights Act 1996, except in relation to the payslips issued
20 dated 25 February and 25 March 2017, and I make a declaration to that effect. There is no monetary compensation awarded by the Tribunal for this failure to comply with the employer's statutory duty to issue itemised pay statements to the claimant.

47. Quite understandably, in giving his evidence at this Hearing, the claimant
25 advised me that as he did not get any payslips after March 2017, while he received some part payments towards what he believed were his wages properly due and payable by the first respondents, he did not know how the sums paid had been calculated, as no payslips were provided to him.

48. In Section 9.2 of the ET1 claim form, when describing the financial
30 compensation he is seeking from the first respondents, the claimant stated

that he was seeking the sum of £3,370.89, in respect of '*unfair break deduction*', as also a separate sum of £6,045, representing 13 weeks' wages, which computes at £465 per week, in respect of what he refers to as "*TUPE compensation (not informed of any transfer until 1 June 2017)*".

5 49. These two matters were not elaborated by him in the course of his evidence to the Tribunal and, accordingly, his claims for unfair break deduction, and TUPE compensation, are both not well founded, and those parts of his claim are dismissed by the Tribunal.

10 50. Further, as his employment with the first respondents ended on 29 May 2017, it is not clear to me on what basis it is alleged that his employment transferred to any new employer.

15 51. It may be there is some link here to what the claimant advised the Tribunal, in reply to Judge Garvie's enquiry, as detailed earlier in these Reasons at paragraph 8 above, where I recorded that, by letter received at the Tribunal, on 21 September 2017, the claimant replied stating that he had been told by the Glasgow Proficient Security line manager, Jerry McElhinney, that he had been transferred to Grangewood Solutions Payroll Company.

20 52. That however sits at odds with the claimant's evidence to me, at this Hearing, that Grangewood Solutions were a payroll provider to Proficient Security Ltd, and as such they were not, and never had been, his employer.

25 53. Finally, in his grievance letter of 30 May 2017 to the first respondent's Head of HR, the claimant asked for him to be provided with information about his terms of employment as he had never been given a copy of the terms and conditions of employment under which he was employed by the first respondents, as from 16 January 2017.

54. At Section 9.2 of the ET! claim form, detailing the financial compensation being sought by him, the claimant refers to the failure to receive any employment contract or terms and conditions, and he seeks 2 weeks' wages, quantified at £930.

55. In respect of the first respondent's failure to issue written particulars of employment to the claimant, either at the time of his employment, or in response to his grievance letter, the Tribunal finds that complaint well founded and awards the claimant 2 weeks' gross pay in that regard, in terms of Section 38 of the Employment Act 2002, and orders the first respondents to pay to the claimant the sum of £930

56. There is no information available to the Tribunal that it would be just and equitable to award to the claimant the higher amount of 4 weeks' pay in that regard. Indeed, the claimant has only sought the minimum amount in this respect.

Compensation for Unfair Dismissal

57. In Section 9.2 of his ET1 claim form, the claimant, in respect of his complaint of automatic unfair dismissal, for him having been dismissed for asking for his salary, seeks an award of compensation in the sum of £2,325, which he states represents "**1-5 weeks' pay**".

58. The basis on which the claimant has calculated that sum is not at all clear to the Tribunal. Having been employed for less than one year with the first respondents, the claimant is not entitled to any basic award for compensation, in terms of Section 119 of the Employment Rights Act 1996.

59. As regards a compensatory award, in terms of Section 123, he is entitled to an award of compensation, representing past loss of wages, together with a future loss of wages, and loss of statutory rights. I am satisfied that he has taken reasonable steps to mitigate his losses, and that he should be paid appropriate compensation by way of a compensatory award, payable to him by the first respondents.

60. In his evidence to the Tribunal, the claimant spoke of looking for work, via Easterhouse Job Centre, and the additional documents provided by him, and considered by me on 24 November 2017, show his efforts to try and get paid employment elsewhere. He advised me that, before being employed by

Proficient Security Ltd, he had worked as a Customer Assistant with BOTO, for about 3 years, and that he had a degree in telecoms from Glasgow Caledonian University. He stated that he was not sure when he would manage to secure new employment paying at least the same as he had been earning with the first respondents.

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61. In his ET1 claim form, at Section 6.2, the claimant stated that he was paid £2,300 monthly for pay before tax, with £2,000 monthly for normal take home pay. The first respondents, having failed to defend the claim, have not commented upon the claimant's stated earnings figures.
- 10 62. Taking those monthly gross and net wages, they compute to £530.77 gross per week, and £461.54 net per week. In his other calculations, the claimant has quoted £465 per week, which I take to be his net weekly wages. That amount is below the statutory limit on a maximum week's pay at £489, for dismissals on and after 6 April 2017.
- 15 63. Having regard to the claimant's evidence at the Final Hearing, and the additional mitigation document produced by him, I have decided that the claimant is entitled to a compensatory award made up as follows:-
64. Past Loss of Wages; 30 May 2017 to Date of Hearing (16 November 2017), being a period of 24 weeks, at £465 per week, being £11,160.
- 20 65. Future Loss of Wages: It is not clear when the claimant might find new employment paying him at least the same as when he was employed by the first respondents. I estimate that he is unlikely to find suitable new employment in less than 18 weeks, from date of Hearing, and so I find it appropriate to award him future loss of earnings for that further 18 week
- 25 period, at £465 per week, being £8,370.
66. Loss of Statutory Rights : Given the claimant's short length of employment, I assess this at % weeks' pay, being £232.50
67. In total, those three figures compute to the compensatory award I have made to the claimant in the amount of £19,762.50.

68. Finally, I note and record that the claimant advised me, in his oral evidence at this Hearing, that he is currently unemployed, and in receipt of Jobseekers' Allowance at the rate of £229 per fortnight, given he has a partner, who is not working, and 4 dependent children, aged from age 1 & 1/2 years to age 8 years.

69. In respect that the claimant advised the Tribunal that he had been in receipt of State benefits (namely Jobseekers' Allowance) after his dismissal by the first respondents, the Employment Protection (Recoupment of Benefits) Regulations 1996 apply. The recoupment provisions apply to the monetary award made in terms of this Judgment, and reference is made to the attached schedule annexed to this Judgment explaining recoupment.

Claim for Statutory Uplift on Compensatory Award

70. In his ET1 claim form, at Section 8.2, the claimant noted how, having received advice from Easterhouse CAB, he wrote a grievance letter to the first respondents, but they failed to respond.

71. In considering whether or not, in those circumstances, it is appropriate to award any statutory uplift, to the claimant's compensatory award, in terms of Section 207 of the Trade Union and Labour Relations Consolidation Act 1992, I have taken into account the fact that the claimant, with advice from the CAB, wrote a grievance letter, sent it to the first respondents Head of HR, yet he did not receive any reply, within the five days requested, or at all.

72. In those circumstances, I am satisfied that there has been an unreasonable breach by the first respondents of their duty in terms of the ACAS Code of Practice to address the claimant's grievance about his unpaid wages, and failure to issue payslips, and his written particulars of employment.

73. I have considered the relevant case law in this regard, including Alima Construction Ltd v Laing [2012] UKEATS/0041/11, an unreported judgment by Lady Smith in the Employment Appeal Tribunal, on 25 January 2012, at paragraph 29, and the more recent judicial recognition of Lady

Smith's guidance provided, at paragraphs 51 and 54, of Mr Justice Langstaff, President of the EAT's, unreported judgment of 21 October 2015 in Bethnal Green & Shoreditch Education Trust v Dippenaar [2015] UKEAT/0064/15.

5 74. Having done so, and the first respondents having failed to lodge any ET3 response resisting the claim, and / or explaining their position, and failing to be represented at this Hearing, and participate to such extent as the Judge might allow, they have not provided any information to this Tribunal to suggest that any lesser percentage uplift might be more appropriate.

10 75. Accordingly, taking note of the fact that the first respondents appear to have some form of in-house personnel / HR function, as suggested by the claimant writing to their Head of HR, I have decided that, in all the circumstances, it is just and equitable to award a statutory uplift to the extent of the full 25% of the compensatory award.

15 76. This takes account not only of the first respondents' size and administrative resources of their undertaking, including payroll / finance and HR advice, but also the separate number of fundamental breaches of basic employment law rights, complained of by the claimant, in his grievance letter.

20 77. In these circumstances. I have ordered the first respondents to make an additional payment to the claimant in the further sum of £4,940.63, being 25% of the compensatory award for automatically unfair dismissal. I have not considered it appropriate to make individual statutory uplifts for each of the successful heads of claim, for to do so, I recognise that that would
25 produce a windfall in favour of the claimant, and so be disproportionate and unfair to the first respondents, given the amounts awarded for those other heads of claim.

Referral to HM Revenue and Customs

78. Given the claimant's concerns that the first respondents' payslips, as issued
30 to him, show more tax paid than HMRC refers to, in their

correspondence with the claimant, there may be an issue that the first respondents have provided payslips to the claimant showing deductions made, but then not actually remitted those deductions for PAYE tax and NI to the relevant authority.

5 79. Accordingly, I have instructed that the clerk to the Tribunal is to send a copy of this Judgment to HM Revenue and Customs, Pay As You Earn and Self Assessment, BX9 1AS, for such investigation, if any, as HMRC might consider appropriate in the public interest into the first respondents' deductions of income tax and national insurance contributions for the
10 claimant's earnings with his employment by them between 16 January and 29 May 2017.

Employment Judge: Ian McPherson
Date of Judgment: 05 January 2018
Entered in register: 08 January 2018
and copied to parties

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