

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102371/2017

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Held in Glasgow on 25 October 2017

Employment Judge: Iain F. Atack

Mrs L Crolla

**Claimant
In Person**

KMT Cleaning Services Ltd.

**Respondents
Represented by:
Mrs Keira Wilson**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is:-

1. That the claimant's claim for accrued but untaken annual paid leave is dismissed.
- 20 2. That the respondent breached the claimant's contract of employment by failing to make payment in lieu of notice and the respondent is ordered to pay the claimant the sum of Thirty Pounds and sixty five pence (£30.65) as damages in respect of the loss sustained as a consequence of said breach.
- 25 3. That the claimant suffered unlawful deductions from wages contrary to the provisions of section 13 of the employment rights act in the sum of Five Hundred and three Pounds and twenty seven pence (£503.27) and

respondent is ordered to pay to the claimant the sum of Five Hundred and three Pounds and twenty seven pence (£503.27).

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REASONS

Introduction

1. In this case the claimant brings claims in respect of arrears of wages, unpaid annual leave, unpaid notice pay and also in respect of unpaid payment in respect of two weeks lying time.
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2. The respondent denies the claims alleging that all sums due have been paid. Mrs. Wilson who appeared for the respondent advised that the respondent company had ceased trading.
3. Both parties produced bundles of documents. Those produced by the claimant will be referred to by the prefix C and those produced by the respondent by the prefix R.
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4. The claimant gave evidence on her own behalf and Mrs. Keira Wilson represented the respondent.
5. From the documents which were produced and the evidence which was led
20 the Tribunal made the following material findings in fact.

Facts

6. The claimant commenced working for KMT Cleaning with effect from 10 October 2016.
7. The business of KMT Cleaning was taken over by KMT Cleaning Services Ltd. She continued to work for that company until her employment was
25 terminated on 12 July 2017.

8. The claimant was issued with a new contract of employment by KMT Cleaning Services Ltd confirming continuity of employment from 10 October 2016.
9. KMT Cleaning Services Ltd ceased trading on 14 July 2017.
- 5 10. KMT Cleaning Services Ltd traded as a company number SC 526494.
11. When that company ceased to trade Mrs. Wilson wrote to customers advising it was closing down. She advised them that her husband's company, KMT Prestige Ltd had some capacity for those customers who wished to continue a weekly cleaning service, R16.
- 10 12. KMT Prestige Ltd is a separate limited company with company number SC547477. It is a separate legal entity from KMT Cleaning Services Ltd.
13. The claimant initially commenced work at an hourly rate of £7.20 for a probationary period and thereafter was paid at the rate of £7.80 per hour. From March 2017 she was paid at the rate of £8 per hour.
- 15 14. She was paid gross without deduction of income tax.
15. The respondents' holiday year runs from 1 January until 31 December.
16. The claimant did not ask for or take any holidays in the period from the commencement of her employment until the end of 2016.
17. In 2017 the claimant took holidays from the 3 to 6 January and from 31
20 March to 14 April. She accepted those holidays totalled the equivalent of 48 hours.
18. In addition she took one unauthorised days absence. She accepted this was equivalent to four hours.

19. The claimant was dismissed with effect from 12 July 2017. She was not given notice of termination of employment.
20. The claimant was absent from work due to ill-health from 22 May 2017 until the termination of her employment.
- 5 21. The claimant was paid by the respondent for the hours which she worked. Those hours are shown on the payslips produced, C2-2.4.
22. The claimant did not complain or raise any question about the hours worked or payments made as shown on the payslips during the course of her employment.

10 **Decision**

23. The issues to be considered by the Employment Tribunal were as follows: -
- (1) Has the claimant received payment in respect of annual leave accrued but untaken as at the date of termination of her employment?
- 15 (2) Is the claimant entitled to notice pay and, if so, has she been paid her full entitlement?
- (3) Has the claimant suffered an unlawful deduction from wages in respect of non-payment of lying time of two weeks wages? and
- (4) Has the claimant been paid her full entitlement of statutory sick
20 pay?
24. The claimant's right to annual leave is contained in the Working Time Regulations 1998. The basic entitlement is to 5.6 weeks paid holiday each leave year, subject to a cap of 28 days. The claimant calculated that she was entitled to 20 hours 19 minutes holiday in respect of the holiday year
25 ending on 21 December 2016, C4, and to 47 hours and 22 minutes in

respect of the holiday year until the termination of her employment on 12 July 2017, C4.

Annual Leave

5 25. Dealing first of all with the holidays untaken in 2016. The regulations provide that leave may only be taken in the leave year in respect of which it is due and cannot be carried over unless the worker has been unable to take his or her entitlement due to long-term absence. In this case the claimant had not asked for any holidays in 2016 and had not been ill or unable to take them. Accordingly, the claimant cannot claim for payments
10 in respect of that leave year for untaken holidays.

26. In 2017 the claimant by her own admission took 48 hours of holiday and accordingly has exhausted her claim in respect of payment for annual leave. Her claim in respect of unpaid annual leave is dismissed.

Unlawful deduction

15 27. The issues to be determined were

- (1) Was the claimant a worker and so entitled to make a claim in respect of unlawful deductions from wages and
- (2) Were there wages due to the claimant that were not paid and
- (3) Was any deduction from wages duly authorised by statute, the
20 contract under which the claimant worked or by a document in which the claimant signified in writing her agreement or consent to the making of the deduction.

28. There was no doubt that the claimant was a worker in terms of the Employment Rights Act 1996.

25 29. Her claim was that she was due payment in respect of two weeks lying time.

30. The payslips produced by the parties show that payment has been made in respect of the claimant working a certain numbers of hours over the period of her employment. The claimant did not query the hours shown as having been worked by her on the payslips during her employment. I accepted that she had been paid at the correct rate and for the correct hours as otherwise she would have raised the issue with the respondent.
31. The claimant became ill and unable to work on 22 May 2017. She was paid in full for May, C2.3, although she would only have worked 48 hours before going off sick. Mrs. Wilson accepted that the claimant had not been paid for the first two weeks of her employment and was therefore due two weeks "lying" time. She alleged the claimant had been paid. She could not explain however how that money had been paid but she suggested in evidence it had all been paid by the time of the payslip of 2 June, C2.3. I was unable to understand the rationale for that suggestion and it appeared to me that the claimant had in fact only been paid in respect of one week's lying time. Payment of that one week's lying time was paid with the payslip of 2 June which showed payment for a full month when only three weeks or 48 hours had been worked. The claimant was therefore entitled to a further week' payment in the sum of £128 being payment for 16 hours at £8 per hour.
32. That deduction was not authorised by statute nor the contract under which the claimant worked, nor any document signed by her consenting to the making of the deduction. It was accordingly an unlawful deduction in terms of section 13 of the Employment Rights Act 1996. The respondent is ordered to pay the claimant the sum of £128 in respect of a week's lying time which has not been paid.

Notice Pay

33. The claimant was dismissed on 12 July and was not given any payment in lieu of notice. Mrs. Wilson's evidence was that she had been paid statutory sick pay in respect of the week's notice and that was sufficient to discharge the liability. The amount paid was £89.35.

34. The Employment Rights Act 1996 section 86 (1) (a) provides that an employee who has been continuously employed for one month or more but less than two years is entitled to notice of one week. If during the period of notice the employee is incapable of work because of sickness or injury the right to payment is protected, section 88(1) (b).
35. The claimant was absent during the period of notice due to ill-health and accordingly was entitled to be paid in full for that week of notice. She was entitled to a payment of £128. The respondent however made a payment of £89.35 leaving a balance of £30.65. The respondent is ordered to make a payment to the claimant in respect of unpaid notice pay of £30.65.

Statutory Sick Pay

36. The claimant received payment of statutory sick pay amounting to £160.83 as shown in the payslip C2.4. In addition she received a payment in August of £89.35. The total paid in respect of statutory sick pay to the claimant was £250.18. She should have been paid statutory sick pay for the period from the beginning with her absence from work in May until 12 July, allowing for qualifying days, at the rate of £89.35 per week. That is a period of seven weeks. The amount of statutory sick pay paid to the claimant should have been £625.45. The claimant received payments of statutory sick pay totalling £250.18 leaving a shortfall of £375.27. The respondent is ordered to make payment to the claimant of that sum.
37. The failure to make payment of statutory sick pay is an unlawful deduction from wages in terms of section 13 of the Employment Rights Act 1996. The definition of wages in section 27 includes statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992.
38. The claimant was of the opinion that the respondent had simply changed name from KMT Cleaning Services Ltd to KMT Prestige Ltd. From the documents produced it is clear that these are two separate companies. They are registered separately at Companies House and have separate company numbers. It may well be that Mrs. Wilson is a shareholder in both

companies but that is not the point. The claimant's employer is the respondent and not KMT Prestige Ltd.

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

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