



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4120358/2018

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Held in Glasgow on 16 May 2019

Employment Judge P O'Donnell

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Mr M Burns

**Claimant
In Person**

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Laundry Scotland Ltd

**Respondent
No appearance and
No representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the Respondent failed to provide the Claimant with an itemised pay statement as required by section 8 of the Employment Rights Act 1996 when it paid him on 22 and 29 June 2018.

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REASONS

Introduction

1. The claimant has brought a complaint that he was not provided with an itemised pay statement as required by section 8 of the Employment Rights Act 1996 (ERA). The claim is resisted by the respondent.
2. A previous hearing of this case in January 2019 was adjourned to allow for a resolution between the parties. Subsequent to that hearing, the Respondent provided the Claimant with itemised pay statements. However, the Claimant complains that the information on the pay statements is inaccurate; it gives the wrong address for him; it does not include "Ltd" in the name of the

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Respondent; it has no employee number; it shows National Insurance deductions which the Claimant alleges have not been paid to HMRC.

3. At the outset of the hearing, the Tribunal clarified that the remedy which it had the power to provide was to make a declaration as to whether an itemised pay statement had been provided and whether it contained the information required by section 8 ERA. It was explained to the Claimant that the Tribunal could not determine the accuracy of any information on the pay statement, the Tribunal could not require information beyond that required by section 8 be included nor could it make any order that sums be paid to HMRC (this being a matter for HMRC). The Claimant confirmed that he still wished to proceed.
4. The Claimant also raised an issue that a letter he received from the Respondent in September 2018 stated that any monies he had been paid had come from the Respondent's operations managers own money and so the Claimant alleged that he had not been paid by the Respondent. The Tribunal Judge explained that no claim had been brought regarding a deduction of wages by the Respondent and if the Claimant wanted such a claim to be determined then he would require to make an application to amend his ET1 to add this claim and the hearing would require to be adjourned to allow the Respondent time to reply to the amendment and lodge a revised defence if the amendment was allowed. The Claimant confirmed that he did not wish to make an application to amend and was content for the hearing to proceed.

Postponement Application

5. There was no attendance at the hearing by the Respondent or anyone representing the Respondent. Contact had been made with Mr Ram of the Respondent who explained that he had sent the Notice of Hearing to his representative whom he was expecting to be in attendance. Mr Ram tried to contact his representative but could only leave a voicemail. He made an application by email for the hearing to be postponed.
6. The Claimant objected to the application to postpone; he submitted that the Respondent had the same notice he had received; the Claimant had taken

unpaid time off work to attend and incurred travelling costs; he did not believe that the Respondent had been unable to contact his representative.

7. The Tribunal took account of the length of time which the case had been ongoing and the fact that a previous hearing had been adjourned to allow for a resolution which had not been successful. There was a need for finality for all parties to bring the matter to a conclusion. The Respondent had been given adequate notice. In these circumstances, applying the overriding objective, the Tribunal refused the application to postpone and proceeded with the hearing.

10 Evidence

8. The Tribunal heard evidence from the Claimant who also handed up documents which included the pay statements provided by the Respondent.

Findings in Fact

9. The Tribunal makes the following relevant findings in fact:-

15 9.1 The Claimant commenced employment with the Respondent on 13 June 2018 as a delivery driver. His employment came to an end on 27 June 2018.

20 9.2 On 22 June 2018, the Claimant received his first payment from the Respondent amounting to £250 in respect of work done on 15, 17, 18, 20 and 21 June 2018. The payment was made in cash handed to the Claimant by Mr Ram.

25 9.3 On 29 June 2018, the Claimant received his second payment from the Respondent amounting to £150 in respect of work done on 25 June 2018 and 2 days' "lying time" in respect of work done on 13 and 14 June 2019. Again, the Claimant was paid in cash handed to him by Mr Ram.

9.4 On neither occasion was the Claimant provided with an itemised pay statement of any kind either before or on the date he was paid.

- 9.5 The Claimant did receive itemised pay statements from the Respondent at the end of January 2019. However, these had the wrong address for him, did not have the word "Ltd" in the name of the Respondent and had no employee number.
- 5 9.6 The itemised pay statements received also showed "deductions" for National Insurance. However, these were not "deductions" in the proper sense of the word as the sums in question had not been taken from the Claimant's pay; the gross and net wage on both pay statements were the same.
- 10 9.7 Further, these "deductions" had not been paid to HMRC. The Claimant has spoken to HMRC on a number of occasions who confirm that they have no record of these payments and the payments do not show on the Claimant's online personal tax account.

Relevant law

- 15 10. Section 8 of the Employment Rights Act states:-
- (1) *[A worker] has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*
- (2) *The statement shall contain particulars of—*
- 20 (a) *the gross amount of the wages or salary,*
- (b) *the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*
- (c) *the net amount of wages or salary payable,*
- 25 (d) *where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; [and*
- (e) *where the amount of wages or salary varies by reference to the time worked, the total number of hours worked in respect of the variable amount of wages or salary, either as—*
- 30 (i) *a single aggregate figure, or*

(ii) *separate figures for different types of work or different rates of pay.*

5 11. Section 11 allows for complaints of a breach of section 8 to be brought to an Employment Tribunal and, in particular, section 11(3)(b) provides (emphasis added):-

a question as to the particulars which ought to have been included in a pay statement or standing statement of fixed deductions does not include a question solely as to the accuracy of an amount stated in any such particulars.

10 12. The remedy available to the Tribunal on determination a claim for breach of section 8 is set out in Section 12(3) as being the power to make a declaration that a Respondent has failed to give the Claimant a pay statement in terms of section 8.

Decision

15 13. The Tribunal has no difficulty in finding that the Respondent failed to comply with section 8 when it paid the Claimant's wages in June 2018. The requirement is provide an itemised pay statement "before or at" the time at which the wages are paid and the Respondent clearly failed to do so. Indeed the ET3 does not dispute that they failed to provide itemised pay statements at the relevant time and simply seeks to excuse that failure (which is irrelevant to the issues to be determined).

14. In these circumstances, the Tribunal makes a declaration that the Respondent failed to provide the Claimant with an itemised pay statement as required by section 8 of the Employment Rights Act 1996 when it paid him on 22 and 29 June 2018.

25 15. However, the itemised pay statements subsequently provided by the Respondent do not fail to comply with the requirements of section 8 as they contain the information required by that section, that is, the gross and net amount of the wages along with any deductions. There is no requirement for there to be an employee number as sought by the Claimant.

16. Further, the Tribunal cannot, in terms of section 11(3), make any determination about the accuracy of the information contained in the itemised pay statements provided. Similarly, there is no power under section 12 for the Tribunal to make any judgment or determination compelling the Respondent to make any payments to HMRC.
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Employment Judge: P O'Donnell
Date of Judgment: 11 June 2019
Entered in register: 14 June 2019
and copied to parties

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