



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Nos: 4111177/2021 & 4111178/2021

Held by Cloud Video Platform on 21 March 2022

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Employment Judge Smith

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Miss C Finlay

**First Claimant
In person**

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Mr F Callan

**Second Claimant
In person**

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Applecrest Eco Limited

**Respondent
Represented by:
Mr R Anderson,
Founder**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. In the case of the First Claimant, it is declared that the Respondent made an unauthorised deduction from her wages in respect of work performed during the period 5 to 29 July 2021. The Respondent is ordered to pay compensation to the First Claimant in the sum of **£1,523.61**.

2. The Respondent failed to issue the First Claimant with a statement of employment particulars. Pursuant to **section 38** of the **Employment Act 2002** the Respondent is ordered to pay compensation of two weeks' pay to the First Claimant, assessed in the sum of **£870.68**.
3. In the case of the Second Claimant, it is declared that the Respondent made an unauthorised deduction from his wages in respect of work performed during the period 5 to 29 July 2021. The Respondent is ordered to pay compensation to the Second Claimant in the sum of **£1,675.08**.
4. The Respondent failed to issue the Second Claimant with a statement of employment particulars. Pursuant to **section 38** of the **Employment Act 2002** the Respondent is ordered to pay compensation of two weeks' pay to the Second Claimant, assessed in the sum of **£957.11**.

REASONS

Request for written reasons

1. An oral judgment, together with reasons, was delivered at the conclusion of the full hearing which took place on 21 March 2022. Written reasons for the Tribunal's judgment were requested by Mr Anderson, founder of the Respondent, via email on 30 March 2022. These full written reasons have been promulgated pursuant to that request and the parties' right to written reasons as stipulated by **r.62(3)** of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, sch.1**.

Introduction

2. There are two Claimants in this case: Miss C Finlay and Mr F Callan, both of whom have presented claims against the same Respondent: Applecrest Eco Limited. The Claimants represented themselves and the Respondent was represented by Mr R Anderson, the Respondent's Founder. The

Respondent was represented at the hearing initially, but Mr Anderson said that he would not attend beyond 11.10am despite the hearing having been listed for a full day, and that he just wanted a decision to be made even if it was in his absence. The reason advanced for his non-attendance after
5 11.10am was that he had a busy business to run. He left part way through Miss Finlay's evidence and did not return. Enquiries were then made of Mr Anderson by my clerk, in which Mr Anderson confirmed that he was happy for the hearing to proceed in his absence. The Claimants both agreed that I should do so. Exercising my power under **rule 47**, I therefore decided that
10 the hearing should proceed.

The claims

3. Both of these claims are for unauthorised deductions from wages. Both
15 claims referred to the same short period of time in which the Claimants were employed by the Respondent (5 July 2021 to 29 July 2021) but to slightly differing claimed amounts of wages calculated on the basis of different number of hours worked. It was an agreed fact that neither Claimant was paid any money in wages for the hours worked in that period.

20 4. The Respondent defended the claim on the basis that it felt it was entitled to withhold such monies to compensate it for what it described in its ET3 as lost revenue for the bank holiday weekend that followed, and the cost of cleaning up the accommodation the Claimants had been living in. There
25 was, however, no employer's contract claim and no particulars were provided by the Respondent as to the amount of any lost revenue or the costs of cleaning.

Agreed issues

30 5. At the start of the hearing the parties agreed that the principal issues I had to decide were, firstly, whether they had proven a legal entitlement to the wages sought – a “properly payable” sum – for the month of July 2021

(s.13(3) Employment Rights Act 1996; New Century Cleaning Company Ltd v Church [2000] IRLR 27, England and Wales Court of Appeal).

- 5 6. The second issue – the occasion for payment (**Murray v Strathclyde Regional Council [1992] IRLR 396**, EAT) – was not in dispute as the parties agreed that the occasion for payment was the last Friday in the month, which in this case would have been 30 July 2021.
- 10 7. The third issue – what was actually paid (**s.13(3)**) – was also not in dispute as it was agreed that the Respondent had paid the Claimants nothing on that occasion. A complete failure to pay is by definition a “deduction” (**Delaney v Staples [1992] IRLR 1919**, House of Lords).
- 15 8. However, the fourth issue was controversial: it was the **s.13(1)** question of whether the Respondent had an entitlement to make a deduction under either subsection **(a)** or **(b)**, which are set out as follows:
- 20 (1) *An employer shall not make a deduction from wages of a worker employed by him unless—*
- (a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
- 25 (b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

Findings in fact

- 30 9. I heard evidence from both Claimants but the Respondent did not call any witnesses. I therefore accepted the largely unchallenged evidence of the Claimants in relation to the following important matters which I find as facts.
10. During the time period in question, the Claimants each worked hours which they had set out in a table and to which I was referred. In Miss Finlay’s

case, the hours she worked were set out in a day-by-day format and in the period in question totalled 171. For Mr Callan, using the same format his total hours worked in the period were 188.

5 11. Miss Finlay said her rate of pay was the National Living Wage rate of £8.91 per hour, applicable to workers of her age. Mr Callan did not know his rate of pay but because they both put their case on the same basis, I accepted that it was probably the same rate for him too.

10 12. It followed that in Miss Finlay's case the wages earned and properly payable to her on 30 July 2021 were £1,523.61. In Mr Callan's case the properly payable sum as at the same date was £1,675.08.

15 13. Neither Claimant was ever asked to signify in writing their consent to deductions being made from their wages – for any reason at all – and neither did so.

20 14. Furthermore, it became evident during the course of the hearing that neither Claimant had been issued with a statement of employment particulars as required by **section 1** of the **Employment Rights Act 1996**. Given the change in the law that took effect on 6 April 2020, they had a right to be provided with such a statement on day one of their employment. No statement was issued by the time these Employment Tribunal proceedings had begun (on 31 August 2021) or indeed had been at any subsequent
25 time.

30 15. It follows that there was no relevant provision of the Claimants' contracts (**s.13(1)(a)**) that permitted deductions to be made for the reasons advanced by the Respondent, and nothing in writing that indicated prior consent (**s.13(1)(b)**). In any event, there was no evidence provided by the Respondent that could have supported either of the reasons it advanced, even if there had been such provision. For completeness, the Respondent did not contend that the deductions were for statutory purposes under subsection (**a**).

Conclusions

5 16. It follows that in paying the Claimants nothing for the period 5 July 2021 to 29 July 2021 on the occasion for payment (30 July 2021) it is declared that the Respondent made unauthorised deductions from wages in respect of both individuals.

10 17. I therefore order the Respondent to pay compensation to Miss Finlay in the gross sum of **£1,523.61** and to Mr Callan in the gross sum of **£1,675.08**.

15 18. There is the further matter of the failure to provide a statement of employment particulars. This is a case of a complete failure to issue such a statement and in circumstances where both Claimants have succeeded in their wages claims, I have the power under **section 38** of the **Employment Act 2002** to make an order for compensation of either two or four weeks' pay.

20 19. In my judgment the two weeks' sum is appropriate in each case because although there has been a complete failure to provide statements of particulars, this is a small business and the period of employment was in both cases short. In the case of new employees, a week's pay for these purposes is calculated according to **section 228** of the **Employment Rights Act 1996**.

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20. I must therefore make a finding as to what fairly represents a week's pay. The Claimants worked 3½ weeks each. Dividing their total hours by this factor gives us an average week's pay. Then multiplying this by a factor of two produces the following results:

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20.1 In respect of Miss Finlay, her average weekly hours were 48.86. Multiplied by £8.91 per hour and then by the factor of two, the result is an award of compensation in the sum of **£870.68**.

20.2 In respect of Mr Callan, his average weekly hours were
53.71. Multiplied by £8.91 per hour and then by the factor of
two the result is an award of compensation in the sum of
5 **£957.11**

21. The Respondent is ordered to pay those sums to the Claimants.

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15	Employment Judge:	P Smith
	Date of Judgment:	05 April 2022
	Date sent to parties:	06 April 2022