



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112386/2021

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Final Hearing Held in person on Monday 4 April 2022 at 10.00am

Employment Judge Russell Bradley

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**Mr Ian Aird**

**Claimant  
In Person**

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**Marc Allan Builders**

**Respondent  
Not present and  
Not represented  
[No ET3 lodged]**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is: -

1. That the claim of unfair dismissal is dismissed under Rule 52 of the Employment Tribunal Rules of Procedure 2013 it having been withdrawn;
- 25 2. That the dismissal of the claimant was a breach of his contract of employment;
3. That the respondent is ordered to pay to the claimant **FOUR HUNDRED AND SEVENTY SEVEN POUNDS AND SEVENTY FIVE PENCE (£477.75)** as damages to compensate him for that breach;
4. That the claim for accrued and untaken holiday pay succeeds; the respondent  
30 is ordered to pay to the claimant the sum of **ONE THOUSAND SEVEN HUNDRED AND TEN POUNDS AND THIRTY FIVE PENCE (£1,710.35)** for that claim;
5. To declare that the claimant's claim that the respondent has made a deduction from his wages in contravention of section 13 of the Employment Rights Act  
35 1996 is well founded; and

6. To order the respondent to pay to the claimant the sum of **FOUR HUNDRED AND SEVENTY SEVEN POUNDS AND SEVENTY FIVE PENCE (£477.75)** in respect of that deduction.

## REASONS

### 5 Introduction

1. On 10 November 2021 the claimant presented an ET1 in which he made a claim of unfair dismissal and for; notice pay; holiday pay and in respect of an alleged unlawful deduction from wages.
2. No ET3 was lodged. The respondent was neither present nor represented at this hearing. On 10 December the respondent's Office & Accounts Manager sought by email an extension for submitting a response form due to admin shortages as a result of COVID-19. On 20 December a legal officer directed that the respondent should be informed that, under Rule 20 of The Employment Tribunal Rules of Procedure 2013, the application for an extension could not be considered because it had not been copied to the claimant; and, as it has been submitted after the time limit within which a response should have been presented, it should have been accompanied by a draft ET3 response or an explanation as to why that has not been possible. A letter to that effect was issued to the respondent on 20 December. That letter also advised that an application in accordance with Rule 20 could be submitted by the respondent if it still wished to defend the claim. No further communication has been received from the respondent.
3. The claimant accepted (as had been indicated to him in a letter from the tribunal of 17 January) that he did not have the necessary 2 years' continuous service to maintain the claim of unfair dismissal. He withdrew it. I explained that it would be dismissed.
4. The claimant explained that he maintained three claims. First, a claim for holiday pay being a claim for 18 days accrued, untaken and unpaid in the year 2021 as narrated at box 8.2 of his ET1 form. Second, a claim of an unlawful deduction from the last wage due to him in that, having been paid a week in

arrears (or with a week's "*lying time*"), he was not paid for his last week of work. Third, a claim for a payment in lieu of notice on the basis that without good cause he had been summarily dismissed and not paid in lieu of his entitlement to one week's notice of termination.

- 5 5. I heard evidence from the claimant.
6. I indicated that I would reserve my judgment which would follow in writing with reasons.
7. The issues are clear from the discussion, decision and remedies noted below.

### **Findings in Fact**

- 10 8. Based on the ET1, various papers within the tribunal file, the claimant's oral evidence and the papers lodged by him at the hearing I found the following facts proved.
9. The claimant is Ian Robert Aird.
10. The claimant began work as a joiner with the respondent on Monday 12  
15 October 2020. The respondent's principal is Marc Allan. His business trading address is also his home address. The respondent did not issue to the claimant a written contract or a statement of terms and conditions of employment.
11. The claimant ordinarily worked 40 hours per week. The agreed pay rate was  
20 £15.00 per hour.
12. The claimant's first wage was paid to him on Friday 23 October. That wage was for the work he had done in his first week of work. Thereafter and until the termination of the contract the claimant continued to be paid one week in arrears.
- 25 13. In the period of his time with the respondent, the claimant worked on a number of sites in and around Glasgow including in Clarkston, Drumchapel and Gartcosh. He worked in large part autonomously. The work included building house extensions and a loft conversion. For the majority of his employment,

the claimant worked with (and supervised) an apprentice. The claimant saw Mr Allan about once or twice a week. The claimant was trusted by Mr Allan to work autonomously and get on with his work. The claimant enjoyed his work with the respondent.

- 5 14. The claimant took some paid time off at Christmas 2020. During that time, he was contacted direct by one of the respondent's clients about an issue on site. He attended to the issue at that time. He was paid by the respondent in his time off and for attending to the client's issue.
- 10 15. On Friday 6 August 2021 the claimant spoke by telephone with Mr Allan. In that conversation the claimant told him that he had put a screw through a pipe while at work. Mr Allan began "*ranting and raving*" at the claimant. The claimant did not understand why. In his view the incident was minor; it had happened to him previously; and did not warrant Mr Allan's reaction. The claimant hung up the call. At that time, he expected to be at work on Monday 15 9 August. On Sunday 8 August Mr Allan telephoned the claimant. He told him not to come back to work. The claimant was summarily dismissed by Mr Allan on 8 August in that call. The respondent gave no other notice to end the contract. The respondent did not pay the claimant in lieu of any notice.
- 20 16. The respondent has not paid the claimant for week beginning 2 and ending 6 August.
- 25 17. From wage slips issued by the respondent, the claimant understood that he was entitled to 28 days paid leave. The claimant produced wage slips dated July 9, 16, 23, 30 and August 13 which supported his understanding. The claimant understood that the proportion due to him to his dismissal was 18 days. The respondent issued to the claimant a wage slip dated 20 August. It shows annual leave remaining of 9.97 days. The claimant took no paid leave in the calendar year 2021. The respondent has not explained its basis for reducing the claimant's leave entitlement as disclosed in the wage slips dated 13 and 20 August.
- 30 18. The last wage slip disclosing a payment to the claimant (30 July 2021) shows net weekly pay of £477.75. That is representative of a week's net pay.

**Comment on the evidence**

19. The claimant's evidence was both credible and reliable. He volunteered information which, while not strictly relevant to the claims, was nonetheless useful background information.

5 **Submission**

20. The claimant did not make a closing submission as such. He was content to leave matters based on his ET1, the material that he had provided prior to and at this hearing and his evidence. He was content that the most recent wage slip which showed a payment to him was representative of both gross and net pay.

10**Law**

21. Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 provides that "*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine;(b) the claim is not one to which article 5 applies; and(c) the claim arises or is outstanding on the termination of the employee's employment.*"

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22. Regulation 13(1) of the Working Time Regulations 1998 provides that "*Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year.*"

23. Regulation 13A(1) and (2)(e) provide "*Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2)*". "(2)(e) *The period of additional leave to which a worker is entitled under paragraph (1) is in any leave year beginning on or after 1st April 2009, 1.6 weeks.*"

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24. Regulation 13A(3) provides *“The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.”*
25. Regulation 14(2) provides *“Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).”*
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26. Regulation 14(3)(b) provides *“The payment due under paragraph (2) shall be— where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula— $(A \times B) - C$  where—A is the period of leave to which the worker is entitled under regulation 1 and regulation 13A; B is the proportion of the worker's leave year which expired before the termination date, and C is the period of leave taken by the worker between the start of the leave year and the termination date.”*
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27. Section 13 (1) and (2) of the Employment Rights 1996 provide that:*“(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 (b) the worker has previously signified in writing his agreement or consent to the making of the deduction (2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”*
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28. Section 23(1) (a) of the 1996 Act provides that:- *“(1) A worker may present a complaint to an employment tribunal —(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2))”*.
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**Discussion and decision**

29. On the claim for notice pay, I accepted the claimant's evidence that he was summarily dismissed in the telephone call with Mr Allan on 8 August with no prior notice. There was no evidence to support a conclusion that the respondent was entitled to summarily end it. The claim for a payment in lieu of notice of one week succeeds, that period of notice being the statutory minimum.
30. On the claim for holiday pay, I accept that in 2021 the claimant had taken no paid leave. There is no explanation and no obvious rationale as to why his entitlement appeared to reduce from 28 to 9.97 days. His claim for 18 days (3.58 weeks) of accrued and untaken holiday pay succeeds under the Working Time Regulations.
31. On the claim of an unlawful deduction from wages, I accepted that; the claimant worked a week in arrears; he was not paid for his last week of employment being the week to Friday 6 August. There was nothing within section 13 of the 1996 Act which permitted the respondent to withhold it. The respondent's failure to pay wages for that week was an unlawful deduction from the claimant's wages.

**Remedy**

32. The claimant accepted that his net pay on 30 July was a fair representation of net pay (£477.75) in his employment. He lost that amount as a result of the breach of contract, the failure to provide notice. I have made an order for payment of this sum to compensate that loss.
33. 3.58 weeks is the equivalent of 18 days. 3.58 week's pay at £477.75 per week equates with a sum of £1,710.35 and I have ordered payment of this sum for loss of accrued untaken holidays to the date of termination.

34. I have made an order declaring that the claim for wages for a week's net pay is well-founded and ordered payment of that amount (again £477.75) in respect of that deduction.

Employment Judge: Russell Bradley  
Date of Judgment: 05 April 2022  
Entered in register: 06 April 2022  
and copied to parties