



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113797/2021

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Held via Cloud Video Platform (CVP) on 10 March 2021

Employment Judge B Campbell

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Mr A Albaroudi

**Claimant
In Person**

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Premier Scotland Group Limited

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the employment tribunal is that an unlawful deduction was made from the claimant's wages contrary to section 13 of the Employment Rights Act 1996, and the respondent is ordered to pay the claimant the sum of £1,658.33 as compensation.

REASONS

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Introduction

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1. This claim arises out of the claimant's employment by the respondent, which began on 25 September 2017 and ended on 30 August 2021. He worked as a security guard. His only claim is that he was underpaid or not paid at all for work he carried out as detailed below.
2. The claimant represented himself at the hearing and gave evidence. The respondent had not lodged a response form (ET3) in reply to the claim and was not represented at the hearing.
3. The claimant submitted copies of timesheets which he was required to complete for his employer in order to be paid. He provided timesheets

covering the dates of 31 July 2021 to 30 August 2021, the time period which his claim related to. He also provided a copy of his payslip for July 2021.

Preliminary issue – designation of the respondent

4. The claim had been raised against 'Premier Security Limited' initially. The claimant's employer was not that company, but Premier Scotland Group Limited as shown on his payslip and the pro forma timesheets he was given to complete.
5. Despite this, the claimant had provided the correct business address of his employer, namely 60 Brook Street, Glasgow G40 2AB. The website of Premier Scotland Group Limited confirms that address as the base of its operations.
6. I was therefore satisfied that the respondent had been given adequate opportunity to reply to the claim, notwithstanding the claimant's error in specifying its correct company name, which is in any event similar to the name he used.
7. The respondent's designation is therefore changed to Premier Scotland Group Limited. I considered it in keeping with the overriding objective set out in regulation 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to allow this correction to be made notwithstanding the respondent's absence from the hearing. It had, in all likelihood, received both a copy of the claim form from the tribunal office and, later, a copy of the details of this hearing. There was no evidence of it contacting the tribunal office in response to either. It did not serve the interests of justice to hold up the hearing of the claim further when there was nothing to indicate that the respondent wished to defend it.

Legal issues

8. The legal questions for the tribunal were as follows:

8.1. Did the respondent pay the claimant no pay, or less pay than he had earned, for work carried out between the dates of 31 July 2021 and 30 August 2021?;

8.2. If yes, what is the monetary value of the shortfall?

5 **Applicable law**

9. By virtue of section 13 of the Employment Rights Act 1996 ('EA') a worker is entitled not to have unauthorised deductions made from their wages. Therefore, subject to specific exceptions provided for in that part of the Act, there will have been an unauthorised deduction if the worker is paid less than
10 they have earned, depending on how their earnings are calculated, or not paid at all for their work. The date of the deduction is deemed to be either the day when less is paid to them than they have earned, or when they would normally have been paid but were not.

10. Examples of lawful deductions would include PAYE income tax properly
15 deducted or a sum which the worker had explicitly consented to having deducted in advance by writing. Section 14(1) EA expressly states that an employer may recover a previous overpayment from a worker's wages, and this will not be treated as an unlawful deduction.

11. A worker who has suffered one or more unlawful deductions from their wages
20 may submit a claim to the employment tribunal under section 23 of the Act. There are detailed requirements as to the timing of complaints to ensure that a tribunal can determine them. In short, if a claim is about a series of deductions, the claim process (initiated by way of commencement of Early Conciliation through ACAS) must begin within 3 months of the last alleged
25 deduction.

Findings of fact

12. The following findings of fact were made as they are relevant to the issues in the claim.

13. The claimant was an employee of the respondent from 25 September 2017 until 30 August 2021. The respondent provides security services to commercial customers such as retail stores, bars and hotels. The claimant worked as a security guard and was stationed at the premises of the respondent's customers.
14. The claimant did not have fixed hours of work. He was paid monthly for whatever hours he worked. He would be offered hours in advance and was free to accept or decline them. His rate of pay was £8.91 per hour gross.
15. In order to be paid, the claimant would submit timesheets using a pro forma template provided by the respondent. He would have to add in the date, start time, finishing time, number of hours worked and client name for each shift he performed. For each month, he would do so by the second of the following month. If he did so, he would be paid on or before the 15th of the month, i.e. within two weeks of submitting the timesheet.
16. The claimant worked, and was paid, under this system without issue up until the end of July 2021. He was paid on or around 15 August 2021 for the hours worked up to and including 30 July 2021.
17. The claimant worked a number of shifts between 31 July 2021 and 30 August 2021. Those were set out in the timesheets he kept, as provided to the tribunal.
18. The number of hours worked between those dates came to 211.5 hours. It is noted that there were some errors in the calculation of shift durations in the timesheet. Those were:
- 18.1. 18 August – 8 hours recorded, the shift was for 6 hours;
 - 18.2. 20 August – 5 hours recorded, the shift was for 5.5 hours;
 - 18.3. 27 August – 5.5 hours recorded, the shift was for 4.5 hours; and
 - 18.4. 28 August -5.5 hours recorded, the shift was for 4.5 hours.

19. Therefore, although the claimant had recorded a total of 215 hours, 211.5 was the correct figure when the start and finish time of each shift were used.
20. The claimant submitted his timesheet to 30 August 2021 as normal, which involved him emailing it to the respondent's operations manager. That individual said that the hours would be paid. There was no challenge to the information in the timesheet.
21. The claimant's wages for 31 July to 30 August 2021 were not however paid to him at any time.

Conclusions

Issue 1 - was an unlawful deduction made from the claimant's pay

22. The claimant was entitled to be paid on or around 15 September 2021 for the work he carried out from 31 July 2021 onwards. He was not paid for that work. He complied with the respondent's rules for recording his shift details and submitting them on a timesheet by a given date. He did not ask for, or consent to, the money not being paid. He asked for it to be paid and was told it would be.
23. Section 13 ERA is clear that non-payment of wages also constitutes a deduction in the statutory sense. The claimant therefore suffered an unlawful deduction from his wages on or around 15 September 2021.

Issue 2 – What is the amount of the unlawful deduction

24. The claimant's gross pay earned for 211.5 hours of work amounted to £1,884.47.
25. He would have potentially been subject to deductions for income tax and national insurance contributions. Based on the information available, which essentially consisted of the details of his hours worked and/or earnings for (a) July 2021, (b) August 2021 and (c) the four month period between April and July 2021 inclusive as shown on his payslip, it is determined that his average gross monthly earnings were around £1,500. The claimant has been in full time study and has not worked since the end of August 2021. It is therefore

deemed that his total earnings for the tax year 2021-2022 would have fallen within the Personal Allowance limit of £12,570 and so he would not have been subject to income tax deductions via PAYE. This is also consistent with his July 2021 payslip which made no deduction for income tax.

- 5 26. As regards National Insurance contributions, the claimant would have earned enough to exceed the Primary Threshold at which employee contributions become payable. That amount was £184 per week (or £797 per month). As such he would have been liable to pay 12% of his gross pay in this way as a PAYE deduction.
- 10 27. Making the required calculation, the claimant would and should have received £1,658.33 net. This is the amount of the unlawful deduction made from his pay and the amount the respondent is therefore ordered to pay him now.

15 Employment Judge: Brian Campbell
Date of Judgment: 11 March 2022
Entered in register: 09 April 2022
and copied to parties