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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112345/2021

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Held on 14 April 2022 by Cloud Based Video Platform

Employment Judge Neilson

Mr R Mitchell

**Claimant
In person**

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Onsite Property Management FM Limited

**Respondent
No appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that:-

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- (a) the claimants claim for unfair dismissal and redundancy pay should be struck out as the claimant does not have the requisite service to bring these claims;
- (b) the claimant's complaint under Section 23 of the Employment Rights Act 1996 is well-founded and orders the respondent to pay to the claimant the sum of £2,572.58 less any appropriate tax and national insurance;
- (c) the respondent shall pay to the claimant the sum of £634.62 as accrued holiday pay less any appropriate tax and National Insurance;

(d) the respondent shall pay to the claimant £634.62 as damages for breach of contract in respect of the notice period – less appropriate tax and National Insurance; and

(e) the respondent shall pay to the claimant £1564.29 as damages for breach of contract in respect of the non-payment of expenses.

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REASONS

1. This was a claim for unfair dismissal, redundancy pay, arrears of pay, holiday pay, and breach of contract in respect of the notice period and the non-payment of expenses.

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2. The claimant attended the hearing in person and gave evidence. There was no appearance by the respondent. There was an issue with the address that had been provided for the respondent. The correct address for the respondent was the address that appeared in the ACAS Early Conciliation Certificate – “Unit 6A Crookedholm Business Centre, 81 Main Road, Crookedholm KA3 6JU.” In error the claimant had incorrectly put the address in the ET1 as “Unit 6A Crookedholm Business Centre, Crookedholm, Sheriff Court House KA1 1ED.” The ET1 was originally served on the respondent with the incorrect address on 18 November 2021. This error was picked up by the Employment Tribunal and the ET1 was re-served upon the respondent at the correct address by letter of 5 January 2022. No response was lodged by the respondent. However subsequent notifications to the respondent were in error then sent by the Employment Tribunal to the incorrect address. In particular the notification of the hearing date of 14 April 2022 was sent to the respondent at the incorrect address.

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3. As no response was lodged by the respondent the case was dealt with under Rule 21 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“the Rules”). However, Rule 21(3) of the Rules does stipulate that the respondent is entitled to notice of any hearings. In the circumstances the Employment Tribunal considered as a preliminary issue whether or not that Rule had been complied with. Whilst the address used was not entirely accurate the Employment Tribunal considered that it was

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sufficiently close to the correct address for the Employment Tribunal to proceed on the basis that notice had been given. However if that was not the case then in all the circumstances of the case the Employment Tribunal was willing to waive the requirement for notice of the hearing in accordance with Rule 6 of the Rules. The Employment Tribunal considered this a just approach in light of the fact that no response was lodged by the respondent and it would appear the respondent had stated to the claimant that it was going into administration when that did not appear to be the case.

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4. The claimant had in his ET1 made claims for both unfair dismissal and redundancy pay. To bring these claims the claimant required to have two years continuous service with the respondent. The claimant stated in his ET1 and at the hearing that he did not have two years continuous service with the respondent. The claimant was asked if he had any other basis upon which he was bringing these claims. The claimant did not advance any other grounds and accepted that if he required two years' service that he was unable to comply with that requirement. In the circumstances the Employment Tribunal struck out both the claim for unfair dismissal and the claim for redundancy pay.
5. The Employment Tribunal dealt with the other claims lodged by the claimant - arrears of pay, holiday pay, and breach of contract in respect of notice pay and the non-payment of expenses.
6. The claimant gave evidence on oath and referred to a number of documents that he sent by e mail to the Employment Tribunal in the course of the hearing.

Findings in Fact

7. The claimant commenced employment with the respondent on 15 July 2020.
8. The claimant was employed as an electrician and a tester.
9. The claimant's employment ceased on 29 October 2021.
10. The claimants pay at the point of termination of employment was £33,000 per annum.

11. The claimant was paid monthly in arrears and he was entitled under his contract to claim back expenses that he incurred in the performance of his duties. In particular he incurred expenses in buying materials for the jobs he was carrying out and parking expenses in attending at the various premises where he had to carry out his duties.
12. On 29 October 2021 the claimant had been working at premises when he received a call from one of the directors of the respondent. He was told by that director that the respondent was going into administration and that his employment was terminated.
13. The claimant spoke with that director on Monday 1 November 2021. He was informed that he should speak to Derek Little from Quantuma as he was dealing with the administration.
14. The claimant has contacted Derek Little of Quantuma who told the claimant that he, Derek Little, had no formal authority to act in this matter.
15. The claimant has subsequently contacted Quantuma on a number of occasions but each time he has been told that they, Quantuma, have no formal authority to act.
16. The claimant was entitled to 28 days holiday per calendar year under his contract of employment. He had taken 18 days by 29 October 2021.
17. The claimant was not paid his monthly salary for October 2021. The claimant was not paid in respect of accrued holiday pay by the respondent. The claimant was not paid in respect of his notice period by the respondent.
18. The claimant was not paid in respect of outstanding expenses that he had incurred whilst employed by the respondent.
19. In July, August and September 2021 the claimant purchased materials to allow him to carry out his job in a total sum of £1065.09. These costs have not been reimbursed to the claimant by the respondent.

20. In July and August 2021 the claimant incurred parking costs, in carrying out his duties, in a total sum of £499.20. These costs have not been reimbursed to the claimant by the respondent.

Submissions

5 21. The claimant seeks his pay for October 2021; his notice pay, accrued holiday pay and reimbursement of his outstanding expenses.

The Law

22. Section 23(1)(a) of the Employment Rights Act 1996 ("ERA") provides a "worker" with the right to make a complaint to an Employment Tribunal that an employer "has made a deduction from his wages in contravention of section 13". Section 13 ERA provides a worker with a right not to suffer unauthorised deductions. Specifically, Section 13(3) states "Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the workers' wages on that occasion."

23. Section 24(1)(a) ERA provides "Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer.. (a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13.."

24. Under the Working Time Regulations 1998 an employee is entitled to paid on termination of employment in respect of accrued holiday pay – Regulations 14 and 30.

25. A claim for breach of contract may be brought under section 3(2) of the Employment Tribunals Act 1996 and the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 ("the 1994 Order"). The claim can only be

made following termination of employment and must be outstanding on termination of employment.

Discussion & Decision

26. In relation to his pay for the month of October – this was not paid to the claimant when it should have been paid. He was employed up to 29 October 2021. In not making payment there has been an unlawful deduction from the claimants pay. The relevant amount due is £2,572.58. This is subject to the deduction of tax and National Insurance.
27. In relation to accrued holiday pay the claimant was entitled to 28 days holiday per annum. He had taken 18 days by 29 October. He will have accrued just over 23 days to 29 October. That leaves just over 5 days accrued but not taken. That equates to one weeks pay. A sum of £634.32. This is subject to the deduction of tax and National Insurance.
28. The claimant did not produce a written contract of employment and could not recall what his notice period under the written contract was. In these circumstances the Employment Tribunal finds that his entitlement to notice is the statutory period of one week under Section 86 of the Employment Rights Act 1996. The respondent did not provide any notice. In failing to provide notice the respondent is in breach of contract. The claimant is entitled to one weeks' pay as compensation in respect of the notice period. That is a sum of £634.62. That will be subject to the deduction of tax and National Insurance.
29. In relation to expenses the claimant explained that he had incurred expenses in purchasing materials for the jobs he was carrying out for the respondent in the period of July and August 2021. He produced a substantial number of invoices. However, some of these were not dated and some were duplicates. The Employment Tribunal was satisfied that there was evidence to support expenses incurred by the claimant on materials to a value of £1065.09.
30. The claimant also incurred expenses in relation to parking charges in carrying out his employment duties in the period of July and August 2021. The claimant also produced a substantial number of invoices – however again

there was some duplication and a number of invoices that related to periods after the end of his employment. The Employment Tribunal was satisfied that there was evidence to support expenses incurred by the claimant on parking to a value of £499.20.

- 5 31. The claimant was entitled under his contract of employment to be reimbursed for expenses incurred by him in the performance of his duties. The Employment Tribunal was satisfied that he was entitled to payment under his contract, as at the 29 October 2021 of £1564.29.

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Employment Judge: S Neilson
Date of Judgment: 25 April 2022
Entered in register: 27 April 2022

15 **and copied to parties**