



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100836/2022

Held via Cloud Video Platform (CVP) on 3 May 2022

Employment Judge: M Sutherland

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Colin Wightman

Claimant
In person

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Stockbridge Decorators Ltd

Respondent
No appearance

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the Respondent is ordered to pay the Claimant-

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1. unpaid wages in sum of £776 (gross) from which tax and national insurance contributions fall to be deducted.
2. holiday pay in sum of £1,045 (gross).
3. £1,088 (gross) in respect of a failure to issue written terms and conditions

REASONS

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1. The Claimant has lodged complaints for unlawful deductions from wages, for holiday pay, and for failure to issue a written statement of employment particulars.
2. The Claimant appeared on his own behalf. The Respondent did not appear despite successful contact having been made by the tribunal clerk with their named contact immediately prior to the hearing.

Findings of Fact

3. The Claimant was employed by the Respondent as a painter and decorator from 14 June 2021 to 29 October 2021.
4. The Claimant was advised that he would be employed to work for 38 hours a week, and be paid £16 an hour and time and half for any overtime. His gross-weekly wage of £608 was paid into his bank account weekly in arrears (in sum of £488.48 net).
5. The Claimant was not provided with any written statement of any of his terms and conditions of employment at any time during his employment despite having requested this on several occasions.
6. During the last two weeks of his employment the Claimant worked 7 hours of overtime for which he was not paid.
7. The Claimant terminated his contract with immediate effect (i.e. without notice) on 29 October 2021. The Claimant was not paid for the last week of his employment to 29 October 2021.
8. As at his termination date the Claimant had taken 2 days holiday for which he had been paid.

Observations on the evidence

9. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur.
10. There was no reason to doubt the credibility or reliability of the Claimant's evidence. He was measured and reasonable in his brief testimony which was consistent with his claim. He readily proffered testimony even where it was contrary to his own interests e.g. that he had taken holidays which had been paid. He also readily accepted certain parts of the Response where it was contrary to his interests e.g. in relation to his hours of work.

Relevant Law

- 30 *Unlawful deduction from wages*

11. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker so employed unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.
12. Under Section 13(3) ERA 1996 there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.

10 *Holiday pay*

13. Under Regulations 13 and 13A of the Working Time Regulations 1998 a worker is entitled to 5.6 weeks leave in each holiday year.
14. Under Regulation 14 a worker is entitled to a payment in lieu of holidays accrued during the holiday year but unused by the termination date.
- 15 15. In the absence of a relevant agreement the holiday year begins on the date when the employee's employment began.

Statement of terms and conditions

16. Section 1 of the ERA 1996 provides that an employee is entitled to receive a written statement of terms and conditions of employment within 2 months of starting work. Section 38 of the Employment Act 2002 provides that an employee is entitled to an award of 2 weeks' pay unless there are exceptional circumstances which would make an award unjust or inequitable. The tribunal may increase the award to 4 weeks' pay if considered just and equitable.

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Discussion and decision

Unlawful deduction from wages

17. The Claimant was due to be paid wages in respect of the last week of his employment in sum of £608 gross. The Claimant was also due to be paid 7 hours overtime in respect of the last two weeks of his employment in sum of £168 gross. The Claimant was not paid these wages and accordingly suffered an unlawful deduction from wages in sum of £776 gross from which tax and national insurance fall to be deducted.

Holiday pay

18. The Claimant is entitled to 5.6 weeks leave in each holiday year. The holiday year began at the start of his employment on 14 June 2021. Accordingly the Claimant had accrued 10.6 days holiday as at the termination date on 29 October 2021. The Claimant had taken 2 days holiday and accordingly was entitled to payment in lieu in respect of 8.6 days holiday namely £1,045 gross.

Failure to issue written statement of terms and conditions

19. The Claimant was not provided with any written statement of any of his terms and conditions of employment at any time during his employment despite having repeatedly requested this. Having regard to the small size of the employer and the short duration of employment it is considered just and equitable in all the circumstances to award 2 week's pay (subject to the statutory cap) namely £1,088.

Employment Judge: M Sutherland
Date of Judgment: 03 May 2022
Entered in register: 04 May 2022
and copied to parties