



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4101509/2022

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**Final Hearing Held by Cloud Video Platform on Monday 23 May 2022 at
11.00am and then on consideration of further written information**

Employment Judge Russell Bradley

Miss Rachel Dingwall

**Claimant
In person**

Skin HQ Limited

**Respondent
Not present
or represented
no ET3 form lodged**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is: -

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1. To declare that the claimant's claim that the respondent has made a deduction from her wages in respect of her salary for January 2022 in contravention of section 13 of the Employment Rights Act 1996 is well founded;
2. To order the respondent to pay to the claimant the sum of ONE THOUSAND NINE HUNDRED AND FORTY SEVEN POUNDS AND FORTY NINE PENCE (£1947.49) in respect of that deduction;

E.T. Z4 (WR)

3. To declare that the claimant's claim that the respondent has made a deduction from her wages in respect of pension contributions in November and December 2021 and January 2022 in contravention of section 13 of the Employment Rights Act 1996 is well founded; and
- 5 4. To order the respondent to pay to the claimant the sum of ONE HUNDRED AND SIXTY POUNDS AND TWENTY TWO PENCE (£160.22) in respect of that deduction.

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REASONS

Introduction

1. In an ET1 presented on 11 March 2022 the claimant made claims for notice pay, holiday pay, arrears of pay and "*other payments*". The notice of claim and of this hearing was sent to the respondent at the above address on
15 14 March. The notice advised that a response form required to be received at the Glasgow Tribunal centre by 11 April 2022. No ET3 form was lodged by that date or since. The notice advised that if no ET3 was received by then, and no extension of time had been applied for and given, the claim would proceed undefended. No extension has been sought. The hearing
20 before me therefore proceeded on the basis of an undefended claim.
2. The tribunal office wrote by email to the claimant on 27 April and on 11 and 20 May seeking further information. It would appear that the claimant did not receive or at least did not see all of those emails. She sent three emails on 21 May with further information. I had not seen any of them at
25 the start of the hearing. In the course of the hearing the claimant sent them to me via the CVP clerk. I agreed that following the conclusion of the hearing I would consider them in the context of her claims and of the evidence which she gave.
3. In discussion with her, the claimant complains about three matters. First,
30 she was not paid her net pay for the month of January 2022. Second, she believes that while the respondent deducted income tax and national

insurance contributions from her pay it did not pay them to HMRC. Third, she believes that while the respondent deducted pension contributions from her pay, it did not pay them to her pension provider. I advised the claimant that I would consider the complaints in the context of the material that she had emailed and of the jurisdictions which the tribunal has. The claimant confirmed that she did not have a claim for holiday pay.

The issues

4. The issues for determination were; (i) had the respondent failed to pay wages to the claimant for the month of January 2022 and if so to what remedy is she entitled? (ii) had the respondent made deductions from the claimant's salary in the name of pension contributions in the three months November 2021 to January 2022 and if so to what remedy is she entitled?

The evidence

5. I heard evidence from the claimant. I considered the various emails and attachments which she forwarded

Findings in fact

6. I found the following facts proved.

7. The claimant is Rachel Louisa Dingwall.

8. In terms of a written statement of terms and conditions of employment issued to the claimant on 19 October 2021, her employment began on 27 October 2021. She was employed as a laser and skincare therapist. The statement provided that; her normal place of work was SkinHQ, Ground Floor East, 26 East Dock Street, Dundee DD1 3EY; her normal hours of work were 40 per week; her salary was £21,000.00 per annum payable monthly by the last working day in arrears by BACS; there was an initial probationary period of six months; notice to terminate the contract to be provided by the claimant (after one month to the point of successful completion of the probationary period) was 1 week, and (on successful completion of the probationary period) was 6 weeks; and the respondent

operated a contributory pension scheme into which the claimant was to be “*auto enrolled*”.

9. On 30 November 2021 the respondent issued to the claimant a wage slip. It discloses a deduction from her gross pay of £63.00 for “*pension*”. It discloses a deduction from her gross pay of £209.20 for “*income tax*”. It discloses a deduction from her gross pay of £107.50 for “*national insurance*”.
10. On 31 December 2021 the respondent issued to the claimant a wage slip. It discloses a deduction from her gross pay of £46.92 for “*pension*”. It discloses a deduction from her gross pay of £128.80 for “*income tax*”. It discloses a deduction from her gross pay of £155.74 for “*national insurance*”.
11. On 22 January 2022 the claimant gave the respondent written notice to end the contract. As per that notice, her last working day was Sunday 30 January. The claimant worked her normal hours in January 2022 including during the period of notice.
12. On 31 January 2022 the respondent issued to the claimant a wage slip. It discloses a deduction from her gross pay of £50.30 for “*pension*”. It discloses a refund of income tax of £338.00. It discloses a deduction from her gross pay of £117.65 for “*national insurance*”. It shows net pay due to her of £1947.49.
13. The respondent has not paid any sum to the claimant for the month of January. The respondent has not paid to NEST (National Employment Savings Trust) any contributions in respect of her pension.
14. On 7 February the claimant emailed to info@skinhq.co.uk to query the fact that her salary for January had not been paid.
15. On 1 March the claimant started the early conciliation process. On 3 March ACAS issued a certificate. It named the respondent as the prospective respondent. Its address is as noted above.

16. On 19 March NEST wrote to the claimant to say that she had been enrolled in NEST from that date.

Comment on the evidence

17. The claimant's evidence was credible and reliable. She answered questions directly without hesitation or prevarication. She was able to explain lucidly the nature of her claim and her other complaints.

Submissions

18. The claimant did not make a submission. I decided the issues based on her evidence, oral and documentary.

The law

19. 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.”

20. Section 13 subsections (5) to (7) of the 1996 Act provide that:-

5 “(5) For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

10 (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

 (7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting ‘wages’ within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”

15 **Discussion and decision**

21. I accepted the claimant’s evidence that she was not paid any of her salary for January 2022. Her email of 7 February is contemporaneous evidence of that fact.

20 22. On the question of income tax, I make no separate award for the following reason. The claimant appears to be due a tax rebate on 31 January of £338.00. By that time, according to that payslip she had paid no tax in that tax year. That amount corresponds with the amounts deducted for income tax in the prior two months. If there were income tax due then she was to be reimbursed some (or most likely all) of it in January. My order for payment of wages for January therefore reflects the fact that the
25 respondent accepts that she is not liable to income tax. The amount of this order includes the £338.00 tax rebate.

30 23. On the issue of pension contributions, the contract between the parties set out that the claimant was to be automatically enrolled in a scheme for her benefit. But on the information available to me, the contract did not contain her consent for the respondent to make deductions from her pay of that benefit. In any event, I have found that the deductions made from her three

payslips ostensibly for this purpose have not been paid to NEST. I have ordered payment of the total (£160.22) on the basis that it was unlawfully deducted from the series of monthly payments due for November, December and January.

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Employment Judge:
Date of Judgment:
Date sent to parties:

R Bradley
01 June 2022
01 June 2022