



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102290/2022

Heard by means of CVP on 13 July 2022

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Employment Judge J Young

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Angelo Renuka Warnakulasuriyage

**Claimant
In person**

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Eve Fratelli Ltd

**Respondent
No appearance and
not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Employment Tribunal is that the respondent shall pay to the claimant:-

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- (i) the sum of **One Hundred and Ninety Six Pounds (£196)** under deduction of Income Tax and National Insurance being the amount due to the claimant in respect of unpaid wages;
- (ii) the sum of **One Thousand and Thirty Two Pounds and Fourteen Pence (£1032.14)** under deduction of Income Tax and National Insurance being the amount due to the claimant in respect of pay for holidays accrued but untaken at date of termination of employment;
- (iii) the sum of **Three Hundred and Fifty Six Pounds and Forty Pence (£356.40)** under deduction of Income Tax and National Insurance being the amount due to the claimant by the respondent in respect of

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their failure to provide notice of termination of employment to the claimant; and

- (iv) the sum of **One Thousand Four Hundred and Twenty Five Pounds and Sixty Pence (£1425.60)** being compensation under section 38 of the Employment Act 2002 for the failure by the respondent to provide a full and accurate written statement of particulars of employment to the claimant under section 1 of the Employment Rights Act 1996.

REASONS

10 Introduction

1. In this case the claimant presented a claim to the Employment Tribunal against Roma Ristorante (Vito Crolla) complaining that he had been dismissed due to a "*dispute regarding a deduction of wages*" and was due unpaid wages; damages for failure to provide him with the appropriate notice of termination of employment (notice pay); holiday pay due in respect of holidays accrued but untaken at date of termination of employment; and compensation for failure to be provided with a written statement of particulars of employment.
2. The complaint was sent to Roma Ristorante at 1 Speygate, Perth together with the prescribed Response Form for completion and return. Information was also given that the hearing on the complaint would take place on 13 July 2022 by means of CVP. No response was received.
3. Prior to the hearing contact was made with Vito Crolla of Roma Ristorante who stated that he would "*discuss with his partner*" whether attendance would be made at the hearing. He was provided with a link to join the hearing but no attendance or representation was made.

The hearing

4. At the hearing the claimant gave evidence and provided a bank statement showing payments of wages over the period 6 December 2021 – 24 January 2022 from Eve Fratelli Ltd.

5. Companies House information notes that Vito Crolla is a Director of Eve Fratelli Ltd having their registered office at 1 Speygate, Perth being the place of business of Roma Ristorante. It was established that pay to the claimant was made by Eve Fratelli Ltd and that the issues are truly
5 between the claimant and Eve Fratelli Ltd.

6. Rule 34 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 states:-

*“The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any
10 person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.”*

15 7. In this case it appeared that it was in the interests of justice to have the issues determined between the claimant and Eve Fratelli Ltd as the correct respondent. The director of the company Vito Crolla had received intimation of the complaint and information on the hearing. Eve Fratelli Ltd is substituted as respondent.

20 8. From the evidence provided and document produced I was able to make findings in fact on the issues.

Findings in fact

9. The claimant had continuous employment as a Chef at Roma Ristorante from 1 June 2021 until that employment was terminated with effect from
25 30 January 2022.

10. The claimant was not provided with a written statement of particulars of employment at any stage. He had requested a statement of terms and conditions when commencing employment and was told that that would be sent to him in “a few days”. However that was never received despite
30 the claimant sending an email to Mr Crolla reminding him of the failure together with a draft statement which the claimant had prepared but he received no reply.

11. The claimant was paid at the rate of £8.91 per hour. He worked with a colleague in the “*pizza section*”. His hours of work tended to vary. Generally, there was a requirement to work between the hours of 12 noon – 10pm Friday/Saturday each week and 4pm – 10pm Monday to Thursday each week.
12. He received payment of wages by payments of net sums due to him direct into his bank account. No payslips were provided. The Bank statement showed that payments came from Eve Fratelli Ltd.
13. The last payment of wages made to him was for the period to 24 January 2022. No payment was made in respect of his work in the period between 24 January and 30 January 2022. In that period he worked 22 hours being 9.30 hours on 28 January 2022; 7 hours on 29 January 2022 and 5.30 hours on 30 January 2022. At the hourly rate of pay the sum due as at 30 January 2022 was the gross sum of £196.
14. He worked continuously in the period of employment with holidays on 22 October 2021; 25 December 2021; 26 December 2021 and 1 January 2022.
15. When his employment was terminated he received no payment for holidays accrued but untaken in the period of employment.
16. Termination of his employment came about subsequent upon damage occurring to machinery in the “*pasta section*” which was not the place of work of the claimant. However Mr Crolla indicated that the claimant was required to pay for the damage and stated that there would be a deduction made from the claimant’s wages. The claimant took advice from the Citizens Advice Bureau on this matter and was told that as he had not been responsible for the damage there was no liability on him for payment. A dispute arose between the claimant and Mr Crolla on this issue and as a consequence the claimant was dismissed without notice on 30 January 2022.

Conclusions

Protection of wages

17. Under section 13 of the Employment Rights Act 1996 an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract. Alternatively the worker can signify in writing his agreement or consent to the making of a deduction. In this case there was no contractual term which authorised the respondent to make a deduction from wages for damage to any machinery. The claimant had not signified any consent to any deduction.
18. In any event there was no evidence from the respondent that the claimant had been responsible for any damage to any machinery.
19. I accepted that the claimant had worked 22 hours in the period between 24 January – 30 January 2022 and was therefore due a gross sum of £196 by way of an unauthorised deduction from wages. That sum is subject to Income Tax and National Insurance (if any).
20. The provisions within section 13 of the Employment Rights Act 1996 as to deduction from wages includes holiday pay being an emolument referable to the employment. Under regulation 14(1) and (2) of the Working Time Regulations 1998 (as amended) a worker is entitled to a payment in lieu of holidays where his employment is terminated during the course of a leave year and on the termination date the proportion of statutory annual leave he has taken is less than the proportion of the leave year that has expired.
21. In this case the claimant was entitled to 28 days' annual leave in the year commencing 1 June 2021. The proportion of the leave year which expired before the termination date was eight months. The claimant had taken four days' holiday in that period (22 October 2021; 25 December 2021; 26 December 2021 and 1 January 2022). The calculation of holidays due but untaken is therefore $(28 \times 0.66) - 4 = 14.48$.
22. I accepted that the average weekly hours worked by the claimant were 40 per week making eight hours per day. The hours of holiday pay due

therefore amount to $8 \times 14.48 = 115.84 \times \text{£}8.91 = \text{£}1032.14$. That is the gross sum due by way of pay for holidays due but untaken by the claimant to date of termination.

5 23. Under section 86 of the Employment Rights Act 1996 an employee is entitled to a period of one week's notice of termination of his employment if (as in this case) he has been continuously employed for one month or more. The section does not affect the right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party. As indicated there was no evidence of
10 any misconduct by the claimant in the termination of his employment. Accordingly he would be entitled to one week's notice of termination which was not given. He is entitled to damages for non-receipt of that notice period. His earnings in the period would be the net amount due to him and so the sum that should be paid is $\text{£}356.40$ under deduction of Income
15 Tax and National Insurance.

24. Under section 38 of the Employment Act 2002 a Tribunal must award compensation to an employee where upon a successful claim made under any of the Tribunal jurisdictions listed in Schedule 5 it becomes evident that the employer was in breach of its duty to provide a full and accurate
20 written particulars under section 1 of the Employment Rights Act 1996. The list of jurisdictions includes the issues in this case namely unauthorised deductions from wages; breach of contract arising on termination of employment and breach of the Working Time Regulations.

25 25. In this case no written particulars were provided to the claimant. The Tribunal in those circumstances must award the "*minimum amount*" of two weeks' pay and may if it considers it just and equitable in the circumstances to award the "*higher amount*" of four weeks' pay (section 38(2), (3) and (4)). It is only if there are exceptional circumstances which would make an award unjust or inequitable that no award is made.

30 26. In this case it would appear that the respondent has ignored calls for a written statement of employment particulars to be provided despite being provided with what might have been a suitable draft. Such particulars are important in identifying the conditions of employment and the true identity

of the employer. In the circumstances it would appear that the appropriate award is the higher amount of four weeks' pay being $4 \times \text{£}356.40 = \text{£}1425.60$ which is not subject to deduction of Income Tax and National Insurance as it is a compensation payment.

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10 Employment Judge: J Young
 Date of Judgement: 27 July 2022
 Date sent to parties: 29 July 2022