



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101471/2022

5 Held via Cloud Video Platform (CVP) in Glasgow on 1 November 2022

Employment Judge Tinnion

Mr Mehraan Ayub

Claimant  
In Person

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H7 Facilities Management Ltd

Respondent  
No appearance and  
No representation

### JUDGMENT REASONS

#### 15 Introduction

1. By a Judgment signed on 1 November 2022 following a final hearing on that date, the Tribunal held the Claimant's wages claim against the Respondent under s.13 of the Employment Rights Act 1996 to be well founded and ordered the Respondent to pay the Claimant the sum of £166.50, consisting of £135  
20 (wages for 26 November 2021 - 7.5 hours at £9/hour, 30 November 2021 – 7.5 hours at £9/hour) plus £31.50 (wages for 2 December 2021 – 3.5 hours at £9/hour).

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2. Reasons for the decision were given orally at the final hearing. On 4 November 2022, the Respondent (which did not lodge a timely ET3, and did not attend the final hearing) requested written reasons. This document provides those reasons.

#### Claim

3. By an ET1 presented on 4 March 2022, the Claimant presented a claim against the Respondent for unpaid wages earned during the brief period in  
30 which he states he was employed by it (26 November – 3 December 2021) as a Telesales Advisor.

4. The Respondent did not lodge a timely ET3 defending the claim. On 30 May 2022, the Tribunal wrote to the Respondent stating that if it wished to defend the claim it needed to submit an application for an extension of time for presenting a response accompanied by a draft of the response it wished to submit. On 10 June 2022, the Respondent applied for an extension of time to present a response, but omitted to provide a draft response. By letter dated 14 June 2022, the Tribunal wrote to the Respondent notifying it that the claim would proceed as undefended because it had not included a draft response.

### Findings

5. The final hearing was on 1 November 2022. The Claimant represented himself, and gave witness evidence on his own behalf. The Respondent was not represented at the final hearing, did not attend, and no witness attended the final hearing to give evidence on its behalf.
6. The Tribunal found the Claimant to be a credible witness who gave evidence in a plain, straightforward manner. The Tribunal makes the following findings on the civil balance of probabilities.
7. The Respondent provides facilities management services. The Claimant applied for a post with the Respondent, and on 23 November 2021 was duly interviewed by Ms. Sylwia Kowalczyk at 70 Hutcheson Street Glasgow G1 1SH (the Respondent's registered office address at the time). Ms. Kowalczyk worked for the Respondent in its Human Resources department and described herself as an HR Executive. In November 2021, Ms. Kowalczyk's email address domain name was "@h7fm.com", and her email address contained the following link <www.h7fm.com>.
8. By an email to the Claimant on 25 November 2021 (at 10:56), Ms. Kowalczyk made an offer of employment to the Claimant on the following terms:
1. *Start day 26.11.2021 at 9am.*
  2. *Pay rate £9.00 per hour.*

3. *FTE 0.52. Work patter[n] Tuesdays 12.00 to 19.30 and Friday 09.00 to 16.30, full-time hours (total 15) and Thursday 16.00 to 19.30 (3.5 hours).*
4. *Holiday entitlement 10.5 days not including Bank Holidays.*
5. *Pay every month last day of the working month day. Payroll cut off day every 25<sup>th</sup>.*  
*Please kindly confirm acceptance.*
9. Nothing in Ms. Kowalczyk's email suggested her offer of employment was made on behalf of a third party. By reply email on 26 November 2021, the Claimant accepted her offer in the following terms: "*I accept this offer.*" At this point, a legally binding contract of employment came into force between the Claimant and Respondent on the terms stated in Ms. Kowalczyk's email.
10. On Friday, 26 November 2021 the Claimant worked for the Respondent for 7.5 hours. On Tuesday, 30 November 2021 the Claimant worked a further 7.5 hours for the Respondent. On Thursday, 2 December 2021 the Claimant worked a further 3.5 hours for the Respondent.
11. By email on Friday, 3 December 2021, Ms. Kowalczyk sent an email to the Claimant stating: "*Unfortunately due to the business changes and restructure as per service deliver unexpected end of cooperation, Verified Group will no longer require you to work for them with an effective date 03.12.2021. Sincerely apologies for any inconvenience this might cause. All rem[a]ining holiday earn during your employment and hours worked will be paid to you with a December payroll. We wish you all the best, was nice to have you around.*"
12. In the event, the Respondent did not pay the Claimant for any of the work he did.
13. On about 16 May 2022, the Respondent changed its registered office address from 70 Hutcheson Street, Glasgow to 10 Payne Street, Glasgow G4 0LF.

**Discussion and conclusions**

14. First, the Tribunal is satisfied the Claimant's contract of employment was with the Respondent. Had it been Ms. Kowalczyk's intent to offer him a contract of employment with a third party, not the Respondent, her email offering employment to the Claimant would – and should - have said so. It did not. Nothing in her email offering employment suggested the Claimant's employer was to be anyone other than the Respondent. Given her email domain name and the link to the Respondent's website on her email, the Claimant assumed – and was entitled to assume – that Ms. Kowalczyk's offer of employment was made for and on behalf of the Respondent. The Tribunal also takes into consideration the fact that the Claimant's 23 November 2021 interview was conducted at the Respondent's registered office address in November 2021.
15. Second, the Tribunal is satisfied the Claimant worked the hours of work he claims on the three dates mentioned, which are consistent with the shifts identified in the contract terms Ms. Kowalczyk offered the Claimant.
16. Third, the Tribunal is satisfied the Respondent did not pay the Claimant the contractually agreed rate of £9/hour (or any lesser sum) for any of the hours he worked on either the last working day of November 2021, the last working day of December 2021, or at any subsequent time.
17. Fourth, there is no evidence which suggests the Respondent's failure to pay the Claimant the wages he was due for the hours he worked was required or authorised to be made by virtue of a statutory provision or a relevant provision of his contract of employment. There is no evidence the Claimant previously signified in writing his agreement or consent to the Respondent's omission to pay him his wages due on the dates those wages were due for payment.
18. Given these findings, the Claimant's claim for unpaid wages under s.13 of the Employment Rights Act 1996 is well-founded, and the Claimant was entitled to the remedy stated in the Judgment signed on 1 November 2022.

**NOTE**

Judgments are published online after they have been sent to the parties.

<b>Employment Judge:</b>	<b>A Tinnion</b>
<b>Date of Judgment:</b>	<b>16 November 2022</b>
<b>Entered in register:</b>	<b>17 November 2022</b>
<b>and copied to parties</b>	