



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105238/2022

Hearing held by CVP on 13 December 2022

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Employment Judge McFatridge

Mr Gabriel Iancu

**Claimant
In person**

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Thornhill Leisure Ltd

**Respondent
Not present or
represented
(no ET3 lodged)**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that

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1. The respondent unlawfully withheld wages from the claimant in the sum of One Thousand, One Hundred and Seventy Three Pounds and Ninety Three Pence (£1173.93). The respondent shall pay to the claimant the sum of £1173.93 in respect thereof.
 2. As at the date of termination of employment the claimant was due the sum of One Thousand, One Hundred and One Pounds and Six Pence (£1101.06) by the respondent in respect of holidays accrued but untaken as at the date of termination. The respondent shall pay this sum to the claimant.
 3. The respondent shall pay to the claimant the sum of Three Hundred and Sixty Seven Pounds and Two Pence (£367.02) as damages for breach of contract (failure to give statutory notice of termination).

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E.T. Z4 (WR)

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he was due various payments following the termination of his employment by the respondent. The respondent did not lodge a response within the statutory period. The claimant was asked to provide more information relating to his claim and provided various pay slips however a Legal Officer decided that it would not be appropriate to issue a Rule 21 judgment and the matter proceeded to a hearing. At the hearing the claimant gave evidence on his own behalf. He referred to various documents which he had lodged with the Tribunal which were contained in the Tribunal file. On the basis of the evidence and the productions I found the following essential facts relating to the matter before me to be proved.

Findings in fact

2. The claimant commenced employment with the respondent on 28 October 2021. He was employed as Shift Manager at the Riverside Inn. The claimant was paid monthly based on the hours worked during the previous month. He was paid mainly at the rate of £10 per hour but on occasions would receive pay at the rate of £11 per hour. He never received any explanation as to why this was. The claimant lodged pay slips which showed that on 29 November he was paid the sum of £1315.48 gross (£1275.70 net) for the period 21 October to 20 November 2021. On 29 December he was paid the sum of £1612.05 gross (£1559.15 net) for the period from 21 November to 20 December. On 28 January he was paid the sum of £1075.13 gross (£1052.34 net) for the period from 21 December 2021 to 20 January 2022.
3. On 28 February 2022 he was paid the sum of £1776.97 gross (£1465.70 net) for the period from 21 January to 20 February 2022.
4. On 28 March 2022 he was paid the sum of £863.73 gross (£848.52 net) for the period from 21 February to 20 March. He then received another pay slip which covered a period when the respondent were changing the base period. This was paid on 1 April and was for the period between

27 February and 26 March. The claimant was paid £330.47 gross (£314.81 net). On 1 May 2022 the claimant was paid for the period from 27 March 2022 to 26 April 2022. He received the sum of £1843 gross (£1776.84 net).

- 5 5. The claimant worked between 26 April and 8 May. He was due to have 9 and 10 May as his regular rota-ed days off. Shortly before closing time on 8 May he was approached by two of the directors of the business. They advised him that they had been in negotiations with the new owners of the premises with a view to continuing the business but these negotiations had fallen through. They told him that as a result he would be dismissed from 10 May.
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6. The claimant was told that he would be paid his entitlements at the end of the month.
7. The respondent provided the claimant with access to an online platform called Workbook on which he could receive pay slips and information about rotas etc. On 9 May a letter appeared on this address to the claimant confirming that he was being made redundant as from 10 May.
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8. A further pay slip appeared on this platform which noted that the claimant's employment had ended on 11 May and indicated that he was due gross earnings of £1092.71 (£1173.93 net) for the period from 27 April to 26 May 2022. This pay slip was in respect of the hours worked by the claimant from 26 April until the end of his employment. Although the claimant understood that he was to be paid the net sum of £1173.93 in respect of these wages he did not in fact ever receive payment of this sum into his bank account.
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9. During the course of his employment the claimant's total earnings amounted to £9909.54 gross and (£8836.55 net). The claimant worked for a total of 27 weeks. The claimant's gross weekly pay was therefore £367.02. His net weekly pay was £327.28. The claimant did not take any paid leave during the period of his employment.
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Observation on the evidence

10. I had no hesitation in accepting the claimant's evidence as truthful. His claim was based on the information contained in his pay slips which were lodged. I was satisfied on the basis of his evidence that although he had received his final pay slip he had not in fact received the money. The pay slip itself did not purport to contain any payment in respect of notice pay or holiday pay and was based simply on the hours worked together with a small tax rebate.

Discussion and decision

11. The claimant claimed in respect of unlawful deduction of wages, holiday pay and notice pay.

12. I was satisfied on the basis of the evidence that the claimant was due £1173.93 in respect of his wages for the hours worked from April onwards. This was the sum brought down in his final pay slip. The claimant was not paid this. I considered it established that the respondent had unlawfully withheld these wages and have made a declaration to this effect and ordered the respondent to pay these to the claimant.

13. With regard to holiday pay I understood the claimant's entitlement to holiday pay to be based on the Working Time Regulations. In terms of regulation 14 a worker whose employment is terminated during the course of his leave year is entitled to compensation for any annual leave accrued but untaken. The claimant was entitled to 28 days' leave during the course of a full year. The leave year ran from the date of the commencement of the claimant's employment on 28 October to 27 October in the following year. The claimant was entitled to 15 days' leave for the period from 28 October to 10 May 2022. This equates to three weeks' pay. I have awarded this at the gross rate since the net pay figures taken from the pay slips include various tax rebates. Any figure I used for net pay is likely to be inaccurate. The respondent will be entitled to deduct from the gross amount awarded any tax or national insurance properly due. The claimant's gross weekly pay was £367 and he is therefore entitled to £1101.06 (3 x 367) in respect of leave accrued but untaken as at the date of termination of his employment.

14. The claimant was entitled to one week's notice of termination of employment in terms of section 86 of the Employment Rights Act 1996. I was satisfied on the basis of the evidence that he did not receive this notice. The claimant is entitled to payment of one week's pay as compensation for this breach of contract. Again, I have awarded this gross. The claimant is entitled to £367.02 in respect of damages for breach of contract (failure to pay notice pay).

15. As noted above the compensation for holiday pay and failure to pay notice have been awarded gross. The respondent shall be entitled to deduct from these gross sums any amount which requires to be paid to HMRC in respect of PAYE and national insurance but that only provided that

- (1) they provide a calculation to the claimant showing the amount of such deductions;
- (2) they forthwith make payment of any sums so deducted to HMRC; and
- (3) if asked they provide proof to the claimant that such payments have been made within 14 days of being asked for this.

Employment Judge: I McFatridge
Date of Judgment: 22nd December 2022
Date issued to parties: 22nd December 2022