



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

5

**Judgment of the Employment Tribunal in Case No: 4104879/2022 Heard at
Edinburgh, on the Cloud Based Video Platform, on the 10th of November
2022**

10

Employment Judge J G d'Inverno

15

Ms Sophie Archer

**Claimant
In Person**

20

ABR Training Limited

**Respondent
Represented by:
Susan Mackinnon -
Director**

25

30

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

35

(First) That the claimant worked on all of the dates itemised on the
“claimant’s Schedule”.

(Second) That the claimant had, in the course of her employment
entitlement in law to receive wages in the gross total sum brought out
in the Schedule of £3,998.78. •

5 **(Third)** That the £400 payment made by the respondent's Director Ms Mackinnon to the claimant on the 31st of March 2022 was made in her capacity as agent of the respondent and was a payment to account of wages.

10 **(Fourth)** That the £400 payment of 31st March falls to be regarded as reducing the sums withheld by the respondent in the name of wages and owed to the claimant in the name of wages, for the purposes of sections 13 and 14 of the Employment Rights Act 1996 and thus reducing the amount of any unauthorised deduction otherwise made from the claimant's wages.

15 (Fifth) That in the period 1st January to the 15th June 2022 the respondent made an unauthorised deduction from the claimant's wages in the sum of £2,786.78 gross.

20 **(Sixth)** That the respondent shall pay to the claimant the sum of £2,786.78 being a sum equivalent to the amount of the unauthorised deduction made from the claimant's wages.

REASONS

25 **Background**

1. The Final Hearing in this case was fixed for the determination of the claimant's claim for arrears of wages, which was registered by the Tribunal as a complaint of unauthorised deduction from wages contrary to the provisions
30 of section 13 of the Employment Rights Act 1996 ("ERA").
2. The claimant appeared in person. The Respondent Company was represented by Ms Mackinnon, its Director. Each of the principal parties gave

evidence in chief, on oath or on affirmation, and answered questions put in cross examination, and by the Tribunal.

Adjustments

5

3. The claimant had intimated that she suffered from anxiety. The respondent had intimated that she suffered from ADHD, albeit that she had also advised in advance of the Hearing that she did not anticipate that it would impact upon her ability to participate in and conduct the Hearing on behalf of the respondent. In the circumstances I conducted the proceedings in a less formal and more conversational form than would normally be the case repeating questions and directions when required to ensure that parties understood them and had sufficient opportunity to respond. I administered the affirmation to both parties at the outset of the Hearing so that when, something said by them fell, in my assessment, into the category of the relevant evidence, I was able to accord it that quality.

10

15

20

25

4. Each of the parties had lodged a bundle of documents to some of which reference was made in the course of evidence and or submission. The claimant's bundle contained a Schedule ("the claimant's Schedule") or ("the Schedule") setting out, by reference to date and hours worked the amounts of money which she claimed by way of arrears of wages (unauthorised deduction). Reference was made to the Schedule by both parties and by the Tribunal in the course of the Hearing, and it is by reference to and adjustment of it that the sums due as set out in the Tribunal's Judgment are calculated.

30

5. On the documentary and oral evidence presented by, and on the submissions of, parties, the Tribunal made the following essential Findings in Fact, restricted to those necessary for the determination of the issues; and, on the oral confirmation of parties made under affirmation in the course of Case Management Discussion conducted at the outset of the Hearing, the Tribunal records the following matters as agreed between the parties as binding upon the Tribunal for the purposes of the Hearing."

Case Management Discussion

6. In the course of Case Management Discussion conducted at the outset of the Hearing, the following matters were confirmed and are recorded as being the subject of agreement between the parties, binding upon the Tribunal for the purposes of the Hearing:-

(a) The claimant's dates of employment with the respondent were from 11th of January 2022 until 15th June 2022, on which-latter date the claimant resigned.

(b) During the period of her employment, the claimant was entitled to be paid for hours worked by her at the gross National Minimum Wage rate of £8.91 per hour and from and after the 1st of April the increased gross National Minimum Wage rate of £9.50 per hour.

(c) The claimant claims payment for hours worked, as per the Schedule produced and relied upon her, covering the period of her employment 11th of January to 15th June 2022 in a total sum of £3,998.78 gross from which there falls to be deducted the sum of £120 also shown on the Schedule as received by her on the 6th of June 2022, and which brings out a gross balance of arrears of wages claimed in terms of the Schedule of £3,878.78.

(d) During the course of the claimant's employment, and in addition to the £120 paid on the 6th of June 2022 for which credit is already given by the claimant in the Schedule, the respondent made payment to the claimant of a further £1,212 as follows:-

(i) On the 31st of March 2022, £400 which the respondent asserts was a payment to account of wages and the claimant asserts was a personal loan falling outwith the scope of her wages.

- (ii) On the 14th of April 2022, £100, agreed by both parties as a payment to account of wages.
- 5 (iii) On the 26th of April 2022, £237.50, again accepted by both parties as payment to account of wages.
- (iv) 9th of May 2022, £237.50 again accepted by both parties as payment to account of wages.
- 10 (v) 25th of May 2022, £57 accepted by both parties as payment to account of wages.
- (vi) 3rd of June 2022, £120 accepted by both parties as payment to account of wages.
- 15 (vii) 26th of March 2022, £60 accepted by both parties as payment to account of wages.
- 20 (e) Of the £1,212 of additional payments made and received, parties are agreed that the respondent falls to be given credit for the sum of £812 as payment to account of wages.
- 25 (f) In relation to the remaining £400 the respondent asserts that she should likewise be given credit for that same as a payment to account of wages. The claimant asserts that the £400 was a personal loan, made to her by the respondent *“to be repaid once her arrears of wages was sorted out”* and thus, in the claimant's assertion, the sum falls to be regarded as forming part of an unauthorised deduction from wages which the claimant had legal entitlement to be paid, for the hours which she worked.
- 30

- 5
- (g) That the claimant had entitlement in law to be paid for the hours worked and in the “salary due” amounts which are specified in the Claimant’s Schedule against those dates, on 11, 12, 14, 18 and 19 January 2022, in the total gross amount of **£338.58**.
- 10
- (h) That the claimant had entitlement in law to be paid for the hours worked and in the “salary due” amounts which are shown in the Claimant’s Schedule, on and against the dates, 25, 26, and 28 January 2022 in the total gross amount of **£267.30**.
- 15
- (i) That the claimant had entitlement in law to be paid for hours worked and in the “salary due” amounts shown in the claimant’s Schedule on and against the following dates; 11, 15 and 16 March 2022; in the total gross amount of **£196.02**.
- 20
- (j) That the claimant had entitlement in law to be paid for the hours worked and in the “salary due” amounts shown in the claimant’s Schedule on and against the following dates; 29 and 30th March, 1st, 5th, 6th and 8th April 2022, in the total gross amount of **£408.56**.
- 25
- (k) That the claimant had entitlement in law to be paid for hours worked and in the amounts shown in the claimant’s Schedule on and against the following dates; 22, 26, 27 and 29 April, and 3, 4, 6, 10, 11, 13, 17, 18, 20, 25 and 26 May 2022 in the total gross amount of £956.
- 30
- (l) The total gross amount, as brought out in the claimant’s Schedule, which parties are agreed for the purposes of the Hearing the claimant had entitlement in law to be paid for, is **£2,161.46**.

- (m) The remainder of the wages claimed in terms of the claimant's Schedule were put in dispute by the respondent.
- (n) The sole basis upon which the respondent denied the claimant's entitlement to be paid in respect of those hours claimed was the respondent's assertion that the claimant did not work on those days, or at least the respondent's adoption of the position of putting the claimant to her proof that she had worked on those days.
- (o) It was a matter of agreement between the parties that in the event that the Tribunal were to hold, on the preponderance of the evidence and on the balance of probabilities, that the claimant had worked on any of the disputed dates, the claimant would be entitled to the wages claimed, the "salary due" amounts set out in the claimant's Schedule against any particular date.
- (p) That the claimant had no legal entitlement to be paid for hours which she did not work.
- (q) That the asserted "total outstanding pay" figure of £3,878.78 brought out in the claimant's Schedule is an arithmetically accurate total of the individual amounts claimed for and shown against itemised dates, in the penultimate column of the Schedule, under deduction of the £120 payment also noted in the Schedule as made and received on 6/6/2022),
- (r) That insofar as the Tribunal determines that the claimant has established, on the balance of probabilities that she worked on any of the dates disputed by the respondent, the claimant will have had and will have legal entitlement to be paid in the "salary due" gross amount shown in the penultimate column of the Schedule against any such particular date.

(s) The Schedule comprises columns under the following heading:

- 5 • the week number,
- the date on which the claimant worked,
- the shift time from “ -to”, the total hours worked in the shift,
- the gross hourly rate of pay,
- the “salary due” for the worked hours,
- 10 • the salary paid,
- the date upon which any payment was made and,
- a comment column

The Issues

15

7. The agreed issues for determination by the Tribunal were accordingly:-

20 **(First)** Whether the claimant worked on all or any of the dates itemised on the Schedule other than those recorded, at paragraphs 5(g) to (k) inclusive above, as dates upon which it was agreed that the claimant had worked.

25 **(Second)** In respect of any of the disputed dates upon which the Tribunal determined the claimant had worked, confirmation of the total gross sums, by way of arrears of wages, in addition to the £2,161.46 accorded at paragraph (5(l)) above, to which the claimant had entitlement.

30 **(Third)** Whether the accepted £400 payment made by the respondent’s Director Ms Mackinnon to the claimant on 31st March 2022 was made by her acting in the capacity of agent of the respondent, as a payment to account of wages, as is asserted by the respondent; or, alternatively, as is asserted by the claimant, was the

payment a personal loan made by Ms Mackinnon, in a personal capacity, to the claimant to be repaid once the claimant's arrears of wages "*had been sorted out*", as is asserted by the claimant and thus,

5

(Fourth) Does the £400 payment fall to be regarded as reducing the sums to which the claimant otherwise had entitlement to in the name of wages or, alternatively, is it a separate matter falling outwith the scope of sections 13 and 14 of the Employment Rights Act 1996 and thus, does not fall to be regarded as reducing the amount of any wages withheld, or unauthorised deduction made, from the claimant's wages.

10

(Fifth) Did the respondent make an unauthorised deduction, contrary to the provisions of section 13 of the ERA, from the claimant's wages in the period 1st January to 15th June 2022, and if so in what gross amount.

15

(Sixth) In the event that the respondent did so make a deduction from the claimant's wages in what amount and in what terms should an Order be made by the Tribunal directing the respondent to make payment to the claimant.

20

The Applicable Law

25

8. Section 13 of the Employment Rights Act 1996 confers upon employees a right not to suffer "unauthorised deductions" from their wages made by their employer. The effect of that provision is to put wages into a protected category and prevents an employer from operating the otherwise normal contractual rights of "compensatio" (i.e. the right to set off against the employer's obligation to pay wages to the claimant, debts owed by the claimant to the employer, except where the employee has given prior written consent to any deduction from (withholding of) wages.

30

9. The definition of wages for the purposes of section 13 protection is wide and there is no question but that the payments in dispute in this case fall within that definition.
- 5 10. In order to trigger the protection set out in section 13 an employee must first establish that they had some entitlement in law, whether in contract or otherwise, to the disputed amounts of wages.
- io 11. It is a matter of agreement between the parties, binding upon the Tribunal for the purposes of hearing that the entitlement in law which the claimant asserts is one which will arise out of her having worked on the disputed days in question. In the event that the claimant succeeds in establishing that she worked on any of those dates, it is accepted by the respondent that she had entitlement in law to be paid for the hours worked and in the “salary due”
15 amounts set out in the Schedule against those dates. In the event that the claimant fails to establish that she worked on any of the disputed dates, it is accepted by the claimant that her asserted right to payment falls away.

Onus of Proof

20

12. The onus of proof sits with the claimant to establish on the balance of probabilities and upon the Treponderance of the evidence, that she did work on each or any of the disputed dates, that is to say to establish on the evidence that it is more likely than not that she did so work. The claimant is able to discharge that burden by reason of her own evidence if it is accepted by the Tribunal as credible and sufficiently reliable in relation to any disputed date.
13. The evidence presented to the Tribunal comprised documents lodged by each party including variously; extracts from social media postings, e-mails, the first page of the claimant’s terms and conditions of employment relating, at least, to the first period of her employment and e-mails. Oral evidence was given on oath or on affirmation by each of the claimant and the respondent’s representative.

Findings in Fact

On the oral and documentary evidence presented I made the following additional

5 Findings in Fact:

14. The Respondent Company carried on its businesses during the period of the claimant's employment, variously from 2 premises, the first in Causeyside and the second in Glenburn Road.
- 10
15. The cessation of the provision of all services by the respondent from its first premises, overlapped with the opening, principally for renovation but also concurrently the provision of some services, of its second premises.
- 15
16. The claimant worked on all of the dates itemised on the claimant's Schedule.
17. The claimant had, in the course of her employment, entitlement in law to receive wages in the gross total sum of £3,998.78 which is brought out in the claimant's Schedule.
- 20
18. The £400 payment, made by the respondent's Director, Ms Mackinnon, to the claimant on the 31st of March 2022, was made by her in her capacity as agent of the respondent and was a payment to account of the claimant's wages.
- 25
19. The £400 payment of 31st March falls to be regarded as reducing the sums withheld by the respondent in the name of wages and owed to the claimant in the name of wages, for the purposes of sections 13 and 14 of the Employment Rights Act 1996 and thus, reducing the amount of any
- 30
- unauthorised deduction otherwise made from the claimant's wages.
20. That in the period 1st January to 15th June 2022 the respondent made an unauthorised deduction from the claimant's wages in the sum of £2,786.78 gross.

21. That the respondent shall pay to the claimant the sum of £2,786.78 (TWO THOUSAND SEVEN HUNDRED AND EIGHTY SIX POUNDS AND SEVENTY EIGHT PENCE) being a sum equivalent to the amount of the unauthorised deduction made from the claimant's wages.

Submissions of the Parties

22. The claimant submitted that the Tribunal should be satisfied as to the accuracy of the record of the days upon which she had worked, as per the Schedule, because; these had been linked to her necessarily placing her child in nursery, that she had kept rolling contemporaneous note of the days and hours which she had worked, that she was able to account for what she did when working, that the respondent's representative's position that the claimant had not worked on the disputed days appeared to be based upon general assertions such as the premises were only open for refurbishment, or were closed because of flood damage but that these covered periods where the respondent's representative herself was only present some of the time and failed to take account of the fact that for a period of time, during which the new premises were being refurbished the respondent continued to carry on business variously from both premises. The claimant accepted that there were occasions on which both she and the respondent's representative were present in the premises these being occasions in which she, the claimant, asserted that she was there and was working and the respondent's representative asserted that she was not. The claimant accepted that in relation to these instances, and neither party accepting that they might be mistaken, it must follow that either she or the respondent's representative was not telling the truth. In relation to such circumstances, and for the reasons set out above, she invited the Tribunal to conclude that she, the claimant, was being truthful and to accept her evidence as sufficient to establish that she was working.

23. The respondent's representative submitted that all of the claimant's evidence should be disregarded as untruthful because she "*had committed perjury*"

when in her ET1 she had failed to narrate the payments which she had received from the respondent during her period of employment which payments she now acknowledged she had received. On that basis the respondent's representative invited the Tribunal to regard the claimant as a wholly untruthful witness and to exclude her evidence on that basis and, that absent that evidence to hold that she was unable to prove that she had worked on the disputed dates. She also asserted that by the dates in question the person whom the claimant indicated was supervising her in the respondent's representative's absence had opened her own business and had commenced trading in it - a position not necessarily incompatible with the claimant's version of events.

Assessment of the Evidence and Discussion and Disposal

24. Averments (details of claim) which appear in an initiating Application ET1 are not made on oath or on affirmation and where inaccurate or shown to be wrong do not constitute commission of the crime of perjury. In answering questions in cross examination in terms of which she was accused "committing perjury", the claimant gave an explanation as to how she had come to not specify at the stage of initiating her claim all of the payments, that is the payments other than the £120 set out in the Schedule, which she had received. She went on to explain that from the point at which the respondent set out the assertion in its Response Form ET3, the claimant in every communication with the respondent and the Tribunal had consistently acknowledged the payments which the respondent had made and which she had received to account of wages and had also acknowledged receipt of the £400 payment which in her assertion had been made to her by the respondent's representative as a personal loan.

25. I rejected the respondent's representative's submission that the claimant had committed perjury and therefore that all of her evidence fell to be discarded as untruthful, as being unfounded in law. I considered that the claimant gave her evidence in a consistent and forthright manner, being able to provide detail when asked both by the Tribunal and in cross examination of who was

present with her in the premises on particular disputed dates, what work or activity she herself was engaged in and who was supervising or mentoring her with the exception of in relation to one disputed group of dates.

5 26. I accepted the claimant's evidence as truthful and, with one exception in relation to the particular set of dates, sufficiently reliable at first instance to discharge the onus of proof. Particularly so when apparently supported by circumstantial evidence and or inconsistencies in the respondent's representative's evidence and in relation to matters in respect of which I did
io not consider the respondent's representative's evidence sufficiently strong or reliable to undermine the reliability or credibility of the claimant's evidence.

27. I found the respondent's representative's evidence to be vague and unreliable in respect of the beginning and end of the time periods which she
15 put in dispute. I found the reasons given by her in evidence for concluding that the claimant "could not" have worked on certain of the dates in dispute to be, general, in parts unreliable, and in parts not fundamentally inconsistent with the claimant's version of events and thus, not excluding the conclusion that the claimant could have worked on those dates, if the Tribunal found her
20 evidence to be credible in that regard.

(28....The claimant seeks and the respondent disputes entitlement to payment for hours worked on the 21st of January 2022 in the sum of £53.46. The respondent's basis for asserting that the claimant did not work was that the
25 premises were closed on that day due to flooding/flood damage.

| 29. The claimant seeks payment and the respondent disputes entitlement to the same, for hours worked on the 1st, 2nd, 4th, 8th and 9th of March during which she avers she worked partly at the Causeyside Street premises and partly at
30 the Glenburn Street premises. The respondent's basis for asserting that the claimant did not work on those dates was that the Causeyside Street premises was closed from the 15th of January to the 11th of February and thereafter from the 2nd of March to the 25th of March with the exception of two initial days when it was open for the purposes of assessing remedial works
|
|
|
t

required. I found the respondent's position in evidence in this regard to be inconsistent with her own earlier evidence, corroborated by that of the claimant, that working premises were open and available to the claimant and the claimant did work on the 11th, 12th, 14th, 18th and 19th and 25th, 26th and 28th of January and on the 4th, 8th, 9th and 11th of February 2022 and further
5 inconsistent with the respondent's representative's earlier evidence that the premises were open from 11th February to the 1st of March inclusive, a position corroborated by the claimant's evidence which was to the effect that she was in the premises and working on the 15th, 16th, 18th, 22nd, 23rd and
10 25th February 2022.

30. On the preponderance of the evidence I considered it more likely than not that the claimant's version of events was the correct one and that the claimant had discharged her burden of proof and established, on the balance
15 of probabilities, that she, the claimant, had worked on the 21st of January 2022 and on the 1st, 2nd, 4th, 8th, 9th, 11th, 15th, 16th, 18th, 22nd, 23rd, and 25th February and, as per the Schedule had entitlement to "salary due" amounts for those dates, as per the Schedule in the total sum of £731.22 gross.

20 31. The claimant seeks payment for and the respondent denies liability to pay, for hours allegedly worked on the 1st, 2nd, 4th, 8th and 9th March 2022 and on the 18th, 22nd, 23rd and 25th March 2022. The respondent's reasons in evidence for denying liability were variously that the new premises at Glenburn Road were open only for renovation works in the period 2nd to 25th March inclusive
25 that only she, the respondent's representative held keys for the new premises, and that in that period she was only in the premises for part of the day having various health issues and medical appointments to keep and, that the person whom the claimant asserted supervised her on occasions when the respondent's representative was not present had, as at the 1st of March,
30 opened her own business in different premises and had commenced trading that business. I considered that evidence to be variously inconsistent with and not incompatible with the claimant's evidence that for a period of time the respondent continued to provide business services from the Causeyside premises while the Glenburn Road premises were being renovated, that in

the period some services were provided from each of the premises, that regardless of whether the individual in question had started their own business in or about the beginning of March, that individual continued to help the respondent in her business and in particular supervised the claimant when the respondent's representative wasn't present, with the social media posting lodged by the claimant praising the claimant's nail service provided to her on the 11th of March in respect of the date of which I accepted the claimant's evidence as both credible and reliable, and inconsistent with the respondent's representative's own evidence that she remembered assisting the claimant with that particular appointment in the Causeyside Street premises, a matter corroborated by the claimant's evidence, albeit that the respondent's representative speculated that that appointment must have been several weeks earlier that is to say some time in February.

32. On the preponderance of the evidence I considered it more probable than less that the claimant's version of events was correct. I considered the respondent's evidence in relation to the period as insufficient to undermine the credibility and reliability of the claimant. I hold that the claimant had discharged her burden of proof in respect of establishing and has established that she worked on each of the disputed dates set out in the Schedule and further for the hours set out against those dates in the Schedule. I accordingly hold that the claimant had entitlement to the "salary due amounts" appearing against those dates, in the total additional sum of £588.06 gross.

25

33. The claimant seeks payment in respect of, and the respondent disputes liability to pay, for hours allegedly worked on the 12th, 13th, 15th, 19th and 20th April 2022.

34. The respondent's reason for asserting that the claimant could not have worked on those dates was her assertion that from the 2nd of April to the 22nd of April inclusive the premises at Glenburn Road and that the claimant did not hold keys for the premises and that accordingly no business services could have been provided by the respondent in that period. I found the

respondent's position in submission to be inconsistent with the respondent's representative's own evidence that in that period she opened up the premises, in the morning but frequently did not remain due to health issues and medical appointments and with her own evidence and acceptance that the claimant did in fact work not only on the 29th and 30th of March but also on the 1st, 5th, 6th, and 8th of April 2022, all matters consistent with and corroborated by the claimant's evidence. On the other hand I did not consider the claimant's version of events to be fundamentally incompatible with the respondent's evidence such as to require the conclusion that the claimant could not have worked during the period.

35. On the preponderance of the evidence I considered it more probable than less that the claimant's version of events was the correct one. I considered that the respondent's evidence was insufficiently specific and insufficiently reliable to undermine that of the claimant's which I accepted as both credible and reliable. On the preponderance of the evidence I considered that it was more probable than less, that the claimant's version of events was the correct one and I held on the balance of probabilities, that the claimant had discharged her burden of proof and established that she had worked on the 12th, 13th, 15th, 19th and 20th April 2022, for the hours shown against those dates in the Schedule and that she thus had entitlement to be paid the "salary due" figures brought out, in the Schedule, against each of those dates in a total additional amount of £361 gross.

36. The remaining elements in dispute relate to hours allegedly worked by the claimant on the 1st and 2nd of June 2022. In respect of this element the respondent's representative's reason for maintaining that the claimant could not have worked on those days was firstly that she remembers having asked the claimant some time in advance if she would work on those days and the claimant had refused and secondly that she believes that she herself was present in the premises on both those days and remembers that the claimant was not. She did not consider in relation to that latter reason, that there was any scope for her misremembering the position. The claimant, for her part, agreed that the respondent's representative was present in the premises for

part of both of those days but also that she herself was present and worked the hours shown on the Schedule. The claimant, for her part confirmed that she considered that there was no scope for her misremembering the position. Each of the parties confirmed in the course of submission that in relation to this last instance, certainly, they each considered that the other party was knowingly being untruthful in the evidence they gave before the Tribunal. I did not consider the fact that the claimant may have been asked on an earlier occasion if she would work on those days and had declined, let it be assumed that that evidence was accepted as both credible and reliable, as amounting to conclusive evidence that she had not subsequently worked on them. The sums claimed for the hours worked in respect of each of the 1st and 2nd June was £60 making a total additional amount claimed of £120. The claimant's Schedule itself records a payment made on the 6th of June by the respondent to the claimant, and confirmed by both parties, in the sum of £120. That is a sum equivalent to the sums due for those 2 days and the only dates which the claimant asserts she worked in the month of June. Those also, in her assertion, being the last days on which she worked for the respondent.

37. I considered that to be circumstantial evidence which was available to inform and did inform the application of the balance of probabilities test and thus did not find it necessary to determine this finding by deciding which of the 2 principal witnesses was being untruthful. On the preponderance of evidence, including the coincidence of the amounts claimed on the 1st and 2nd and the payment made by the respondents to the claimant on the 6th of June I considered it more probable than less that the claimant's version of events was correct. I held, on the balance of probabilities, that the claimant had established that she worked on the 1st and 2nd of June 2022 for the hours brought out against those dates in the Schedule and accordingly that she had entitlement to receive the "salary due" amounts set out in the Schedule against those dates, in the total additional sum of £120.

38. The total disputed amounts in respect of which I hold the claimant had entitlement in law to receive as wages was £1,800.28.

39. I accordingly conclude that the claimant has established on the balance of probabilities that she did work on each of the dates set out in the Schedule and accordingly had entitlement to receive as wages in the whole period of her employment the total due figure brought out in the Schedule namely £3,998.78 gross. Against that figure it was a matter of agreement that the respondent had paid to and the claimant had received a total sum of £1,212 leaving a balance of wages due in the sum of £2,786.78 gross.
40. In the claimant's contention, however, that balance fell to be increased by £400 that being the value of what she offered to prove was the personal loan made to her by the respondent's representative on the 31st of March 2022 in terms that it would be repayable once the claimant's arrears of wages had been resolved. If the payment was indeed established as a personal loan then if the respondent would not be entitled to treat it as a payment to account of wages and receive credit for it in calculating the balance of wages withheld.
41. The onus of proving that the payment was a loan sits with the claimant. The only evidence before the Tribunal was the oral evidence of each individual principal as to what was said at the time the payment was made. On the preponderance of that evidence I have concluded that the claimant has not proved, on the balance of probabilities, that the payment was a loan in the sense described by the claimant it being, in my consideration a conclusion, equally likely on the evidence, that it was a loan or then again that it was a payment to account of wages. I considered that the evidence of both principals agreed to the extent of establishing that the payment was sought and made in circumstances where the claimant's wages were in arrears due, to the cash flow issues associated with the kick start funding not yet being in place. In those circumstances I did not consider the fact that the respondent's representative had advanced the monies from her personal funds to be conclusive of the issue. In the circumstances, the claimant having failed to prove that the £400 payment was a personal loan, it is a payment in respect of which the respondent is entitled to credit when

calculating the shortfall on the wages paid to the claimant and thus the extent of any unauthorised deduction made.

42. I accordingly determine and dispose of the issues as follows:-

5

(First) That the claimant worked on all of the dates itemised on the claimant's Schedule.

10

(Second) That the claimant had, in the course of her employment entitlement in law to receive wages in the gross total sum brought out in the Schedule of £3,998.78.

15

(Third) That the £400 payment made by the respondent's Director, Ms Mackinnon, to the claimant on the 31st of March 2022 was made in her capacity as agent of the respondent and was a payment to account of wages.

20

(Fourth) That the £400 payment of 31st March falls to be regarded as reducing the sums withheld by the respondent in the name of wages and owed to the claimant in the name of wages, for the purposes of sections 13 and 14 of the Employment Rights Act 1996 and thus reducing the amount of any unauthorised deduction made from the claimant's wages.

25

(Fifth) That in the period 1st January to the 15th June 2022 the respondent made an unauthorised deduction from the claimant's wages in the sum of £2,786.78 gross.

30

(Sixth) That the respondent shall pay to the claimant the sum of £2,786.78 being a sum equivalent to the amount of the unauthorised deduction made from the claimant's wages.

5

Employment Judge: J d'Inverno
Date of Judgment: 10 January 2023
Entered in register: 11 January 2023
and copied to parties

10

15

I confirm that this is my Judgment in the case of Archer v ABR Training Limited and that I have signed the Judgment by electronic signature.

