



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108559/2022

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Held in chambers in Glasgow on 18 May 2023

Employment Judge D Hoey

Mr V Lazerevas

First Claimant

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JH Transport Limited

Respondent

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# JUDGMENT

## Rule 21 of the Employment Tribunal Rules of Procedure 2013

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1. The judgment of the Employment Tribunal is that the first claimant's complaint of a failure of the respondent to pay wages due to the first claimant succeeds and it is declared that the respondent made an unlawful deduction from wages due to the first claimant and the respondent shall pay to the first claimant the gross sum of **SEVEN THOUSAND NINE HUNDRED AND TWENTY POUNDS** (£7,920) (less such deductions required by law).

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2. The first claimant is also due holiday pay in the gross sum of **SEVEN HUNDRED AND TWENTY POUNDS** (£720).

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3. The remaining claims are dismissed.

# REASONS

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1. The first claimant had raised a number of claims. The respondent had not defended the claims. While there was a proposal to strike the respondent from

the companies house register that process had been paused. There was no suggestion of any ongoing insolvency proceedings.

2. A case management preliminary hearing had been fixed to progress the claims. The respondent chose not to attend or be represented at that hearing  
5 and the claims proceeded as undefended.
3. Following the case management preliminary hearing the Tribunal issued a Note to the first claimant and respondent setting out in clear terms what sums the first claimant sought and why. The Note was served on the respondent to allow any comment, which failing it was said that it may be possible that a  
10 judgment may be issued without the need for a hearing in the absence of any defence to the claims. No response was received from the respondent to that Note.
4. In the absence of any response to the Note it is possible to issue judgment from the material available.

## 15 **Facts**

5. From the material before the Tribunal it is possible to make the following findings.
6. The respondent ceased to pay wages to the first claimant and ceased all contact.
- 20 7. The first claimant had not been paid for 66 days which were due. The first claimant was entitled to be paid £120 per day. The first claimant was due to be paid 66 days. His daily rate was £120.
8. The first claimant was also due holiday pay in the sum of £120 for 6 days which is £720.
- 25 9. These are gross sums.

## **Law**

### **Unlawful deductions**

10. In terms of section 13 of the Employment Rights Act 1996, it is unlawful to pay to an employee, by way of wages, a sum less than that which is properly payable in terms of the contract of employment. The Tribunal is able to make a declaration as to what the unlawful deduction was and order the respondent to pay to the claimant said deduction.
11. While the first claimant sought payment in respect of “lost time and lost savings debt and unemployment insurance due”, this is not something in respect of which the Tribunal has the power to compensate.

### 10 **Holiday pay**

12. The law is found in the Working Time Regulations 1998. Regulation 13 sets out the entitlement to annual leave, namely 4 weeks per year. Regulation 13A sets out the entitlement to the additional leave period of 1.6 weeks a year. Thus all workers are entitled to 5.6 week’s leave per year.
13. Regulation 14 deals with the calculation of pay where holidays have accrued and remain untaken as at the end of employment. It contains a formula to calculate what is due as at the end of employment (essentially the proportion of untaken leave that has accrued to the relevant date) and requires the employer to pay to the employee a payment in lieu of the leave that has accrued (where the amount of accrued leave is more than the amount taken).
14. Payment for holidays which have accrued but not been taken upon the cessation of employment can be ordered by the Tribunal.

### **Decision and discussion**

15. The first claimant is entitled to be paid for 66 day’s wages (at £120 per day) which is £7,920 (less any deductions required by law).
16. The first claimant is also due holiday pay in the sum of £120 x 6 which is £720 (less any deductions required by law).

17. The first claimant confirmed these were all the sums he was seeking and the remaining claims are dismissed.
18. The respondent is ordered to pay the first claimant these sums which are due to the claimant.

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**Employment Judge: D Hoey**  
**Date of Judgment: 18 May 2023**  
**Entered in register: 18 May 2023**  
**and copied to parties**

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