



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case Nos: 4102943/2023

Held in Edinburgh on 26 July 2023

10

Employment Judge M Sutherland

Michelle Thomson

**Claimant
In person**

15

Swish A Ltd

**First Respondent
No response and
no appearance**

20

Swish Technologies BV

**Second Respondent
No appearance**

25

30

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claim succeeds and that –

The First Respondent is ordered to pay the Claimant in sum of £2,774 (gross).

The Second Respondent is ordered to pay the Claimant in sum of £1,039 (gross).

35

E.T. Z4 (WR)

REASONS

Introduction

1. The Claimant made complaints of unlawful deduction from wages. The complaints were denied by the Second Respondent but not the First Respondent who did not lodge a response.

2. A final hearing was listed for today. The Claimant had lodged a bundle of documents and gave evidence on her own behalf. Neither the First nor the Second Respondent were in attendance and they had given no prior indication that they intended to participate in the final hearing.

Findings in fact

3. The Tribunal makes the following findings in fact:-

4. The Claimant was employed by the First Respondent from 6 March 2023 until 20 April 2023 and by the Second Respondent from 21 April to 7 May 2023. In both roles she performed exactly the same work. She worked full time from home as a Website Support Advisor uploading sales information to the Swish UK website. The Second Respondent is a wholly owned subsidiary of the First Respondent.

5. On 6 March 2023 the Claimant entered into a written contract of employment with the First Respondent. It provided that she would work 40 hours a week for an annual salary of £22,500 to be paid monthly in arrears. The Claimant did not receive any payment of wages under that contract.

6. The Claimant reported to James van Houten who is a Director of the First and Second Respondent. James van Houten told the Claimant that the First Respondent was experiencing a difficulty with HMRC and that their employer was to change to the Second Respondent. On 24 April 2023 the Claimant entered into a written contract of employment with the Second Respondent. It provided that she would work 40 hours a week for an annual salary of €27,000 a year to be paid monthly in arrears. The Claimant did not receive any payment of wages under that contract.

7. On 28 April 2023 the Second Respondent provided the Claimant with a copy of a payslip and a bank transfer indicating that it had transferred to her net

wages in sum of €1031.75. Those monies were never received by the Claimant.

Observations on the evidence

- 5 8. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
- 10 9. The Claimant came across as wholly credible and reliable in her testimony which was fair and measured, and consistent with the other evidence. She answered judicial questions without any material hesitation but given the Respondents' failure to attend her evidence was not of course tested under cross examination.

15 **The law**

Unlawful deduction from wages

10. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker so employed unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.
- 20
11. Under Section 13(3) ERA 1996 there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
- 25

Discussion and decision

12. The Claimant worked for the First Respondent for 45 days and was accordingly due to be paid gross wages in sum of £2,774 (45/365 x £22,500) by end April 2023. The First Respondent failed to pay these wages.

Case Nos: 4102943/2023 Page 4

13. The Claimant worked for the Second Respondent for 16 days and was accordingly due to be paid gross wages in sum of €1,183 (16/365 x €27,000) by end May 2023. The First Respondent failed to pay these wages.
14. Accordingly the First Respondent made an unlawful deduction from wages in sum of £2,774 and the Second Respondent made an unlawful deduction from wages in sum of £1,039 (applying the Bank of England spot rate from 28 April 2023 of 1.1385).

Employment Judge: M Sutherland
Date of Judgment: 27 July 2023
Entered in register: 28 July 2023
and copied to parties