



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102799/2023**

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**Held via Cloud Video Platform (CVP) in Glasgow on 16 August 2023**

**Employment Judge P O'Donnell**

10 **Mr D Thomson**

**Claimant  
In Person**

15 **Westcoat Butchers (2001) Ltd**

**Respondent  
No appearance and  
No representation**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Judgment of the Employment Tribunal is:

1. The name of the respondent is amended to "West Coast Butchers (2001) Ltd".
2. The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of £4907.04 (Four thousand nine hundred and seven pounds, four pence).
- 25 3. The claimant was dismissed without notice and is awarded compensation for this breach of contract in the sum of £4054.20 (Four thousand and fifty-four pounds, twenty pence).
- 30 4. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £202.71 (Two hundred and two pounds, seventy one pence).

5. The respondent has failed to pay the claimant his holiday entitlement and he is awarded the sum of £270.28 (Two hundred and seventy pounds, twenty-eight pence) in respect of this deduction of wages.
6. The respondent acted in breach of contract by not paying sums deducted from the claimant's wages in respect of pension contributions into his pension fund. The claimant is awarded the sum of £182.84 (One hundred and eighty-two pounds, eighty-four pence) as compensation for this breach of contract.

## REASONS

### Introduction

1. The Claimant has brought complaints against his employer relating to payments due to him on termination of his employment; statutory redundancy pay, notice pay, pay in lieu of untaken holidays and arrears of pay.
2. There has been no ET3 lodged by the respondent. The Tribunal sought to serve the claim on them at both their registered office address and the claimant's place of work. In both instances mail was returned as addressee gone away. The Tribunal considers that all efforts that could be reasonably made to serve the claim have been made. The hearing proceeded in the respondent's absence.

### Findings in fact

3. The Tribunal made the following relevant findings in fact.
4. The claimant was employed as a butcher from 10 August 2007 until he was dismissed on 18 February 2023. He was 31 years old at the termination of his employment. He earned £1772 a month before tax and £1464 a month net.
5. On 18 February 2023, the claimant was informed by the owner of the business that it was ceasing to trade and that his employment was ending that day. He was not given any notice or pay in lieu of notice.

6. The claimant had been paid on 15 February 2023 for the previous 4 week period. He had worked on 16, 17 & 18 February 2023 but was not paid for those days.
7. The holiday year for the claimant was 1 January to 31 December each year.  
5 The claimant had taken no holidays since 1 January 2023. He received no pay in lieu of untaken holidays when he was dismissed.
8. The claimant was a member of a pension scheme provided by his employer. Deductions were made from his salary in respect of contributions made by him.
- 10 9. In respect of the following periods, no contributions were paid into the pension scheme by the respondent:
  - a. 1-28 February 2020
  - b. 9 October to 5 November 2021
  - c. 18 June to 15 July 2022
  - 15 d. 10 September to 7 October 2022
  - e. 8 October to 4 November 2022
  - f. 5 November to 2 December 2022
  - g. 3 December to 30 December 2022
  - h. 31 December to 27 January 2022
- 20 10. The following deductions were made from the claimant's salary in respect of pension contributions:
  - a. £49.44 on 25 November 2022
  - b. £81.70 on 23 December 2022
  - c. £51.70 on 20 January 2023

11. Section 135 of the Employment Rights Act 1996 provides that an employee is entitled to redundancy payment where they are dismissed in circumstances where they are redundant.
12. The definition of redundancy can be found in section 139 of the Employment Rights Act 1996 and includes the situation where the employer ceases to carry on the business in which the employee is employed.
13. The amount of any redundancy pay is determined by section 162 of the 1996 Act and is a number of weeks' pay depending on age and length of service.
14. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996 which is based on length of service.
15. Where an employer does not give the correct notice of dismissal then an employee can recover damages for this breach of contract equivalent to the salary they have lost for the relevant period.
16. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994.
17. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
18. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.
19. Section 27 of the ERA defines "wages" which include any fee, bonus, commission, holiday pay or other emolument referable to a worker's employment whether payable under the contract or otherwise. Section 27(2)(b) excludes the payment of expenses from the definition of "wages".

20. Regulations 13 and 13A of the Working Time Regulations make provision for workers to receive 5.6 weeks' paid holidays each year.

21. Where a worker leaves employment part way through the leave year then Regulation 14 of the 1998 Regulations provides for compensation to be paid to the worker in respect of untaken holidays in the following terms:

(1) *This regulation applies where—*

(a) *a worker's employment is terminated during the course of his leave year, and*

(b) *on the date on which the termination takes effect ('the termination date'), the proportion he has taken of the leave to which he is entitled in the leave year under [regulation 13] [and regulation 13A] differs from the proportion of the leave year which has expired.*

(2) *Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).*

(3) *The payment due under paragraph (2) shall be—*

(a) *such sum as may be provided for the purposes of this regulation in a relevant agreement, or*

(b) *where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—*

*(AxB)-C*

*where—*

*A is the period of leave to which the worker is entitled under [regulation 13] [and regulation 13A];*

*B is the proportion of the worker's leave year which expired before the termination date, and*

*C is the period of leave taken by the worker between the start of the leave year and the termination date.*

5 **Decision**

22. The Tribunal notes from the payslips and other correspondence provided by the claimant that the correct name for the respondent is "West Coast Butchers (2001) Ltd". The Tribunal, therefore, amends the name of the respondent accordingly.

10 23. There is no question that the claimant was dismissed by reason of redundancy. He lost his job because the respondent ceased trading and this clearly falls within the definition of redundancy in s139 ERA.

15 24. The claimant is, therefore, entitled to statutory redundancy pay. The claimant had 15 full years' service at the termination of his employment and was 31 years' old. He is therefore entitled to a redundancy payment of 12 weeks' gross pay at £408.92 per week. The Tribunal awards the claimant statutory redundancy pay of £4907.04 (Four thousand nine hundred and seven pounds, four pence).

20 25. The claimant was entitled to 12 weeks' notice given his length of service. It is quite clear that the claimant was dismissed without notice and that amounts to a breach of contract.

25 26. The Tribunal awards the claimant compensation for that breach of contract equivalent to the sums he would have been paid if he had been given the proper notice of 12 weeks. The claimant's net pay was £337.85 per week. The Tribunal awards the claimant compensation for breach of contract in respect of the failure to give him notice of dismissal of £4054.20 (Four thousand and fifty-four pounds, twenty pence).

27. The respondent has not paid the claimant for the three days he worked since his last salary was paid, that is, 16, 17 & 18 February 2023. This amounts to

an unlawful deduction of wages and the Tribunal awards the claimant the sum of £202.71 (Two hundred and two pounds, seventy one pence).

28. Based on the proportion of the leave year worked by the claimant by the end of his employment, the claimant had 4 days' untaken holiday and he is entitled to pay in lieu of these days. This was not paid by the respondent when the claimant was dismissed and so there was a deduction of wages in respect of this. The claimant is awarded £270.28 (Two hundred and seventy pounds, twenty-eight pence) in relation to this deduction.
29. The Tribunal considers that it was part of the contract of employment between the claimant and respondent that any deduction from his wages in respect of pension contributions would be paid into the pension fund. Although the Tribunal was not shown a written contract or any similar document relating to deductions for pension, it must be part of the agreement by which the claimant consented to such deductions being made that those sums are paid into his pension fund. If not, the claimant derives no benefit from paying such contributions and either the well-known "officious bystander" or "business efficacy" tests must imply such a term into the contract to make the deduction of pension contributions work.
30. In failing to pay the deductions made from the claimant's pay into his pension fund, the Respondent has breached the contract. The difficulty is that the Tribunal has not been presented with any evidence of the sums in question except in respect of the payments made in November 2022, December 2022 and January 2023. It cannot, therefore, quantify the losses to the claimant other than in relation to those months.
31. This is not intended to be a criticism of the claimant who has provided all the evidence he has in his possession. It is a criticism of the respondent who has not provided the claimant with the itemised pay slips to which he was entitled by law and which would have provided the information in question.
32. The Tribunal can only award compensation in respect of losses which can be quantified and so it can only award a sum based on the deductions for which it has evidence.

33. The Tribunal awards the Claimant compensation of £182.84 (One hundred and eighty-two pounds, eighty-four pence) in respect of this breach of contract.

5 **Employment Judge: P O'Donnell**  
**Date of Judgment: 17 August 2023**  
**Entered in register: 21 August 2023**  
**and copied to parties**

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