



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102805/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 13 October 2023

Employment Judge W A Meiklejohn

10 Miss Ieva Vaisiauskaite

Claimant
In Person

15 T.O.P Car Parts Ltd

Respondent
Not present and
Not represented

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows –

- (a) The Tribunal does not have jurisdiction to consider the claimant's claim of unfair dismissal and that claim is dismissed.
- (b) The claimant's claim of unauthorised deduction from wages succeeds and the respondent is ordered to pay to the claimant the sum of **NINE HUNDRED AND SIXTY TWO POUNDS AND FORTY PENCE (£962.40)**; this sum is expressed in net terms and the respondent should account to HM Revenue and Customs for the appropriate amounts of income tax and employee's National Insurance contributions.
- (c) The claimant's claim for holiday pay succeeds and the respondent is ordered to pay to the claimant the sum of **SEVEN HUNDRED AND SEVENTY FIVE POUNDS AND FORTY FOUR PENCE (£775.44)**; this sum is expressed in gross terms and should be paid to the

claimant under deduction of the appropriate amounts of income tax and employee's National Insurance contributions.

- 5 (d) The respondent did not provide the claimant with a written statement of initial employment particulars and, in terms of section 38 of the Employment Act 2002, the respondent is ordered to pay to the claimant the sum of **TWO THOUSAND TWO HUNDRED AND EIGHTY FOUR POUNDS (£2284.00)**; no income tax and employee's National Insurance contributions should be deducted from this sum.

REASONS

- 10 1. This case came before me for a final hearing, conducted remotely by means of the Cloud Video Platform, to deal with both liability and remedy. The claimant participated in person. The respondent had not entered appearance and did not participate. The claimant was assisted by a Lithuanian interpreter, Ms L Jankauskaite.

15 **Procedural history**

2. The claimant presented her ET1 claim form on 26 April 2023. Her claim was accepted against the respondent but rejected against Mr O Petrauskas, Director, who was also named in the form.
- 20 3. Notice of the claim was sent to the respondent on 17 May 2023. Within this Notice, the respondent was advised that the ET3 response form required to be submitted by 14 June 2023 at the latest. No ET3 was received by that date.
- 25 4. The respondent did submit an ET3 on 22 June 2023. This was rejected because it was out of time, and no application for an extension of time had been made. The Tribunal wrote to the respondent on 3 July 2023 advising that the ET3 had been rejected, and also advising the respondent of the right to apply for a reconsideration of the rejection within 14 days. No application for reconsideration was made.

Nature of claims

5. The claimant brought claims of unfair dismissal, unauthorised deduction of wages and entitlement to holiday pay.

Evidence

- 5 6. I heard oral evidence from the claimant. The claimant indicated at the start of the hearing that she was happy for the hearing to proceed in English as she had a good understanding of the language. However, as the hearing progressed, she relied more on the interpreter so that much of her evidence was given in Lithuanian and translated.

10 Findings in fact

7. The claimant was employed by the respondent from 22 November 2022. Her job involved placing advertisements for car parts. She worked 48 hours per week, based at home. She was not provided with a written statement of initial employment particulars.
- 15 8. The claimant was paid at the rate of £12 per hour which equated to £576.00 per week. She was normally paid weekly. Her normal weekly net pay was £481.20.
9. The claimant first became aware on or around 17 March 2023 that her employment was to come to an end. She continued to work until 31 March
20 2023. Her employment ended on that date. She received payslips for her final two weeks but the net pay disclosed in these payslips (£481.20 per week) was not paid into her bank account.
10. The claimant's final payslip disclosed an accrued holiday entitlement of 64.62
25 holidays on termination of her employment.

Applicable law

11. I will summarise the relevant parts of the applicable statutory provisions briefly
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- 5 (a) Unfair dismissal – in terms of section 108(1) of the Employment Rights Act 1996 (“ERA”) the right of an employee not to be unfairly dismissed does not apply unless the employee has been continuously employed for a period of not less than two years ending with the effective date of termination.
- 10 (b) Unauthorised deduction of wages – in terms of section 13 ERA an employer must not make a deduction from a worker’s wages unless (a) it is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract or (b) the worker has previously consented in writing to the making of the deduction.
- 15 (c) Holiday pay – in terms of regulations 13 and 13A of the Working Time Regulations 1998 a worker is entitled to 5.6 weeks’ holiday in each leave year. If a worker leaves part way through a leave year, he/she is entitled to pay in respect of the proportion of the annual holiday entitlement which has accrued up to the date of leaving, less any days of holiday actually taken.

Discussion and disposal

- 20 12. I found the claimant to be a credible witness. She answered questions directly and to the best of her recollection.
- 25 13. The claimant had not provided her dates of employment when she presented her ET1. This meant that it was not apparent until she gave her evidence that she did not have the necessary two years’ continuous employment to bring a claim of unfair dismissal. There are exceptions to the general rule requiring two years’ service but none of these applied in this case. The consequence was that the Tribunal did not have jurisdiction to deal with the claimant’s unfair dismissal claim, and that claim had to be dismissed.
- 30 14. I accepted as credible the claimant’s evidence that, despite receiving payslips, she had not been paid for the period between 17 and 31 March 2023. Her net pay as disclosed on those payslips was £481.20 per week, a total of

£962.40. The failure of the respondent to pay these wages to the claimant was an unauthorised deduction. The claimant was entitled to an award to reflect this.

- 5 15. I also accepted as credible the claimant's evidence that that her final payslip disclosed an accrued holiday entitlement of 64.62 hours. I found that she was entitled to holiday pay reflecting that accrued entitlement. Based on her hourly rate of pay of £12, this equated to an entitlement to holiday pay on termination of employment in the sum of £775.44.
- 10 16. For the sake of completeness I should add that there was some discussion during the hearing as to whether the claimant might be entitled to notice pay. I considered that this was foreshadowed in her ET1 (where she stated that she was told she was being dismissed without any notice). However, as the claimant became aware on or around 17 March 2023 that her employment was to end and then continued to work until 31 March 2023, I did not consider
15 that the respondent had acted in breach of contract by failing to give the claimant the statutory minimum notice period of one week to which she was entitled.
- 20 17. Finally, because the claim succeeded and the respondent had failed to provide the claimant with a written statement of initial employment particulars (as required in terms of section 1(1) ERA), section 38 of the Employment Rights Act 2002 was engaged. In terms of that section, unless there were exceptional circumstances making an award unjust or inequitable, the Tribunal was required to make a minimum award of two week's pay and could
25 make an award of four weeks' pay if it considered that it was just and equitable to do so.
18. In this case there had been a complete failure to comply with the duty to provide a written statement. I considered that this meant the higher award of four weeks' pay was appropriate. I found no exceptional circumstances making this unjust or inequitable.
- 30 19. The award is based on weekly gross pay (in this case £576) but this is subject to a maximum amount in terms of section 227 ERA. At the claimant's date of

termination of employment the maximum amount was £571. Accordingly the award under section 38 is £571 multiplied by 4 which gives a total of £2284.

5 **Employment Judge: W A Meiklejohn**
 Date of Judgment: 13 October 2023
 Entered in register: 19 October 2023
 and copied to parties

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