



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

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**Judgment of the Employment Tribunal in undefended cases No:
8000327/2023 and 4103917/2023 combined for the purposes of final hearing
and, heard at Edinburgh on the 13th of September 2023**

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Employment Judge J G d'Inverno

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Ms Anna Seymour

Claimant, in person

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Fun Science

**Respondent
Not appearing and not
represented**

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ORDER OF THE EMPLOYMENT TRIBUNAL

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Edinburgh 13th September 2023

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Upon the claimant confirming, on oath, that the claims which she intended to give notice of in her Claim Number 4103917/2023, first presented on 23rd 07 2023 as part of Multiple Number 4100495 with Lead Case Number 4103915/2023, are a duplication of the claims presented by her in the instant case 8000327/2023, and upon being satisfied that to do so is, in the circumstances, in accordance with the Overriding Objective, the Employment Judge:-

Orders that the claimant's Claim Number 4103917/2023 only, be combined, and is hereby combined, for the purposes of Final Hearing, with Case Number 8000327/2023.

Employment Judge: d'Inverno
Date of Judgment: 22 September 2023
Entered in register: 25 September 2023
and copied to parties

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I confirm that this is my Judgment in the case of Seymour v Fun Science and that I have signed the Judgment by electronic signature.

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

25 **(First)** That in her grievance submitted to the respondent on 8th June and in her text sent to the respondent on 12th June, both 2023, the claimant made qualifying and protected disclosures in terms of sections 43A and 43B(b) of the Employment Rights Act 1996.

30 **(Second)** That the claimant's complaint, in terms of section 13 of the Employment Rights Act 1996, of unauthorised deduction from wages succeeds and the respondent shall pay to the claimant the sum of £115 being a sum equivalent to the deduction made by the respondent from the wages due to the claimant for the weeks beginning 17th and 25th March
35 2023; said sum to be paid to the claimant gross and without deduction of PAYE or employee's National Insurance contribution and the claimant to

account to Her Majesty's Revenue and Customs for any income tax and National Insurance due thereon.

5 **(Third)** That the claimant's complaint in terms of sections 43A, 43B, 43C, and 47B of the Employment Rights Act 1996, of having been subjected to detriment by acts of the respondent done on the ground that she, a worker, had made a protected disclosure, succeeds.

10 **(Fourth)** That detrimental conduct of the respondent, constituted by his telephone conversation with the claimant and separate email sent to the claimant on 12th June 2023 in consequence of the claimant's protected disclosures contained in her grievance submitted to the respondent on 8th and her text sent to the respondent on 12th, both June 2023, caused injury to the claimant's feelings.

15 **(Fifth)** That the respondent shall pay to the claimant the sum of £1,000 as damages in compensation for injury to feeling arising from the unlawful detriment.

20 **(Sixth)** The claimant's claim for notice pay fails and is dismissed.

25 **Employment Judge: d'Inverno**
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REASONS

- 5 1. These combined cases proceeded to undefended Final Hearing, In Person at Edinburgh on the 13th of September 2023, the respondent having failed to enter a Response Form ET3.
2. The claimant appeared In person and gave evidence on oath. There was no appearance by or on behalf of the respondent.
- 10 3. The claimant lodged a bundle of documents extending to some 22 pages, to some of which reference was made in the course of evidence and submission.

The Claims

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4. In her combined cases the claimant presents complaints of;
- (i) unauthorised deduction from wages (section 13 of the Employment Rights Act 1996);
 - (ii) of having suffered detriment on the grounds of having made a protected disclosure, (sections 43A and 43B(1)(b) and section 47B of the Employment Rights Act 1996);
 - (iii) a claim for damages in compensation for injury to feelings arising from the unlawful detriment;
- (b) a claim for notice pay.

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30 Findings in Fact

5. The Tribunal found the claimant to be a credible and reliable witness and accepted her evidence. On the oral and documentary evidence presented

the Tribunal made the following essential Findings in Fact restricted to those relevant and necessary to the Determination of the claims.

- 5 6. The claimant whose date of birth is the 16th of February 2003 contracted with the respondent on 7th November 2022 to perform personally work for the respondent, the other party to the contract whose status was not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the claimant.
- 10 7. The claimant so carried out work and the respondent was under obligation to pay the claimant for work carried out up to and including 12th of June 2023 on which latter date the claimant decided that she would no longer carry out work for the respondent and so determined the contractual relationship between the parties.
- 15 8. In so carrying out work for the respondent the claimant was a “worker” in terms of section 230(3) of the Employment Rights Act 1996.
- 20 9. The work carried out by the claimant was that of delivering pre-prepared science lessons to school children in schools.
- 25 10. The claimant’s contractual rate of remuneration was that of £20 gross per session in which she was the Lead Deliverer and £15 gross per session where she functioned as an Assistant Deliverer and £20 per session where she functioned as an Assistant Deliverer to lessons delivered in the Edinburgh Academy.
- 30 11. The claimant delivered four lessons for the respondent in schools across the weeks beginning the 17th and the 25th of March, both 2023.
12. In the week beginning 17th March, the claimant delivered one lesson as Lead in respect of which she was contractually entitled and due to be paid £20, and two lessons as Assistant for each of which she was due to be paid £15, plus, two lessons as Assistant in the Edinburgh Academy for which she was

entitled to be paid 2 x £20, making a total due for the week commencing the 17th March 23, of £75.

- 5 13. In the week commencing 25th March 2023 the claimant delivered two lessons as Lead for which she was contractually entitled to receive payment of 2 x £20 making a total of £40 for the week commencing 25th March.
- 10 14. The claimant duly submitted her timesheets to the respondent on the 5th of April 2023 and requested payment, but the respondent has refused or delayed to make payment.
- 15 15. On 8th June 2023, the claimant submitted a grievance to the respondent complaining about the non-payment of the wages due to her, seeking payment and advising the respondent that in the event of his not making payment by return she would make contact with ACAS with a view to initiating proceedings against the respondent in the Employment Tribunal.
- 20 16. On the 12th of June 2023, the respondent having made no response, the claimant sent a text, copied and produced at page 12 of the bundle, to the respondent, Mr Anwar, in the following terms:

25 *“Hello I have sent in my official grievance, and have not received a response. I have now officially reported this issue to ACAS, and they should be in touch. I am extremely disappointed that it had to come to this. I have now in addition, filed a complaint about your threatening and aggressive behaviour.”*

- 30 17. In response to the claimant’s text message, the respondent, on the same day 12th June 2023, made a telephone call to the claimant in which he accused her of various misdemeanours allegedly committed by her in the course of delivering classes in an unnamed school. The allegations which were of a potentially serious nature were said by the respondent to have been advanced as official complaints by a Head Teacher of the school in question.

18. None of the matters referred to in the allegations had ever been raised with the claimant either at the time of her delivering lessons or at any other time thereafter and neither by Head Teachers or other teaching staff in any school, nor by the respondent on any prior occasion.
- 5 19. The claimant's position in evidence, unchallenged in cross examination and uncontroverted by any other evidence, was that none of the allegations had any foundation in fact.
- 10 20. Later in the same day the respondent sent an email to the claimant, copied and produced at page 13 of the bundle in which he reiterated the allegations made orally.
- 15 21. In July of 2022, the claimant was diagnosed with Borderline Personality Disorder. She has from that time been medicated with two drugs Quetiapine twice daily and Citalopram once daily. The telephone call and the email respectively made and sent by the respondent to the claimant on 12th June, caused the claimant to suffer from increased stress such that she required to consult her General Practitioner who, on the 13th of June 2023, increased the claimant's medication dosages. The correspondence dated 17th July 2023 from Dr Keith Hill of the University Health Service confirms the same (page 20 18 of the bundle).
22. The said telephone conversation and the said email directly caused injury to the claimant's feelings.
- 25 23. Within a few days of her increased medication the claimant's stress levels returned to those evidenced prior to her receiving the telephone call and emails of 12th June 2023.

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Findings in Fact and in Law

24. As a worker in terms of section 230 of the Employment Rights Act 1996 the claimant is entitled to the protection afforded by section 13 against the making of unauthorised deductions from her wages.
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- 5 25. In withholding the claimant's payment, contractually due to her, for work carried out in April of 2023 the respondent made an unauthorised deduction from the claimant's wages contrary to the provisions of section 13 of the Employment Rights Act 1996 in the sum of £115.
- 10 26. In making her grievance on 8th June 2023 and on advising the respondent by text on 12th June 2023 that she had made contact with ACAS with a view to raising Tribunal proceedings, the claimant made qualifying and protected disclosures in terms of section 43B(1)(b) of the Employment Rights Act 1996.
- 15 27. The telephone call placed by the respondent to the claimant and the email sent by the respondent to the claimant on 12th June 2023 were made and sent to the claimant by the respondent on the grounds that, that is to say in reaction to and because, the claimant had made the protected disclosures of 8th and 12th June 2023.
- 20 28. The telephone call and the email of 12th June 23 constituted unlawful detriments suffered by the claimant, at the hands of the respondent, Mr Anwar, for the purposes of section 47B of the Employment Rights Act 1996.
- 25 29. In consequence of the said unlawful detriments the claimant suffered injury to feelings.
- 30 30. The claimant is entitled to an Order requiring the respondent to make payment to her in a sum equivalent to the unauthorised deduction made from her wages.
31. The claimant is entitled to be compensated in damages for injury to feeling caused by the unlawful detriments suffered by her at the hands of the respondent.

32. The injury to the claimant's feelings though not trivial persisted for a period only of a few days after which period of time it was sufficiently ameliorated by the increases in the claimant's medication dosages.

5 33. The injury to feeling suffered by the claimant sits in the category of less serious cases and falls to be compensated towards the bottom of the lower band of the revised scale set out in **Vento v The Chief Constable of West Yorkshire Police (No 2)** [2003] IRLR 102 as revised in **De Souza v Vinci Construction (UK) Limited** [2017] EWCA Civ 879. And further should
10 reflect the 10% uplift identified in **Simmons v Castle** [2012] EWCA Civ 1288.

34. The Tribunal is separately satisfied, on an application of the principles of Scots law, that damages in compensation for the injury to feelings suffered by the claimant is reasonably quantified in the sum of £1,000.

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The Claim for Notice Pay

35. The claimant was not dismissed by the respondent from a Contract of Employment nor, despite not enquiring of the claimant, post 12th June 2023,
20 whether she was available to work neither did the respondent give notice of determining the contractual relationship between the parties. Rather, the claimant, for her part, decided as at the 12th of June 2023, that she was no longer prepared to carry out work for the respondent. The claimant accordingly has no entitlement to a payment in lieu of notice whether in
25 contract or under statute, and her claim in that regard fails and is dismissed.

Employment Judge:	d'Inverno
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