



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5

**Case No: 4105464/2023**

10

**Final Hearing heard at Edinburgh remotely by Cloud Video Platform on  
21 December 2023**

**Employment Judge A Kemp**

15

**Ms Diana Adomaitis**

**Claimant  
In person**

25

**Black Arrow Financial Solutions**

**Respondent  
No appearance**

30

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

35

1. The respondent made unlawful deductions from the wages of the claimant under section 13 of the Employment Rights Act 1996 and the claimant is awarded the sum of TWELVE THOUSAND SIX HUNDRED AND FOUR POUNDS SIXTEEN PENCE (£12,604.16) payable to her by the respondent, subject to appropriate statutory deductions.
2. The respondent is in breach of contract with the claimant in not paying her the bonus it awarded to her on 21 December 2022 in the

sum of ONE THOUSAND POUNDS (£1,000.00) and that sum is payable to the claimant subject to appropriate statutory deductions.

5 3. The respondent is in breach of contract with the claimant in not paying her expenses for use of her car, and the claimant is awarded the sum of TWO THOUSAND THREE HUNDRED AND EIGHTY FOUR POUNDS AND SIXTY TWO PENCE (£2,384.62) payable by the respondent without deduction.

10 4. The Tribunal defers consideration of a penalty under the Employment Tribunals Act 1996 section 12A until after 22 January 2024 to allow the respondent to make representations in writing.

## REASONS

### Introduction

15 1. The claim is one for unlawful deductions from wages, primarily in respect of unpaid wages but also for a bonus and expenses related to an allowance for use of her car. This was a Final Hearing, fixed in the Notice thereof to be heard remotely.

20 2. The respondent did not present a Response Form timeously. It sought to do so late and made what amounted to an extension of time to do so. It had been expected that the respondent would attend this hearing to make that application and if allowed then to defend the claim, but there was no appearance from or on behalf of the respondent.

### Issue

25 3. The first issue of whether or not to grant the application under Rule 20 to extend time for the Response Form fell away accordingly. The Claim therefore proceeded undefended, and the issue to address is whether or not there had been unlawful deductions from wages or breach of contract by the respondent and if so what the amount of those deductions or damages for breach had been.

4. Despite there being no appearance from the respondent, I have set out below the background circumstances to the present hearing, as they are not simple.

### **Background**

- 5 5. On 12 October 2023 a Claim by the claimant against the respondent was accepted by the Tribunal, after reconsideration. It was deemed presented on 29 September 2023.
6. Notice of the Claim was sent to the respondent on 12 October 2023. It required a Response Form to be submitted by 9 November 2023 and gave  
10 notice of a Final Hearing on 21 December 2023, after a separate letter confirmed that the date of 21 December 2023 had incorrectly been given as 12 December 2023.
7. On 9 November 2023 the respondent wrote to the Tribunal by email to apply for an extension of time to present the Response Form to  
15 30 November 2023, stating that their “CEO/Founder has just returned from his break for health reasons, and we have just read the contents for this case.....” It was further stated that the CEO and management team did not have availability for December [2023] and that they wished to propose alternative dates.
- 20 8. That application was refused on 13 November 2023 as the respondent had not complied with Rule 20 in making that application, in that it had not been copied to the claimant.
9. On 15 November 2023 a further application was made by Mr Gopal Hariharan of the respondent, its CEO and Founder, essentially making the  
25 same application. The claimant was invited to respond and did so on 22 November 2023.
10. The respondent’s application was granted by letter dated 27 November 2023, which gave the respondent until 30 November 2023 to present their Response Form. It was sent to the parties by email to the same email  
30 address from which the respondent had earlier communicated.

11. On 29 November 2023 the respondent sent an email to the Tribunal to inform of a new email address.
12. No Response Form was submitted on or before 30 November 2023.
13. The Tribunal wrote to the claimant on 4 December 2023 to state that a  
5 Judgment could be issued but seeking further information. It was sent to the respondent for information by email.
14. On 4 December 2023, shortly after that email was sent to it, the  
10 respondent emailed the Tribunal to state that it had had “technical issues” in completing the Response Form, and not received a response to messages. It attached its earlier messages to the Tribunal, but also that of 4 December 2023 from the Tribunal sent to the former email address.
15. The claimant responded on the same date.
16. On 5 December 2023 the respondent emailed the Tribunal with a  
15 Response Form, and asking that it be received, which was taken to be a further application for extension under Rule 20. It was copied to the claimant.
17. Further correspondence was sent to the respondent by the Tribunal on  
20 7 and 8 December 2023. The parties were informed that the issue of the application for extension of time to submit a response Form would be addressed at this hearing by letter dated 7 December 2023.
18. The respondent replied on 8 December 2023 referring to its message on 5 December 2023.
19. The claimant opposed the application for extension of time on 8 December 2023.
20. 25 There being now no appearance before me from the respondent, or on its behalf, this hearing proceeded under Rule 21.

## Remedy

21. I heard evidence from the claimant. I considered that the claimant was a credible and reliable witness. She spoke to various documents she had provided.

## 5 Facts

22. The claimant is Ms Diana Adomaitis.

23. The respondent is Black Arrow Financial Solutions. That is a trading name.

24. The respondent offered the claimant employment by message on 22 August 2022, which included an amount of up to £500 as expenses to be paid for use of her car for company work, as a car allowance.

25. The claimant was employed by the respondent as a Business Manager, initially on a salary of £50,000 per annum. She was also paid a car allowance of £500 per month.

26. The terms of her employment were set out in a contract of employment dated 26 August 2022. The contract is headed Blackarrow Regtech Limited, but is signed at the foot using the name Black Arrow Financial Solutions Limited. The contract has an overall heading of Blackarrow Financial Solutions.

27. Payslips for the claimant had the name "Blackarrow Financial Solutions Ltd". The P60 issued for the claimant stated as employer "Black Arrow Financial Solutions".

28. The respondent paid the claimant the sum of £500 per month as expenses for use of her car with effect from the commencement of her employment until April 2023, when it ceased. The payment was made separately to the payment for salary.

29. The contract provided for a bonus at clause 9. The claimant was informed by Teams message from the respondent on 21 December 2022 that she was to be paid a bonus of £1,000.

30. The said bonus has not been paid by the respondent.

31. On or around 1 June 2023 the claimant was informed in a telephone call with Mr Andy Calder, then the Operations General Manager of the respondent, with the respondent's Chief Executive Officer Mr Gopal Hariharan also on the call, that her salary was increased to £55,000 with effect from 1 June 2023. The claimant was also informed of several other increases of salary for other staff of the respondent at or around the same time, and with effect from the same date, as she was the person responsible for payroll within the respondent.
32. The respondent did not pay salary for the claimant for the months of June and July 2023. The claimant continued to work during those months, and for the period until she resigned.
33. The respondent resigned from her employment with the respondent on 26 August 2023 with immediate effect as a result of the failure to pay her wages.
34. She sent an email to the respondent on that date stating that the wages due were £4,583.33 for each of the months of June and July 2023 and £3,437.50 for the period 1 – 26 August 2023. She sought payment of the said bonus. She also sought payment of expenses by which she referred to a car allowance of £500 per month, which had not been paid to her for the period from April 2023 to the date of termination.
35. The said sums as to salary have not been paid to the claimant by the respondent.

## Discussion

36. As stated this is an undefended claim. The respondent has been designed (meaning set out in the Claim Form) as above. The documentation before me was inconsistent in that there was reference to a limited company of a similar name, and to another being Blackarrow Regtech Limited, but that inconsistency appeared within the contract of employment issued by the respondent itself. It was not consistent as between payslips issued and the P60. It appeared to me however that the respondent had used the trading name that the respondent itself used, and that that was sufficient for the purposes of the Judgment.

37. I was satisfied that the wages sought by the claimant were due, being for the months of June, July and to 26 August 2023. The total due in this regard is £12,604.16. They are awarded gross, and are subject to appropriate statutory deductions. They are each of an unlawful deduction from wages and a breach of contract.
38. The claimant also sought a bonus of £1,000. I was satisfied that it was also payable under the contract, since although it is discretionary the amount of the bonus was confirmed on 21 December 2022 such that it becomes payable, and as that is a sum outstanding on termination of employment under the Employment Tribunals (Extension of Jurisdiction) (Scotland) Order 1994 ("the Order"). It too is awarded gross, and subject to statutory deductions. The total so awarded is therefore £13,604.16.
39. The claimant sought expenses in the form of a sum for car allowance at the rate of £500 per month. It had been paid to her up to April 2023, but the payments then ceased. I was satisfied that that was a breach of contract within the Order. The calculation of the sum due from 1 April 2023 to 26 April 2023 is £2,384.62, very slightly higher than the amount in her resignation email.
40. The claimant also sought compensation for the mental distress and consequences financially of her not receiving the pay and other sums due, but I explained to her that the Tribunal did not have jurisdiction to make such an award in my view.

### **Penalty**

41. Employment Tribunals have a discretionary power in certain circumstances to order employers to pay a financial penalty to the Secretary of State, under the Employment Tribunals Act 1996 section 12A, which was inserted by section 16 of the Enterprise and Regulatory Reform Act 2013. It has subsequently been amended.
42. This power was granted to tribunals, according to the Explanatory Notes to the 2013 Act by which that amendment was introduced:

“to encourage employers to take appropriate steps to ensure that they meet their obligations in respect of their employees, and to reduce deliberate and repeated breaches of employment law”.

43. The Explanatory Notes also comment on the factors that a Tribunal might  
5 take into account as follows:

“An employment tribunal may be more likely to find that the employer’s behaviour in breaching the law had aggravating features where the action was deliberate or committed with malice, the employer was an organisation with a dedicated human resources team, or where the  
10 employer had repeatedly breached the employment right concerned. The employment tribunal may be less likely to find that the employer’s behaviour in breaching the law had aggravating features where an employer has been in operation for only a short period of time, is a micro business, has only a limited human resources function, or the  
15 breach was a genuine mistake.”

44. The financial circumstances of the respondent are a factor to take into account if a penalty is to be imposed. The amount of the penalty has certain restrictions set out in the statute which include that it may be no more than up to 50% of the sum awarded.

- 20 45. It appeared to me that the respondent may have been guilty of conduct for which a penalty may be considered. There was no reason not to pay the salary due, not only as this is an undefended claim but separately as in any event it appeared to me that nothing stated in the draft Response Form that was submitted constituted any basis in law not to pay the sums  
25 that the claimant sought. That there was no Response Form presented on the extended timeframe given, and then what was presented was followed by a failure to appear at this hearing, may give the impression that the respondent was acting maliciously.

46. I consider that the failure to pay such sums was liable, potentially and  
30 subject to what the respondent may say, to have been a deliberate flouting of the contractual and statutory employment law duties of the respondent.



I have not however taken a decision on this matter, as I wish to give the respondent an opportunity to comment on that.

47. I have therefore deferred the decision on whether or not to impose a penalty, and if so in what amount, for a period of one month to allow the respondent to make representations on this matter, including its financial circumstances. It should set out any submission in writing by 4pm on 22 January 2024 a longer period than would normally be allowed to take account of the holiday season.

**Employment Judge A Kemp**

**Employment Judge**

**21 December 2023**

**Date of judgment**

**Date sent to parties**

**21/12/2023**