



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Nos: 4106887/2023 & 4106888/2023

Held by Cloud Video Platform on 12 March 2024

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Employment Judge: M Kearns

15 **Mr R H Hallett**

**First Claimant
In Person**

20 **Miss H Wynne**

**Second Claimant
In Person**

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Dalnaglar Holiday Cottages Ltd

**Respondent
Represented by:
Ms A Devine**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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Rules 70 – 72 of the Employment Tribunal Rules of Procedure 2013

The Judgment of the Employment Tribunal is that upon reconsideration in terms of rule 72, the original decision dated 19 January 2024 is revoked and the following decision substituted:

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E.T. Z4 (WR)

(1) The respondent unlawfully deducted sums from the first claimant's wages contrary to Section 13 of the Employment Rights Act 1996. The respondent is ordered to pay to the first claimant the sum of **£657 (Six Hundred and Fifty Seven Pounds)** in respect thereof.

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(2) The respondent unlawfully deducted sums from the second claimant's wages contrary to Section 13 of the Employment Rights Act 1996. The respondent is ordered to pay to the second claimant the sum of **£469 (Four Hundred and Sixty Nine Pounds)** in respect thereof.

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(3) The claims for holiday pay are dismissed.

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REASONS

1. The claimants presented their claims to the Employment Tribunal on 6 November 2023 and the claims were served on the respondent on 10 November 2023 along with a Notice that the hearing of the claims would take place by Cloud Video Platform on 19 January 2024. The respondent lodged its ET3 response defending the claims. On 17 January 2024, two days before the hearing Mr Mackie, on behalf of the respondent emailed the Tribunal stating that he had been trying to settle the case but had not succeeded and that he would not be able to attend the hearing owing to being on holiday. He sent in written representations which he asked to be taken into account in the event that the Tribunal were unwilling to postpone the hearing. Unfortunately, the written representations contained detailed information about the parties' attempts to settle the case extra judicially and they were therefore inadmissible and unhelpful. The claimants attended the hearing and the first claimant gave evidence. A Judgment was signed on 19 January 2024 and sent to the parties on 23 January 2024.

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2. On 5 February 2024 the respondent requested reconsideration of the judgment on the grounds that the claimants had not been honest with the tribunal. The email stated that the respondent was happy to pay the claimants' salary up to 12 September 2023 plus one working day for the handover they provided. However, they disputed that the claimants carried out 6 additional working days and also disputed that they did not take holidays given that the explanation the second claimant herself offered for removing petty cash to pay gardeners on 7 separate occasions was because they were away. They stated that they had documentary evidence supporting their position. The respondent was directed to send the evidence to the tribunal, copied to the claimants. They did so. On receipt of this, I decided that the application for reconsideration should not be refused and a hearing would be required. Notice of today's reconsideration hearing was sent out to the parties together with an order to produce an electronic file of any documents they wished to refer to at the hearing. The hearing took place today. Having heard the respondent's and the first claimant's evidence, I consider that it is in the interests of justice to revoke the original decision dated 19 January 2024 and to substitute the current judgment. The amended reasons are as follows.

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3. The claimants were employed by the respondent from 6 June 2022 until 11 September 2023 when their resignations took effect. They thereafter worked two additional days for the respondent to provide cover on 23 September and a handover to their successors on 4 October 2023.

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Evidence

4. The first claimant gave evidence on behalf of both claimants. Ms Anna Devine, partner of Mr Kevin Mackie, the respondent's director gave evidence for the respondent. Ms Devine assists Mr Mackie in running the respondent's holiday let business. Ms Devine's evidence was supported by contemporaneous documents and for that reason, I preferred it to the first claimant's evidence where there was a conflict.

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Findings in Fact

5. The following material facts were found to be proved:-
- 5 6. The respondent is a limited company involved in the letting of a castle and four holiday cottages near Blairgowrie. The claimants began working full time for the respondent on 6 June 2022. The first claimant was a caretaker and maintenance person. The second claimant was a caretaker and housekeeper. The respondent manages the premises remotely through its caretakers. The respondent's directors reside near Edinburgh.
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7. The claimants' duties included cleaning, maintaining and looking after the properties and preparing them for guests on turnaround days. The first claimant's duties included daily treatments of the hot tubs in the cottages. Laundry was outsourced to a local firm. The first claimant's salary was £17,500 per annum. His gross monthly pay was accordingly £1,458.33. The second claimant's salary was £12,500 per annum. Her gross monthly pay was £1,041.67.
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8. The claimants were entitled to annual leave of 5.6 weeks (or 28 days) per year in terms of the Working Time Regulations 1998. Their leave year started on 1 June in any year and ran until 31 May the following year. The claimants worked a five day week. Saturday was a working day but the others days varied from week to week.
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9. The claimants' contract with the respondent provided for six months' notice. In or about July 2023 the claimants advised the respondent that they would be leaving for another job in mid-September. The respondent began a recruitment exercise and appointed two replacement employees. However, they were unable to start work with the respondent until 4 October. After some discussions, the claimants agreed to cover until that date and to hand over to the new employees at that time.
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10. The claimants worked for the respondent up to and including 11 September 2023. On 12 September they moved to their new place of work in Plockton. The distance between the respondent's premises and Plockton is approximately 155 miles. The claimants started their new employment on 16 September 2023. However, they travelled down and worked for the respondent on the following additional days: Saturday 23 September 2023 and a handover on 4 October 2023. The first claimant arranged that after their departure on 12 September, the hot tubs would be treated daily by the local operative who generally covered his annual leave. The second claimant arranged cleaning cover from the agency that cleans the castle.

11. The respondent's holiday year ran from 1 June to 31 May. The claimants each accrued 8 days' holiday during the period between 1 June and 11 September 2023. However, they used the holidays they had accrued and were not due any holiday pay upon termination. The first claimant sent two emails to both Mr Mackie and Ms Devine on 11 July 2023 (R4). The first email stated: *"Hi all a reminder that we're down in Bath from this Sunday to Thursday to support Helen's Dad's new round of chemo. We're back for the meeting Kev has planned with Ferdinand on the 21st so anytime suits for us from then till the Patterson wedding prep starts on 31st."*

12. The second email (R4) stated: *"Just following up on my previous e-mail there is currently only one departure while we are away and we have arranged for Sally to do it on Wednesday 19th. As the bookings currently stand we can cover everything else before we go or when we come back."* The claimants were away for four or five days in July 2023. When the claimants were away on holiday, the first claimant would instruct Blair Murdoch to cut the grass for him and Mr Murdoch would be paid from the petty cash. This arrangement was confirmed to the respondent in a WhatsApp message from the second claimant to Ms Devine on 12 October 2023 (R3) which stated: *"The gardening payments to Blair were to keep on top of the grass while we were away."* The petty cash record

showed that payments were made to Mr Murdoch on the following dates: 4th, 9th, 14th, 17th and 25th August and 6th and 8th September 2023. The claimants were away on holiday on those dates. Accordingly, they had used up their annual leave entitlement for the leave period and no holiday pay was due on termination of employment.

Discussion and Decision

Claim for Unauthorised Deductions from Wages

13. Section 13 of the Employment Rights Act 1996 gives workers the right not to suffer unauthorised deductions from their wages. Under section 13(3) a deduction occurs where *“the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion.”* The claimants ought to have been paid for the period from 1 to 11 September 2023; for their shift on 23 September and for the handover 4 October. They are due payment from 1 to 11 September ($11/30 = 0.36$). They are also due a further 2 days' pay for their additional shifts.

14. The first claimant's gross monthly salary is £1,458.33. He is due £525 for the period from 1 to 11 September ($£1,458.33 \times 0.36$). With regard to the 2 additional days worked, since they were both working days, I have calculated them separately. The daily rate (for a five day week) is $31/7 \times 5 = 22.14$ working days per month. For the first claimant: £1,458.33 divided by 22.14 gives a daily rate of £65.86 $\times 2$ days = £131.72. His total arrears of pay are $131.72 + 525 = £656.72$.

15. The second claimant's gross monthly pay was £1,041.67. She is due £375 for the period from 1 to 11 September ($£1,041.67 \times 0.36$). £1,041.67 divided by 22.14 gives a daily rate of £47.04. $£47.04 \times 2 = £94.08$. The second claimant's total arrears are $£375 + £94.08 = £469.08$.

16. All sums are rounded to the nearest whole pound. All sums are also gross of tax and National Insurance. The claimants are required to account to HMRC for tax and NI.

5 Holiday Pay Claim

17. The claimants' holiday year ran from 1 June 2023. They had taken their pro-rated annual leave entitlement for the year to 11 September 2023. No further payment is due.

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M Kearns

Employment Judge

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12 March 2024

Date of Judgment

14 March 2024

**Entered in register
and copied to parties**

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I confirm that this is my Reconsideration Judgment in the case of Mr RH Hallett and Miss H Wynne v Dalnaglar Holiday Cottages Ltd 4106887/2023 & 4106888/2023 and that I have signed it by electronic signature.

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