



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8000120/2024

Hearing Held by CVP on 24 April 2024

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Employment Judge O'Donnell

15 **Lesley Wilson**

**Claimant
In Person**

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Goodlad Coffee Limited

**Respondent
No appearance or
representation**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The judgment of the Employment Tribunal is:-

1. The ET3 lodged by the respondent on 22 April 2024 is rejected under Rule 18 as it was lodged outside the relevant time limit and no application for an extension of time was made.
2. The name of the respondent is amended to "Goodlad Coffee Ltd".
- 35 3. The claim for deduction of wages in respect of deductions made for tax is not well-founded and is hereby dismissed.

4. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the gross sum of £1700 (One thousand seven hundred pounds).
5. The respondent breached the claimant's contract by underpaying her in July 2023. The respondent is ordered to pay damages to the claimant in the gross sum of £228.38 (Two hundred twenty eight pounds and thirty eight pence) in respect of this breach of contract.
6. The Tribunal makes a declaration under section 11 of the Employment Rights Act 1996 that the respondent failed, over the whole of the claimant's period of employment, to provide her with an itemised pay statement as required under section 8 of the 1996 Act.

REASONS

1. The claimant has brought complaints relating to the following issues relating to her wages:-
- a. Deductions for tax have been made from her wages but these sums have not been paid to HMRC.
 - b. The claimant was underpaid for the month of July 2023 when she had been off sick.
 - c. She received no pay in lieu of untaken holidays at the end of her employment with the respondent.
 - d. She was not provided with payslips throughout her employment with the respondent.
2. The respondent did not attend the hearing. They had lodged an ET3 on 8 April 2024 but this was rejected under Rule 17 of the Tribunal's Rules of Procedure because it did not state whether the respondent resisted any part of the claim. A revised ET3 was lodged on 22 April 2024 stating that the claim is not resisted. This was lodged outside the time limit for lodging the response in terms of Rule 16 and was not accompanied by an application for an extension of time. The Tribunal, therefore, rejects this ET3 under Rule 18. The claim proceeded as undefended.

3. The Tribunal heard evidence from the claimant from which it has made the following relevant findings in fact:-

- 5 a. The claimant worked for the respondent from 1 March 2023 to 30 November 2023. The respondent's name is "Goodlad Coffee Ltd".
- b. The claimant worked 5 days a week, 8 hours a day and was paid £12.50 an hour.
- c. The claimant took 4 days holiday during her employment.
- 10 d. In July 2023, the claimant worked 51 hours and was then off sick for 3 weeks in that month. She was entitled to Statutory Sick Pay. She received a payment of £724.82 in respect of her wages that month.
- e. The claimant received no pay in lieu of untaken holidays at the end of the month.
- 15 f. The respondent did not provide the claimant with any payslips throughout her employment.

Relevant Law

4. The Tribunal was given the power to hear breach of contract claims by the
20 Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994.
5. 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
25 written consent of the worker.
6. 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.
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7. 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”.

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

9. 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:-

10 (1) *This regulation applies where—*

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

15 (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).*

20 (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*

25 (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.*

10. An employee is entitled to an itemised pay statement under section 8 ERA. If the Tribunal finds that an employer has failed to provide such a statement then it can make a declaration to that effect in terms of section 11 ERA.

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Decision

11. The Tribunal will deal with each aspect of the claim in turn.

12. First, the claimant gave the name of the respondent as "Goodlad Coffee" in her ET1 but accepts that this was an error and the correct designation is "Goodlad Coffee Ltd". The Tribunal amends the name of the respondent to "Goodlad Coffee Ltd".

13. Second, the deductions made from the claimant's wages in respect of tax are authorised under statute and so are lawful deductions. The fact that the respondent has not then made the correct payments to HMRC does not render the deductions themselves unlawful. In these circumstances, any claim that there has been any unlawful deduction of wages related to tax is not well-founded and is hereby dismissed.

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14. In any event, even if it might be said that the failure by the respondent to pay the sums deducted to HMRC was breach of contract, the claimant would receive a windfall if these sums were awarded to her in damages. These are not sums which would have been paid to her in the normal course of events.

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15. If there is an issue with the payment of tax then this is a matter for HMRC and not this Tribunal. The same goes for any issue as to whether the amount of tax being deducted was correctly calculated. This Tribunal does not have the power to determine issues relating to tax.
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16. Third, the claimant had accrued 21 days holiday at the end of her employment. She had worked for 9 months of the holiday year starting at the commencement of her employment. She was entitled to 28 days a year (5.6 weeks at 5 days a week) and so the pro-rated holiday entitlement was 28 x 0.75 = 21 days.
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17. The claimant had taken 4 days' holiday during her employment leaving her with 17 days untaken holiday at the end of her employment.
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18. The claimant worked 8 hours a day at £12.50 an hour = £100 a day. The claimant was, therefore, entitled to the gross sum of £1700 (One thousand seven hundred pounds) as pay in lieu of untaken holidays.
19. Fourth, the Tribunal is satisfied that the claimant was underpaid for the month of July 2023. She worked 51 hours at £12.50 an hour = £625 and three weeks Statutory Sick Pay would have been £328.20 (£109.40 a week). This would have amounted to £953.20 and the claimant was only paid £724.82.
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20. It is possible that some of the difference between these sums was due to the deduction of tax but the complete absence of any payslip means that there is no evidence on which the Tribunal could conclude that this is either the sole reason or one reasons amongst others why there is a shortfall.
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21. In these circumstances, the Tribunal considers that there has been a breach of contract by the respondent in failing to pay the claimant correctly for the month of July 2023. The claimant is awarded the gross sum of £228.38 (Two hundred twenty eight pounds and thirty eight pence) as damages for this breach of contract.
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22. Fifth, and finally, the Tribunal is satisfied that, for the whole period of the claimant's employment with the respondent, she was not provided with an itemised pay statement as required by section 8 of the Employment Rights Act 1996. The Tribunal, therefore, makes a declaration under section 11 of the Act to that effect.
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Employment Judge:	P O'Donnell
Date of Judgment:	25 April 2024
Entered in register:	29 April 2024
and copied to parties	