



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4100135/2024 & 8000105/2024 Hearing by Cloud Video Platform at
Edinburgh on 23 April 2024**

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Employment Judge: M A Macleod

C Stobie

**Claimant
In Person**

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Sandemans

**Respondent
Represented by
Mr R Sandeman
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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**The Judgment of the Employment Tribunal is that the claimant was
unlawfully deprived of holiday pay, and that the respondent breached her
contract in relation to the non-payment of expenses and outlays due; and
that the respondent is therefore ordered to pay to the claimant the sum of
Six Hundred and Forty Eight Pounds and Ninety One Pence (£648.91); and
that the respondent did not fail to provide the claimant with a written
statement of terms and conditions of employment.**

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REASONS

1. The claimant presented a claim to the Employment Tribunal on 9 January 2024 (4100135/2024) in which she complained that she had been unlawfully deprived of wages, in the form of holiday pay, and that her contract of employment had been breached in that she had incurred travel expenses which remained unpaid. She also sought compensation in respect of the respondent's failure to provide a written statement of terms and conditions of employment.
2. The claimant subsequently submitted a further claim on 7 February 2024 (8000105/2024) in which she repeated the same claims.
3. The respondent submitted an ET3 response in which they resisted all claims made by the claimant.
4. A Hearing was listed to take place on 23 April 2024 by Cloud Video Platform (CVP). The claimant appeared on her own behalf, and Mr Sandeman, the principal of the respondent, appeared for them.
5. At the outset of the Hearing, the claimant confirmed that she had sought to submit a number of documents, attached to emails sent to the Tribunal from 9.53am to 10.11am, with photographs of documents. She also said that she had sent a pdf of her documents to the Tribunal at 1.30am on the morning of the Hearing. Mr Sandeman objected to the introduction of the documents, stating that no pdf was attached to the email of 1.30am, and in any event, he could not open all of the attachments to the emails sent around 10am that morning. He referred to the Tribunal's Order requiring parties to produce documents within 7 days of the Hearing.
6. It was not clear to me what if any directions had been issued to the parties in relation to documents, but given that the claimant is a qualified solicitor, I was not inclined to agree to the late production of documents which were in a form which was unreadable to me, and without any clear explanation as to why they were produced so late and in such a form. Accordingly, I directed

that the productions sought to be produced by the claimant would not be allowed to be admitted to the Hearing.

7. The claimant gave evidence on her own account, and Mr Sandeman gave evidence on behalf of the respondent. Reference was had to documents which were produced by the respondent at the outset of the proceedings.
8. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

9. The claimant, whose date of birth is 21 June 1982, qualified as a solicitor on 31 December 2022. She was interviewed by Mr Sandeman, who is the principal and sole practitioner of the respondent, on 29 September 2023, and commenced employment as a solicitor on 24 October 2023. When she was interviewed, the claimant was advised that she would receive a statement of terms and conditions of employment.
10. The respondent produced a document bearing to be a statement of terms and conditions in relation to the claimant (R1). The claimant's evidence was that she had never seen that document until it was produced by the respondent with the ET3. The document produced was unsigned by either party.
11. In the statement of terms and conditions produced by the respondent, the claimant's pay was defined as £33,000 per annum, to be paid monthly in arrears on the last working day of each month. Her normal working hours were to be Monday to Friday 9am to 5pm. The claimant's holiday entitlement was said to be 20 working days per annum.
12. The statement also provided that there was a probationary period of 3 months, and that the respondent could end the claimant's employment by giving 1 week's notice per year of employment, with a minimum period of one calendar month or the statutory notice to which she would be entitled, whichever would be the longer. The claimant would require to give one calendar month's notice to end her employment.

13. The claimant maintained that the statement of terms and conditions was not accurate in every respect. The name of the respondent was given as “Sandemans”, whereas she maintained that the respondent is known as “Sandemans Solicitors”; the start date was incorrect; the scope of her work was to be in criminal and family law, and conveyancing was not to be part of her duties, as suggested in clause 6; she was never told what her holiday entitlement was.

14. The claimant’s employment was terminated on 21 December 2023 by telephone. Mr Sandeman was absent from the office due to Covid, and accordingly could not attend to speak in person with the claimant.

15. The claimant’s position was that there was nothing in writing about travel expenses, but that she understood that there was a system whereby she would be reimbursed for such expenses. She said there was no process, but that she would write down the file name, date, the travel, attendance and advocacy undertaken, and then hand over the file.

16. The claimant’s claim was that she should have been reimbursed for 626.8 miles at 0.45p per mile, amounting to £282.06. She set out the details in an email to the respondent on 22 December 2023 (R2).

17. Mr Sandeman replied to that email (R3) on the same date. In that email he said:

“Of course you will be paid your reasonable outlays. However, you have never advised me what these were until now. I understand that you for some reason spoke to Allison [the respondent’s office manager] about these on Tuesday but implored her not to mention that to me – I cannot imagine why. She did not. What you state about such below is untrue and if you persist in such untruths, I will do something about it. Make no mistake.”

18. Mr Sandeman went on to list a number of criticisms of the claimant’s performance and to warn the claimant against threatening him with litigation. He also pointed out that there was a file note of work undertaken on a file relating to a client (“DB”) in Oban which was not on the file.

19. The claimant responded later that afternoon (R3) to say that she was not threatening the respondent, but advising that no outlays were mentioned by him. She maintained that she had been asked to cover work for which she had no prior experience, as the respondent was aware. She also said that
5 the attendance note in relation to DB in Oban was attached to the clipboard which she had returned to the respondent.

20. Mr Sandeman replied shortly thereafter (R3). He denied the claimant's allegations and sought to terminate the discussion.

21. On 10 January 2024, Mr Sandeman set out a detailed response to the
10 claimant's application in relation to expenses. He considered that some of the expenses were due, and concluded that the total amount which would have been payable under this heading was £174.60. He went on to say that if the claimant were able to vouch properly for the cost of a train and other outlays, that would give the claimant a total entitlement of £291.

15 22. However, Mr Sandeman pointed out that he had, to the claimant's surprise, paid for her practising certificate for 12 months, but had only had the benefit of 2 months' work from her. He anticipated, therefore, that she should repay the balance of 10 months' cost of the practising certificate. The total cost of the practising certificate fee was £509.38, and accordingly Mr Sandeman
20 argued that she owed the practice £424.48.

23. As a result, Mr Sandeman concluded the letter by suggesting to the claimant that on balance she owed the respondent £133.48 (£424.48 minus £291).

24. On 19 January 2024, the claimant responded to several emails from Mr
25 Sandeman (R8). In that email, she denied that there had been any discussion or agreement on her part that she would repay the balance of the cost of her practising certificate in the event of termination of her employment.

25. The correspondence continued with allegation and counter-allegation, to no
30 conclusive purpose.

26. The respondent paid the claimant until 31 December 2023. The office was closed for the Christmas break between 21 December and 2 January 2024, on 22, 27, 28 and 29 December 2023.

27. The claimant did not take any annual leave during the course of her employment with the respondent. Mr Sandeman's position was that by paying her to the end of December he was, in effect, paying her for annual leave of 7 days, which was her entitlement, taking into account 20 days plus public holidays.

Submissions

28. Both parties made brief oral submissions, which I took into consideration in my deliberations.

Discussion and Decision

29. There were 3 issues for the Tribunal to address in this case:

1. Did the respondent unlawfully deprive the claimant of pay in respect of annual leave accrued but untaken as at the date of termination of employment?

2. Did the respondent breach the claimant's contract of employment by failing to pay expenses which were due to her in respect of travel undertaken during the course of her employment?

3. Did the respondent fail to provide to the claimant a written statement of terms and conditions of employment?

30. At the outset, it should be noted that this was a difficult and somewhat fractious hearing. Sadly, the relationship between the claimant and her former employer has completely broken down, and feelings tended to run high during the hearing, leading to the occasional need for me to intervene and ask one or the other to stop interrupting. I regarded this as nothing more than the understandable expression of strong feeling between two strong-minded individuals.

31. I address the issues of credibility and reliability in dealing with the issues below.

1. Did the respondent unlawfully deprive the claimant of pay in respect of annual leave accrued but untaken as at the date of termination of employment?

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32. The claimant's right to paid annual leave is not denied by the respondent. Although the statement of terms and conditions presented by the respondent specifies that the claimant's entitlement to annual leave was 20 working days per annum, Mr Sandeman frankly accepted in evidence that in addition to that basis entitlement, the claimant was entitled to 8 public holidays.

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33. Regulation 14 of the Working Time Regulations applies where, as here, a worker's employment is terminated during the course of their leave year. Regulation 14(2) states that where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, the employer shall make him a payment in lieu of leave in accordance with paragraph (3). Paragraph (3) sets out the basis for calculation of the sum due.

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34. Regulation 15 provides for notice to be given by either the employer or the worker as to when leave is to be taken. That notice requires to be given prior to the period of leave.

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35. In this case, the circumstances do not fit the terms of the Working Time Regulations. Essentially, as I understand it, the respondent's argument is two-fold: that by paying the claimant to the end of December 2023, having dismissed her on 21 December 2023, but not requiring her to work, the respondent was effectively paying the claimant for annual leave taken, or presumed to be taken, in that period; and secondly, that the office of the respondent was closed over the Christmas break, and therefore that period must be regarded as annual leave, for which the claimant was paid.

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36. There are a number of difficulties with these propositions:

- At no stage did the respondent make any of this clear to the claimant, in writing or verbally.
- 5 • It is not clear from the evidence whether this was the respondent's understanding at the time, as Mr Sandeman appeared to suggest that he felt it was simply a fair thing to do to pay her to the end of December, having dismissed her on 21 December.
- 10 • It was accepted by Mr Sandeman that she was entitled to 7 days' annual leave, but he only paid her for 4 days, namely 22, 27, 28 and 29 December.
- 15 • The fact that the office was closed may be a relevant consideration, but nowhere in evidence was it clarified that that closure involved the employees of the respondent taking annual leave. It was not stated in such terms in the purported statement of terms and conditions of employment (R1).

37. I have reached the conclusion that the evidence about this matter is so confusing that it is entirely unclear what the respondent's intentions were. Had the respondent issued the claimant with clear notice that the period after 21 December was to be taken as annual leave, then that might alter
20 my view. However, there is further confusion in that there was no written letter of dismissal, and as a result, it is not clear whether the claimant was dismissed with or without notice. If with notice, then the period up to 29 December for which she was paid may be interpreted as the notice period. If so, it cannot both be notice and annual leave unless there is clear
25 evidence that there was an agreement to that effect. No such evidence is available. At the very least it is clear that there was no agreement to such an effect between the parties.

38. Accordingly, it is my judgment that the claimant was not paid for annual leave which was untaken as at the date of termination.

39. The question for determination, then, is the amount which the claimant was due.

40. The claimant's employment with the respondent lasted from 24 October 2023 until 21 December 2023. The respondent's evidence was that the claimant's entitlement to annual leave was 20 days plus public holidays including Christmas and Boxing Days, and 1 and 2 January, as well as other statutory holidays at Easter and otherwise. By my reckoning the claimant would have been entitled to a proportion of her 20 days annual leave, together with Christmas and Boxing Day while still in employment with the respondent.

41. Essentially, having been employed for one-sixth of the leave year, the claimant was entitled to one-sixth of 20 days, namely 3.33 days. Adding Christmas and Boxing Day to that total gives a total of 5.33 days. However, the claimant's claim is for 4.6 days, and in the circumstances it appears to me that it is just and equitable to make an award to that extent and not beyond.

42. The claimant's normal take home pay was £2,234 monthly. I calculate that to be £26,808 net annual pay; and £515.54 net weekly pay. Dividing her weekly pay by 5 comes to £103.11 per day, net. The claimant's annual leave entitlement was therefore £103.11 x 4.6, amounting to **£474.31**.

43. The respondent is therefore ordered to pay this sum to the claimant.

2. Did the respondent breach the claimant's contract of employment by failing to pay expenses which were due to her in respect of travel undertaken during the course of her employment?

44. The evidence on this issue was, again, confusing and conflicting.

45. The statement of terms and conditions upon which the respondent relied was silent both as to the claimant's right to recover expenses incurred in the course of her employment, and also as to the process to be followed in claiming those expenses. The respondent accepted that the claimant was entitled to be paid her reasonable expenses (R3).

46. In his evidence, Mr Sandeman stated that since he is a “one man band”, he only has a few employees and therefore does not require a large system. He maintained that the claimant’s cases were mainly funded by Legal Aid, and that the process there was to mark up the mileage on the account, which would then be paid to the firm by the Scottish Legal Aid Board. The figures would need to be correct, and it is incumbent on the individual solicitor to ensure that they have a correct file note on the file to show that the mileage was properly done. He maintained that he expected an employee such as the claimant to make clear to Allison, the office manager, or himself, that the expenses had been incurred, and provide details. He anticipated that expenses would be paid in cash to the individual concerned. He also said that the claimant never made any claims to him for expenses.

47. With regard to outlays (which I understand to mean payments of money in relation to a particular file), this needed to be recorded on the client file as a credit, and the Scottish Legal Aid Board would require vouching in the form of a train ticket or similar receipt for the payment outlaid, scanned into the system. When the account is prepared, the respondent would have access to the ticket or receipt to upload to the Scottish Legal Aid Board.

48. The claimant professed little if any knowledge of the process to reclaim expenses or outlays. What she said was that when she prepared an attendance or file note following a client visit or court attendance, she would note with the file note the mileage done or the cost of the train travel, attaching the ticket or receipt to the note. She said that she never received any expenses or reimbursement of outlays from the respondent.

49. There was such a stark divergence between the parties on this matter that it was extremely difficult to know what to make of the expenses system, such as it was. It is plain that the respondent was willing to pay for outlays and expenses incurred by the claimant (albeit expressed following the claimant’s dismissal), but that the claimant did not make a specific, explicit expenses claim until after she had been dismissed by the respondent.

50. I accept, however, that the respondent admits that the claimant did incur certain expenses, and most helpfully set out in his letter of 10 January 2024 (R6) those expenses and outlays which he was prepared to admit were due. The amount he accepted was due to the claimant came to a total of
5 £174.60. There were other sums which he accepted were potentially payable, though without vouching he was not prepared to accept them, being the outlay for a train ticket, for a Viper in relation to DB, and on another file (MMcL) travel to and from Lowmoss, amounting to a further £126.40.

10 51. There is a further complication, in that the respondent did not consider that any payment, of whatever amount, should be made to the claimant, on the basis that they took the view that the claimant owed them for the balance of the cost of her practising certificate for the year, namely £424.48.

15 52. In trying to disentangle this rather complex sequence of events, I have reached the following conclusions:

- The respondent accepts that the claimant is due to receive reimbursement of her expenses and outlays incurred in the course of her employment, notwithstanding the absence of any provision to this effect in her statement of terms and conditions, upon which the
20 respondent relies;
- Having established this, it is my view that that amounts to a contractual obligation accepted by the respondent that any such expenses and outlays should be reimbursed;
- The respondent did say, however, that he expected all such
25 expenses and outlays to be properly recorded and vouched. In my judgment, this is an entirely obvious and reasonable expectation on the part of an employer. The claimant did not appear to dispute this principle, since she maintained that she did keep such records and provided them to the respondent on her return to the office;

- The evidence demonstrates that the respondent admits that the claimant is entitled to the sum of £174.60 in respect of the expenses and outlays set out in his letter of 10 January 2024;
- 5 • However, the remaining expenses and outlays sought by the claimant have not been proved, on the balance of probabilities, to be due to her under her contract of employment, since the respondent disputes that they were undertaken as she alleged, and in the absence of any further persuasive evidence to this effect, I am unable to find that the claimant is entitled to any sum beyond that
10 admitted by the respondent, namely £174.60.
- The respondent seeks to deduct that sum in recompense for their having paid for the claimant's practising certificate for the whole of the year, in which they only received the benefit of 2 months' work from the claimant. The respondent has not provided any evidence
15 that this formed part of the claimant's contract of employment, or that the claimant agreed at any stage to such a deduction. It is plain that when the respondent advised the claimant that he was setting off the amount due to her against this sum in respect of the practising certificate, the claimant maintained that she was unaware of any
20 such intention or right on his part to do so.
- In my judgment, without any clear written authority by the claimant to deduct the balance of the practising certificate fee from her due expenses, the respondent acted in breach of her contract of employment.

25 53. It is therefore my conclusion that the respondent acted in breach of the claimant's contract of employment by failing to pay her the sum of £174.60 in expenses and outlays admitted to be due to her, and that the respondent is ordered to pay to the claimant the sum of **£174.60**.

30 **3. Did the respondent fail to provide to the claimant a written statement of terms and conditions of employment?**

54. There was a clear divergence between the parties about this. The respondent produced R1, a copy of a statement of written terms and conditions of employment bearing the name of the claimant and the details of her employment. The claimant said that she had never seen this document before, and clearly had not signed it in acceptance.

55. Mr Sandeman's evidence was that he printed off the document and left it on the claimant's desk, but that she never signed it or returned it to him. The matter then escaped his notice at that time.

56. On this matter, I am not prepared to find that Mr Sandeman simply made up a document and presented it to the Tribunal as real. It is my view that while the evidence cannot satisfactorily explain what happened to the document, Mr Sandeman did prepare a statement of written terms and conditions for the claimant, but did not hand it to her, leaving it for her in the office. The claimant says she never saw it. While it is unclear how this could be the case, I am prepared to accept that the claimant is being truthful about this matter.

57. In my judgment, this does not amount to a failure to provide the claimant with a written statement of terms and conditions. It was clearly unhelpful that both parties could not agree as to what happened to it. However, as I say, I am not prepared to say of a solicitor of the respondent's experience and standing that he created a document which was not genuine, and in fairness, the claimant did not go so far as to say that either. She simply said that she had not seen it, and did not agree with its terms.

58. Accordingly, this claim made by the claimant fails, and is dismissed.

Murdo A Macleod
Employment Judge

08 July 2024
Date of Orders

Date sent to parties

19 July 2024

I confirm that this is my Note and Orders in the case of Stobie v Sandemans and that I have signed the Note and Orders.