



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4106857/2023**

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**Held in Glasgow on 26 August 2024**

**Employment Judge: Claire McManus**

10 **Mr A Fairley**

**Claimant  
In Person**

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**Renfrew Transport Services Ltd**

**Respondent  
Represented By  
Mrs Singh  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that:-

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- The claimant's claim for unauthorised deductions from wages contrary to Section 13 of the Employment Rights Act 1996 is not well founded and is dismissed.

**REASONS**

**Background**

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1. The claimant's claim is in respect of his position that he is contractually entitled to 40 hours work per week and that his employer has failed to offer him 40 hours work per week. The ET1 named two respondents: (1) Renfrew Warehousing & Distribution Ltd (2) Renfrew Transport Servies Ltd. As the ACAS Early Conciliation Certificate only related to Renfrew Warehousing & Distribution Ltd, the claim was only served on that respondent. An ET3

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**E.T. Z4 (WR)**

defence was submitted on behalf of Renfrew Warehousing & Distribution Ltd. In that ET3 it was denied that the claimant was employed by that respondent.

2. A Final Hearing ('FH') was scheduled to proceed on 25 January 2024. At the respondent's representative's request that FH was postponed. That hearing  
5 was converted to a Preliminary Hearing for the purposes of case management ('a CMPH'), which took place before EJ Doherty. Following that CMPH, a Note and Order dated 26 January 2024 was issued. For reasons set out in that Note, the claimant against Renfrew Warehousing & Distribution Ltd was dismissed and Renfrew Transport Servies Ltd were sisted as a respondent.  
10 The claim was subsequently served on Renfrew Transport Services Ltd (to the same address as that previously registered for Renfrew Warehousing and Distribution Ltd).
3. An ET3 was submitted in response to that service, although with the name in  
15 Box 2.1 of the ET3 set out as being 'Renfrew Warehousing and Distribution Ltd'. The grounds of resistance submitted with that ET3 were based on the claimant not being an employee of the respondent, and no sums being due to the claimant from the respondent. The respondent named in the Grounds of Resistance submitted with that ET3 was Renfrew Transport Services Ltd. The claim proceeds against Renfrew Transport Services Ltd only and that ET3  
20 was taken as having been submitted on behalf of Renfrew Transport Services Ltd.
4. A Case Management Order was issued on 5 March 2023, including for  
25 exchange and lodging of documents intended to be relied upon at the Final Hearing. This Case Management Order was not complied with within the period specified in the Order but a Joint Bundle of Productions was provided to the Tribunal on 23 August 2024. This contained 22 documents, set out with consecutively numbered pages (P1 – P89). One additional page was lodged by the claimant at today's FH (P90).

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### Discussions at Hearing

5. I took steps to identify the claims and the issues for determination by the Tribunal. The claimant's position is that he remains employed by the respondent. The respondent now concedes that the claimant is an employee of the respondent. The ET3 had not been updated to reflect that position.
6. It is the claimant's position that he is contractually entitled to be offered 40 hours work a week from the respondent, that he was offered less than 40 hours work a week, and that he took holidays, and was paid for those holidays, as a means of increasing his take home pay. The claimant confirmed that he is not due any sums from the respondent in respect of non-payment of hours worked. From discussions, it appeared that the claimant seeks to rely on the respondent being in breach of their alleged contractual duty to offer the claimant at least 40 hours work a week.
7. I explained to the claimant that the Employment Tribunal does not have jurisdiction to hear a breach of contract claim arising from an employment contract, unless that contract has come to an end (and subject to the jurisdiction value limit of £25,000) . I allowed a short adjournment in order for parties to consider their positions. I noted my concern that no action had been taken by the respondent to update their ET3 or to properly progress their defence of the claim.
8. Following the adjournment, it was the claimant's position that his holiday pay was wrongly calculated and that he was due sums in respect of holiday pay. The claimant's position was that he had recently submitted a grievance to the respondent in respect of their calculation of his holiday pay. I noted the terms of the ET1 and the ET3. The respondent's representative accepted that the ET3 Grounds of Resistance includes a response in respect of denial that any sums are due in respect of holiday pay. I noted that this claim had been ongoing for some time and that I was keen that matters be progressed and be dealt with today, if possible. The claimant was accompanied to the Tribunal by a Mr G Dyer, who the claimant intended to call as a witness. It was noted that a Judgment had been issued by the Employment Tribunal in respect of Mr Dyer's claim against the respondent (case number

4106433/2023) but that the basis of Mr Dyer's claim was not that same as this claimant's claim. I allowed a further adjournment, to allow the claimant to consult with Mr Dyer. I allowed time for the claimant to specify what he says is due to him from the respondent in respect of holiday pay, and how that has been calculated, and for the respondent to check payment records and provide their position in respect of that. In doing so, I sought to pursue the overriding objective of the Employment Tribunals as set out in Rule 2 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('the Procedure Rules').

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- 10 9. Following the adjournment, the claimant read out a statement of his position, being:-

*"The respondent claims I was put on short term working when I was under 40 hours but I didn't get guaranteed pay for that. Wage slips confirm that.*

*So, guaranteed pay is £38 for 5 days over a 3 month period = £190.*

- 15 *There are 8 x 3 month periods in 2 years.*

*So they didn't pay me £190 x 8 months = £1,520."*

He sought to amend his claim in those terms.

10. I noted that a claim for guaranteed payments can be brought as part of a breach of contract claim, but again that the Employment Tribunal does not have jurisdiction to hear a breach of contract claim where the contract of employment is continuing.
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11. The claimant confirmed that he is not seeking any payments from the respondent in respect of unpaid holiday pay.

12. The claimant confirmed that he is not seeking any payments from the respondent in respect of unpaid wages.
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13. I informed that it is not appropriate for an Employment Judge to give legal advice to a party but that the claimant should take legal advice before taking any action in respect of his employment. No or low cost advice may be

obtained from a solicitor or from sources such a Law Centre or Law Clinic such as those offered by law students at the Universities of Glasgow and Strathclyde Universities, or from a CAB ('Citizens' Advice Bureau').

### Relevant Law

- 5 14. The Employment Rights Act 1996 ('the ERA') at section 13 provides for the right of an employee not to suffer unauthorised deductions from wages. Section 14 sets out the provisions in respect of excepted deductions and section 16 sets out the provisions in respect of excepted payments. Section 13(3) states:

10 *'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 (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the*  
15 *worker's wages on that occasion.'*

15. Section 27 sets out provisions with regard to meaning of wages, including at section 27(1)(a) 'any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.'

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### Decision

16. The claim for unpaid wages under section 13 of the Employment Rights Act  
30 1996 is not well founded and is dismissed.

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C McManus  
Employment Judge

26 August 2024  
Date of Judgment

10 Entered in register  
and copied to parties

27 August 2024