



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000657/2024

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Held in Glasgow on 6 April 2024

Employment Judge M Sutherland

10 **Mr A Mcgurk**

**Claimant
In Person**

15 **Dirty Dogs Deli Ltd**

**Respondent
Represented by:
Mr C Campbell -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The judgment of the tribunal is that –

1. The complaint of unlawful deduction from wages is dismissed upon withdrawal.
2. The complaint of failure to pay holiday pay is dismissed upon withdrawal.
3. The respondent was in breach of contract and is ordered to pay to the claimant
25 damages in sum of £1,1157.40.
4. The Claimant was not provided with itemised pay statements but it would not be just and equitable to make a monetary award.

REASONS

5. A final hearing had been listed for today by CVP (video) to determine
30 complaints of unlawful deduction from wages, holiday pay and failure to provide itemised pay statements.

6. The Claimant appeared on his own behalf. Craig Campbell, Director appeared on behalf of the Respondent. The relevant facts were not in dispute and accordingly oral testimony was not given.
7. Following discussion it was agreed that there was no failure to pay holiday pay and that complaint was withdrawn and falls to be dismissed.
8. It was not in dispute between the parties that: -
- a. The claimant was employed by the respondent as a chef from 5 January to 15 June 2024.
 - b. The respondent had deducted tax and NI from the claimant's gross pay and paid to him the net balance
 - c. The amount of the tax and NI deducted was correct (an earlier error was addressed by a balancing payment)
 - d. The amount deducted has not been remitted to HMRC by the respondent because of an administrative error on the part of HMRC. The respondent has made reasonable endeavours to address that error without success
 - e. The claimant has not been provided with a written pay statement because the software will not generate a payslip until the issue with HMRC is resolved. The claimant has been provided with regular verbal explanations for this issue but nothing in writing.
 - f. The amount of the deductions for tax and NI was as follows:

	Hours			
Date	Gross	Net	Deduction	worked
18/0/2024	420	361.2	58.8	35
22/03/2024	450	357.84	92.16	37.5
02/04/2024	420	361.2	58.8	35

05/04/2024	456	387	69	38
12/04/2024	420	361.2	58.8	35
19/04/2024	420	361.2	58.8	35
26/04/2024	168	168	0	14
03/05/2024	420	361.2	58.8	35
13/05/2024	420	361.2	58.8	35
17/05/2024		72.24	-72.24	
17/05/2024	504	361.2	142.8	42
24/05/2024	336	216.72	119.28	28
24/05/2024		72.24	-72.24	
31/05/2024	420	370.35	49.65	35
07/06/2024	558	454.28	103.72	49
14/06/2024	420	370.35	49.65	35
21/06/2024	504	430.83	73.17	42
01/07/2024	420	170.35	249.65	35
Total	6756	5598.6	1157.4	565.5

9. Following discussion it was agreed that there was not an unlawful deduction from wages because the tax and NI was an authorised deduction. The issue was that the deduction had not been remitted to HMRC in breach of a duty to do so. The claimant made an application to amend to include a complaint of breach of contract in respect of the failure to remit those funds to HMRC which was not opposed by the Respondent.

Discussion and decision*Breach of contract*

10. The respondent was under an implied contractual duty to remit the deductions of tax and NI to HMRC and the failure to do so amounted a breach of contract arising or outstanding on termination. The claimant is entitled to damages in sum of £1,1157.40 representing the total amount of the deduction of tax and NI from wages. The claimant is responsible for remitting to HMRC directly the tax and NI relating to his employment with the respondent.

Itemised pay statement

11. The claimant was entitled to but did not receive an itemised pay statement. Unnotified deductions were made but it is not considered just and equitable to make a monetary award because the claimant has been awarded the amount of the deductions by way of damages for breach of contract.

Employment Judge: M Sutherland
Date of Judgment: 06 September 2024
Entered in register: 09 September 2024
and copied to parties