



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000860/2024**

**Held remotely via Cloud Video Platform (CVP) on 28 August 2024**

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**Employment Judge: C McManus**

**Mr T Hogarth**

**Claimant  
In Person**

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**Edinburgh Construction Ltd**

**Respondent  
No Appearance  
(Un defended)**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that:-

- The respondent has made unauthorised deductions from wages contrary to Section 13 of the Employment Rights Act 1996 and the respondent is ordered to pay to the claimant the total net sum of £6,612 (SIX THOUSAND SIX HUNDRED AND TWELVE POUNDS) to the claimant, being comprised of:
  - £1,240 in respect of unpaid wages (2 weeks x £620 weekly wage)
  - £3,472 in respect of accrued but untaken holidays (28 days x daily rate of £124) and
  - £1,900 in respect of deductions purported to be made for pension contributions but not then paid by the respondent in to the pension fund.

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- The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the net sum of £2,480 (TWO THOUSAND FOUR HUNDRED AND EIGHTY POUNDS) being in respect of 4 weeks' notice (4 x £620).

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## REASONS

### Introduction

1. The claimant's claim was served on the respondent at the company's registered address but no ET3 defence was received. The claims for unlawful deductions from wages, being in respect of unpaid wages, pension contributions and for payment of accrued but untaken holiday pay and the claim for breach of contract in respect of unpaid notice pay proceeded undefended.
2. Evidence was heard from the claimant on affirmation.

### Issues for Determination

153. The issues for determination were:-

(1) Whether the claimant is properly due payments from the respondent in respect of:-

- unpaid wages
- accrued but untaken holidays

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and

- deductions purported to be made for pension contributions but not then paid by the respondent in to the pension fund.

(2) Whether the claimant was dismissed in breach of contract in respect of 4 weeks' notice

25 **Relevant Law**

4. I dealt with this case in terms of the Tribunal's overriding objective as set out in Rule 2 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('The Procedure Rules'), being:

5 *"The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly.*

*Dealing with a case fairly and justly includes, so far as practicable –*

- (a) *ensuring that the parties are on an equal footing;*
- (b) *dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- 10 (c) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) *avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) *saving expense.*

15 *A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."*

205. 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:

25 *'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 worker's wages on that occasion.'*

5 Section 27 ERA 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.'

### Findings in fact

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6. The following material facts were found to be proven.

7. The claimant was employed by the respondent as Finance Manager from 23 October 2023. His wages in respect of that employment were gross pay of £865 per week (net £620 per week). He was contractually entitled to 4 weeks' notice or pay in lieu of notice on termination of employment. He was paid weekly.

8. The last payment the claimant received from the respondent was by bank transfer on 19 February 2024. As no further payments were made by the respondent to them after that date, the claimant and other employees ceased to carry out work for the respondent on 4 March 2024. On 7 March 2024 a Whats App message was sent by the Managing Director of the respondent to the claimant and other employees informing that outstanding wages would not be paid and that no further work would be carried out by the company.

9. The claimant has not received payment of wages for work carried out by him from the respondent in the period from 19 February 2024 until 4 March 2024. He is due the net sum of (2 x £620) £1,240 in respect of unpaid wages for that two week period.

10. The claimant had accrued holiday entitlement of 28 days. On the basis of a 5 day working week, at a net daily rate of (£620 / 5) £120, that equates to net payment due to him from the respondent of (28 x £120) £3,360 in respect of his entitlement to statutory and contractually accrued untaken holidays.
11. Deductions were made by the respondent from the claimant's wage purportedly in respect of pension contributions but no monies were then paid into a relevant pension fund for the claimant. The respondent made total deductions from the claimant's wages of £1,900 purported to be in respect of pension contributions.
12. The claimant was contractually entitled to 4 weeks' notice or pay in lieu of notice of termination of employment and did not receive any notice.

### Decision

13. The claimant's claims under the Employment Rights Act 1996 section 13 are well founded and the claimant is due the following net sums from the respondent:-
- £1,240 in respect of unpaid wages
  - £3,472 in respect of accrued but untaken holidays (28 days x daily rate of £124)
- and
- £1,900 in respect of deductions purported to be made for pension contributions but not then paid by the respondent in to the pension fund
14. The claimant's claim for breach of contract is well founded and the claimant is due payment from the respondent of £2,480 in respect of 4 weeks' notice.

**Employment Judge: C McManus**  
**Date of Judgment: 28 August 2024**  
**Entered in register: 9 September 2024**  
**and copied to parties**

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