



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 8000456/2024

Held in Glasgow on 4 October 2024

10

Employment Judge: M Kearns

Mr J Stewart

**Claimant
In person**

15

Culchulain Construction Ltd

**Respondent
Represented by
**Mr S O'Sullivan
Director****

20

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30

The Judgment of the Employment Tribunal was that both the claimant's claim and the respondent's counter-claim are dismissed.

NOTE

35

1. This case called for a final hearing by Cloud Video Platform on 2 August 2024. The hearing could not be concluded because neither party had provided to the Tribunal or to each other the documents they required in order to prove their respective cases. The Notice of Hearing sent to parties on 29 April 2024 had contained a document order which required the parties to prepare an

E.T. Z4 (WR)

5 electronic or paper file containing any documents they wished to refer to at the hearing. Neither party had done so. I discussed the document order with the parties on 2 August and explained to them what was required. On 9 August 2024, a Note recording the discussions at the 2 August hearing was sent out to the parties containing the following orders: *“(1) Not later than 6 September 2024, the parties are each ordered to send to the Employment Tribunal, copied to the other party an electronic file containing all the documents they wish to refer to at the hearing. The file must have numbered pages and an index at the beginning.*

10 *(2) The CVP hearing of this case is continued to Friday 4 October 2024 at 2.30pm.”*

- 15 2. The continued hearing took place today. I heard further evidence from the claimant and from Mr Sean O’Sullivan, the respondent’s Director. Various documents had been produced by the parties and put into an electronic file for the hearing.

20 Findings in Fact

3. The following facts were admitted or found to be proved:

- 25 4. The claimant was employed by the respondent as a ground worker from Monday 28 November 2022 until his resignation with immediate effect on Friday 22 March 2024. On 28 November 2022 the claimant signed an employment contract with the respondent and a further document entitled ‘Deductions from Pay Agreement’. The Deductions from Pay Agreement contained the following clauses: “

30 *“6. Any damage to Vehicles, Stock or property (including non-statutory safety equipment) that is the result of your carelessness, negligence or deliberate vandalism will render you liable to pay the full or part of the cost of repair or replacement.*

7. Any loss to us that is the result of your failure to observe rules, procedures or instructions, or is as a result of your negligent behaviour or unsatisfactory standards of work will render you liable to reimburse to us the full or part of the cost of the loss.

9. In the event of failure to pay such costs will be deducted from your pay.”

5
10 5. The claimant worked a week’s lying time at the start of his employment and his bank statement shows that he was paid £712 on Friday 9 December 2022. The requirement for the employer to process daily time sheets and feed the information into the pay roll suggests that this was payment to the claimant for the week ending Friday 2 December 2022. Thereafter, the claimant was
15 paid around £540 net weekly by the respondent. The claimant resigned without notice on 22 March 2024. He was paid as normal on that day for the week ending Friday 15 March 2024. He did not work any notice and was thereafter paid for 31 hours worked in the week ending 22 March 2024 under a pay slip dated 29 March 2024 (from which certain sums were deducted as
20 set out below). This payment was received late into the claimant’s bank account on 3 May 2024 because of a banking error by the respondent’s bank.

25 6. The payslip dated 29 March 2024 showed 31 hours (being the correct number the claimant worked in his final week to 22 March 2024) at £19 per hour giving a gross sum of £589 and 47 hours holiday pay accrued but untaken at termination. This was the correct amount of holiday pay. 47 hours at £19 per hour gives a gross sum of £893. Thus the gross sum for wages and holiday pay before deductions was £1,482. From this sum were deducted £248.69 tax, £82.80 NI and £42.35 pension giving net pay of £1,108.16. The reason
30 why the final sum paid to the claimant was £338.20 and not £1,108.16 in respect of his wages and holiday pay was because the respondent had deducted an agreed sum of £200 for the claimant’s accidental damage to the respondent’s van and a further sum of £570 for insurance excess incurred by

the respondent in respect of the alleged negligent loss by the claimant from his van of a rotating laser leased from a company called Hilti.

- 5 7. The claimant handed his van back to the respondent on Saturday 23 March 2024. He did this by taking it to the house of the respondent's site manager, Rory McLean, who returned it to the respondent. On receipt of the van, a helmet and a rotating laser were found to be missing from it. The helmet had been taken from the van while the van was in the claimant's custody as 'security for wages' by another departing employee, who subsequently
10 returned it to the respondent. However, the rotating laser was not recovered. The laser was worth £2,854.10. It had been leased by the respondent from Hilti and was covered by insurance, subject to an excess of £570, which was paid by the respondent. The respondent deducted the insurance excess from the claimant under the Deductions from Pay Agreement as a loss they had
15 incurred as a result of carelessness or negligence by the claimant.

Discussion and decision

The claim for lying time

- 20 8. The claimant states that he is owed a week's lying time because he was not paid by the respondent for the first two weeks of his employment. The respondent disputed this and maintained that the claimant was paid for his first week at the end of his second week and that he was paid thereafter at the end of each week. At today's continued hearing, the respondent produced
25 the claimant's pay slips for the beginning and end of his employment and the claimant produced two pages from his bank statement, one showing transactions from 5 to 16 December 2022 and one for 24 April to 3 May 2024. The first page showed that the claimant was paid £712 on Friday 9 December 2022. The requirement for the employer to process daily time sheets and feed
30 the information into the pay roll suggests that this was payment to the claimant for the week ending Friday 2 December 2022. Thereafter, the evidence suggested that the claimant was paid around £540 net weekly by the respondent. The claimant resigned without notice on Friday 22 March 2024. Since he did not suggest otherwise and did not produce the bank

statement covering that week, I inferred that the claimant was paid as normal on that day for the week ending Friday 15 March 2024. He did not work any notice and was thereafter paid for 31 hours worked in the week ending 22 March 2024 under a pay slip dated 29 March 2024 (from which certain sums were deducted as set out below). That payment was received late into the claimant's bank account on 3 May 2024 because of a banking error by the respondent's bank. The second bank statement page produced by the claimant for the period 24 April to 3 May showed the payment of that sum.

9. In order to prove that he had not received his lying time, the claimant would have required to show that a week was missing from his total pay in respect of his period of employment or that this was never caught up at the end of his employment but despite being given a second chance to do so, he did not lodge documentary evidence or give cogent oral evidence from which this could be discerned. It appears to me from the evidence I heard that the claimant's claim for lying time is based on a misunderstanding and that he has, in fact been paid the correct amount by being paid on 22 March for the week ending 15 March 2024 and on 3 May for the week ending 22 March 2024. That head of claim is therefore dismissed.

The claim for notice pay

10. The claimant originally claimed notice pay but he testified at the hearing on 2 August 2024 that he had resigned without giving notice, having said to the contracts manager that he was not coming back. He is not entitled to notice pay in these circumstances and that head of claim is dismissed.

Deductions from the claimant's final pay packet

11. With regard to the other claims, the parties were agreed that the claimant was due 31 hours' pay at £19 per hour for his final week's work (£589 gross) and that his pro-rated holiday entitlement for the holiday year to the date of his resignation (22 March 2024) was 47 hours (£893 gross). The gross sum

before deductions was £1,482. From this sum were deducted £248.69 tax, £82.80 NI and £42.35 pension giving net pay of £1,108.16. The respondent explained that the final payment due to the claimant should have been paid to him on or around 29 March 2024 by bank transfer but that due to a banking error payment was delayed until 3 May 2024. For the respondent, Mr O'Sullivan testified that the sum was paid to the claimant under deduction of £770 in respect of damage to the respondent's van (£200) and the alleged negligent loss of a laser (£570). The sum paid to the claimant was accordingly £338.20.

10

12. The respondent asserted that it was entitled to deduct this sum from the claimant under his contract of employment and 'Deductions from Pay Agreement' which he signed on 28 November 2022. At today's hearing, the claimant's contract of employment and 'Deductions from Pay Agreement' were lodged and referred to. The claimant confirmed that he had signed both documents on 28 November 2022, the signatures on the documents being his own. The claimant accepted that he had agreed with the deduction of £200 for the damage to the respondent's van.

15

20

13. It was difficult to resolve the issue of the laser. It was not suggested that the claimant had taken it himself, only that it had disappeared from the van on his watch. The respondent produced the invoice from Hilti showing that 80% of the total value of the laser had been covered by Hilti theft insurance and that the respondent had had to pay the excess of £570 plus VAT on 5 April 2024. The date of the invoice and insurance claim supported the respondent's evidence that they had had to make a claim following the loss of the laser from the van and was consistent with them doing so at the end of March. Mr O'Sullivan testified that a helmet had gone missing from the van at the same time but that this had subsequently been returned. At the hearing on 2 August, the claimant said that the employee in question had taken the helmet from the van as security for his wages. The claimant accepted that until he handed the van over to Mr McLean, he had been the one with the keys. On the balance of probabilities, and given the evidence about the helmet and the

25

30

fact that until he handed them over, the claimant was in possession of the van keys, I concluded with some reservations that the laser had been taken from the van by a third party on the claimant’s watch and that this came within the circumstances agreed to in the Deductions from Pay Agreement. The respondent had mitigated its loss by making the insurance claim and I therefore concluded that they were entitled to deduct the remaining sum for the laser from the claimant’s final pay. The remaining claim is therefore dismissed.

10 *The respondent’s counterclaim*

14. The respondent lodged a counterclaim in the following terms: “*We would like to claim back the remaining costs to repair the damage to our vehicle. We deducted only part of the cost and we now want the balance.*” The respondent did not cover this in evidence. There are accordingly no facts to support the counterclaim and it is dismissed.

M. Kearns

Employment Judge

8 October 2024

Date

Date sent to parties

11 October 2024

I confirm that this is my Judgment in the case of Mr J Stewart v Culchulain Construction Ltd and that I have signed the Judgment by electronic signature. M Kearns