



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000216/2024

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Held via Cloud Video Platform (CVP) on 29 October 2024

Employment Judge N M Hosie

10 Mr A English

Claimant
In Person

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Hoxleigh Limited (in Liquidation)

Respondent
No appearance and
No representation

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

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1. the claim under s.23 of the Employment Rights Act is well-founded and the respondent shall pay to the claimant the sum of **£36,959.96 (THIRTY SIX THOUSAND, NINE HUNDRED AND FIFTY NINE POUNDS AND NINETY SIX POUNDS)**, as unlawful deductions from wages, subject to the appropriate deductions for income tax and national insurance;
2. the claim under Regulation 30 (1)(b) of the Working Time Regulations 1998 is well-founded and the respondent shall pay to the claimant the sum of **£1,120 (ONE THOUSAND, ONE HUNDRED AND TWENTY POUNDS)**, as a payment in lieu of annual leave, subject to the appropriate deductions for income tax and national insurance; and
3. the respondent shall pay to the claimant the sum of **£5,600 (FIVE THOUSAND AND SIX HUNDRED POUNDS)**, in respect of the respondent's

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failure to provide the claimant with a written statement of particulars of employment.

REASONS

1. Alan English brought various complaints following his resignation from his employment with the respondent Company, Hoxleigh Limited, (“Hoxleigh”), on 1 December 2023. His claim was not defended. Hoxleigh went into Creditors’ Voluntary Liquidation on 25 March 2024.

The evidence

2. I heard evidence from Mr English at the Hearing. He gave his evidence in a measured, consistent and convincing manner and presented as credible and reliable. In the course of his evidence, he referred to a bundle of documentary productions which he had submitted (“P”).

The facts

3. Having heard Mr English’s evidence and considered the documentary productions, I was able to make the following findings in fact.
4. Mr English commenced his employment with Hoxleigh on 30 May 2023 following an approach by the two Directors with whom he had worked previously. He was employed as Head of Software and Integrations.
5. He was offered a salary of £72,800 gross per annum which he accepted. This was confirmed in the offer of employment which he received (P.2).
6. Mr English started work immediately. He managed a team of four. As part of his job he was in regular contact with third parties, on behalf of Hoxleigh.
7. However, despite raising the matter on numerous occasions and despite assurances from the Company Directors (P.34, for example), Mr English did not receive any payments of his salary.
8. He was reassured time and again throughout his employment that “investment was coming” and that payment of his salary would be made, plus back pay for his accrued unpaid salary, but this was never forthcoming.

Eventually, Mr English's patience ran out. He lost all trust and confidence in his employer due to the financial strain he was under and he resigned, verbally, on 1 December 2023. He confirmed his resignation by letter dated 13 December 2023. He explained that he was resigning due to nonpayment of salary and the impact this was having on him and his family.

The financial claims

9. Helpfully, Mr English had submitted a Schedule of Loss (P.83) which I was satisfied was accurate. However, as Mr English did not have the required 2 years' continuous service with Hoxleigh and could not bring a "standard" unfair dismissal complaint, there was no legal basis for an "ACAS percentage uplift" in the monetary awards.
10. I deal with each of his complaints in turn.

Unpaid wages

11. I was satisfied that Mr English was not paid any salary throughout the period of his employment with Hoxleigh. On the basis of a gross annual salary of £72,800, he should have received £560 for the two days he worked in May 2023; and £36,399.96 for the six months he worked from 1 June to 1 December 2023 (6 x £6,066.66).
12. Accordingly, Mr English suffered a total unlawful deduction of wages of **£36,959.96**. This is a gross sum and requires to be paid to him by Hoxleigh, under deduction of the appropriate amounts of income tax and national insurance.

Accrued annual leave

13. Mr English was entitled to 28 days' annual leave, in terms of the offer of employment. He worked for Hoxleigh for a total of 6 months. This meant that when his employment ended, he had accrued 14 days' annual leave. He took 10 days' paid leave during his employment which left 4 days' accrued annual leave when his employment ended. On the basis of daily earnings of £280, this amounts to **£1,120**. This is also a gross sum and requires to be paid to

him by Hoxleigh, under deduction of the appropriate amounts of income tax and national insurance.

Written particulars of employment

- 5 14. Mr English was not provided with a written statement of his particulars of employment, as he should have been, in terms of s.1 of the Employment Rights Act 1996.
- 10 15. Tribunals **must** award compensation to an employee upon a successful claim being made under any of the Tribunal jurisdictions listed in Schedule 5 of the Employment Act 2002, when it becomes evident that the employer was in breach of his duty to provide full and accurate written particulars. Mr English's successful claims are listed in Schedule 5.
- 15 16. A Tribunal **must** award a "minimum" amount of 2 weeks' pay in respect of this failure, in addition to the other awards. However, a Tribunal can also award 4 weeks' pay in exceptional circumstances. Hoxleigh's Directors were experienced employers. They had around 15 employees. They were, or should have been, well aware of the requirement to provide employees with written particulars of employment. In these particular circumstances, I decided that it would be appropriate to award Mr English 4 weeks' pay in respect of this failure. It was a flagrant disregard of a legal obligation. Mr English is also
- 20 entitled, therefore, to a payment of **£5,600** (£1,400 x 4) in this regard.

N Hosie

Employment Judge

14 November 2024

Date of Judgment

Date sent to parties

20 November 2024

