EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 8003045/2025

Held in Glasgow by Cloud Video Platform on 16 April 2026

Employment Judge McFatridge

Mr S Mcilvain	**Claimant** **In Person**
Sumo Waste & Recycling Limited	**Respondent** **Represented by** **Mr Nicholas Short,** **Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:-

1. the respondent unlawfully withheld wages from the claimant in the sum of £2520.54 gross. The respondent shall pay the said sum to the claimant;

2. the respondent withheld the sum of £2407.69 gross from the claimant in respect of paid annual leave accrued but untaken as at the date of termination of employment. The respondent shall pay the said sum of £2407.69 gross to the claimant in respect thereof;

3. the total sum due to be paid by the respondent to the claimant is £4928.23 gross. The respondent shall be entitled to deduct therefrom any sums that

are required to be paid to HMRC in respect of PAYE tax and national insurance contributions and to pay only the net sum due to the claimant but that only if the following conditions are met:

1. The respondents provide an itemised payslip to the claimant showing the amount of such deductions for PAYE, tax and national insurance;
2. Any sums in respect of PAYE, tax and national insurance are immediately forwarded by the respondent to HMRC;
3. If requested by the claimant the respondent provides written proof in the form of a receipt from HMRC to confirm that they have received these funds.

REASONS

1. The claimant submitted an ET1 claim form to the Tribunal in which he claimed that he was due to be paid various sums following the termination of his employment with the respondent. He stated that he had been given notice on 1 August 2025 and that his final day of work had been 23 August. He stated that whilst he had been paid the sums due up to 1 August he had not received any payment for the period between 1 and 23 August, nor had he received holiday pay which he was due. He provided a calculation which had been carried out by his accountant which he said brought out a net figure of £3106.35 after deduction of tax and national insurance however, no detail of the calculation relating to holiday pay was provided. The respondent submitted a response to the claim in which they simply said that the claimant had not been employed by them.

2. The hearing took place by CVP on 16 April. The claimant gave evidence on his own behalf. Mr Nicholas Short appeared on behalf of the respondent and gave evidence on their behalf. He was previously a director of the company. Currently his wife is the sole director. He indicated that he managed the company. Although the parties had been ordered to exchange documents and produce a Joint Bundle prior to the hearing, neither party had done this. The only document the claimant had forwarded to the Tribunal was a hard copy of the calculation which had been carried out by his accountant which did not say how the figures had been derived. On the morning of the hearing the respondent sent a number of unindexed documents to the Tribunal in IMG format which they indicated had been forwarded to them from the claimant via ACAS. I referred as best I could to these documents during the hearing. I had also prior to the hearing went to Company’s House Website and put various points arising to the information contained therein to Mr Short when he was giving evidence. On the basis of the evidence I found the following facts relevant to the matter before the Tribunal to be proved or agreed.

3. The respondent are a waste management company. They are run by Mr Short and his wife, Sarah Short who is the sole director. Mr Short was the director of the company until he resigned in May 2025. The respondent company was incorporated in July 2024 which was after the date the claimant commenced working for Mr Short. Mr Short was previously a director of various companies some of which had been dissolved or were in liquidation. One of these companies was a company called SW Waste Limited which had been incorporated on 4 January 2023. The accounts for the year to 31 January 2025 are still outstanding according to the Company's House Website and appeared to be in the waste management as well as other lines of business. There is an active proposal to strike off S. W. Waste Limited. In addition, the confirmation statement is also overdue. . Mr Short is a director of that company. Both the respondent company and S.W.Waste Limited appear to be engaged in the same type of work.

4. On 1 February 2023 the claimant commenced work in Mr Short's business. The business involved commercial waste recycling. The claimant reported to Mr Short and to his wife who was involved in running the business with him. His job involved contacting potential customers and attempting to sell the company's commercial waste recycling services to them. After a time he also started working in the offices at 90-96 Dykehead Street, Glasgow from which the business was operated. There was a sign at the office saying "Sumo waste"..

5. At no time was the claimant provided with a statement of terms and conditions of employment as is a requirement in terms of section 1 of the Employment Rights Act 1996. At no time was the claimant provided with a statement of change of terms and conditions of employment as would be a requirement under section 4 of the Employment Rights Act 1996.

6. The claimant did not receive any itemised payslips on any kind of regular basis. During the entire course of his employment he received two or three. At least one of these had the name SW Waste Limited shown as his employer.

7. The claimant referred to the company as Sumo Waste and there was a sign on the employers premises saying Sumo Waste which at some stage was taken down. At some point he received a document from HMRC which gave the name of his employer as SW Waste Limited.

8. At no time was the claimant given any information as to the entity which actually employed him. His understanding was that at some point in early

2025 the identity of the employing company had changed. He described this as a change of name to Sumo Waste and Recycling Limited. This happened around the time the sign saying Sumo Waste was taken down from the company's office. Although the claimant was obtaining orders for the company, the only documents which were completed were duty of care documents. Some of these had "Sumo Waste" on them. The claimant became aware that labels which were provided for commercial waste carboard collections which had been carried out by the company had the name "Sumo Waste and Recycling Limited" on them. He assumed that this was the correct designation of his employer.

9. I find on the balance of probabilities that having been initially employed by SW Waste Limited the claimant's employment transferred to the respondent following the respondent's incorporation in July 2024.

10. On or about 1 August the claimant gave the respondent notice that he would be leaving. The last day of employment was 23 August. Despite asking Mr and Mrs Short for payment of the final monies due to him the claimant has not received payment.

11. The claimant was paid at the rate of £40,000 per annum gross. For the period of 23 days between 1 and 23 August the claimant was due the sum of £2520.54 gross (£40,000 x 93/365).

12. The claimant had never received any statement of terms and conditions and there was no written agreement in existence regulating the holiday year. In those circumstances the default provisions contained in the Working Time Regulations apply and the holiday year ran from 1 February to 31 January in each year. The claimant had taken no paid annual leave during the period from 1 February 2025 up to the date of termination of his employment on 23 August 2025. According to the Government Website he was entitled to 3.13 weeks pay in respect of annual leave for this period. That amounts to £2407.69. These are gross figures. These sums were not paid by the respondent.

Matters arising from the evidence

13. It is an unusual case in that the main matter to be determined was whether or not the claimant was employed by the respondent company. In employment cases it is not at all unusual for employees to be confused as to the precise identity of their employer. It is no doubt for this reason that Parliament has set out a very clear obligation on employers to provide this information in writing to their employees at the commencement of

employment and whenever any changes are made. It is to be regretted that in this case Mr Short who appears to have been charged with the running of all of the various limited companies did not comply with this requirement. It is also not unusual for claims to be lodged against the wrong entities. In those circumstances my experience is that it is the invariable practice of employers and their representatives to immediately provide information to the claimant about the correct employing entity. It is to be regretted that in this case Mr Short who was quite clearly responsible for employing the claimant decided that he was not prepared to engage with the Tribunal process other than to rely on what he considered to be a technical defect in the claim. In doing so he entirely failed to comply with his duty to the tribunal in terms of the overriding objective and indeed the duty of frankness which applies in all civil proceedings

14. Given that there was almost a complete dearth of relevant paperwork in this case I required to base my decision largely on the evidence of the parties. The claimant was an impressive witness. It was very clear that he was trying to be honest in his evidence and would not go further than the information in his possession. When he did not know something he said so. He did not seek to guild the lily and he made appropriate concessions. I found his evidence to be credible and reliable. He had not been given the information about his employer that he was entitled to and in the circumstances had tried his best to work out who his employer was based on the very limited information he did have.

15. Mr Short was a much less impressive witness and I regret to say that I found his evidence to be evasive and self-serving. I considered he was being mendacious in many of his answers. It appeared to me that he had decided that he was not going to pay the claimant and would try to offload liability on to a previous company which was in the course of being wound up. Initially he was not keen at all to answer any questions about SW Waste Limited. He did not say why the present company had been set up which appeared to be doing exactly the same work as SW Waste Limited. He initially said that it would be doing slightly different work but when asked to provide details of this he was unable to speak other than in generality. He did say that it was part of the normal evolution of companies. He did not provide any explanation as to why if the claimant had continued to be employed by SW Waste Limited up to the termination of his employment in August, there had been a failure to provide accounts to Company's House for SW Waste Limited which had led to that company now being on the point of being struck off. His evidence was at times little more than a repetition with a mantra that the claimant had no documents to back up his claim. I did not find this a particularly compelling argument since the onus was on Mr Short to provide documents such as

payslips. He had not provide these for what appears to have been the claimant's employment by the previous company and it is therefore unsurprising that there were none in respect of the claimant's employment with the respondent.

16. At the end of the day the factors which led me to a finding that at the time of the claimant's termination of employment he was employed by the respondent were:

1. the claimant's assertion that there had been a change of name of the company and that the sign had been taken down;
2. the claimant's assertion that his understanding had been that he had latterly had become employed by the respondent Limited Company;
3. the fact that although there was not much contract documentation there were some namely the labels which did show the name of the respondent. It is hard to see why there would be a need to change the name;
4. the fact that Mr. Short appears to have ceased to carry out basic administration of the previous company to the extent that it is now on the point of being struck off. This is despite the fact that Mr. Short is clearly still carrying on the same business as he was during the period of the claimant's employment.
5. The fact that if the claimant was latterly employed by S.W. Waste Limited up to the date of dismissal as appeared to be Mr. Short's position, then it would have been a simple matter for Mr. Short to lodge the PAYE records of S.W. Waste limited in order to demonstrate this. He did not.

17. As against all of that I simply have Mr Short's continued assertions that there is no paperwork, a situation which has been caused by him. There appeared to me to be absolutely no substantial difference between the work carried out by the respondent company and the work carried out by the previous entity. It appeared to me that on the balance of probabilities Mr Short was in the process of transferring his business enterprises from one Limited Company shell to another and that as a result of this the claimant's employment had transferred to the present respondents.

18. I accepted the claimant's evidence that he had not been paid for his last three weeks of employment and the holiday pay to which he was entitled. In his evidence he confirmed that he had one week's paid annual leave in January which had fallen into the previous holiday year. I accepted his evidence when he said he had had no holidays since then. Mr Short's position was that if the claimant had sued the correct company then he would have defended this on the basis that he (the claimant) had removed certain confidential information

when he left which he was now using in his current employment. I need hardly point out that such a matter would not amount to a relevant defence to the claims being made in this case. I also note that Mr Short has not so far raised the issue and according to the claimant had not done so prior to the hearing.

Discussion and decision

19. Having established that the respondent was the claimant's employer there was no relevant defence put up to the issue of whether the sums were due. I have shown my calculation of the sums due in my findings of fact above. I appreciate that this is slightly different from the figures produced by the claimant's accountant but it was not clear to me how the accountants figures were derived in particular the figure I have calculated for holiday pay appears to be higher than that calculated by his accountant.

20. I deliberated whether to award the sums net or gross. Given the way Mr Short behaved at the Tribunal I have absolutely no confidence that he would meet his obligations to account to HMRC for any payments made to the claimant. I have therefore awarded the sums gross. If Mr Short wishes he may calculate the appropriate PAYE deductions, tax and national insurance and deduct these but only provided these sums are thereafter immediately remitted to HMRC and proof provided as is stated in the Judgment above.

Date sent to Parties **27 April 2026**