

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 4105112/2016, 4105113/2016 & 4105115/2016 Hearing at Edinburgh
on 2 March 2017

Employment Judge: M A Macleod (sitting alone)

Sarah-Jane Baxter

Claimant
In Person

Robert Young

Claimant
In Person

James Henderson

Claimant
Not Present

EIH Systems Ltd

Respondent
Not Present and
Not Represented

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

(1) The claim by Ms Baxter succeeds, and the respondent is ordered to pay to her the sum of **Three Thousand Four Hundred and Sixty Three Pounds and Eighty Three Pence (£3,463.83)**;

(2) The claim by Mr Young succeeds, and the respondent is ordered to pay to him the sum of **Two Thousand Four Hundred and Eighty Nine Pounds and Twenty Six Pence (£2,489.26)**; and

(3) The claim by Mr Henderson fails, and is dismissed.

REASONS

1. The three claimants in this case submitted an ET1 together claiming that they had been unlawfully deprived of wages by the respondent. They also claimed that they had been unfairly dismissed.

2. The respondent did not submit an ET3 response within the statutory deadline.
3. On 14 November 2016, Ms Baxter, who purported to represent herself and the two other claimants, wrote to the Tribunal to ask if they needed to attend the Tribunal in person, as she had realised that they needed to have two years' continuous service in order to proceed with an unfair dismissal claim.
4. The Tribunal responded to that email on 16 November 2016, to inform Ms Baxter that all of the claimants would be required to attend any hearing, and provided a date listing stencil for their completion.
5. A hearing was fixed to take place on 2 March 2017. Both Ms Baxter and Mr Young attended the hearing, but Mr Henderson did not. I was informed by Ms Baxter that he was unable to take time off his new work to come to the hearing.
6. Based on the evidence given and the information provided, the Tribunal was able to make the following findings.

Ms Baxter

7. Ms Baxter commenced employment with the respondent on 15 November 2015, and advised the Tribunal that her final day in employment was 1 August 2016. She found it difficult to be precise, as the respondent had never provided her with a letter of termination, nor a P45.
8. Ms Baxter recognised that she lacks the necessary qualifying service upon which to base a claim for unfair dismissal.
9. At the outset of her employment, the claimant was told that her salary would be £20,000 per annum. She understood that to represent her salary after tax. Mr Bernd Gantert, who owned and managed the respondent's business, provided the claimant with a copy of a contract of employment (1.2). It must be said that this is an unsatisfactory document. It identifies the claimant as the employer, and Mr Gantert as the employee. It makes no reference to the

name of the company for which the claimants worked, EIH Systems Ltd, but to BWG Consulting.

10. The salary is shown as being £20,000 per annum “payable 13 times monthly in arrears”. The meaning of this statement is unclear. It goes on to provide that the 13th payment would be “an additional payment at the end of the year, its like a bonus from the company so the payment is just happens when the company make profit”.

11. The claimant Ms Baxter was said to work 30 hours per week. Her holiday entitlement was defined as 28 days per annum, inclusive of public or local holidays, pro rata for the year of joining according to completed calendar months.

12. During the probationary period (the first 3 months of employment), the notice of termination was 1 week; thereafter it was 4 weeks.

13. The claimant did not sign that contract, but returned it to Mr Gantert with amendments marked on its face (1.2). The amendments were relatively minor, and related firstly to the identities of the employer and employee, and also to additional payments to be made in the event that the normal place of work for the claimant changed to the Edinburgh or Broxburn office, to account for additional travel costs.

14. In turn, Mr Gantert did not sign that contract.

15. The claimant was paid £1,272 per month, after deduction of tax and national insurance by the respondent from the first month of employment.

16. In May 2016, the claimant was paid £1,132.80, an underpayment of £139.20.

17. The claimant received no payment of salary in June or July 2016.

18. On 12 December 2016, the respondent paid to the claimant the sum of £1,000 direct into her bank account. There was no explanation as to what that sum represented.

19. The claimant maintains that her former employer overpaid tax on her behalf to Her Majesty's Revenue and Customs, though she accepts that that is an issue between herself and HMRC.

5 20. The claimant seeks payment in respect of outstanding annual leave. In the year to 1 August 2016, the claimant had taken 6 days' annual leave. Her pro rated entitlement to annual leave in 2016 was 7/12 of 28 days, amounting to 16.33 days. She also seeks payment in respect of 4 weeks' notice, as her employment was terminated without notice and she did not resign.

10 21. Ms Baxter's claim is undefended. Accordingly, it is my judgment that the respondent is ordered to pay to her the following sums, calculated as shown:

15 i. **£1,683.20** in respect of arrears of pay, for underpayments made in May to July 2016. I find that the claimant was not due to be paid £20,000 net per annum, but that the payments made represented her net payments. It is impossible to discern precisely what was or should have been paid beyond the monthly figures shown, in the absence of payslips or a definitive contractual statement. I am satisfied that the claimant has been underpaid £2,683.20. However, that sum requires to be reduced by £1,000 paid to the claimant on 20 12 December 2016.

ii. **£1,174.16** in respect of four weeks' notice pay, taking £293.54 as the weekly pay brought out by multiplying £1,272 by 12, and then dividing by 52.

25 iii. **£606.47** in respect of annual leave accrued but untaken as at the date of termination of employment. The claimant was entitled to 10.33 days, having taken 6 out of her pro rated entitlement of 16.33 days. On the basis that her weekly pay was £293.54, her daily net pay was £58.71 which when multiplied by 10.33 comes to £606.47.

22. Accordingly, it is my finding that the respondent must pay to the claimant Ms Baxter the total sum of £3,463.83.

Mr Young

23. Mr Young commenced employment for the respondent on 16 March 2015.

5 He is in a similar position to Ms Baxter, in that he has never been formally advised that his employment has ended with the respondent. He did take up voluntary work in October 2016 on the understanding that he was no longer employed by the respondent. He estimates that the last day upon which he attended work for the respondent was in the middle of May 2016. He said
10 that Mr Gantert told him not to attend work until he had been paid.

24. The claimant Mr Young did receive a contract of employment from the respondent during his employment but was unable to provide the Tribunal with a copy of that contract.

25. He was paid £1,272 per month. He was due to be paid £20,000 per annum, which he understood to be the gross figure, subject to the deduction of tax and national insurance.
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26. He is claiming an underpayment of wages, of £728, taking into account a payment by the respondent into his bank account of £1,275 on 12 December 2016. He is also claiming £600 by way of holiday pay, relating to 10 days' untaken annual leave, and 4 weeks' pay in respect of notice pay.
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27. In my judgment, while the claimant Mr Young's evidence was vague and unsupported by documentation, his claim succeeds, being undefended, and the respondent is ordered to pay to Mr Young the following:

- i. **£728** in respect of unpaid wages;
- 25 ii. **£1,174.16** in respect of four weeks' notice pay, taking £293.54 as the weekly pay brought out by multiplying £1,272 by 12, and then dividing by 52.
- iii. **£587.10** in respect of annual leave accrued but untaken as at the date of termination of employment. The claimant was

entitled to 10 days. On the basis that his weekly pay was £293.54, his daily net pay was £58.71 which when multiplied by 10 comes to £587.10.

5 **28. Accordingly, it is my finding that the respondent must pay to the claimant Mr Young the total sum of £2,489.26.**

Mr Henderson

29. Mr Henderson did not attend at the hearing, and the reason given by Ms Baxter, who purported to represent him, was that he was unable to take time off from his new employment.

10 30. Although I did not regard this as a sufficient reason for his non-attendance, I instructed that a letter be sent to Mr Henderson on 3 March 2017, requiring him to answer certain questions by no later than 17 March.

15 31. Mr Henderson has not replied to that letter. In the circumstances, given both his failure to attend the hearing and to reply to that letter, there is no basis upon which the Tribunal can make any award to Mr Henderson, and accordingly his claim is dismissed. It is plain that he has failed to pursue the claim but in any event there is no evidence provided by him upon which any decision could properly be made.

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32. Accordingly, Mr Henderson's claim fails and is dismissed.

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Employment Judge: Murdo Macleod
Date of Judgment: 24 March 2017
Entered in Register: 27 March 2017
and Copied to Parties