



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107206/2020

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Held via Cloud Video Platform (CVP) on 29 January 2021

Employment Judge Beyzade Beyzade (sitting alone)

10 **Mr Grzegorz Matula**

**Claimant  
In Person**

15 **Windparkservice UK Ltd**

**Respondent  
No appearance and  
Not represented**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The judgment of the Tribunal is that:

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1.1. The claim for unauthorised deduction from wages and breach of contract in respect of the non-payment of £630.00 between January/February 2018 and February/March 2020 is withdrawn. The Claimant's other claims continue.

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1.2. The complaint of unauthorised deduction from wages in respect of arrears of pay relating to August 2020 is well founded and the Respondent is ordered to pay the Claimant the sum of **TWO THOUSAND EIGHT HUNDRED AND NINETY-NINE POUNDS AND SIXTY-THREE PENCE (£2,899.63)** from which tax and national insurance requires to be deducted, provided that the Respondent intimates any such deductions in writing to the Claimant and remits the sum deducted to Her Majesty's Revenue and Customs (and that sum is payable immediately).

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1.3. The complaint of breach of contract in respect of non-payment of expenses in July/August 2020 is well founded and the Respondent is

ordered to pay the Claimant the sum of **ONE HUNDRED AND FIFTY-TWO POUNDS AND NINETY-TWO PENCE (£152.92)** from which tax and national insurance does not require to be deducted (and that sum is payable immediately).

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## REASONS

### Introduction

2. The Claimant presented a complaint of unlawful deduction from wages (pay arrears), breach of contract (expenses), and unlawful deduction from wages and breach of contract (non-receipt of payment of £35.00 per month for 18 months). The Respondent did not enter a Response.
3. A final hearing was held on 29<sup>th</sup> January 2021. This was a hearing held by CVP video hearing pursuant to Rule 46. This was pursuant to a Notice of Hearing and standard directions sent to the parties on 10<sup>th</sup> December 2020. I was satisfied that the Claimant were content to proceed with a CVP hearing, that the Respondent did not object, and that it was just and equitable in all the circumstances. The Tribunal were satisfied that the Claimant were able to see and hear the proceedings, and that the Claimant could be seen and heard.
4. The parties did not file a Bundle of Documents. The Tribunal had in its possession a copy of the Tribunal file which included the Claim Form, Notice of Hearing and standard directions sent on 10<sup>th</sup> December 2020, directions of Employment Judge Maclean dated 22<sup>nd</sup> January 2021 (and my directions dated 28<sup>th</sup> January 2020), Claimant's payslip dated 31<sup>st</sup> August 2020 and other correspondences between the Tribunal and the Claimant.
5. On 22<sup>nd</sup> January 2020 Employment Judge Maclean had given directions including in the last 3 paragraphs of the Tribunal's correspondence where he directed the Claimant to provide confirmation within 7 days of whether he is claiming unlawful deduction of wages for his August salary and breach of contract for expenses, what is claimed in view of notice and what is the basis of the claim in respect of £35.00. The Claimant were sent further correspondence from myself on 28<sup>th</sup> January 2021 reminding the Claimant of

the need to comply with Employment Judge Maclean's order dated 22<sup>nd</sup> January 2021. The Tribunal questioned why the Claimant did not comply with the Order. The Claimant stated that he did not know, he replied two days ago with a copy of his payslip, he sent another email yesterday, and he did not have evidence relating to the £35.00 or his expenses (as this was in the UK and he could not travel to there at present due to COVID restrictions). The Tribunal was satisfied that the Claimant could deal with any matters contained in Employment Judge Maclean's Order fairly and justly in evidence and submissions and that this was in accordance with the overriding objective (Rule 2).

6. The Tribunal determined that it was appropriate and reasonable to proceed with the final hearing in the Respondent's absence because the Respondent was notified about the date, time, and format of the hearing in the Notice of Hearing and directions sent to the parties 10<sup>th</sup> December 2020. The Tribunal considered its overriding objective (Rule 2), and it was in the interests of justice to proceed without further delay.

7. At the outset of the hearing the Claimant was advised that the Tribunal proposed to investigate and record the following issues as falling to be determined, the Claimant being in agreement with these:

8.1 Did the Respondent fail to pay the Claimant's wages in August 2020, and if so, what amount is due to Claimant?

8.2 Was the Respondent required to pay the Claimant reimbursement for his expenses in the amount of £153.92 under the Claimant's terms of employment?

8.3 Was there an agreement to pay the Claimant £35 a month for 18 months (which is what German technicians were paid) and whether the Respondent was in breach of contract by failing to pay this to the Claimant?

8. The Claimant gave evidence at the hearing on his own behalf and the Respondent were not present or represented.

9. The Claimant made closing submissions on his behalf.

Withdrawal

10. The Claimant has withdrawn his complaint of breach of contract and unlawful deduction of wages in respect of the alleged non-payment of £630.00 payable to him in equal monthly instalments over a period of 18 months between January/February 2018 and February/March 2020. Where a claim, or part of it, has been withdrawn the Tribunal shall issue a judgment dismissing it unless (a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be a legitimate reason for doing so; or (b) the Tribunal believes that to issue a judgment would not be in the interests of justice (Rule 52).

11. The Claimant has indicated a desire to bring proceedings in the sheriff court for breach of contract. I am satisfied that this is a legitimate reason. The Claimant's breach of contract claim was justiciable in the civil court and in the Employment Tribunal. The Claimant believed he properly commenced proceedings in the Employment Tribunal in respect of the breach of contract claim, having been previously unaware of the Tribunal time limits. The Claimant's claim in the Employment Tribunal would be limited to events that took place 3 months less one day from the date proceedings in the Employment Tribunal were started (account to be taken of the ACAS Early Conciliation 25 days). His breach of contract claim concerns events prior to 22<sup>nd</sup> July 2020. The Claimant's position was that the deductions in question occurred between January/February 2018 and February/March 2020 and he explained that he did not bring his claim previously as he was still working for his employer. I explained that the Claimant may need to apply for an extension of time should he wish to progress his claim for unlawful deduction of wages in the Tribunal. In respect of breach of contract the Claimant would need to satisfy the Tribunal that the claim arises or is outstanding on the termination of the Claimant's employment and it was brought within the time limit for breach of contract claims. Additionally having discussed that there were insufficient particulars and an absence of any evidence, the Claimant has evidence that he cannot currently access as he is not able to travel to the UK

due to COVID-19 restrictions and he would like to discuss this evidence with a civil lawyer. The Claimant is required to make an election as to where the proceedings are brought in the sheriff court or the Employment Tribunal the Claimant cannot do both. The Claimant's choice to proceed in the sheriff court is legitimate in the circumstances.

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12. The Respondent did not attend the hearing to request that the claim in question be dismissed, and even if dismissal were requested by the Respondent, I am not satisfied based on the information on the Tribunal file that there is any matter that would lead me to conclude that it is not legitimate for the Claimant's claim to proceed in the sheriff court. Any defence that the Respondent may have to the claim is unaffected by the venue. Any issue estoppel argument can be made in the sheriff court proceedings. The fact that the Claimant has been (or should have been) aware of the Employment Tribunal limitation for some time does not in my view make the election he has made at this time not a legitimate reason, and I take into account that the Claimant has not had the benefit of advice and representation and his difficulties accessing his evidence.

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13. For all the reasons above I would in any event have considered that it was not in the interests of justice to issue a judgment to dismiss the Claimant's breach of contract claim in relation to the sum of £630.00.

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14. The Claimant's other complaints continue.

#### Findings of Fact

15. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues -

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16. The Claimant was employed by the Respondent from 07<sup>th</sup> November 2017 until 31<sup>st</sup> August 2020 as a Wind Turbine Technician. The Claimant's duties included being a Team Leader (looking after a 3-member team), attending to wind turbines, contacting customers, stopping turbines, and servicing them.

The Respondent's main office was located at Lamond Court, The Castle Business Park, Stirling, FK9 4TU.

17. The Claimant was provided with a Statement of Terms of Employment by the Respondent. The Claimant was paid £29,800.56 basic pay and both a Daily Allowance and Functional Bonus in addition to this. His working hours were usually between 8am – 4pm (approximately 8 hours per day), although he worked 9-10 hours per day when he worked in France. The Claimant did have a lunchbreak for 20 minutes which was paid. The Claimant was paid monthly.
18. The Claimant worked 40 hours per week and he normally worked Monday to Fridays. This continued until the end of August 2020. The Group Company was based in Germany. The Claimant worked in France between January and June 2020. During this period, the Claimant was paid on time.
19. The Claimant did not claim for any additional hours worked. Travel time was normally recorded on payslips (this was the driving from hotel to customer or from windfarm). The Daily Allowance payable was £15.00 when he started work and £15.00 on his return journey. There was also a functional bonus payable of £35.00 per month which he could spend on restaurants and in supermarkets (he had to be at work all the time and not claim sick pay in order to receive this).
20. The Claimant resigned and gave Angelica Giboula, a Manager in the Windpark service of the Respondent (and the Claimant's line manager) over the minimum period of three weeks' notice of termination of his employment on or around Monday 3<sup>rd</sup> August 2020. The Claimant's last working day was 31<sup>st</sup> August 2020 on which date he left his PPE, lanyard, laptop, and other company property with the Respondent.
21. The Claimant received a payslip dated 31<sup>st</sup> August 2020. The Claimant's gross pay due in the month of August was £2899.63 (£2483.38 basic pay; £315 daily allowance; and functional bonus £101.25). The owner of the Company told the Claimant that the Respondent did not have funds to pay the Claimant, but the Claimant's manager advised him that the Respondent did have income.

22. The Respondent agreed to pay the Claimant's reasonable expenses incurred during the course of his employment. This included diesel, water, batteries, and some parts. The Claimant presented an expenses' claim, and he was normally paid his expenses incurred monthly prior to July/August 2020. In  
5 respect of July or August 2020 the Claimant claimed the sum of £152.92. He was advised he would be paid his expenses by the Respondent.

23. At the date of termination, the Claimant had not been paid any of his salary entitlement in respect of August 2020 and he did not receive his £152.92 expenses reimbursement.

10 Observations

24. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

15 25. The Claimant had a Contract of Employment, so he was aware of the details relating to his salary.

26. The Claimant produced a payslip in respect of 31<sup>st</sup> August 2020 which showed that his gross salary for the month of August 2020 was £2899.63 setting out the breakdown for this and his deductions in respect of tax, national insurance, and pension. There was no evidence the Respondent disputed that  
20 it owed this amount to the Claimant. The owner of the Respondent told the Claimant the Respondent did not have the funds. There was no evidence that the Respondent had made any payment in respect of this to the Claimant.

27. The Claimant gave evidence that there was an agreement between the Claimant and Respondent that they would repay his expenses. No written  
25 agreement was provided. He submitted a claim in July or August 2020 to the Respondent for expenses totalling £152.92, but no copy of the claim or receipts were provided. The Claimant explained he had some evidence in the UK and he could not get there at present due to COVID restrictions, and I accepted the Claimant's evidence. On the balance of probabilities it was likely  
30 the Claimant had to spend his own money on diesel and it is inherently

implausible that he would not receive reimbursement in respect of this. There was no evidence that the Respondent disputed his expenses claim. In fact, the Respondent told him he would receive reimbursement of his expenses.

Relevant law

- 5 28. To those facts, the Tribunal applied the law –
29. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers contract advised in writing, or by the worker's prior written  
10 consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.
30. A worker means an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to perform personally any work for another party who is not a client or customer  
15 of any profession or business undertaking carried on by the individual (s230 15 ERA).
31. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
- 20 32. Under Section 27(1) of the ERA "wages" means any sums payable to the worker in connection with their employment including pay arrears, any fee, bonus, commission, holiday pay or other emolument under a contract of employment.
33. A complaint for unlawful deduction from wages must be made within 3 months  
25 beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.
34. Contracts of employment which give rise to the entitlement to pay are a matter of contract: based upon an agreement between the parties, employer, and



employee, although it is recognised that those two parties rarely have the same bargaining power. Many forms of employment protection have been established by Parliament over the years to ensure that employers deal properly and in accordance with minimum contractual entitlements with their employees. In short, employers will not be acting lawfully if they act on a unilateral basis. The statutory provisions dealing with the relevant employment protection rights are set out in the Employment Tribunals Act 1996, at Section 3 read with the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624 for the breach of contract claims, Part II of the Employment Rights Act 1996, particularly at Sections 13, 14, 23 and 24, for the unlawful deduction from wages claims. The Tribunal had regard to its overriding objective at Rule 2 of the Employment Tribunals Rules of Procedure 2013 to deal with cases fairly and justly.

35. Pursuant to section 7 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624 a complaint to an Employment Tribunal in respect of an employment contract must be presented within the period of three months beginning with the effective date of termination; or where this is not reasonably practicable, within such further period as the Tribunal considers reasonable.

#### 20 Discussion and decision

36. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

37. The Claimant submits that he was due £2289.79 net in respect of his pay arrears for the month of August 2020. The Claimant did not receive any sum in relation to this in August 2020 or thereafter. The Claimant therefore states he is owed £2289.79.

38. The Claimant had worked throughout August 2020 up to and including 31<sup>st</sup> August 2020 and he is accordingly entitled to a full month's salary. His basic yearly salary was £29,800.56. His basic monthly salary was £2483.38. He was also entitled to a daily allowance amounting to £315.00 and a functional bonus of £101.25 as shown on his August 2020 payslip. Accordingly, he was

entitled to a month's pay in the sum of £2899.63 gross. The Claimant had not received any payment in respect of this after his employment ended. He is therefore due to be paid £2899.63 gross in respect of pay arrears. The Claimant did not consent to the said deduction from his wages.

5 39. The Claimant further submits he is owed £152.92 in terms of expenses he incurred during the course of his employment. I am satisfied that there was an agreement between the Claimant and the Respondent that any reasonable expenses he incurred during the course of his employment would be repaid to the Claimant. Such expenses included the purchase of Diesel and other  
10 matters. I am further satisfied that the Claimant presented evidence of expenditure he incurred while he was employed in July and August 2020 to the Respondent, that the Respondent agreed to repay the expenses incurred in the amount of £152.92, and the expenses payment was outstanding on termination of his employment. The Claimant had not received any payment  
15 in respect of this after his employment ended. He is therefore due to be paid £152.92 (without deduction) in respect of expenses.

40. The Respondent has therefore made an unlawful deduction of wages in the sum of £2899.63 (less tax, national insurance and pension deductions shown on the Claimant's payslip for August 2020) and has failed to pay the Claimant  
20 the sum of £152.92 in breach of contract.

25 Employment Judge: Beyzade Beyzade  
Date of Judgment: 22<sup>nd</sup> February 2021  
Entered in Register: 2<sup>nd</sup> March 2021  
Copied in Parties