



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107400/2020

10

Held on the Cloud Video Platform 22 November 2021

Employment Judge A Jones

15

Mr G MacKay

**Claimant
In person**

20

**Hotel in the Skye Limited
Trading as Hotel in the Skye**

**Respondent
No appearance**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It is the judgment of the Tribunal that the respondent was in breach of section 8 Employment Rights Act 1996 throughout the claimant's employment in that it failed to provide him with any itemised pay statements timeously and the respondent is ordered to pay to the claimant the sum of £3379.31 being the total sum of unnotified deductions made by the respondent.

30

REASONS

Introduction

35

1. The claimant lodged a claim of unlawful deduction from wages and alleged that he had not received itemised wage slips in accordance with section 8

E.T. Z4 (WR)

Employment Rights Act 1996. His claim form made reference to some sums he believed represented underpayments, but indicated that he was not sure what underpayments had been made as he had not received payslips for these months.

- 5 2. The respondent did not lodge a response to the claimant's claim and did not participate in the proceedings. A preliminary hearing took place by telephone conference call on 18 January 2021 and the respondent did not seek to participate in that hearing.
3. A final hearing took place on the Cloud Video Platform. The claimant
10 appeared in person and there was no contact with the Tribunal by the respondent in relation to the hearing. The Tribunal heard evidence from the claimant.

Findings in fact

4. The Tribunal makes the following findings in fact:
- 15 5. The claimant was employed by the respondent from around February 2020 until he was made redundant towards the end of September 2020.
6. The claimant's salary which was to be paid monthly was £21,000.
7. The claimant was paid monthly by bank transfer. He did not receive payslips each month.
- 20 8. The claimant questioned the respondent regularly as to why he had not received any payslips. The respondent informed the claimant that they would speak to their accountant and revert to him. No explanation was ever provided to the claimant for the respondent's failure to provide him with payslips.
9. The claimant's pay varied from month to month and the claimant did not
25 understand why this should be given he was employed on an annual salary which was to be paid in twelve equal instalments.
10. The claimant was made redundant in September 2020. After the termination of his employment, he asked again for payslips to allow him to check that he had received all sums due to him. The respondent again made reference to

contacting their accountant and provided him with payslips for the last two months of his employment in October or November 2020.

11. The claimant received holiday pay to which he was entitled some months after the termination of his employment.

5 12. Since the termination of his employment the claimant has been required to repay £400 to HMRC, which was said to be an overpayment made to him.

Relevant law

13. Section 8 of the Employment Rights Act 1996 ('ERA') provides that a worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement. This statement should include information regarding the gross and net amounts to be paid to the worker and any deductions which require to be made.

15 14. Section 11 ERA provides that a worker can make a reference to an employment tribunal where he had not been provided with a statement as required by section 8.

15. Section 12 ERA provides that where on such a reference, an employment tribunal finds that an employer has failed to meet the requirements of section 8, then it shall make a declaration to that effect.

20 16. Section 12(4) ERA states that 'where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made...the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.

25 17. Section 13 ERA provides that an employer shall not make a deduction from wages of a worker employed by him unless such deduction is required to be made by virtue of a statutory provision, or the worker has previously signified his agreement in writing to the making of the deduction.

Discussion and decision

18. The Tribunal found that the respondent had failed to meet the requirements of section 8 ERA throughout the claimant's employment despite the claimant's repeated requests for payslips. The respondent only provided the claimant with two payslips some time after the claimant's employment had terminated and only as a result of the claimant's continued perseverance to obtain these.

19. The respondent's failure was wholly unacceptable and no reason was ever provided for its failure. The failure did not allow the claimant to determine whether he had received all sums due to him. The claimant still does not know if he has received all sums due to him. It was clear to the tribunal that this was not an oversight or technical failure on the part of the respondent but a deliberate and continued failure to meet its obligations, which caused the claimant difficulties.

20. In these circumstances, the tribunal concluded that it was appropriate to penalise the respondent to the maximum amount allowed in terms of section 12(4) ERA.

21. The claimant's gross monthly pay was £1750. He received the following payments from the respondent during his employment:

- 31.03.2020 1488.68 a shortfall of 261.32 from the gross amount
- 30.04.2020 1263.11 a shortfall of 486.89 from the gross amount
- 29.05.2020 1263.03 a shortfall of 486.97 from the gross amount
- 30.06.2020 1263.03 a shortfall of 486.97 from the gross amount
- 01.09.2020 1244.17 a shortfall of 505.83 from the gross amount
- 01.09.2020 1244.17a shortfall of 505.83 from the gross amount
- 30.09.2020 1104.50 a shortfall of 645.50 from the gross amount

22. Therefore, the total amount of unnotified deductions is £3,379.31 and the tribunal orders the respondent to pay the claimant that sum. In these circumstances, the tribunal makes no findings in relation to any unlawful deduction from wages which may have been made to the claimant's wages.

Employment Judge: Amanda Jones
Date of Judgment: 22 November 2021
Entered in register: 24 November 2021
and copied to parties

5

10