



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4101092/2022

Final Hearing held by Cloud Video Platform on 20 June 2022

10

Employment Judge A Kemp

15

Mr Thomas Simpson

**Claimant
In person**

20

Limitless Development Services

**Respondent
No appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

The claimant is awarded the total sum of FOUR THOUSAND ONE HUNDRED AND FIFTY POUNDS FORTY PENCE (£4,150.40) payable by the respondent, in respect of the following:

30

- (i) Payment as an unlawful deduction from wages and breach of contract in respect of unpaid pay for annual leave, and unpaid wages, of £2,246.40 subject to any necessary statutory deduction. In the event that the respondent makes a statutory deduction it shall (a) immediately remit the sum deducted to Her Majesty's Customs and Revenue and (b) provide when doing so written evidence of the same to the claimant.**
- (ii) A statutory redundancy payment, or a basic award for unfair dismissal, in the sum of £1,904.00.**

35

REASONS

Introduction

1. This was a Final Hearing held remotely.
2. The respondent did not provide a Response Form, and the Tribunal issued
5 a Judgment on liability on 12 April 2022. The present hearing was restricted to remedy.
3. The respondent did not appear at the hearing. I noted that the respondent was designed as “Limitless Development Services”, and that the Judgment had been issued against that entity. The claimant thought that
10 it was Stephen Jeffries as a sole trader using that as his trading name, rather than a limited company or other entity. As the Judgment on remedy had already been issued I considered that it was appropriate to proceed on the same basis.

Evidence

- 15 4. Evidence was heard from the claimant. The claimant was offered the opportunity to send any supporting documents including payslips and an email as to outstanding annual leave by email after the Hearing, under the terms of Rules 2 and 41. He did so, providing a payslip and the said email.

Issue

- 20 5. The sole issue is: to what remedy is the claimant entitled as to (i) unlawful deductions from wages for annual leave pay, or holiday pay as he put it, and for a lye week as he referred to, and (ii) a statutory redundancy payment.

25 Facts

6. The following facts, material to the issues before the Tribunal, were found by the Tribunal.
7. The claimant is Mr Thomas Simpson. His date of birth is 1 December 1978.

8. The respondent is Limitless Development Services.
9. The claimant was employed by the respondent from 2 February 2018. When he started he worked a “lye week” being a week of work for which he was not then paid. Pay started from the second week of employment.
- 5 10. The claimant’s gross pay was approximately £624 per week. He worked five days per week.
11. The claimant’s employment ended 21 October 2021 following an email to him dated 28 September 2021 from the respondent stating that his employment was to end on that date. No reason for the dismissal was
10 given. He has not received a statutory redundancy payment.
12. The claimant had accrued but untaken entitlement to annual leave as at the date of termination of employment amounting to 13 days, confirmed to him in said email. He has not been paid for the same.
13. The claimant commenced early conciliation on 7 January 2022. The
15 certificate in relation to that was issued on 25 January 2022. The Claim Form was presented on 17 February 2022.

The law

14. I was satisfied that the Claim had been presented timeously and was within the jurisdiction of the Tribunal.
- 20 15. The Employment Rights Act 1996 (“the Act”) provides for a right not to suffer unlawful deductions from wages under Part II. The right is set out in section 13, and that includes for wages due as well as for holiday pay having regard to the terms of section 27.
16. It also provides for a right not to be unfairly dismissed by section 94, which
25 is determined having regard to the terms of section 98. Case law has established that save in unusual circumstances consultation with the employee is required before there can be a fair dismissal for redundancy, including in ***Polkey v AE Dayton Services [1988] ICR 142.***
17. There is an entitlement to annual leave under the Working Time
30 Regulations 1998. That includes an entitlement to payment for leave

accrued but untaken as at the date of termination of employment under Regulation 14. The amount is related to the week's pay.

18. A person whose employment terminates on ground of redundancy is entitled to a statutory redundancy payment by virtue of section 136 of the Act. Redundancy is defined in section 139, and there is a statutory presumption that dismissal is by reason of redundancy. The amount due is calculated by reference to section 162, which is based on calculations of a week's pay under sections 212 – 214 of the Act. There is a statutory limit to the figure for purposes of the redundancy payment under section 136, which at the time of the claimant's dismissal was £544 per week.

19. A person unfairly dismissed with the necessary service has an entitlement to a basic award under section 119 of the Act.

Discussion

20. I was satisfied that the claimant was a credible and reliable witness.

21. Firstly in respect of the unpaid pay for annual leave, I accepted that the claimant had an entitlement to 13 days, which the respondent confirmed by its email dismissing him, that the weekly gross pay was £624, confirmed by the payslip, that the daily equivalent was £124.80 and that the sum due for 13 days was therefore £1,622.40.

22. Secondly, I accepted that he had not been paid the lye week, and that that amounted to £624. The total of those two sums is £2,246.40

23. Thirdly, I accepted that the statutory presumption of redundancy applied, no other reason for dismissal having been given and no evidence of a reason having been provided by the respondent. It was also accepted that he had not been paid the statutory redundancy payment to which he is entitled. I calculated that to be £1,904.

24. In any event the dismissal was unfair and the same sum was payable as a basic award under section 119 of the Act.

25. No further sums were sought.

26. I make the award in the total sum of £4,150.40. The sums have been addressed separately as the calculations for the unlawful deductions from wages were made gross, and may require to be taxed. Provision in that respect has been made. No such consideration arises for the statutory
5 redundancy payment.

10 Employment Judge: Sandy Kemp
Date of Judgment: 28 June 2022
Entered in register: 28 June 2022
and copied to parties