



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4101467/2022**

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**Held in Glasgow on 16 May 2022**

**Employment Judge P O'Donnell**

10 **Mr A Milliken**

**Claimant  
In Person**

15 **Robert Craig**

**Respondent  
In person**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The judgment of the Employment Tribunal is that the Claimant's claim for unlawful deduction of wages under Part 2 of the Employment Rights Act 1996 is upheld and the Claimant is awarded the sum of £700 (Seven hundred pounds).

### **REASONS**

#### **Introduction**

25 1. The Claimant has brought a complaint regarding monies he is owed by the Respondent. On his ET1, he ticked the boxes for "redundancy pay" and "notice pay" but the narrative does not set out a claim for such payments and, rather, sought wages for work done.

30 2. At the outset of the hearing, the Tribunal clarified with the Claimant that he was seeking wages he says are owed to him and not redundancy or notice pay. He confirmed that this was correct and the Tribunal proceeded on the basis that the claim to be determined was a claim for unlawful deduction of wages under the Employment Rights Act 1996.

3. The Respondent resists the claim. The primary defence is that the Claimant owes the Respondent certain sums (for example, cost of retrieving and

cleaning the van supplied to the Claimant and damage done to the van) which have been deducted from the wages owed to the Claimant. The sums involved are such that they cancel out the wages owed to the Claimant.

4. The Respondent had also sought to bring an employer's contract claim in their  
5 ET3. Due to an administrative error, this was not identified and so this claim has not been properly processed and served on the Claimant. This claim was not, therefore, before the Tribunal today and would not be determined.
5. Parties were given the option to wait for the Respondent's contract claim to be processed and then dealt with along with the Claimant's claim but they  
10 preferred to proceed with the Claimant's case today.
6. The Tribunal did indicate to the Respondent that it was unlikely to have jurisdiction to deal with his contract claim as the Claimant was pursuing a claim under the 1996 Act (rather than a breach of contract claim) which did not allow for a Respondent to bring a counter-claim. However, the  
15 Respondent's contract claim needed to be processed in accordance with the Tribunal Rules and so this would be referred to the Tribunal administration to be progressed.

### **Evidence**

7. The Tribunal heard evidence from the Claimant which was subject to cross-  
20 examination by the Respondent.
8. Much of the evidence related to matters which arose after the Claimant's employment came to an end dealing with matters such as the return of the van supplied to the Claimant, correspondence regarding these matters and the ACAS Early Conciliation process. The Tribunal considered that much of  
25 this was irrelevant and, in the case of the ACAS process, inadmissible. It has, therefore, not made findings of fact about this and asked parties to move on from these during the hearing.
9. Neither party produced a bundle of documents. The Claimant did not seek to rely on any documents. The Respondent did seek to make reference to  
30 documents when cross-examining the Claimant but these were not produced

as a bundle to the Tribunal and were not provided to the Claimant. The Tribunal did not allow those documents to be admitted in these circumstances.

### Findings in fact

- 5 10. The Tribunal made the following relevant findings in fact.
11. The Claimant was employed as a multi-drop delivery driver by the Respondent from 16 November 2021 to 7 December 2021. It was agreed that he would be paid £75 a day.
- 10 12. The Claimant was not provided with a written contract during his employment with the Respondent. Neither was there any other document in which the Claimant gave written authorisation for deductions to be made from his wages. He signed some documents as part of his induction with DPD (who were the end user of the Claimant's services) but these were not produced to the Tribunal and were not said to be authorisation for deductions to be made.
- 15 13. The Claimant worked a total of 20 days for the Respondent.
14. The Claimant was paid £800 by the Respondent; he received a £200 advance on his wages and £600 in payments made at the time.

### Relevant Law

- 20 15. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
- 25 16. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.
17. Section 27 of the ERA defines "wages" which include any fee, bonus, commission, holiday pay or other emolument referable to a worker's employment whether payable under the contract or otherwise.

**Decision**

18. The Tribunal has no hesitation in finding that the deductions made by the Respondent were unlawful in terms of s13 ERA; the deductions were not authorised by statute, there was no written contract authorising these nor was there any other prior written authorisation for the deductions made by the Respondent.
19. There was, therefore, no basis on which the Respondent could lawfully make the deductions which he has made.
20. The question then is the amount of wages owed to the Claimant which is disputed by the Respondent on the basis that he says that the Claimant only worked 16 days and not 20 days as asserted by the Claimant.
21. The Respondent produced no evidence to support his assertions and the Tribunal would expect an employer to maintain records of when their employees were working for them. As noted above, the Respondent had sought to refer to a document regarding the work done by the Claimant but, despite the Notice of Hearing providing instructions regarding the production of documents, the Respondent had not lodged a bundle and the document was not produced to the Claimant.
22. In these circumstances, the Tribunal did not allow this document to be referenced and could place no weight on it, not having had sight of it. However, the Tribunal did allow the Respondent to put to the Claimant the dates on which it was said that he did not work. Only one date was put to the Claimant and he was consistent in his position that he attended for work every day on which he was asked and this was 20 days.
23. The Tribunal prefers the Claimant on this point and finds that he worked 20 days earning £1500. He was paid £800 in total which leaves a shortfall of £700.
24. The Tribunal, therefore, upholds the Claimant's claim for unlawful deduction of wages and awards him the sum of £700.

Employment Judge: Peter O'Donnell

Date of Judgment: 23 May 2022

5 Entered in register: 24 May 2022  
and copied to parties