



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101668/2022

Held via Cloud Video Platform (CVP) on 8 June 2022

Employment Judge: M Sutherland

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Adam Haras

**Claimant
In person**

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Perch (Edinburgh) Limited

**Respondent
Respondent
No response
and no appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that :

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1. Perch (Edinburgh) Limited is substituted as the respondent; and
2. the respondent is ordered to pay the claimant -
 - a. unpaid wages in sum of £1,175 (gross) from which tax and national insurance contributions fall to be deducted;
 - b. the sum of £35.35 in respect of pension contributions; and
 - c. holiday pay in sum of £863.75 (gross).

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REASONS

1. The claimant has lodged complaints for unlawful deductions from wages, breach of contract and for holiday pay.

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2. The claimant appeared on his own behalf. He had lodged copies of his pay slips.

3. The claim was raised against the Adriatico Restaurant trading at 2 Douglas Bridge, Galashiels, Borders ('the Adriatico'). The named respondent did not lodge a response and did not appear. The claimant subsequently advised that he had not received a written contract but had received payslips from Perch (Edinburgh) Ltd ('PEL') whom he understood owned and operated the Adriatico. He advised that Keirnan McNeil, the sole Director of PEL, also worked in the Adriatico. PEL has a place of business at 2 Douglas Bridge, Galashiels, Borders and their registered office address is 3 Bridge Place, Galashiels, Borders TD1 1SN. It appears that there are issues between PEL and the claimant failing within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings and accordingly PEL are substituted for the Adriatico as the respondent.

Findings of Fact

4. The claimant was employed by the respondent as a Head Chef from 16 November 2020 until 30 November 2021.
5. The claimant was employed to work an average of 45 hours over 5 days a week and was paid £12.50 an hour. He also received an employer's pension contribution of 3%. His wages were paid into his bank account weekly in arrears.
6. The claimant was not provided with any written statement of any of his terms and conditions of employment. The claimant was provided with payslips from August 2021.
7. The holiday year coincided with the tax year starting 6 April. During the holiday year starting 6 April 2021 the claimant took 12 days (8 hours) holiday for which he was paid.
8. The claimant gave 2 weeks' notice of termination of his employment. The claimant worked 94 hours during his notice period. The claimant did not receive payment of wages or pension contribution in respect of his notice period.

Observations on the evidence

9. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur.
10. There was no reason to doubt the credibility or reliability of the claimant's evidence. He was measured and reasonable in his brief testimony which was consistent with his claim. He readily proffered testimony even where it was contrary to his own interests e.g. that he had taken holidays which had been paid.

Relevant Law

Unlawful deduction from wages

11. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker so employed 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 consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.
12. Under Section 13(3) ERA 1996 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.

Breach of contract

13. Article 8 of the Extension of Jurisdiction (Scotland) Order 1994 provides that an employee may bring a claim for breach of contract which is arising or outstanding on termination of employment.

Holiday pay

14. Under Regulations 13 and 13A of the Working Time Regulations 1998 a worker is entitled to 5.6 weeks leave in each holiday year.
15. Under Regulation 14 a worker is entitled to a payment in lieu of holidays accrued during the holiday year but unused by the termination date.

16. In the absence of a relevant agreement the holiday year begins on the date when the employee's employment began.

Discussion and decision

Unlawful deduction from wages

5 17. The claimant was due to be paid wages in respect of his notice period of £1,175 gross (94 hours x £12.50). The claimant was not paid these wages and accordingly suffered an unlawful deduction from wages in sum of £1,175 gross from which tax and national insurance fall to be deducted.

10 *Breach of contract*

18. The claimant was due to benefit from pension contributions in respect of his notice period of £35.25 gross (3% x £1,175 gross). These pension contributions were not made and accordingly he is awarded damages in that amount in respect of that breach of his contract.

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Holiday pay

19. The claimant was entitled to 5.6 weeks leave in each holiday year. The holiday year began on 6 April 2021. The claimant had accrued 165.1 hours holiday as at the termination date. The claimant had taken 96 hours holiday (12 days x 8 hours) and accordingly was entitled to payment in lieu in respect of 69.1
20 hours of holiday namely £863.75 gross.

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Reconsideration

20. This decision has been reached in the absence of PEL who may apply for reconsideration under Rule 71 within 14 days.

5 Employment Judge: Michelle Sutherland
Date of Judgment: 08 June 2022
Entered in register: 10 June 2022
and copied to parties

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