



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100144/2023

Held at Dundee by CVP on 27 March 2023

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Employment Judge McFatridge

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Miss Medya Mahmoud

**Claimant
In person**

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**Dr Christopher JBDR Ireland
t/a Jute, Jam and Journalism Group**

**Respondent
Not present or
represented - no
ET3 lodged**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that

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1. The respondent unlawfully withheld wages from the claimant in the sum of Four Thousand Eight Hundred and Ninety Pounds and Forty One Pence (£4890.41) gross.
2. The respondent shall pay to the claimant the sum of Four Thousand Eight Hundred and Ninety Pounds and Forty One Pence (£4890.41) in respect thereof.

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REASONS

E.T. Z4 (WR)

1. The claimant submitted a claim to the Tribunal in which she claimed that the respondent had unlawfully withheld wages from her. No response was lodged within the statutory period. A Legal Officer decided that there was insufficient information in the claim form for the Tribunal to issue a Rule 21 judgment so the case proceeded to a hearing. At the hearing the claimant gave evidence on oath. There was no representation from the respondent. The claimant also lodged her contract of employment with the Tribunal. On the basis of the claimant's evidence and the contract lodged I found the following essential facts to be proved.

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2. In or about September 2022 the claimant saw an advert on the Indeed job site for an Admin Assistant. She contacted the respondent through LinkedIn and thereafter through WhatsApp. The respondent offered her a job as an Admin Assistant at an annual salary of £25,500. He provided the claimant with a contract. The claimant said that she wanted to see his office before she signed the contract. The respondent stalled the claimant for a few days and then arranged for her to visit his office which was a room in his house at 73 Loons Road. It was a small room which was full of old equipment and papers. The claimant told the respondent she would prefer to work at home and he indicated he was happy with this. He indicated that he was not in a position to provide her with a laptop but that one would be provided in due course. In the meantime she was to use her own laptop. The claimant made reference to various other employees who worked from home in England. The claimant had some contact with them during the period of her employment. The contract had originally been due to start on 15 October but because of the delay due to the claimant wanting to see the office it did not start until 22 October. The respondent changed the date on the contract to reflect this. The claimant thereafter worked from home 24 hours per week. She was involved in carrying out admin work. She was given access to the respondent's Microsoft Office account and sorted out old documents. She also dealt with administration in respect of various other employees. At the end of October the claimant was told that because the contract worked in arrears she would not be paid until the end of the following month. At the end of the following month she contacted the claimant and was told that she would not be paid until the end of December because she had started after
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the beginning of October. During this period the claimant was in contact with another employee who had contacted her by email to ask if she had received her salary. The respondent told the claimant that he was waiting on payment from clients. The claimant continued to work carrying out administrative tasks. She also attended online training courses which she was directed to attend by the respondent.

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3. At the end of December the claimant contacted the respondent again since she had still not been paid. She said that she needed the salary paid before the end of the year. At this point the claimant had been working since 22 October and had received no payment whatsoever.

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4. At the beginning of January the claimant discovered that the Office 365 account which she had been working with had been disabled. She was no longer able to carry out any work from that date.

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5. The claimant had heard that the respondent was deceased but had no confirmation of this. My attention was however drawn to an article in the Daily Record newspaper on 4 January 2023 which was headed "Walter Mitty conman Christopher Ireland found dead at his Dundee flat". The article indicated that Mr Ireland had been found deceased at his flat on Loons Road, Dundee at 11pm on January 1. Although I have no way of knowing this for sure since the article is, at best, hearsay I consider that on the balance of probabilities the respondent was in fact deceased having died on 1 January 2023. Obviously the claimant had no information regarding his personal representatives however I note that the terms of s207 of the Employment Rights Act 1996 would impose liability for any sums due on any personal representatives who may be appointed and I therefore did not see any reason not to make an award against the respondent.

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6. The claimant was due to be paid £25,500 per annum. Her employment started on 22 October 2022. The claimant did not carry out any work and was physically unable to do so after 31 December 2022 because the Office 365 account which she used had been disabled from that date.

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Discussion and decision

7. It was quite clear to me that the claimant was an honest witness and giving truthful evidence. The claimant noted that she had not resigned from employment but equally accepted that she had not actually carried out any work from the beginning of January onwards. I consider that the claimant was due wages for the work done in October, November and December 2022. I considered that her contract had come to an end through frustration on or about 1 January when the respondent's Office 365 account was disabled. I accepted the claimant's evidence that she was due to be paid £25,500 per annum. This is the figure stated in the contract. The claimant was employed for a total of 70 days and the proportionate amount due to her is therefore £4890.41.

8. I considered it appropriate to award this sum gross since it appears there is very little likelihood that the respondent or his personal representatives are likely to be in a position to submit payment of any deductions made to HMRC. If however the respondent does make payment he will be entitled to deduct therefrom any sums due to HMRC under statute in terms of PAYE Tax and National Insurance but only provided

- (1) he provides a calculation showing the deductions to the claimant at the time of payment;
- (2) he immediately pays the sums so deducted to HMRC; and
- (3) he provides proof of the same to the claimant if asked.

Employment Judge: I McFatridge
Date of Judgment: 30 March 2023
Date sent to parties: 31 March 2023