



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101677/2022

Held at the Glasgow Employment Tribunal on 13 April 2023 by Cloud
Video Platform (CVP)

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Employment Judge Murphy

Mr D Strang

Claimant
In Person

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Clarke EPOS (UK) Ltd

Respondent
Not present and
Not represented

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent has made unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of **SIX THOUSAND NINE HUNDRED AND THIRTY NINE POUNDS STERLING AND FORTY EIGHT PENCE (£6,939.48)** in respect of unpaid wages earned in the period from 1 December 2021 to 2 February 2022.
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- 25 2. The respondent has made unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of **SEVEN HUNDRED AND FOURTEEN POUNDS STERLING AND EIGHTY-EIGHT PENCE (£714.88)** in lieu of 4.67 days' untaken annual leave accrued in 2022 prior to the termination of the claimant's employment.
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3. The sums awarded at items 1 and 2 are expressed gross of tax and national insurance. It is for the respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

4. The claimant's breach of contract claim in respect of four weeks' notice pay is dismissed pursuant to Rule 52 of the Employment Tribunal Rules 2013, the claimant having withdrawn his claim in the course of the hearing on 13 April 2023.
5. The claimant's claim in respect of 7 days' accrued untaken annual leave alleged to have carried forward from 2021 and to be outstanding on the termination of his employment is dismissed pursuant to Rule 52 of the Employment Tribunal Rules 2013, the claimant having withdrawn his claim in the course of the hearing on 13 April 2023.
6. The claimant's claim in respect of employer pension contributions for the months of December 2021 and January and February 2022 is dismissed pursuant to Rule 52 of the Employment Tribunal Rules 2013, the claimant having withdrawn his claim in the course of the hearing on 13 April 2023.

REASONS

15 Introduction

1. The claimant brought claims for unauthorised deductions from wages in respect of unpaid salary and car allowance, unpaid pension contributions, and accrued untaken annual leave outstanding on the termination of his holiday. He alleged he resigned from his employment on 2 February 2022 and brought a claim for breach of contract (constructive wrongful dismissal) in respect of his four week notice period.
2. The respondent accepted in the ET3 response to the claim that the claimant was owed salary, car allowance and pension contributions referable to the period from 1 December 2021 to 2 February 2022. The respondent accepted that payment had not been made. The respondent disputed the amount of accrued untaken holiday outstanding on the termination of the employment but accepted in its response that 4.67 days had accrued in 2022 in lieu of which the claimant was due payment. The respondent accepted this had not been paid.
3. There have been four previous postponements of a final merits hearing in this case. Two have been on the respondent's application and two have been on the claimant's application. The latest postponement was of a

hearing scheduled to take place on 12 December 2022 on the claimant's application to enable an agreed settlement to be effected. In the event, the respondent did not pay the claimant in accordance with their agreement and a hearing was relisted in the case for 13 April 2023.

- 5 4. On 12 April 2023, the respondent's director and representative, Hugh Clarke, made an application to postpone the hearing which was refused by EJ Whitcombe. On the morning of 13 April 2023, Mr Clarke wrote to the Tribunal intimating that he did not intend to attend the hearing. He advised that he had previously agreed a sum with the claimant and stated he
10 wished this to be accepted "in full and final settlement". Email correspondence was sent to the parties confirming that the hearing was not postponed, and that the respondent's correspondence would be discussed at the hearing. The respondent was informed that, in the event of his non-attendance, under Rule 47 of the Employment Tribunal Rules
15 2013, the Tribunal may proceed with the hearing in the respondent's absence.
5. The respondent did not attend and was not represented at the hearing. I determined that the hearing should proceed in the respondent's absence having regard to all of the circumstances. These included the long history
20 of postponements in the case and the fact that many material aspects of the claimant's complaint were admitted by the respondent in the respondent's pleadings. During the hearing, the claimant withdrew those claims which were not admitted by the respondent.
6. I could not issue a judgment of consent based on the figures Mr Clarke
25 had indicated in his email. Those figures had been based on net sums in relation to the claimant's unauthorised deductions from wages complaints and there was no clarity in relation to the intended tax treatment of the proposed award. Nor was there clarity that the tax treatment had been considered or agreed between the parties. Sums awarded in respect of
30 deductions have the character of remuneration and are taxable as earnings under the PAYE system. I therefore proceeded with the hearing and heard evidence from the claimant in respect of his extant claims.

7. Oral reasons were given at the hearing. Written reasons will not be provided unless they are asked for by a party within 14 days of the sending of this written record of the decision.

5 **Employment Judge: L Murphy**
 Date of Judgment: 14 April 2023
 Entered in register: 17 April 2023
 and copied to parties

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