



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4102540/2023 Hearing by Cloud Video Platform at Edinburgh on 8
June 2023**

Employment Judge: M A Macleod

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Ronnie Blair

**Claimant
In Person**

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George Burr trading as

**Respondent
In Person**

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Easy Landscapes

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**The Judgment of the Employment Tribunal is that the claimant's claim that
30 he suffered unlawful deductions from wages fails, and is dismissed.**

REASONS

1. The claimant presented a claim to the Employment Tribunal on 27 March
35 2023 in which he complained that he had been unlawfully deprived of notice
pay by the respondent. He also complained of "deformation of character".
2. The respondent submitted an ET3 in which they resisted the claimant's
claims.

3. A Hearing on the Merits was listed to take place on 8 June 2023 by Cloud Video Platform (CVP).
4. The claimant appeared on his own behalf, and Mr Burr appeared for the respondent.
- 5 5. Both parties gave evidence in the course of the Hearing, and made short submissions at the end of it.
6. No formal bundle of documents was produced, but I had access to the Tribunal's electronic administrative file, to which I made reference from time to time during the Hearing.
- 10 7. There were no issues about the use of CVP in this case, as all parties were able to see and hear each other. There were no interruptions and I was satisfied that a fair hearing was able to take place.
8. At the outset, I clarified with Mr Burr that he was a sole trader, trading in the name of Easy Landscapes, which is not a limited company. I secured his, and the claimant's, agreement to alter the instance to reflect properly the identity of the respondent. The instance confirms this now.
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9. Based on the evidence led and the information provided, the Tribunal was able to make the following findings in fact.

Findings in Fact

- 20 10. The claimant, whose date of birth is 18 November 1960, worked for the respondent as a contracts manager from 18 May 2022 until 18 or 21 November 2022 (an issue to which I shall return). He was paid £2,916 gross per month, and £2,222 net per month.
11. The claimant confirmed that he had received a written contract of employment but that he had not brought it with him nor sent a copy to the Tribunal. He believed his notice period was for one month or four weeks.
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12. On or about 7 November 2022, the claimant wrote a letter to the respondent in the following terms:

"Good morning, George

I write to inform you that I am resigning my post at Sports Turf Services as of Monday 7th November 2022.

5 *My reasons are that over the last few days there has been friction between us, staff etc which I really cannot be doing with at my age. I don't mind an argument but when it's done in public then that certainly isn't nice. I have principles, I have said many times that liars do not go down well in my book, sides were taken and, in the end, proven that things were certainly not as they seemed. Other things have also been at the back of my mind for a*
10 *while now although I cannot get confirmation on them so for now these will remain with me, but I am almost certain that I am right in my thinking which I cannot condone either, this has also played a part in my decision.*

I left an employment where I had issues with things going on that I certainly did not think were right in the business, that caused me heart ache to come to you and I am certainly not going back ot that. Being in Champany certainly isn't my idea of a great place to work and I do know you are tring to do something about it but unfortunately I won't see it come to fruition. Clients are very important in this business and for me they cannot be abused in any way shape or form.

20 *Also, as I mentioned last week, I do need a lot more finances coming into the house due to the increase in Mortgage, food etc which I cannot see going down anytime soon. My Offer is £52,000 per annum with annual bonuses Guaranteed which you cannot match.*

I will work until the end of the month if required to, you are down from next week and we can have a hand over meeting then so as all are up to date what is on the system.

25 *I won't tell you where I am going as this will only make things worse for you if others get to know, I certainly would not be in this yard one minute after it was known.*

Geroge, this time I won't be talked around, my mind is made up, I do realise this will make things difficult but sts is in a winter period where there is time to get the right man to take things forward.

5 *At this moment in time, you, me and Sarah are the only ones aware of what is going on and it's probably best it remains that way or I think the Lid will blow on this from others, especially if Jill, peter etc let the cat out of the bag.*

No doubt I will hear from you on this but as I have said my mind has been made up and this time I have accepted and only need a release date from yourself.

10 *I do thank you very much for the opportunity and also for the great friendship we have enjoyed over the last 5 years but I really need this now more than ever before. Sarah and Aaron need me to provide for them, yes, I had had a rough time with my marriage over the last year but P1 certainly contributed to that side of it, we are doing better (not great by any matter of means) still a lot better these days which I certainly want to carry on. I can*
15 *work from home constantly which is a massive pull.*

Please don't make this harder than it is already, accept my resignation and let's move on as friends, there will also be work for you where I am going if you want it. I kdo know that you will be both angry and disappointed but so
20 *am I because a lot of hard work has certainly done into this since last year (September) when p1 took over and asked me to step in. I have put a lot of hours into this and gained a lot of satisfaction from seeing what has been achieved. The last time we got to this stage, people said if I went then so would clients, I don't believe that now, there is a solid footing here now and*
25 *you will pull it all together and it will flourish.*

Yes, granted mistakes have been made and I know that but STS wnow have a good base where multi year contracts are in place and there is something to build on, yes Peter needs to bring things in but again I feel he can do this just needs the breaks to come his way...

Let me have the earliest date to be released please and we can shake hands and move on.

Best regards,

Ronnie”

5 13. Following receipt of that letter, the respondent spoke with the claimant and sought to persuade him to withdraw or defer his decision to hand in his notice. There followed a period of reflection during which the claimant considered whether or not to go through with his resignation. This was not the first occasion on which he had purported to resign, as he made clear in
10 his letter when he referred to the “the last time we got to this stage”. That resignation was submitted on 14 August 2022 by email, but was withdrawn following discussions with Mr Burr.

14. Mr Burr gave evidence to the effect that the claimant’s final decision was to submit his notice from 19 November 2022. No written copy of an email on
15 that date to that effect was presented to the Tribunal, but when asked about it in the hearing, the claimant confirmed that that did happen. He said in evidence that he was undergoing some uncertainty about when his new employment would commence, and that on 16 November 2022 he had a conversation with the respondent in which he had some doubts as to his
20 starting date with his new employer. As a result, he then emailed the respondent on 19 November 2022 to confirm that he had now received the appropriate documentation from his new employer which made clear that he was starting there. That date, 19 November 2022, was therefore the date upon which the claimant gave notice of termination of his employment.

25 15.1 did contemplate, following the Hearing, asking the parties to produce to me that additional adminicle of evidence, namely the email which was sent confirming the date of notice, but standing the claimant’s acceptance that that was what had happened I determined that it was not necessary.

16. The respondent concluded that since he had given four weeks' notice on 19 November 2022, he would remain in employment with the respondent until 17 December 2022.

17. On 24 November 2022, the claimant wrote to Mr Burr a lengthy email. It is not necessary to set out the email in its entirety, but it is appropriate to quote extracts from it:

"I get that you're angry but keeping wages from someone who has worked hard in the employment, carried out the extra hours and weekends etc and gained no extra money for this at all isn't right. Ok maybe walking out isn't right but I did work cut off date to cut off date and I did have holidays due to me, I was happy to work from home on Gardening leave but being at Champany and p1 finding out about me well I knew I wouldn't be able to take that. I also wrote that I was going into remove all my stuff on Sunday 20th which I did, took about 5 mins, just in case Andy appeared and ordered me out..."

When I resigned in August both you and Peter ambushed me at Tesco and made me feel like I had to stay, I knew in my hardt that I needed extra money yet I stayed, much to Sarah's disgust as it meant she had to keep working extra hours to help out. When I resigned this time the same thing was going to happen, you said you would be down to talk to me on the week of the 7th November yet it took until last Wednesday 16th November before you showed and that was well into my second week of notice..."

I knew I had holidays due and knew that I would probably finish up on the 21st/22nd hence me still there on Monday after my blood tests at the doctors, asking to stay until the 16th December meant that I would have a partial wage from you and not enough to be in a position to pay for presents for Aaron..."

The new job starts on Monday the 5th December so as I can at least have Money from them for the month of December (pay is every 4 weeks) that will allow me to pay the bills on time and also give Aaron what he needs at xmas..."

18. On 1 December 2022, the claimant submitted a formal grievance to the respondent, setting out his issues as follows:

5 *"I have an issue with what has been classed as a notice period starting on the 21st of November when I clearly sent you my resignation by email to your easy landscapes email address on the 7th of November stating that this was final and that unlike the 4th of August, I would not be taking this back, if you can refer to this email in your response as to what you thought it was referring to when you received/read its content. This came about as a direct result of the argument we had on a train in Birmingham on the 3rd of*
10 *November, also at the Saltex show we were attending, almost all the way up in the vehicle to the yard on the 3rd of November and again on the Friday 4th November where you whistled and shouted at myself in front of the staff on a site. No apology came to me for this outburst until the 16th of November.*

15 *I also have an issue with the non-response to my email dated 28th November reference the non-payment of days worked between the 1st of November and the 18th of November 2022. 14 working days in all, to date there has been no response to this email.*

20 *I also would like evidence sent to me relating to the removal of monies due to 'Damage'. Also, any quotes for the repairs to the 'Damage' so I can assess what this relates to as this has not been brought to my attention (sic) as far as I am aware.*

I would be grateful if you could let me know when we can discuss my grievance. "

25 19. There was some confusion about when the claimant started employment with his new employer. In his ET1, he intimated that he had started on 5 November 2022, but in his evidence, he could not recall having told anyone that that was the date he started. His position was that he started his new role on 28 November 2022. He produced a letter from Mark Gibson,
30 Managing Director of his new employer, Root One, dated 31 May 2022

confirming that “you started working for Root One on the 28th November 2022.”

20. The claimant did not receive a response to his grievance from the respondent.

5 21. The respondent accepts that he subjected the claimant to deductions from his pay, on three bases:

(a) that he had not worked his full notice period, but had started his employment with the new employer on 28 November 2022, 9 days after handing in his notice;

10 (b) that he had caused £150 damage to a company vehicle, which he required to be billed for, when he had driven into a lamp-post outside his house; and

(c) that the respondent had paid for a stay in a hotel, which he had agreed to pay for.

15 22. No payslips were produced, nor any bank statements by the claimant, and accordingly the Tribunal required to consider the oral evidence of both parties to determine what the claimant had been paid on termination of his employment. He wrote to the respondent setting out his claim by letter dated 1 May 2023, which he copied to the Tribunal.

20 23. The claimant maintained that he was due the sum of £2,190.24 on leaving employment, on 2 December 2022.

24. He said that he had been paid £709.24 by the respondent, and claimed the balance outstanding to be £1,481.

25 25. The claimant acknowledged that he required to have the cost of the hotel room in Glasgow deducted from pay, at the cost of £70. His claim was therefore that he was due £1,411.

Discussion and Decision

26. The claimant maintains that he was due the sum of £1,411 in respect of outstanding notice pay.
27. The respondent maintains that the claimant was paid in full to the date of termination of his employment.
28. The first issue, it seems to me, is to establish what was the last date of his employment. The evidence on this was very confused, but at the very least the claimant's position on this was unhelpful and perhaps disingenuous.
29. The claimant's claim was that he was employed by the respondent until he started his new employment on 5 December, although in his evidence he also made reference to 7 December, a date which on my reading of the facts has no bearing on the matter whatever.
30. However, he presented evidence to the Tribunal to confirm that he commenced his new employment on 28 November 2022, a week earlier.
31. It is no part of the claimant's claim that he should have received pay in respect of the week beginning 28 November 2022 from both employers, and such a claim would be rejected by this Tribunal in any event.
32. What does give rise to some concern is that there have been a variety of dates put forward by the claimant over a period of time as the start date of his new employer, including 5 November 2022 in his ET1. This latter, I assume, is simply a typing error, and I dismiss it as a relevant date.
33. The claimant's position, then, in his claim is that he gave notice on 7 November, and therefore his notice period ran until four weeks later, namely 5 December 2022. However, in his email of 24 November 2022, he said: "*I knew I had holidays due and knew that I would probably finish up on the 21st/22nd hence me still there on Monday after my blood tests at the doctors, asking to stay until the 16th December meant that I would have a partial wage from you and not enough to be in a position to pay for presents for Aaron...*"

34. The reference to the claimant asking to stay until 16 December is incomprehensible, if his claim that his notice was given on 7 November is correct. It suggests that he wanted to maximise his notice period with the respondent, and is consistent with the respondent's understanding that he had tendered his notice finally on 19 November. The reality is that the claimant's own evidence confirmed that due to uncertainties about when and indeed if he would be starting with his new employer he had to have a further conversation with the respondent on 16 November and then email again on 19 November to confirm his notice.
35. It may be the case that the claimant became confused about when he had effectively tendered his resignation, but in my judgment it is entirely unclear that he did so on 7 November, particularly given that he had purportedly submitted his notice in writing in August but then withdrawn it. It appears to me that the letter of 7 November was the opening of a discussion rather than the clear and unambiguous giving of notice, taking into account all of the circumstances, and therefore that he understood and intended that his notice was actually tendered finally on 19 November 2022.
36. It is plain therefore that the claimant's notice expired on 17 December 2022, but that he commenced employment with the new employer on 28 November 2022. This appears to have come as a surprise to the respondent, either at the time or later, since they understood that he was still employed by them until 17 December, and was taking paid leave in the meantime.
37. In my judgment, the claimant has introduced a great deal of confusion into this situation, and appears to have attempted to obtain a financial advantage by changing the dates of termination of his employment on a number of occasions, and by starting with his new employer before the end of his notice period, even on his own version of events.
38. As a result, it is my conclusion that the claimant has not proved that he has suffered an unlawful deduction from his wages at termination of employment; that he has introduced a great deal of confusion into the

situation by altering dates at different stages, and that the respondent was entitled to withhold pay from the point when he started employment with Root One.

5 39. In his email of 1 May to the respondent, which the Tribunal has been sent, the claimant makes his claim for unpaid wages to 2 December 2022. He knew that his new employment began on 28 November, and has proved that before me. His claim to 2 December is entirely inappropriate in the context of the Tribunal proceedings. Essentially, he made a claim that he knew could not be justified.

10 40. Accordingly, it is my conclusion that the claimant has failed to prove that he was subjected to unlawful deductions from wages, nor the amount which would have been due in any event; and that his claim is of such ambiguity as to give rise to some concern about its basis. I have therefore reached the decision that the claimant's claim must fail and be dismissed.

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20 **Employment Judge: M Macleod**
Date of Judgment: 16 June 2023
Entered in register: 19 June 2023
and copied to parties

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