



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4106467/2022

Hearing held at Dundee on 6 March 2023

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Employment Judge McFatridge

Miss D Mckenna

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**Claimant
In person**

AIDARS

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

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the respondent unlawfully withheld wages from the claimant in the sum of One Thousand and Eighty Five Pounds (£1085). The respondent shall pay the said sum of One Thousand and Eighty Five Pounds (£1085) to the claimant.

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REASONS

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1. The claimant submitted a claim to the Tribunal in which she claimed that she had not been paid the wages she was due by the respondent. The respondent did not submit a response within the statutory period. The matter was considered by a Legal Officer who decided to seek further details from the claimant. The claimant provided various time sheets and

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claimed that she was due to be paid for 66 hours at the rate of £17.50 per hour. She was also asked to provide a copy of her contract of employment but advised that there was no written contract in this case. An Employment Judge decided it would be appropriate to fix a hearing in order to deal with the claim. The hearing took place on 6 March. The claimant attended and gave evidence on her own behalf. She also lodged various documents comprising text messages between herself and the respondent's management. On the basis of the claimant's evidence and the documents provided I found the following essential facts relevant to the claim to be proved.

Findings in fact

2. The claimant is a private carer having worked in this capacity for around five to six years. She mainly works for various local government and NHS services however on occasions she also works for private clients where she is paid directly. The respondent is AIDARS (Angus Integrated Drug and Alcohol Recovery Service) which is an integrated health and social work service providing services to adults who misuse drugs and alcohol. Prior to February 2022 the claimant had carried out work for numerous clients on behalf of AIDARS. These had usually been arranged through a particular social worker with AIDARS known as Pauline. The system would be that Pauline would contact the claimant and ask if she was available. She would then send the claimant details of a service user and the care which was to be provided. The claimant would then require to invoice AIDARS on a regular basis on time sheets produced by AIDARS and she would be paid direct into her bank account.
3. The claimant understands there are a number of other private carers who provide care on this basis. In 2021 the recognised hourly rate for such private care services was £15 per hour however this went up to £17.50 per hour in 2022. In some instances where the claimant required to provide her services to clients outwith the immediate area she would charge £22 per hour with the agreement of the funder and the individual's service user involved. Generally speaking the money to pay the claimant came from funding which was agreed either with the NHS or the local authority or indeed state benefits.

4. In or about February 2022 the claimant became aware of a service user named Paul. Paul's father acted as his advocate and contacted the claimant to see if she would be available to work with Paul on a regular daily basis through AIDARS. The arrangement made was a completely standard one. The claimant agreed and was then contacted by a Russell Wood who was a social worker with AIDARS. The claimant understood he carried out the same role as Pauline her previous contact had.
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5. It was agreed between the claimant and Mr Wood that she would provide a regular caring service to Paul for around half an hour each day. The service user had social and anxiety issues and her main role was accompanying him down to the chemist to obtain his prescription and/or to other shops. This usually took half an hour per day. On occasions she would accompany him for longer than this if, for example, he had to attend a medical or dental appointment.
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6. After this had been going on for a few weeks the claimant contacted Mr Wood to discuss payment. He said that he was setting things up through the Council's systems but not to worry and she would be paid her usual rate. The claimant was not at all anxious about this delay since in her experience it usually took at least several weeks to set up the payment arrangements.
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7. After a time the claimant became concerned that Mr Wood seemed to be avoiding her. He would not pick up the phone when she telephoned. Eventually he said that the funding for Paul had been declined since this individual received too much in benefits. He assured the claimant that she would be paid for the work which she had done to date. He was very clear that the claimant would be paid for the work she had done. In or about June Mr Wood arranged for the claimant to complete a number of time sheets/invoices. The claimant completed these invoices which were lodged. This showed the claimant working for a total of 62 hours. The claimant initially mistakenly understood that she had worked 66 hours because she double counted two invoices. The invoices were not lodged for the hearing but were previously sent by email to the Tribunal by the claimant on 18 January 2023.
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8. At this time a number of text messages were being exchanged between the claimant and Mr Wood. These text messages were lodged. On 8 July 2022 Mr Wood texted the claimant to state

5 "That equates to £1155 do you agree (66 x £17.50).
Will use this amount if you agree." (Page 1)

9. The claimant confirmed that this was correct. A further email was sent in July by Mr Wood stating

10 "I have sent the further detail that my manager wanted.
I will let you know when he gets back to me and what he says.
As I say I have asked for full payment ASAP.
Will message when I hear anything sorry for delay".

He then contacted the claimant again on 18 August stating

15 "Sorry for not letting you know earlier but my boss has COVID and
hasn't been at work to take the report to his boss yet. ...
I will go directly to his boss tomorrow and see what she says.
He will have let her know.
I will let you know the outcome ASAP".

Subsequent to this the claimant sent further reminders. On 3 October Mr Wood texted the claimant stating

20 "I am sending information to chief of finance in council.
What I have been told is we need to set you up as a provider on
our systems.
This has been missing so when we thought we had sent instruction
to pay there was no link to say who to pay.
25 I know that should have been easy to detect but it seems it wasn't
clear.
I need your address for the form if you can send that I will send
straight to finance lead to pay."

30 The claimant then sent her full address details by return. Despite this the
claimant was not paid. On or about 25 November Mr Wood texted stating

“I am hoping that we are within a day or two of having the money to you ...”

5 He indicated there was an issue with the bank not recognising the sort code. The claimant confirmed the correct sort code to him. On 29 November Mr Wood texted the claimant stating

“All fingers and toes crossed.

The payment for the service package was authorised today.

That should mean the money is transferred to you.

10 I would be obliged if you can confirm if you have received the agreed amount.

I am truly sorry for all the trouble and delay and can assure I have done everything in my power to get this resolved.”

He then texted shortly thereafter to state

“It was authorised today.

15 Should be BACS payment in next couple of days or so.”

10. Despite this the claimant has not received any payment from the council or from the respondent in respect of the sum due to her.

11. The claimant’s arrangement with the respondent was never reduced to writing. The claimant was however required to carry out work personally.

20 **Discussion and decision**

12. It was unclear from the claimant’s original ET1 whether she was an employee of the respondent or a worker providing services to them. On the basis of the information provided it appears to me that the claimant was at the very least a worker. She was obliged to perform services personally. She did require to provide the respondent with an invoice for payment albeit this document was also described from time to time as a time sheet. Given that the Tribunal’s jurisdiction to deal with unlawful deduction of wages simply depends on the claimant having the status of worker I decided that I did not require to investigate the matter further. It was clear to me the Tribunal did have jurisdiction.

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13. It was clear on the basis of the evidence that the respondent had unlawfully withheld wages from the claimant. On the basis of the claimant's evidence it appeared that the wages were due to be paid at the latest on 29 November 2022 which is when the respondent said they would be paid direct into her bank account. Nothing was received and the total amount of her wages have therefore been withheld.
14. The claimant had originally calculated her wages due as being £1155 being 66 hours at £17.50. The claimant accepted in evidence that in fact she had only worked 62 hours.
15. With regard to the hourly rate it was clear to me on the basis of the evidence that this was the rate which was standard for individuals like the claimant providing care services to organisations like AIDARS. This sum would have been well-known to the respondent and certainly incorporated in the contract. I also note that in his text Mr Wood makes specific reference to the rate of £17.50 per hour in his email of 8 July.
16. The claimant was therefore due wages in the sum of £1085 (62 × £17.50). She is entitled to a declaration to this effect and an order for the respondent to pay this sum to the claimant.

Employment Judge: Ian McFatridge
Date of Judgment: 7 March 2023
Date sent to parties: 7 March 2023