



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4108295/2022**

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**Held via Cloud Video Platform (CVP) on 8 March 2023**

**Employment Judge Campbell**

10 **Mr Nadim Al-Maharik**

**Claimant  
In Person**

15 **Rujia Marketing Consultants Ltd**

**Respondent  
No appearance and  
No representation**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The Judgment of the Employment Tribunal is that:

1. the respondent (i) breached the claimant's contract of employment and (ii) made unlawful deductions from his wages contrary to section 13 of the Employment Rights Act; and
2. that he is entitled to the total sum of £874.45 in compensation.

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### **REASONS**

#### **Introduction**

1. This claim was heard by video. The claimant attended and gave evidence under affirmation. The respondent had elected not to defend the claim and had not submitted a response form when given the opportunity. It did not attend or have a representative join today.

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2. The claim was decided on the basis of the claimant's oral evidence and documents he provided to the tribunal, primarily a wage slip for August 2022, a schedule of travel expenses incurred and a sequence of WhatsApp

messages with a senior person within the respondent. The claimant was found to be open and credible.

3. The claimant began early conciliation via ACAS on 19 December 2022 and presented his claim to the tribunal two days later.

## 5 **Applicable law**

1. By virtue of section 13 of the Employment Rights Act 1996 (ERA) a worker is entitled not to have unauthorised deductions made from their wages. Therefore, subject to specific exceptions provided for in that part of the Act, there will have been an unauthorised deduction if the worker is paid less than they have earned, depending on how their earnings are calculated, or not paid at all for their work. The date of the deduction is deemed to be either the day when less is paid to them than they have earned, or when they would normally have been paid but were not. A complaint can be made about a series of deductions if the situation is repeated.
- 15 2. Examples of lawful deductions would include PAYE income tax properly deducted or a sum which the worker had explicitly consented to having deducted in advance by writing. Section 14(1) ERA expressly states that an employer may recover a previous overpayment from a worker's wages, and this will not be treated as an unlawful deduction.
- 20 3. A worker who has suffered one or more unlawful deductions from their wages may submit a claim to the employment tribunal under section 23 ERA.
4. There are detailed requirements as to the timing of complaints to ensure that a tribunal can determine them. In short, if a claim is about a single deduction, the claim process (initiated by way of commencement of Early Conciliation through ACAS) must begin within three months of the date the deduction was made. If the claim is about a series of deductions, the same steps must be taken within three months of the last deduction in the series.
- 25 5. Whether or not deductions form part of a series is for an employment tribunal to consider and decide, based on factors such as the nature of each deduction and the frequency, or any pattern, of deductions. A potential series of
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deductions will be broken by a three month period in which none are made. This may mean that the earlier complaints are out of time and that the tribunal is therefore unable grant any remedy in respect of them.

- 5 6. Non-payment of an employee's wages or salary will normally also constitute a material breach of their contract of employment at common law. Payment for work done at the agreed rate is a fundamental term of the employment relationship. There will similarly normally be a breach if an employee is promised that they will be reimbursed for expenses properly and reasonably incurred in the course of carrying out their duties, and the employer does not  
10 then repay the employee for such sums incurred.

### Legal issues

The issues to be decided in the claim were as follows:

1. Was the claimant an employee or worker in relation to the respondent?
- 15 2. If he was either, when did his period of service with the respondent end?
3. Was he entitled to pay for work carried out during August 2022, and if so how much?
4. Was he paid some or all of such amount owed to him?
5. If he was not paid any amount due, when should he have been paid?
- 20 6. Separately did the claimant properly incur expenses in the course of performing his duties?
7. Had the respondent promised to repay some or all of any such expenses?
- 25 8. If any expenses were due but not paid, when should they have been paid?
9. Are the claims within time?

10. If any valid claim is not within time, should time be extended to allow it to be decided?
11. If the claim succeeds to any degree, what compensation is payable?

### **Findings in fact**

5 The following findings were made based on the evidence provided:

1. The claimant was employed by the respondent between the dates of 5 February and 31 August 2022. The respondent operated a number of centres throughout the UK providing Covid-19 tests to individuals wishing to travel abroad. The respondent operated sites in Glasgow, Edinburgh, Dundee and  
10 Aberdeen within Scotland.
2. The claimant was recruited as a manager by the respondent's Regional Manager who was named Charlene McCartney. She was his main point of contact initially. The respondent advertised the post on an online recruitment website and the claimant applied, and was accepted into the role. His base  
15 was the Dundee centre and he managed a team of individuals who administered Covid-19 tests.
3. The claimant was given a statement of terms and conditions of employment electronically. It said that he was engaged on variable hours. In practice he worked five days per week full time. He regularly worked additional shifts,  
20 most usually to cover for people in his team who were absent.
4. The claimant was paid monthly and received monthly payslips. They confirmed his earnings and deductions made to cover income tax and National Insurance contributions. The claimant was paid directly into his bank account. Initially he was paid around the end of the month he worked in, but  
25 as time went on the payment date became later and it was around the middle of the following month.
5. The claimant was asked to cover other centres within Scotland from time to time. Ms McCartney confirmed to him that he should keep a record of his

travelling expenses to other centres and to claim them back at the end of each month. This he did and he would be reimbursed along with his monthly wages.

6. The claimant received a payslip for August 2022 as normal. This was produced to the tribunal. It showed that his net pay earned was £324.96. The claimant expected this to be paid to him by the middle of September 2022 but he received no payment then or since.
7. The claimant covered other centres of the respondent between 3 June and 4 July 2022. He kept a record of the expenses which he incurred for travel, which consisted of train and bus journeys primarily between Dundee and Edinburgh, but also on occasion to Aberdeen and Glasgow if they were short-staffed or to recruit new staff. The total amount he spent on work-related travel was £549.49. He claimed this back from the respondent by sending a statement to the respondent's HR WhatsApp account on 29 August 2022. This is the process he had followed in at least two previous months and after doing so he was reimbursed. The claimant expected to be reimbursed for his travel expenses by the middle of September 2022. He was not, either at that time or subsequently.
8. At the end of August 2022 the claimant indicated that he could not be as flexible as he had been in the past in terms of the hours he worked and the travelling he was undertaking. The respondent terminated his employment on 31 August 2022.
9. As the middle of September 2022 passed without the claimant being paid he took this up with the respondent. He was put in touch with a Mr Johal who he was told was more senior within the company than Ms McCartney. He asked Mr Johal via WhatsApp when he would be paid and was told there was a slight delay. He made a number of further requests between then and early December and each time was told that he would be paid, but there was a delay. On one occasion on 29 September 2022 he was told that the respondent was switching bank accounts and that this had caused delay. He was promised payment on 7 October 2022. The claimant continued to believe

he would be paid but by 19 December 2022 had reached the view he would not, and so contacted ACAS to begin his claim.

10. The claimant did not seek advice from anyone about his right to make a claim to an employment tribunal.

5 **Discussion and decision**

11. On the evidence provided, the claimant was an employee of the respondent when rendering his services. He was dismissed on 31 August 2022. At that date he was owed net pay of £324.96 and repayment of expenses in the amount of £549.49. He was not paid those sums at any time.
- 10 12. There was no evidence of the respondent having grounds to withhold payment of some or all of the sums owed. The evidence available suggested that the respondent wished to pay the claimant but was unable to find the funds to do so.
13. The payment of both sums was initially due to the claimant on or around  
15 Friday 16 September 2022. As such, he ought to have begun early conciliation with ACAS within three months of that date, and therefore no later than Thursday 15 December 2022. He commenced early conciliation on Monday 19 December 2022.
14. However, the respondent promised to pay the claimant the sums due to him  
20 on 7 October 2022 and made further assurances up until at least early December 2022. On this basis the claimant undertook early conciliation within three months of the revised date of payment of his contractual sums, and the claim is in time.
15. Alternatively, it is found that were the claim out of time, it was not reasonably  
25 practicable for him to have raised it within time given the circumstances of the claim, including the renewed promises by the respondent to pay him and his lack of knowledge of tribunal time limits.

16. Accordingly, the claimant was the subject of both an unlawful deduction from his pay and also a breach of contract, both of which occurred on 7 October 2022 (or a later date but with the same effect).

17. The claimant is therefore entitled to payment of the total sum of £874.45 and  
5 this is what the respondent is now ordered to pay to him.

**Employment Judge: B Campbell**  
**Date of judgment: 9 March 2023**  
**Date sent to parties: 13 March 2023**