



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106797/2023

Held in Dundee on 16 January 2024

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Employment Judge M Sutherland

Lydia Hardman

**Claimant
In person**

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Unique Hospitality Ltd

**Respondent
No response and
no appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is that the Respondent has made an unlawful deduction from wages and is ordered to pay the Claimant gross wages in sum of Five Hundred and Fifty Five Pounds and Thirty Nine Pence (£555.39) from which any tax and national insurance fall to be deducted.

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REASONS

Introduction

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1. A final hearing was listed to determine the Claimant's complaint of unlawful deduction from wages which was not resisted by the Respondent.
2. The hearing was conducted by CVP (video). The Claimant appeared on her own behalf. The Respondent did not appear.
3. The Claimant lodged an electronic bundle of documents and gave evidence on her own behalf.

4. The issues to be determined in this case were as follows –

Unlawful deduction from wages

- 5 a. Was the total amount of any wages paid on any occasion by the relevant Respondent less than the total amount of the wages properly payable by them to the Claimant on that occasion?

Findings in fact

5. The Tribunal makes the following findings in fact:

6. The Claimant was employed by the Respondent as a Kitchen Assistant from 2 May 2023 to 11 August 2023. Her hourly rate of pay was £9.18. She was paid monthly one month in arrears at the end of the following month. She worked 54.5 hours in July and 34.5 hours in August. In respect of that work she was paid £261.63 (28.5 hours) on 30 August and received no pay on 30 September.

Observations on the evidence

- 15 7. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
- 20 8. The Claimant came across as wholly credible and reliable in her testimony which was fully supported by documentary evidence.

Relevant Law

Unlawful deduction from wages

- 25 9. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker so employed unless the deduction is required or authorised by statute, or by a provision in the worker's contract advised in

writing, or by the worker's prior written consent. Certain deductions are excluded from protection by virtue of s14 or s23(5) of the ERA.

10. Under Section 13(3) ERA 1996 there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than
5 the total amount of the wages properly payable by him to the worker on that occasion.
11. Under Section 23 a complaint for unlawful deduction from wages must be made within 3 months of the date of the payment of wages from which the deduction was made or, if it was not reasonably practicable to do so, within
10 such further reasonable period. Where there is a series of deductions the time limit applies to the last deduction in the series. Nevertheless, a complaint must relate to a deduction made within the period of 2 years ending with the date of the complaint.

Discussion and decision

15 *Unlawful deduction from wages*

12. The total amount of the wages paid to the Claimant on 30 August and 30 September 2023 was less than the amount properly payable on those occasions. The amount of the deduction in August was £238.68 (26 hours x £9.18) and in September was £316.71 (34.5 hours x £9.18). Accordingly the
20 Claimant has suffered an unlawful deduction from wages in sum of £555.39 (gross).

Employment Judge: M Sutherland
Date of Judgment: 17 January 2024
Entered in register: 18 January 2024
and copied to parties