



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106887/2023 & 4106888/2023

5

Held via Cloud Video Platform (CVP) in Glasgow on 19 January 2024

Employment Judge M Kearns

10 Mr R H Hallett

First Claimant
In Person

15 Miss H Wynne

Second Claimant
In Person

20 Dalnaglar Holiday Cottages Ltd

Respondent
No appearance and
No representation

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 1. The Judgment of the Employment Tribunal was that:

(1) The respondent unlawfully deducted sums from the first claimant's wages contrary to Section 13 of the Employment Rights Act 1996. The respondent is ordered to pay to the first claimant the sum of **£978 (Nine Hundred and Seventy Eight Pounds)** in respect thereof.

30 (2) The respondent unlawfully deducted sums from the second claimant's wages contrary to Section 13 of the Employment Rights Act 1996. The respondent is ordered to pay to the second claimant the sum of **£699 (Six Hundred and Ninety Nine Pounds)** in respect thereof.

35 (3) The respondent is ordered to pay to the first claimant the sum of **£560 (Five Hundred and Sixty Pounds)** as compensation for accrued but

untaken annual paid leave in terms of Regulation 16 of the Working Time Regulations 1998.

- 5 (4) The respondent is ordered to pay to the second claimant the sum of **£400 (Four Hundred Pounds)** as compensation for accrued but untaken annual paid leave in terms of Regulation 16 of the Working Time Regulations 1998.

REASONS

- 10 1. The claimants were employed by the respondent from 6 June 2022 until 12 September 2023 when their resignations took effect. They thereafter worked six additional days for the respondent to provide cover until their successors arrived on 4 October 2023. Having complied with the early conciliation requirements, they presented an application to the Employment Tribunal on 6 November 2023 in which they claimed arrears of pay and holiday pay.
- 15 2. The respondent lodged a response to the claim but failed to attend the hearing. Their representative, Mr Kevin Mackie emailed the Tribunal to say he would be on holiday in Tenerife. A late application to postpone the hearing to another day was refused.

Evidence

- 20 3. The first claimant gave evidence on behalf of both claimants. His evidence was in most material respects consistent with the written account of events provided by the respondent in their response.

Findings in Fact

4. The following material facts were found to be proved:-
- 25 5. The respondent is a limited company involved in the letting of a castle and four holiday cottages near Blairgowrie. The claimants began working for full time the respondent on 6 June 2022. The first claimant was a caretaker and maintenance person. The second claimant was a caretaker and housekeeper. The respondent manages the premises remotely through its caretakers. The respondent's directors reside near Edinburgh.

6. The claimants' duties included cleaning, maintaining and looking after the properties and preparing them for guests on turnaround days. The first claimant's duties included daily treatment of the hot tubs in the cottages. Laundry was outsourced to a local firm. The first claimant's salary was £17,500 per annum. His gross monthly pay was accordingly £1,458.33. The second claimant's salary was £12,500 per annum. Her gross monthly pay was £1,041.67.
7. The claimants were entitled to annual leave of 5.6 weeks (or 28 days) per year in terms of the Working Time Regulations 1998. Their leave year started on 1 June in any year and ran until 31 May the following year. The claimants worked a five day week. Saturday was a working day but the others days varied from week to week.
8. The claimants' contract with the respondent provided for six months' notice. In or about July 2023 the claimants advised the respondent that they would be leaving for another job in mid-September. The respondent began a recruitment exercise and appointed two replacement employees. However, they were unable to start work with the respondent until 4 October. After some discussions, the claimants agreed to cover until that date and to hand over to the new employees at that time.
9. The claimants worked for the respondent up to and including 12 September 2023. On 13 September they moved to their new place of work in Plockton. The distance between the respondent's premises and Plockton is approximately 155 miles. The claimants started their new employment on 16 September 2023. However, they travelled down and worked for the respondent on the following additional days to provide cover until the new employees arrived to take over: Saturday 23 and Sunday 24 September 2023; Saturday 30 September and Sunday 1 October 2023; a handover on or about 3 and 4 October 2023. The first claimant arranged that after their departure on 13 September, the hot tubs would be treated daily by the local operative who generally covered his annual leave. The second claimant arranged cleaning cover from the agency that cleans the castle. The first claimant also provided on call telephone advice to guests until 4 October 2023.

Discussion and Decision

Claim for Unauthorised Deductions from Wages

10. Section 13 of the Employment Rights Act 1996 gives workers the right not to suffer unauthorised deductions from their wages. Under section 13(3) a deduction occurs where *“the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion.”* The claimants ought to have been paid for the period from 1 to 12 September 2023; for their shifts on 23, 24 and 30 September and 1 October and for the handover on 3 and 4 October. They are due payment from 1 to 12 September ($12/30 = 0.4$). They are also due a further 6 days' pay for their additional shifts.
11. The first claimant's gross monthly salary is £1,458.33. He is due £583.33 for the period from 1 to 12 September ($£1,458.33 \times 0.4$). (I do not know which five days of the week the claimants worked. Saturday was a working day but the other days seem to have varied from week to week. For that reason, the pro-rated period from 1 June to 12 September is calculated using 365 because the period includes working days and non-working days.) With regard to the 6 additional days worked, since they were all working days, I have calculated them separately. The daily rate (for a five day week) is $31/7 \times 5 = 22.14$ working days per month. For the first claimant: £1,458.33 divided by 22.14 gives a daily rate of £65.86 $\times 6$ days = £395.16. His total arrears of pay are $395.16 + 583.33 = £978.49$.
12. The second claimant's gross monthly pay was £1,041.67. She is due £416.67 for the period from 1 to 12 September ($£1,041.67 \times 0.4$). £1,041.67 divided by 22.14 gives a daily rate of £47.04. $£47.04 \times 6 = £282.30$. The second claimant's total arrears are $£416.67 + £282.30 = £698.97$

Holiday Pay Claim

13. The claimants' holiday year ran from 1 June 2023. They had not taken any annual leave in the year to 12 September 2023. It is right to add the six additional days worked for calculation purposes, so the period over which

leave accrued in the current holiday year was 1 June to 18 September 2023, which is 110 days. $110/365 \times 28$ days gives 8.5 days when rounded to the nearest half day.

- 5 14. The claimants are entitled to payment in respect of holidays accrued but untaken as at the date of termination of employment under Regulation 30 Working Time Regulations 1998 ("WTR"). Using the daily rates worked out above, the first claimant is entitled to 8.5 days \times £65.86 = £559.81. The second claimant is entitled to holiday pay of 8.5 days \times £47.04 = £399.84.
- 10 15. All sums are rounded to the nearest whole pound. All sums are also gross of tax and National Insurance. The claimants are required to account to HMRC for tax and NI.

Employment Judge: M Kearns
Date of Judgment: 19 January 2024
Entered in register: 23 January 2024
and copied to parties

25 *I confirm that this is my Judgment in the case of Mr RH Hallett and Miss H Wynne v Dalnaglar Holiday Cottages Ltd 4106887/2023 & 4106888/2023 and that I have signed it by electronic signature.*