



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107507/2023

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Held via Cloud Video Platform (CVP) on 14 March 2024

Employment Judge Campbell

10 **Mr Patrick O'Donnell**

**Claimant
In Person**

15 **Mr Philip McWilliams
t/a McWilliams & Company Solicitors**

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The judgment of the tribunal is that:

1. The claimant's claim for unlawful deduction of wages succeeds.
2. The claimant is therefore awarded the sum of £2,365.91.

REASONS

25 1. The claim was heard on 14 March 2024 by video. The claimant attended and gave evidence. There was no appearance by or on behalf of the respondent. The claimant confirmed that the respondent was aware of the claim.

30 2. The claimant also confirmed that the respondent is an individual, Mr Philip McWilliams, trading under the name 'McWilliams & Company Solicitors'. This is consistent with Companies House records – i.e there is no company or LLP registered with that name. The designation of the respondent is accordingly amended.

3. The claimant sought payment of sums claimed to have been earned in the course of his engagement as a trainee solicitor, but not paid by the

respondent. His claim was therefore one of unlawful deduction from wages under section 13 of the Employment Rights Act 1996. At the hearing an oral judgment on liability was given, confirming that the claim was successful. It was necessary to deliberate and issue a remedy judgment as the sums claimed had to be checked and consideration had to be given to whether figures should be adjusted to reflect income tax and National Insurance contributions.

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4. A question arose over whether the claim had been submitted to the tribunal within time. On the evidence heard, it had been presented within time. The claimant was paid on the last day of each month. His salary for August 2023 should have been paid on the 31st of that month. It was not, and this was the last deduction relied upon in a series. Factoring in the dates applicable to ACAS Early Conciliation, he presented his claim on the last day for timeously doing so.

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5. The claimant set out in his claim form the deductions which had been made from his pay in June, July and August 2023, together with the amount of a partial payment made by the respondent towards the outstanding pay. The total amount unpaid after giving credit for the respondent's partial payment was calculated at £3,479.28. However, this was a gross figure and did not reflect the claimant's liability to pay income tax or employee National Insurance contributions.

6. It is well settled that a claimant should be compensated to reflect their true loss. Therefore, his unpaid salary should be calculated on a net basis.

7. Assuming a basic rate of income tax of 20% and a National Insurance rate of 12%, the figure should be reduced to £2,365.91 and this is the amount which the respondent is ordered to pay.

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B Campbell

Employment Judge
21 March 2024

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Date
26 March 2024

Date sent to parties