



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND)

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**Judgment of the Employment Tribunal in Glasgow Based Un defended Case
Number 8001094/2024 Heard on the Cloud Based Video Platform on
4th October 2024 at 2 pm**

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Employment Judge J G d'Inverno

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Mr T Houston

**Claimant
In Person**

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Fenix Battery Recycling Ltd

**Respondent
Not appearing
and not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

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(First) That on 31st May 2024, the respondent made an unauthorised deduction from the claimant's wages in the net amount of £1,546.35 being the sum due to the claimant in respect of outstanding wages for 121.25 hours worked by him in the pay period 1st to 31st May 2024 and, in respect of 30.8160 hours of holiday pay accrued but untaken by him as at the Effective Date of Termination of his employment on 23rd of May 2024, all at

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the gross hourly rate of £11.44 and after deduction of;

(a) PAYE in the sum of £156.60,

- (b) Employee National Insurance Contribution – A in the sum of £62.65, and,
- 5 (c) Employee’s Contribution to NEST (RAS) Pension Fund,
- (d) all as set out in the payment advice (payslip), issued to the claimant for the pay period 01/05/24 to 31/05/2024 (Tax Month 2), showing tax code 1257L, Employee ID: FX-017, and,
- 10 (e) showing a gross pay figure of £1,831.16 and net pay of £1,546.35 due by the respondent to the claimant,
- (f) said net sum having been retained by the respondent and not
- 15 paid to the claimant contrary to the provisions of section 13 of the Employment Rights Act 1996.

(Second) That the respondent shall pay to the claimant the sum of £1,546.35, being a sum equivalent to the unauthorised deduction made.

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(Third) That, in the months of December 2023 and, January, February, March, April and May 2024, the respondent breached the claimant’s Contract of Employment by deducting from his wages the sums specified below, which in terms of the Contract should have been paid by the respondent, on behalf of the claimant, into his NEST (RAS) Pension Fund but were retained by the respondent and not so paid and being in respect of pay periods:

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	(a)	1 st to 31 st December 2023	£ 52.81
30	(b)	1 st to 31 st January 2024	£ 53.59
	(c)	1 st to 29 th February 2024	£ 56.58
	(d)	1 st to 31 st March 2024	£ 52.81
	(e)	1 st to 30 th April 2024	£ 64.95
	(f)	1 st to 31 st May 2024	<u>£ 65.56</u>
35		Total	<u>£346.30</u>

5 **(Fourth)** That the retention of the sum of £346.30 by the respondent, without its subsequent payment into the claimant's NEST Pension Fund, separately constituted an unauthorised deduction from the claimant's wages contrary to the provisions of section 13 of the Employment Rights Act 1996.

10 **(Fifth)** The respondent shall pay to the claimant the sum of £346.30 in the name of damages for breach of contract being the sum of money, the payment of which will put the claimant, the innocent party, into the position he would have been in, but for the respondent's breach; and separately being a sum equivalent to the deduction made.

15 **J d'Inverno**

Employment Judge

08 October 2024

Date of Judgment

20 **10 October 2024**

Date sent to parties

25 **I confirm that this is my Judgment in the case of Houston v Fenix Battery Recycling Ltd and that I have signed the Judgment by electronic signature.**

REASONS

30 1. This claim called for undefended Final Hearing on the Cloud Based Video Platform on 4th October 2024 at 2 pm. The claimant appeared In Person. There was no appearance for or on behalf of the respondent who had failed to enter a Notice of Appearance Form ET3.

35 2. On the day preceding the Hearing the claimant had communicated with the Clerk to the Tribunal advising that the respondent company "*had been placed in liquidation*".

3. The claimant gave evidence on oath on his own behalf and lodged with the Tribunal copy payslips for the months of January, February, March, April and May 2024. The claimant had not received a payslip for the month of December 2023 but gave oral evidence in relation to that period which was
5 accepted by the Tribunal as both credible and reliable. He also shared with the Tribunal the terms of correspondence received from the respondent on or about the 1st of July 2024, in terms of which the respondent's CEO advised the claimant, and other employees that they, the respondent company (its Directors), "had decided to place the company into liquidation", and had
10 identified the person who would act as liquidator, a Mr Paul McCarthy.

Findings in Fact

4. On the documentary and oral evidence presented the Tribunal made the
15 following essential Findings in Fact, restricted to those relevant and necessary to the Determination of the Issues before it.
5. The claimant was employed by the respondent from 23rd 08 2023 until 23rd 05 2024 upon which latter date he was dismissed, the said date being the
20 Effective Date of Termination of his employment.
6. The claimant was contracted to work an average 37.5 hour week across 5 days Monday to Friday. His agreed rate of pay was £11.44 per hour gross (that is before deductions for PAYE, Employee's National Insurance
25 Contribution and Employee's NEST (RAS) Pension Contribution.
7. In or about July of 2024 the respondent company entered into voluntary liquidation appointing, in due course, Mr Paul McCarthy to act as liquidator. Voluntary liquidation, whether "Members or Creditors Voluntary Liquidation",
30 as opposed to compulsory liquidation, has no impact upon the claimant's Title to Present and pursue his complaints before the Employment Tribunal nor upon the Tribunal's Jurisdiction to Consider and Determine them.

8. In the pay period 1st to 31st May 2024 the claimant worked a total of 121.25 hours in respect of which he was entitled, under his Contract of Employment, to be remunerated at the gross rate of £11.44 per hour and in the gross amount of £1,387.10.
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9. On the 23rd of May 2024 the respondent dismissed the claimant, that date being the Effective Date of Termination of his employment.
10. The claimant's holiday year ran from 1st January to 31st December.
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11. As at the Effective Date of Termination of employment the claimant had an accrued proportionate, but as yet untaken and outstanding, entitlement to paid annual leave of 30.816 hours in respect of which, upon termination of employment he was entitled to be compensated at the rate of £11.44 per hour in a total gross sum of £352.54.
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12. The net value of the claimant's outstanding holiday pay entitlement, after deduction of PAYE and Employee National Insurance Contribution – A, when combined with the net value of wages due to him after deduction in respect of PAYE, Employee National Insurance Contribution A and NEST (RAS) Pension Contribution was £1,546.35 net.
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13. That net sum of £1,546.35 ought to have been paid by the respondent to the claimant on the 31st of May 2024 being the next pay day immediately following the Effective Date of Termination of the claimant's employment, all in terms of the payslip issued by the respondent to the claimant for the pay period "01/05 2024 – 31/05/2024 (Tax Month 2) which is produced and relied upon by the claimant.
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14. The respondent failed to make payment to the claimant of the net sum of £1,546.35 and continues to retain the same. In so retaining wages for hours worked and accrued holiday pay entitlement, the respondent made, as at 31st May 2024, an unauthorised deduction from the claimant's wages contrary to the provisions of section 13 of the Employment Rights Act 1996.
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15. The respondent is liable to pay and shall pay to the claimant the sum of £1,546.35 being a sum equivalent to the unauthorised deduction made from the claimant's wages.

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Breach of Contract

16. In terms of the Contract which regulated the claimant's employment the claimant had authorised the respondent to make an additional deduction from his monthly wages, calculated as a fixed percentage of his wages earned in any month, of an Employee's Contribution to the NEST (RAS) Pension Fund.

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17. In the months of December 2023, January, February, March, April and May 2024 the respondent made deductions from the claimant's wages in respect of NEST (RAS) Pension Contribution respectively in the sums of; £52.81, £53.59, £56.58, £52.81, £64.95 and, £65.56, that is, in a total sum of £346.30.

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18. The respondent failed to make payment of the sums deducted into the claimant's NEST (RAS) Pension Fund on the claimant's behalf but rather retained those deductions.

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19. In so retaining the claimant's pension contributions and in so failing to pay them on the claimant's behalf, into his Pension Fund, the respondent has breached the claimant's Contract of Employment entitling the claimant to receipt of damages for the breach.

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20. In so deducting but retaining those pension contributions the respondent, separately made an unauthorised deduction from the claimant's wages, contrary to the provisions of section 13 of the Employment Rights Act 1996 in the sum of £346.30.

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21. The measure of damages in contract is the sum of money, the payment of which, will place the innocent party (the claimant) in the position he would

have been in but for the breaching party's (the respondent's) breach of contract.

22. In the circumstances of the instant case the damages due by the respondent
5 to the claimant are quantified in the sum of £346.30 which sum, being a sum
equivalent to the deduction made but retained by the respondent.

23. The respondent shall make payment to the claimant in damages for breach of
10 contract the sum of £346.30; and separately also being a sum of money
equivalent to the unauthorised deduction made from the claimant's wages,
contrary to the provisions of section 13 of the Employment Rights Act 1996.

15 **J d'Inverno**
Employment Judge

20 **08 October 2024**
Date of Judgment

Date sent to parties **10 October 2024**

25 **I confirm that this is my Judgment in the case of Houston v Fenix Battery
Recycling Ltd and that I have signed the Judgment by electronic signature.**