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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107804/2019

Held in Dundee on 4 October 2019

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Employment Judge M Sutherland

Mr Chris Cannon

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**Claimant
Represented by:
Mr A Locke**

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Wind Technik Nord UK Limited

**Respondent
No response
and appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the Respondent made an unlawful deduction from wages and the Respondent is ordered to pay the Claimant the sum of Eight Hundred and Ten Pounds (£810) (gross) from which income tax and national insurance fall to be deducted.

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REASONS

Introduction

1. The Claimant presented a complaint of unlawful deduction from wages.
2. The Respondent did not lodge a response or enter an appearance.
- 5 3. The claim could not be determined on the available material and the Claimant was asked to provide two prior pay slips. The Claimant was unable to obtain these and instead attempted to provide a copy of his bank statement but it was not legible. It was therefore decided that the claim could not be determined on the available material or the further information
10 provided and a final hearing was fixed for 4 October 2018.
4. The Claimant was represented by Mr A Locke of Citizens Advice Bureau (CAB).
5. The Claimant lodged a set of productions and gave evidence on his own behalf.
- 15 6. The Claimant made an application for the travel costs, loss of wages, and time spent in preparing for and attending this hearing.

Findings of Fact

7. The tribunal makes the following findings of fact –
8. The Claimant was employed by the Respondent from 3 January 2018 until
20 24 May 2019. The Claimant was employed by them as a Wind Turbine Technician.
9. On 31 May 2019 the Claimant was due to be paid wages in sum of £1855.22 less tax, national insurance and pension contributions. On 31 May 2019 the sum of £810 was deducted from the Claimant's wages
25 by the Respondent in respect of 'company car usage'. He had not previously had a deduction for company car usage and no such deduction was authorised under the Claimant's contract.
10. The Claimant spent two hours drafting and lodging his claim. The Claimant spent three hours in meetings with CAB discussing his claim. The

Claimant spent two hours sourcing relevant documents. CAB did not charge for their time.

Relevant law

- 5 11. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised by statute, or by a provision in the workers 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 12. A worker means an individual who has entered into or works under a contract of employment, or any other contract whereby the individual undertakes to perform personally any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230 ERA).
- 15 13. Under Section 13(3) there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
- 20 14. Under Section 27(1) of the ERA "wages" means any sums payable to the worker in connection with their employment.
- 15 15. A complaint for unlawful deduction from wages must be made within 3 months beginning with the due date for payment (Section 23 ERA 1996). If it is not reasonably practicable to do so, a complaint may be brought within such further reasonable period.
- 25 16. An award of costs is not normally made in tribunal proceedings. However under Rule 77 a Tribunal may make a preparation time order, and shall consider whether to do so, where it considers that— (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part)
30 or the way that the proceedings (or part) have been conducted; or (b) any claim or response had no reasonable prospect of success.

17. A party may apply for a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.
18. "Preparation time" means time spent by the Claimant (including by any employees or advisers) in working on the case, except for time spent at any final hearing.
19. The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of— (a) information provided by the Claimant on the preparation time spent; and (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
20. The hourly rate is currently £39.
21. In deciding whether to make a preparation time order, and if so in what amount, the Tribunal may have regard to the Respondent's ability to pay.

Discussion and decision

22. On 31 March 2019 there was a deduction from the Claimant's wages in sum of £810. There was no written agreement or consent to the deduction and accordingly the deduction was not authorised. The Claimant therefore suffered an unauthorised deduction from wages in sum of £810 (gross) from which tax and national insurance requires to be remitted to HMRC.
23. There is no statutory basis for recompensing the Claimant for his travel costs and loss of earnings in preparing for and attending this tribunal hearing. The Claimant was represented by the CAB. The CAB do not charge for representation. The Claimant was accordingly not legally represented and was not represented by a lay representative who charges for representation. The Claimant and his advisor spent considerable time preparing for this hearing but having regard to the simplicity of the issues, the limited number of documents, and the absence of other witnesses, a

total of 3 hours is considered reasonable and proportionate. However this hearing, and the preparation for it, was necessitated because of failure on the part of the Claimant to provide a legible copy of his bank statement (in lieu of the payslips requested). Further a preparation time order may only
5 be made where the Respondent has acted unreasonably in the conduct of the proceedings or where the response had no reasonable prospects of success. Given that the Respondent had not entered an appearance or lodged a response it is not competent to make a preparation time award and accordingly the application is refused.

- 10 24. If there is good cause for the failure of the Respondent to appear or be represented at this hearing the Respondent may apply for reconsideration of this decision under Rule 71 and for an extension of time for presenting a response under Rule 20.

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Employment Judge:
Date of Judgment:
Date sent to parties:

Michelle Sutherland
11 October 2019
14 October 2019