



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105614/2020

Held by Cloud Video Platform on 16 August 2021

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Employment Judge McFatridge

Mr A Breyer

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**Claimant
In person**

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Muhabbat Khan

**Respondent
Not present or
represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the respondent unlawfully withheld wages
30 from the claimant in the sum of One Thousand and Seventeen Pounds and Forty
Four Pence (£1017.44). The respondent shall pay to the claimant the sum of
One Thousand and Seventeen Pounds and Forty Four Pence (£1017.44).

REASONS

- 35 1. The claimant submitted a claim to the Tribunal in which he claimed that he
had been employed by the respondent between 12 July 2020 and
18 August 2020 and that the respondent had failed to pay him the full

amount of the wages which he was due. The respondent lodged a response in which he accepted that the claimant had worked for him but stated that he had only worked between 10 August 2020 and 17 August 2020 and that the claimant had worked 27 hours all together and was
5 exaggerating the amount of hours which he had worked. Matters proceeded to a hearing prior to which the claimant lodged various documents with the Tribunal including a letter dated 11 August 2021 which set out his claim in more detail. The respondent ceased to respond to letters from the Tribunal. The case was set down for a final hearing to
10 take place by CVP on 16 August 2021. Both parties were given appropriate notice of the date and time of the hearing. The respondent failed to contact the Tribunal on numerous occasions in order to carry out a CVP test. On the date and time fixed for the hearing the claimant was present and ready to proceed. A Polish interpreter was also present in
15 order to assist the claimant give his evidence. The respondent did not log in. The claimant indicated that it was his understanding that the respondent was no longer operating the business but that it was being operated by his wife. His position was that the respondent was doing this in order to avoid correspondence from HMRC and the Tribunal. I decided
20 that it would be appropriate to proceed with the hearing and the claimant thereafter gave evidence on oath which basically confirmed the position set out in his previous correspondence with the Tribunal including the email dated 11 August 2021. He made reference to the voluminous documents which he had lodged with the Tribunal confirming his position
25 although I did not consider it necessary to go into these in detail. On the basis of the evidence I found the following essential facts to be proved in relation to the subject matter of the claim.

Findings in fact

2. In 2020 the respondent operated a store in Alyth known as the Alyth
30 Premier Shop. The claimant commenced employment with him on or about 18 July. His employment ceased on or about 17 August 2020 due to a dispute over pay. During the period of his employment the claimant worked a total of 127 hours. The claimant was 50 years of age at the time and was entitled to be paid at the rate of the National Minimum Wage.

The only payment which the claimant received during this period was a payment of £90 which was said to be a payment for 16 hours which the claimant had worked.

3. The rate of the National Minimum Wage for the period in question was £8.72 per hour. The claimant was entitled to be paid the sum of £1107.44 in respect of the 127 hours which he worked. The claimant therefore suffered an unlawful deduction of wages in the sum of £1017.44 given that he was only paid £90 for his work.

Observation on the evidence

4. The claimant gave his evidence in a straightforward fashion and I saw absolutely no reason to doubt his word. He had lodged a considerable amount of correspondence with the Tribunal which he considered corroborated his position. The respondent had been advised of the date of the hearing and the arrangements but chose not to respond. The claimant's position was that this was a deliberate action on the part of the respondent since he had already ignored correspondence from HMRC in respect of the alleged failure to pay the National Minimum Wage. I did not see any need to go into the detailed documentary evidence lodged given that the respondent was not present to defend his position. The claimant confirmed that the total amount of hours he had worked was 127. He had been paid £90 for 16 of those hours. He made reference in correspondence to the fact that the respondent had made a deduction in respect of a cash handling error made by the claimant of £44 and also that the respondent alleged he had agreed a lesser rate with the claimant. There was no evidence before me to suggest that any deduction for alleged cash shortages had been authorised by the claimant in terms of section 13 of the Employment Rights Act 1996. I accepted the claimant's evidence about the number of hours worked.

Discussion and decision

5. Given that I accepted the claimant's evidence that he had worked 127 hours, whatever agreement the respondent claimed to have made with him it is an implied term of every contract of employment that the hourly wage paid shall be no less than the rate of the National Minimum Wage.

The rate of the National Minimum Wage for the period was £8.72 per hour. On this basis the claimant was entitled to £1107.44. He was only paid £90. He is therefore entitled to a judgment in respect of the balance of £1017.44.

- 5 6. In his ET1 the claimant also made reference to the fact that the respondent had not provided him with a contract of employment or statement of initial particulars of employment. The requirement on an employer to provide a statement of initial particulars of employment to an employee is set out in section 1 of the Employment Rights Act 1996 however the employer only
10 requires to provide this no later than two months after the commencement of employment. In this case the claimant was employed for less than two months and the Tribunal can therefore take no action in respect of the failure to provide a statement of initial particulars of employment in terms of the Employment Act 2002.
- 15 7. The claimant indicated that as well as raising Tribunal proceedings he had also contacted the HMRC Enforcement Unit in relation to the respondent's failure to pay minimum wage. My understanding is that they will automatically cease to take any further action given that there is now a judgment of the Tribunal and indeed the claimant had lodged a letter from
20 HMRC confirming that this was their position. Notwithstanding this the claimant may wish to send a copy of this judgment to HMRC.

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30 **Employment Judge:** I McFatridge
Date of Judgment: 17 August 2021
Date sent to parties: 18 August 2021