



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4111265/2021

Held at Dundee on 6 December 2021

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**Employment Judge McFatridge
Tribunal Member W Canning
Tribunal Member R Duguid**

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Mr Ilie Anghel

**Claimant
In person**

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Mr Huseyn Karaca t/a Top Stitches

**Respondent
Represented by
In Person**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that

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1. The claimant was not automatically unfairly dismissed by the respondent for claiming infringement of a statutory right. This claim is dismissed.
2. The respondent gave the claimant the appropriate notice of termination of employment and the claim for notice pay is dismissed.
3. The respondent failed to provide the claimant with itemised pay slips as required by s8 of the Employment Rights Act 1996. This declaration is made in terms of s12(3) of that Act. There were no deductions made in

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the final 13 weeks of his employment other than those for which the claimant has been compensated below in terms of his claim under s13 of the said Act.

4. The respondent unlawfully withheld wages from the claimant in the sum of £3316.45. The respondent shall pay the claimant the sum of Three Thousand, Three Hundred and Sixteen Pounds and Forty Five Pence (£3316.45) in respect thereof.
5. The claimant is entitled to the sum of One Thousand, Six Hundred and Five Pounds and Twenty Four Pence (£1605.24) in respect of paid annual leave accrued but untaken as at the date of termination of his employment. The respondent shall pay this sum to the claimant.
6. At the time these proceedings commenced the respondent was in breach of his obligation to the claimant to provide him with written particulars of employment in terms of section 1 of the Employment Rights Act 1996. The respondent shall pay to the claimant the sum of Four Hundred and Eighty Four Pounds and Sixty Pence (£484.60) (two weeks' pay) in terms of section 38 of the Employment Act 2002.

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he had suffered an unlawful deduction of wages. He also claimed that he was due holiday pay and that he had been automatically unfairly dismissed by the respondent for asserting a statutory right. He claimed that he had never received a contract of employment or written statement of particulars of employment from the respondent and that he had not received any itemised payslips until after the termination of his employment. The respondent submitted a response in which he denied the claims. He accepted that he had not provided the claimant with an itemised statement of particulars of employment. He denied that the reason for the claimant's dismissal had anything to do with the assertion of a statutory right. It was clear from the pleadings that the principal dispute between the parties was in relation to furlough payments during

two periods when the claimant had been absent from the business, one at the beginning of 2020 and one at the beginning of 2021. On both occasions the claimant had been out of the country however it was common ground that the respondent had successfully claimed furlough payment from the government under the CJRS in respect of the claimant. There was a dispute as to what amounts had been paid to or on behalf of the claimant.

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2. At the hearing the claimant gave evidence on his own behalf. He did this through an interpreter. He had not lodged any documents but during the course of the hearing he sought to lodge various pay slips however he accepted that these had been sent to him after his employment had terminated. The respondent objected to them being lodged. It appeared to the panel that these were likely to be of little assistance to the Tribunal and in any event were being lodged very late in the day. The respondent then gave evidence on his own behalf. He had lodged a bundle of documents which included handwritten statements setting out his position. He also gave his evidence through an interpreter. On the basis of the evidence and the productions the Tribunal found the following essential matters relative to the claim to be proved or agreed.

20 **Findings in fact**

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3. The respondent operates a tailoring business in St Andrews. The claimant commenced employment with the respondent on 1 February 2020. The claimant and the respondent agreed that the claimant would work 30 to 35 hours per week for which he would be paid £8.21 per hour. The claimant was the respondent's only employee. The claimant moved to St Andrews where he sub-let a room in a flat from a Mr Barry J Evans. The claimant earned around £1050 per month on average which (while he was in the UK and working) was paid in cash.
4. No part of the arrangement between the claimant and the respondent was at any time reduced to writing. The respondent did not provide the claimant with initial particulars of employment as required by section 1 of the Employment Rights Act 1996.

5. As is well known the Covid pandemic began at the end of March 2020. A national lockdown was announced commencing 23 March. The claimant wished to return to Romania and the respondent purchased an air ticket for the claimant to go back to Romania for £121.99. He also dropped the claimant off at the airport paying a parking charge of £10 whilst doing so.
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6. There was no written agreement between the claimant and the respondent authorising the respondent to deduct any sums from the claimant's wages. No paperwork was entered into between the claimant and the respondent at any time. There was no written arrangement between the parties in relation to the claimant being furloughed.
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7. The respondent and the claimant were on friendly terms and the respondent agreed to apply to the government for furlough payments for the claimant under the Coronavirus Job Retention Scheme.
8. The claimant had left some of his belongings in the flat he sub-let in St Andrews. The respondent paid the claimant's rent on his behalf whilst the claimant was away in Romania.
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9. Prior to going to Romania the claimant had purchased a mobile phone and set up an account for this with TalkTalk. The respondent agreed with the claimant that he would pay the mobile phone bill on the claimant's behalf while he was away. The respondent paid a total of £124.45 to TalkTalk on the claimant's behalf in monthly instalments. The last such payment was made on 28 July 2020.
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10. Towards the end of June 2020 the claimant contacted the respondent and asked him to return from Romania and start work since the respondent was now in a position to open up his business again. The claimant advised the respondent that he was not keen on returning immediately since his understanding was that at that time Romania was a red list country and he would require to quarantine for 14 days on arrival in the UK. He wished to avoid this.
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11. The respondent was annoyed by this. The claimant eventually returned to the UK on 27 July. He recommenced work with the respondent on 1 August 2020.
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12. During the period the claimant was away (the first lockdown period) the respondent received payments totalling £3345.55 from the government under the Coronavirus Job Retention Scheme in respect of furlough payments for the claimant. During the first lockdown period the respondent paid the sum of £679 to the claimant on 22 May 2020 and the sum of £700 to the claimant on 24 June 2020. The respondent paid four of the monthly rent payments of £300 paid due by the claimant for his accommodation in St Andrews. This amounted to £1200. The respondent also paid the total of £124.25 to TalkTalk in respect of payments due by the claimant for his mobile phone.
13. After the claimant returned to the UK and recommenced working with the respondent the respondent paid the claimant a further £509.81 in cash which he calculated as the balance due of the furlough monies he had received from the claimant less payments made to the claimant and the various other payments which he had made on the claimant's behalf. As noted above the respondent at no time had any written authority from the claimant to make deductions from wages.
14. The claimant did not raise any issues with the respondent about the matter or claim that any sums were due to him following the first lockdown for the remainder of 2020. The claimant worked for the respondent from his return to work on 1 August until Christmas 2020. The claimant did not take any time off work. He did not receive any paid holidays during this period.
15. The claimant arranged with the respondent that he would go on holiday from 29 December. The claimant intended to spend some time in Romania. He intended to be away for around 4 weeks. The respondent had also arranged to go on holiday at the same time and would be travelling back to Turkey. The claimant and the respondent agreed that they would both catch a Turkish Airlines flight to Istanbul and that thereafter the claimant would travel from Istanbul on to Bucharest. The respondent booked and paid for the flights to Istanbul. He paid £293.62 for the claimant's air fare. He also paid for his own air fare. Shortly before they were due to depart the respondent changed his mind partly because of the worsening Covid situation. The respondent obtained a refund in

respect of his own flight but the claimant continued with the arrangements and flew back to Bucharest on 29 December.

16. As is well known the UK entered a second period of lockdown from 26 December 2020 onwards. As a result of this the claimant did not return to work at the end of his holiday as planned but remained in Romania. The respondent again applied successfully for furlough payments from the government under the CJRS. During this second lockdown period the respondent was paid the sum of £4166.45 from the government in respect of furlough payment for the claimant. As before there was no written arrangement between the parties in relation to the claimant's furlough.
17. In late April/early May the respondent asked the claimant to return to the UK and return to work. The claimant refused to do so, once again indicating that he was unwilling to have to quarantine in the UK on arrival given that Romania was a red list country. The respondent was unhappy at this and decided that he could no longer work with the claimant. He decided to dismiss the claimant. The reason for the dismissal was the respondent's view that the claimant's refusal to return to work was unreasonable as had been his delay in returning to work in 2020. The respondent gave the claimant verbal notice that his employment would terminate on 31 May 2021.
18. The claimant returned to the UK on or about 1 June. The claimant arranged to take up a new employment with a tailoring business in Aberdeen the principal of which was known to the respondent. The claimant asked the respondent if he could deliver his belongings from the flat in St Andrews up to his new address in Aberdeen. The respondent agreed to this and on or about 30 May he picked up the claimant's belongings from St Andrews and then delivered them up to Aberdeen.
19. During the time the claimant was in Romania the respondent made two transfers of cash to him, one of £400 on 22 April 2021 and one of £450 on 7 February 2021.
20. The respondent also continued to pay the claimant's rent as on the previous occasion the claimant had been absent. He paid five payments totalling £1500. The last such payment was made at the end of May 2021.

21. The air fare which the respondent paid on behalf of the claimant was £293.62.

22. The respondent also advanced the sum of £200 to a friend of the claimant. The respondent's view was that the claimant would be responsible for ensuring this sum was repaid. Once again there was no written authorisation from the claimant during this period authorising the respondent to make any deductions from his wages.

23. After the claimant returned to the UK on 1 June relations deteriorated between the parties. The claimant took advice and wrote to the respondent seeking itemised pay slips. Itemised pay slips were provided by the respondent's representative to the claimant however the claimant did not accept that these were correct. The Tribunal was not given any information from the claimant as to what ought to have been on these itemised pay slips and is therefore not in any position to make an order in terms of section 12(3) of the Employment Rights Act 1996.

Matters arising from the evidence

24. The claimant was not a good witness. His evidence was somewhat confused and it was clear that he was extremely angry with the respondent. The claimant accepted that he had received some furlough payments when abroad but initially said that on both occasions he had received around £400 twice. He denied that the respondent had made payments for his mobile phone and he did not accept that the respondent had made payments in respect of his rent. When the respondent's bank statement showing various of these deductions (excluding the rent) was showed to him then he appeared to grudgingly accept that the payments had been made as described but his position was that he still denied that the respondent had paid for his flight to Istanbul in December 2020 although this payment can be clearly identified from the bank statement. He denied receiving £509 in cash following his return to work in August 2020. He said he knew nothing of the payment to his friend. With regard to the rent, by the end of his evidence he appeared to accept that the respondent had paid this but stated that the respondent should not have done so because the rent was not due as it was an unofficial let and he

was “off the radar”. His evidence regarding the terms of the contract also differed. He eventually accepted that he had agreed an hourly rate of £8.21 with the respondent but it was his position that he was paid weekly in cash. He said that he received the same amount for three weeks in the month and then £40 less on one week in the month when his national insurance and tax was taken off.

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25. The respondent was a much more careful witness and he had produced some written evidence which to some extent backed up his position. He produced his bank statements which showed the payments made to the claimant whilst the claimant was in Romania. The bank statements also showed the sums paid to TalkTalk which appeared to be for an additional account to the respondent’s own account. His bank statement also showed a sum of £200 paid to someone he said was a friend of the claimant. The bank statement did not show the payment of £509 which he claimed to have made in cash to the claimant following the claimant’s return to work in August 2020. The respondent also stated that he had paid the claimant a further £1500 in or about October 2020 which he said were payments made to the claimant when the claimant requested a loan from him. It appeared to be his position that he had taken repayment of the loan together with repayment of the £200 advanced to the claimant’s friend from the furlough monies which he had received for the claimant during the second lockdown. The respondent’s position also differed from the claimant in that he stated that the claimant was paid at the rate of £8.21 per hour but was paid monthly in cash. There was also a dispute between the parties as to the amount the claimant received. The claimant’s position was that he received £1300 per month whilst the respondent said that his pay was around £1030-£1050 per month net.

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26. Neither party had lodged pay slips which had been provided by the respondent’s representative to the claimant in or about August 2021. The claimant indicated on the morning of the hearing that he had some of them with him but the respondent objected to their production on the basis that he had not had the chance to examine these in advance. These would appear to be of doubtful relevance since both parties were in agreement they had been produced well after the claimant’s employment had ceased.

27. At the end of the day the Tribunal was faced with considerable evidential difficulty. It was common ground between the parties that the claimant had been employed for a period and there was some agreement as to the times the claimant had been out of the country. There was a disagreement
5 between the parties as to the terms of that agreement. We had concerns about the claimant's evidence given that in evidence he denied that payments had been made when clearly the bank account showed they had been made. There were also a number of other inconsistencies in his evidence. We accepted that the respondent had made the payments
10 which were shown in his bank statement. With regard to the cash payments which the respondent claimed to have made we noted that there was absolutely no vouching in respect of any of these. On the other hand we accepted the respondent's point that the claimant had returned to work in August 2020 and had raised no issues about non-payment of furlough
15 pay. The claimant's evidence was that he had paid the claimant £509.81 in cash in respect of the balance of furlough money and that the claimant had accepted this. We accepted the respondent's argument that if the claimant had believed that he was still due furlough money then he would have raised the matter at some point between his return to work in August
20 and his departure on holiday on 29 December.

28. On the other hand with regard to the two amounts of £1000 and £500 which the respondent claimed to have paid to the claimant in October 2020 there was absolutely no vouching for this whatsoever. The Tribunal felt that this was a fairly substantial sum and that on the balance of
25 probabilities the respondent would have asked the claimant for something in writing were he making a loan of this amount no matter how friendly they were. The Tribunal felt that on the balance of probabilities we could not make a finding that these sums had been paid.

29. With regard to the reason for the claimant's dismissal we entirely accepted
30 the evidence of the respondent. The claimant did not give any evidence whatsoever to say that he had raised the issue of pay slips or non-payment of wages with the respondent prior to the termination of his employment. We accepted the respondent's interpretation of events which was that the

claimant had been entirely happy with things until the respondent terminated his employment and that relations soured after that.

30. With regard to the evidence the Tribunal would wish to record our thanks to the two interpreters in this case who had at times an extremely difficult job.

Issues

31. In his ET1 the claimant notes that he does not speak or write good English and that the ET1 was compiled by CAB. The claims being made were

- (a) unlawful deduction of wages – unpaid wages/furlough pay;
- (b) notice pay;
- (c) holiday pay for accrued but untaken annual leave on termination;
- (d) compensation for failure to provide written statement of terms and conditions;
- (e) compensation for failure to provide itemised pay slips;
- (f) automatically unfairly dismissal for raising a statutory right.

32. With regard to item (e) we note that there is no statutory right for compensation for failure to provide itemised pay slips. An employee who is aggrieved that his employer has failed to provide him with an itemised pay slip may complain to an Employment Tribunal in terms of section 11 of the Employment Rights Act 1996. If the claim is upheld then there is no entitlement to compensation. An employee is entitled to a declaration that there has been a breach of the obligation to provide pay slips set out in section 8 and in terms of section 12(4) the claimant is further entitled to reimbursement of any deductions made in the 13 weeks prior to the date of the application.

Discussion and decision

33. It is appropriate to deal with each of the claimant's claims in turn.

Automatic unfair dismissal

34. The claimant does not have two years' qualifying service and is therefore not in a position to claim ordinary unfair dismissal. It was however the

claimant's position that his dismissal was automatically unfair in terms of section 104 of the Employment Rights Act 1996. This provides

“(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.”

35. As noted above the Tribunal were satisfied that the reason for the claimant's dismissal was that the respondent was unhappy when the claimant delayed his return to work from Romania in 2021. The respondent had been unhappy when the claimant did the same thing in 2020. There was no evidence from the claimant that the claimant had done anything to assert a statutory right prior to him being told he was dismissed in May 2021. Accordingly the claim of automatically unfair dismissal fails and is dismissed.

Notice pay

36. In terms of section 86 of the Employment Rights Act 1996 an employee is entitled to not less than one week's notice if his period of continuous employment is less than two years. The claimant was employed for less than two years. He was accordingly entitled to two weeks' notice. The evidence of the respondent was that the claimant was given more than two weeks' notice. This was not seriously challenged by the claimant. Accordingly the claim for notice pay fails.

Holiday pay

37. The claimant's claim is in respect of holidays accrued but untaken as at the date of termination of his employment. There is no written agreement therefore in this case the claimant's holiday pay entitlement falls to be determined by the Working Time Regulations 1998. The claimant is entitled to 5.6 weeks' annual leave per year. In the terms of Regulation

13(b) a worker's leave year begins on the date on which that employment begins and each subsequent anniversary of that date. In the case of the claimant this means that his leave year commenced on 1 February each year.

5 38. Generally speaking leave under the Working Time Regulations cannot be carried forward from one year to another however there are some limited exceptions. One of these is set out in Regulation 13(10) which provides

10 "Where in any leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under this regulation as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society) the worker shall be entitled to carry forward such untaken leave as provided for in paragraph 11 (paragraph 11 states that leave to which paragraph 10 applies may be carried forward and taken in the two
15 leave years immediately following the leave year in respect of which it was due)."

39. In this case the evidence of both parties was to the effect that the claimant intended to go on holiday from 29 December 2020. He was prevented from doing so by the coronavirus lockdown which was imposed. The
20 likelihood is that he would have taken the remainder of his annual leave between then and 1 February. The Tribunal's view was therefore that he should be permitted to carry over a portion of his annual leave from the previous year being the leave he intended to take between 29 December 2020 and 1 February 2021. This amounts to 24 days or 4.8 weeks. He
25 loses the remainder of this annual leave for the year 2020/21 because he could have taken this in the period from August 2020 when he was working and was not prevented from doing so by the effects of Coronavirus.

40. Regulation 14 deals with the compensation due to an employee who leaves part way through the leave year. The claimant was due 4.8 weeks' pay from the previous year. In addition, he accrued leave for the 119 days
30 between 1 February 2021 and 31 May 2021. He is therefore entitled to 5.6 x 119/365 weeks' pay amounting to 1.825 weeks' pay for the 2021/22 leave year. The claimant is therefore entitled to a total of 6.625.

41. With regard to the amount of a week's pay the Tribunal preferred the respondent's evidence to the effect that the claimant was paid £1050 per month net. This equates to £242.30 per week. The claimant is therefore entitled to £1605.24 (6.625 x 242.30). The claimant is entitled to this amount as payment for holiday pay accrued but untaken as at the date of termination of employment.

Failure to provide itemised pay slips

42. It was clear that during both furlough periods the claimant had not been provided with itemised pay slips at or before the time the payment was made. It is noted that the claimant was supplied with pay slips at a later date however section 8 of the Employment Rights Act requires that such pay slips be provided at or before the time the payment is made. The claimant is therefore entitled to a declarator in terms of Regulation 12(3). The claimant commenced early conciliation on 27 August 2021. The 13 week period prior to this commenced on 20 May 2021. The Tribunal did not consider that any deductions had been made within this period which are not covered in our judgment below in terms of the claimant's general claim of unauthorised deductions.

Failure to provide written terms and conditions of employment

43. It was clear from the evidence that the respondent had not provided the particulars of employment he was required to do in terms of section 1 of the Employment Rights Act 1996. Section 38 of the Employment Act 2002 provides that in such circumstances the Tribunal must (subject to section 38(5)) make an award of the minimum amount to be paid by the employer to the worker (2 weeks' pay) and may if it considers just and equitable in all the circumstances award the higher amount (4 weeks' pay) instead. Section 38(5) relieves the employer of the duty to give a statement of employment particulars if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable. In this case the Tribunal does not consider there are exceptional circumstances.

44. The Tribunal considered that in this case it was appropriate to award the lower amount of two weeks' pay. The respondent is a small employer and

the claimant was his sole employee. Although, since April 2020, the legislation provides that such a statement must be provided before employment commences, the law at the time gave the respondent a period of time after employment commenced to provide this information and the COVID outbreak and the claimant's departure for Romania occurred before the end of the period. The respondent shall therefore pay to the claimant the sum of two weeks' pay (£484.60) in terms of section 38 of the Employment Act 2002.

Unlawful deduction of wages

45. In terms of section 13 of the Employment Rights Act 1996 an employee has the right not to suffer unauthorised deductions. The Act states

“(1) An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section 'relevant provision', in relation to a worker's contract, means a provision of the contract comprised –

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”

46. In his closing submissions the claimant made it clear to the Tribunal that what he was seeking was payment of the furlough monies which had been paid to the respondent by the government on his behalf.

47. The first question for the Tribunal to determine was the “wages” due to the claimant by the respondent for the relevant periods which were the periods

the claimant was on furlough. The claimant was not making any claim in respect of the period when he had been at work between August and December 2020. In this case there is no written contract between the parties, there is of course no requirement for a contract of employment to be in writing for the contract to exist. The contract can be constituted orally and indeed terms of the contract may be implied. In this case the Tribunal accepted on the basis of the limited evidence before us that the claimant was initially employed on the basis that he would work 30 to 35 hours per week for £8.21 per hour. This all changed however with effect from 23 March 2020 when the Covid lockdown commenced and the claimant was furloughed. Although it would have been prudent of the respondent to have put the matter in writing the tribunal were prepared to accept that after this the agreement between the parties was that the claimant would be furloughed and that the claimant would receive the furlough monies paid to the respondent by the government in respect of the claimant. Even if there were no such agreement the tribunal was confident that such a term could be implied into the contract. The Tribunal's view was that this was also the contractual position in respect of the second lockdown in 2021.

48. The Tribunal accepted the respondent's evidence that he had received £3345.55 in respect of the first lockdown period and £4166.45 in respect of the second lockdown period. The Tribunal's view was that the wages the claimant ought to have received for the period of the first lockdown was £3345.55 and in respect of the second lockdown period was £4166.45. In each case the tribunal accepted that the parties had not reached a specific agreement on when they were to be paid but it can be implied that these sums were due to be paid at least no later than the claimant's return to work on 1 August 2020 in respect of the first lockdown period and by the termination of his employment on 31 May 2021 in respect of the second lockdown period.

49. Before the Tribunal goes on to deal with the issue of whether or not these sums were paid and whether any deductions were made the Tribunal requires to address the issue of time bar. We require to do this despite

the fact it was not raised by the respondent given that it goes to the jurisdiction of the Tribunal.

50. The time limit for lodging a complaint of unlawful deductions is contained in section 23(2) of the Employment Rights Act 1996. It states

5 “(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

10 (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of –

15 (a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

20 the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.”

51. The claimant commenced early conciliation on 17 August. Accordingly the only deductions made in the period after 18 May 2021 fell within the three month period unless such deductions were part of a series of deductions. The Tribunal’s view was that we required to look at each of the deductions in turn and decide whether or not it was part of a series before determining whether or not the Tribunal had jurisdiction to deal with the matter. Before we do this however it is as well to set out our findings in relation to deductions arising from our factual findings above.

30 52. During the first lockdown period the claimant was due to receive £3345.55. The Tribunal accepted that he had received £679, £700 and £509.81 amounting in total to £1888.81. He had therefore suffered a deduction from his wages of £1456.74 during this period. During the second

lockdown he was due to receive £4166.45. He received £850 in cash (£450 + £400). He therefore suffered a deduction of £3316.45 during the second lockdown.

53. It is as well to state here that it was clear to the Tribunal that all of these deductions were not authorised in terms of section 13. The question however is whether the Tribunal has jurisdiction to deal with all of them or not. The claimant did not provide any evidence to the Tribunal such as to suggest that it had not been reasonably practicable for him to raise the matter at an earlier stage.

54. The tribunal's view that it had no jurisdiction to deal with the deductions made during the first lockdown period. It is clear that these deductions were all made by 1 August 2020. With regard to the second lockdown period our view is that the deductions were all made from the payment which the claimant ought to have received no later than the termination of his employment on 31 May 2021. Early conciliation was lodged within three months of that date and the tribunal therefore has jurisdiction.

55. The tribunal did consider whether the deductions for rent payments during the first lockdown amounted to a series of deductions to be considered along with those for the second lockdown but rejected this argument on the basis that what we had here were two separate series of deductions in each lockdown.

56. Accordingly the tribunal's finding is that the claimant suffered an unauthorised deduction of wages in the sum of £3316.45

57. The Tribunal noted during the Tribunal hearing that the respondent on various occasions expressed the view that the claimant had abused his good will and that he felt extremely aggrieved that the claimant had raised these proceedings. On the other hand the claimant's view was that he had not been paid monies to which he was entitled. The respondent will no doubt feel aggrieved that he is required to pay to the claimant the sum which was deducted for rent payments which we have found on the evidence were quite clearly made by the respondent. On the other hand employment law in the UK is quite clear in requiring certain matters to be reduced to writing. The respondent in his business will no doubt be aware

of a number of regulations and laws which he requires to comply with. There are rules and regulations which apply to employment and behoves anyone who becomes an employer to familiarise themselves with them. Had the respondent done so then he may well not have found himself in this position.

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58. Finally, for the sake of clarity we should confirm that our decision in this matter is simply to the effect that the respondent was not authorised to deduct these sums from the claimant's wages and he must repay these sums to the claimant. It may be that the respondent will wish to sue the claimant in the Sheriff Court for repayment of the sums said to be advanced by way of loan, rent and payment of air fare etc in the ordinary courts and in our view there is nothing in this judgment which prevents him doing so. We cannot, of course, comment on the likelihood of success.

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

I McFatridge
22 December 2021
22 December 2021