



**IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH**

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**Judgment of the Employment Tribunal in Case No: 4106053/2022 Heard at  
Edinburgh on the 26<sup>th</sup> of January 2023.**

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**Employment Judge J G d'Inverno**

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**Miss S Robertson**

**Claimant  
In Person**

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**Rujia Marketing Consultant Ltd**

**Respondent  
Not appearing and not  
represented**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is that the Claimant, whose date of birth is 25/06/1987 and who was employed by the respondent from the 25<sup>th</sup> of February until the 29<sup>th</sup> of August 2022, which latter date was the Effective Date of Termination of her employment effective upon expiry, on that date, of one week's prior notice given by her:

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**(First)** Suffered an unauthorised deduction from her wages in the period 1<sup>st</sup> to 21<sup>st</sup> August 2022 inclusive, at the hands of the respondent and, contrary to the provisions of section 13 of the Employment Rights Act 1996 ("ERA"), in a conceded and agreed net amount of £519.65.

(Second) That the respondent shall pay to the claimant the sum of £519.65 being an amount equivalent to the amount of the unauthorised deduction made.

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**(Third)** That the claimant suffered a further unauthorised deduction from her wages at the hands of the respondent, for the pay period of her week's notice worked being between 22<sup>nd</sup> and 29<sup>th</sup> August 2022 inclusive, in the sum of £720 gross, being 72 hours at the gross contractual rate of pay of £10.

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**(Fourth)** That the respondent shall pay to the claimant the sum of £720 gross and in respect of which sum the claimant shall be obliged to account to His Majesty's Revenue and Customs for Income Tax and National Insurance contribution, the same being an amount equivalent to the gross unauthorised deduction made.

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**(Fifth)** That as at the Effective Date of Termination of her employment the claimant had accrued, as yet untaken entitlement to paid annual leave of 0.86 weeks, in respect of which she is entitled to be compensated in a gross sum of £344.

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**(Sixth)** That the respondent shall pay to the claimant the sum of £344 gross in respect of accrued but untaken paid annual leave entitlement outstanding as at the Effective Date of Termination of her employment and upon receipt of such sum which the claimant shall become obliged to account to His Majesty's Revenue and Customs for Income Tax and national Insurance contribution due thereon.

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**(Seventh)** That the claimant's complaint of breach of contract and claim for damages arising from the cancellation of her holiday, is not made out, and is dismissed.

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**REASONS**

1. This case called for Final Hearing on the Cloud Based Video Platform on 26<sup>th</sup> of January 2023.

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2. The claimant was in attendance and represented herself. There was no appearance for or on behalf of the Respondent Company on whose behalf, however, an individual signing herself as "Lynsey" had written to the Tribunal on 19<sup>th</sup> January 23 stating that the Company was "in the process of going into liquidation". In the circumstances, the Employment Judge directed that the Hearing should proceed in the respondent's absence and has determined the issues based upon the evidence presented by the claimant.

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**The Claims presented/the Issues**

3. The claimant advanced 4 complaints, 2 being of unauthorised deductions from her wages in respect of the first 3 weeks in August 2022, worked by her but in respect of which she received only 50% of her net wages due, and the second in relation to payment for the week's notice worked by her in the period 22<sup>nd</sup> to 29<sup>th</sup> August 2022 inclusive.

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4. The third claim presented was one in respect of compensation for accrued paid annual leave entitlement, untaken and outstanding as at the Effective Date of Termination of the claimant's employment.

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5. The fourth claim was one arising in terms of an asserted breach of contract on termination of employment and was one in terms of which the claimant sought recovery from the respondent of damages of £150 being the value of the deposit paid by her on a prebooked holiday and lost upon its cancellation following the respondent's failure to pay her the full amount of her net wages due for the first 3 weeks in August. That claim was subject to the test of reasonable foreseeability.

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6. The claimant gave evidence on affirmation which the Tribunal, in the context of it being unchallenged in cross examination, accepted as both reliable and credible.

5 Findings in Fact

7. On the evidence presented the Tribunal made the following essential Findings in Fact restricted to those necessary for the determination of the Issues.

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8. The claimant, whose date of birth is 25/06/87 was employed by the respondent from 25<sup>th</sup> of February 2022 until the 29<sup>th</sup> of August 2022, on a zero hours contract. The claimant, notwithstanding the nature of her engagement, worked 8 hours a day 5 days a week throughout her period of employment.

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9. In terms of her Contract of Employment, the claimant was entitled to be paid at a gross rate of £10 per hour for the period 1<sup>st</sup> to 21<sup>st</sup> August 2022 inclusive. The claimant was entitled to remuneration net of deduction of tax and NI contribution, for hours worked in that period, in the sum of £1,039.31 .

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10. Due to financial and trading difficulties the respondent did not make payment of those wages due to the claimant on termination of her employment.

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11. On or about the 13<sup>th</sup> of October 2022, the respondent retrospectively made payment to the claimant of only one half of that net sum due namely £519.60 while conceding and acknowledging, at that time, that a further sum of £519.65 net was due to the claimant by way of wages for hours worked in that pay period.

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12. The retention of the sum of £519.65 net by the respondent from the wages due to the claimant in the period 1<sup>st</sup> to 21<sup>st</sup> August 2022, constituted an unauthorised deduction from the claimant's wages, in that amount, contrary to the provisions of section 13 of the ERA.

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13. On 22<sup>nd</sup> August 2022, the claimant gave one week's contractual and statutory notice, of termination of her employment, to the respondent.
14. The claimant worked her notice period 22<sup>nd</sup> to 29<sup>th</sup> August 2022 inclusive, working in that period, a total of 72 hours in respect of which she was entitled to be remunerated at a gross rate of £10 per hour, totalling £720 gross.
15. The claimant, not having access to her payslips, was unable to express the amount of wages due in net terms.
16. The respondent did not pay the claimant in respect of those hours worked and, in so failing, made an unauthorised deduction from the claimant's wages contrary to the provisions of section 13 of the ERA, in the gross amount of £720.
17. The respondent is liable to make payment to the claimant in the gross amount of £720 and, upon receipt of which the claimant shall be liable to account to His Majesty's Revenue and Customs for the relevant income tax deductions and National Insurance contributions.
18. As at the Effective Date of Termination of her Contract of Employment the claimant had accrued proportionate entitlement, across the whole period of her employment, of 2.86 weeks paid annual leave. Against that entitlement the claimant had taken 2 weeks of paid annual leave leaving outstanding and untaken by her, as at the Effective Date of Termination, a balance of 0.86 weeks or 34 hours.
19. The claimant is entitled to be compensated in the gross sum of £344 (40 hr x £10/hr x .86 of a week) in respect of which sum she will be liable, upon receipt, to account to His Majesty's Revenue and Customs for relevant Income Tax deductions and National Insurance contribution.

#### Discussion and Disposal

20. The Tribunal being satisfied, on the evidence presented and findings in fact made, that the claimant has entitlement to receive from the respondent

payments in the above respective net and gross amounts, the Tribunal has ordered the respondent to make payment of those sums to the claimant.

21. In consequence of the respondent failing to pay the claimant her full wages due in respect of the period 1<sup>st</sup> to 21<sup>st</sup> August 2022 the claimant required to cancel a prebooked holiday contracted for by her on credit, but which she could no longer afford to pay for. In so cancelling the claimant lost a deposit of £150 which she had paid to the tour operator in relation to the holiday.
22. Although the claimant had made the respondent's Director aware that failure to pay her full wages on the dates due would result in her suffering financial hardship, she had not specifically disclosed to the respondent, prior to or at the time of the respondent breaching her contract by not timeously paying to her the full wages due in respect of her August working, that she would in consequence require to cancel her holiday and in doing so would lose the deposit of £150. On the evidence presented the Tribunal was unable to hold that the claimant had proved, on the balance of probabilities, that the loss of the deposit was a loss which was, or ought reasonably to have been, foreseeable to the respondent at the time of the breach of contract founded upon. In the circumstances the claimants claim for damages for breach of contract is dismissed.

**Employment Judge: J d'Inverno**  
**Date of Judgment: 02 February 2023**  
**Entered in register: 06 February 2023**  
**and copied to parties**

I confirm that this is my Judgment in the case of Robertson v Rujia Marketing Consultant Ltd and that I have signed the Judgment by electronic signature.