



5

## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107393/2020

10

Held via Cloud Video Platform (CVP) on 8 February 2021

Employment Judge B. Beyzade

15

**Ms. Maria Dias**

**Claimant  
In person**

20

**Margo Deans and Willie Deans  
(a partnership)  
t/a Deans Restaurant**

**Respondent  
Represented by:  
Mrs. Margo Deans  
Partner**

25

30

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

### 1. The Judgment of the Tribunal is that:

35

- a. The complaint of unauthorised deduction from wages in respect of arrears of pay between 30 September 2020 and 4 October 2020 is well-founded and the Respondent is ordered to pay the Claimant the sum of **ONE HUNDRED AND NINETEEN POUNDS AND TWENTY - FIVE PENCE (£119.25)** from which tax and national insurance requires to be deducted, provided that the Respondent intimates any such deductions in writing to the Claimant and remits the sum deducted to

40

Her Majesty's Revenue and Customs (and that sum is payable immediately).

- 5
- b. The complaint of unauthorised deduction from wages in respect of arrears of pay between 18 September 2020 and 29 September 2020 not well-founded and is dismissed.
  - c. The Claimant's claim for compensation for financial loss in accordance with section 24(2) of the Employment Rights Act 1996 is not well-founded and is dismissed.
  - d. The Claimant's claim in respect of unfair dismissal is dismissed for want of jurisdiction.
  - e. The Respondent's title be amended to Margo Deans and Willie Deans (a partnership) t/a Deans Restaurant.
- 10

## REASONS

15 **Introduction**

- 2. By an ET1 Claim Form dated 21 November 2020 the Claimant presented a complaint of unlawful deduction from wages (arrears of pay) and unfair dismissal which the Respondent denied.
  - 3. A final hearing was held on 8 February 2021. This was a hearing held by CVP video hearing pursuant to Rule 46. The Tribunal was satisfied that the parties were content to proceed with a CVP hearing, that it was just and equitable in all the circumstances, and that the participants in the hearing were able to see and hear the proceedings.
  - 4. The parties did not file a Bundle of Documents. The Tribunal had in its possession a copy of the Tribunal file which included the Claim Form, document titled 'My Story at Deans Restaurant' (and further document dated 28 January 2021), Letter to Tribunal from Lee Deans (undated), CAB letter 21 November 2020 from Mrs. Deans, 1 December 2020 document Mrs. Deans
- 20
- 25

Supporting Information, 5 February 2020 document Mrs. Deans Supporting Information, working hours provided by Claimant, amendment of timesheet document from Claimant, Rota (2 pages); bank statement from Mrs. Deans, text messages dated 7 October 2020; 21 November 2020 email from Mrs. Deans, employment contract (not signed), payslip dated 30 September 2020, employee information form start date 18 September 2020; and other correspondences between the Tribunal and the parties.

5. At the outset of the hearing the parties were advised that the Tribunal proposed to investigate and record the following issues as falling to be determined, and both parties agreed the following list of issues:

- (i) What is the proper title of the Respondent to this claim?
- (ii) Is the Claimant owed monies in respect of arrears of pay for the period of 18.09.2020 – 04.10.2020 and if so whether the amount of the Claimant's pay arrears should be assessed at £181.80 (gross)?
- (iii) Is the Claimant entitled to be paid a sum in respect of any financial loss in accordance with section 24(2) of Employment Rights Act 1996?
- (iv) Did the Respondent lawfully deduct the sum of £181.80 (gross) from the Claimant's pay arrears? The Respondent's position is that the Claimant caused them financial loss calculated at £187 which the Respondent was entitled to deduct from the Claimant's salary.

6. The Claimant also ticked the box "*I was unfairly dismissed*" at para. 8.1 of her Claim Form. So far as the unfair dismissal complaint was concerned, to qualify to bring an unfair dismissal complaint an employee must have been continuously employed for not less than two years ending with the effective date of termination (*s.108(1) of the Employment Rights Act 1996*). In her claim form at para. 5.1 the Claimant stated that she had only been employed by the Respondent from 18<sup>th</sup> September 2020 to 4<sup>th</sup> October 2020. There are no grounds disclosed on her Claim Form for an automatically unfair dismissal claim that does not have the said continuous service requirement. The

Tribunal does not, therefore, have jurisdiction to consider this complaint. I was surprised, considering the clear terms of the Claim Form, that this issue had not been addressed earlier, rather than the complaint being allowed to proceed to a final hearing.

- 5 7. The Claimant gave evidence at the hearing on her own behalf and Mrs. Margo Deans, a Partner at Deans Restaurant gave evidence on behalf of the Respondent.
8. Throughout the hearing, the Claimant had the benefit of a Portuguese interpreter, Mr. Martin Adolf who was appointed by the Tribunal.
- 10 9. Both parties made closing submissions on their own behalf.

### **Findings of Fact**

10. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues -
  - 15 The Claimant was employed by the Respondent from 18 September 2020 until 4 October 2020. The Claimant was employed by the Respondent as a Cleaner.
  11. The Respondent owns and operates a restaurant called Deans Restaurant. The restaurant is owned by Margo Deans and Willie Deans and it is run as a  
20 partnership.
  12. The Claimant agreed to work according to a rota for Deans Restaurant. She worked between Monday – Sunday on her rostered dates and her working hours varied between 2 and just over four hours per shift. The Claimant's rate of pay was £9.00 gross per hour.
  - 25 13. The Claimant was paid monthly in arrears by bank transfer.
  14. There was no written statement of terms of employment provided to the Claimant.

15. The Claimant received payment amounting to £150.75 on 30<sup>th</sup> September 2020. This represented 16.75 hours that were worked by the Claimant and were calculated up to 28 September 2020.
- 5 16. The Claimant was provided with a payslip in respect of pay date 30<sup>th</sup> September 2020 recording that a payment had been made to her in the sum of £150.75. There were no deductions made for tax or national insurance.
17. The Claimant did not receive any further payment in respect of hours she worked after 28 September 2020.
- 10 18. The Claimant's total working hours between 30 September 2020 and 04<sup>th</sup> October 2020 were 13.25 hours.
- 15 19. On Saturday 3 October 2020 the Claimant omitted to clean an apartment. Mrs. Margo Deans telephoned the Claimant and asked her if she could clean the apartment as the customer was waiting. The Claimant was unable to attend as she was undertaking online training for her evening job. The Respondent had no other staff that could work at short notice. Consequently, the Respondent's customer had left, they demanded a refund and had accused the Respondent of spoiling their anniversary.
- 20 20. The Respondent incurred costs (including monies lost from Booking.com) because of the customer that they had lost that day.
- 20 21. As the Claimant did not offer any sincere apology to the Respondent and the booking had been lost, the Claimant was not offered any further shifts after 4 October 2020.
- 25 22. On 7 October 2020 the Claimant sent a text message to Mrs. Margo Deans demanding payment in respect of 20.35 hours at £9.00 per hour amounting to £185.25. The Claimant was advised that the Respondent had to refund £150 and incurred other costs, and they would have to calculate how much

they lost. The Claimant's P45 and any remaining amount after deductions were made would therefore be forwarded to the Claimant later that month.

23. The Claimant replied with a further text message stating "*Are you joking with me? It's ok. Enjoy my money and be happy with your dishonest attitude.*" The Respondent sought to re-iterate that the Claimant had "*mucked up a booking*" and the Claimant acknowledged that it was a mistake and she apologised.
24. There was some correspondence thereafter during which the Claimant pursued payment in respect of the hours in which she did not receive any payment.
25. The restaurant has since closed temporarily due to COVID-19 restrictions.

### Observations

26. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –
27. The Respondent suggested that the Claimant worked 13.25 hours between 30 September 2020 and 4 October 2020. The Claimant maintained she worked 19.8 hours in respect of which she had not been paid. The timesheet records produced by the Claimant in support of the hours she stated she worked were not reliable. By way of example on 23 September 2020 the Claimant recorded she worked 5 hours, 15 minutes whereas the Respondent recorded her hours as 4.75 hours. The Claimant acknowledged she made a mistake and on her own document she noted 4.75 hours. The Claimant also produced a second statement she sent to the Tribunal making corrections to her calculations and her text message dated 7 October 2020 also contained an incorrect calculation. In view of the foregoing, I preferred the Respondent's evidence in relation to the Claimant total hours being 13.25 hours.

28. There was no contract of employment between the parties entitling the Respondent to deduct any sum of money from the Claimant's pay. The Respondent relied on the text messages dated 7 October 2020 which it said entitled it to make deductions from the Claimant's salary. Construing the  
5 totality of the text messages and correspondences between the parties it was clear that the Claimant believed she was owed pay arrears and I can see no clear concluded agreement for any specific deduction to be made from the Claimant's pay by the Respondent. The Respondent also did not produce an account or documentary evidence of the losses it suffered. As a small  
10 business, the Respondent was significantly impacted by the loss of its customer from booking.com.

**Relevant law**

29. To those facts, the Tribunal applied the law –
30. Section 13 of the Employment Rights Act 1996 ('ERA 1996') provides that an  
15 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 1996.
- 20 31. 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 personally perform any work for another party who is not a client or customer of any profession or business undertaking carried on by the individual (s230  
15 ERA 1996).
- 25 32. 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.

33. Under Section 27(1) of the ERA 1996 “wages” means any sums payable to the worker in connection with their employment.

34. 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  
5 reasonably practicable to do so, a complaint may be brought within such further reasonable period.

### **Discussion and decision**

35. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

10 36. At all material times the Claimant was employed at Deans Restaurant which was owned and operated by Mrs. Margo Deans and Mr. Willie Deans (a partnership). The Respondent confirmed that the restaurant was operated as a partnership during its evidence. The Claim Form indicated that both individuals were the Claimant’s employers. I therefore order that the  
15 Respondent’s title be amended to ‘Margo Deans and Willie Deans (a partnership) t/a Deans Restaurant.’

37. Given the circumstances and on the evidence, it is reasonable and proper to infer that the Claimant was not paid in respect of hours worked between 30  
20 September 2020 and 4 October 2020. The Claimant worked a total of 13.25 hours on the said dates.

38. Based on the evidence before the Tribunal, on Saturday 3 October 2020, the Claimant failed to turn up to a shift to clean an apartment, which led to a customer leaving the apartment and the loss of a booking. As the Claimant did not have a contract of employment and it was not argued before me that  
25 there was a statutory entitlement to make a deduction, there was no entitlement to make a deduction pursuant to section 13(1) of the ERA 1996. As observed earlier, the Respondent relied on text messages dated 07<sup>th</sup> October 2020, and there was no clear concluded agreement therein that the



Claimant had signified her prior agreement or consent to the making of the deduction of pay in writing in accordance with section 13(2) of the ERA 1996.

39. The total amount of any wages payable was less than the total amount of the wages properly payable by the Respondent to the Claimant in the following occasions: -

5

<b>Date</b>	<b>Amount Payable</b>	<b>Amount Paid</b>	<b>Deduction</b>
30.09.2020- 04.10.2020	£119.25	£0.00	£119.25

40. The above amounts were evidenced in the Respondent's statement of 05<sup>th</sup> February 2021 and were broadly consistent with the oral evidence provided by the Claimant. The Tribunal concluded without hesitation that the claimant, proved these outstanding amounts in relation to hours worked between 30<sup>th</sup> September 2020 and 04<sup>th</sup> October 2020. The Respondent has therefore made an unlawful deduction from wages in the sum of £119.25 in total (13.25 x £9 = £119.25) [less any statutory deductions due including tax and national insurance in relation to which the Respondent is required to account to HMRC and to confirm the amounts to the Claimant in writing].

10

15

41. The Claimant pursued a claim for compensation under Section 24(2) of the ERA 1996. However, I do not consider it appropriate in all the circumstances to award compensation because the Claimant was unable to provide details of any financial loss sustained by her which was attributable to the matter complained of.

20

42. Although the Claimant sought £10,000 compensation, on the above basis I hold that the Claimant has failed to establish, in fact and in law, that there was any justification for awarding this sum or any other amount in respect thereof.

5

10	<b>Employment Judge:</b>	<b>Beyzade Beyzade</b>
	<b>Date of Judgment:</b>	<b>08 March 2021</b>
	<b>Date sent to parties:</b>	<b>10 March 2021</b>

15