



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case no. 4111578/2019

Held at Edinburgh on 8 January 2020

Employment Judge: W A Meiklejohn

Mr Victor Jones

**Claimant
No appearance or
representation**

Hallford Douglas

**Respondent
No appearance or
representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim of unlawful deduction of wages is dismissed.

REASONS

1. This case was listed for a final hearing in Edinburgh on 8 January 2020. The Notice of a Claim and Notice of Final Hearing was sent by the Tribunal to the respondent on 16 October 2019, and was copied to the claimant on the same date. The respondent did not submit a response to the claim.

2. In his ET1 claim form the claimant stated that his claim was for “unpaid work I carried out”. He also stated that he “worked 3 days at 3 hours a day total of 9 hours”. At section 6.2 of his ET1 which asks “How much are, or were you paid?” the claimant inserted “£0” as his pay before tax and normal take-home pay.
3. The Tribunal was unable to issue a default judgment in favour of the claimant under Rule 21 contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 because the claimant had not provided sufficient information in his ET1 claim form to allow the sum claimed to be determined. Accordingly, the Tribunal wrote to the claimant on 21 November 2019 asking him to confirm his rate of pay and requiring that this information be provided within 14 days. The claimant did not respond.
4. The claimant did not attend at the time and on the date specified in the Notice of Final Hearing (being 11.30 am on 8 January 2020). He had not been in contact with the Tribunal to intimate that he was unable to attend. I instructed the Tribunal clerk to attempt to contact the claimant by telephone on the number stated at section 1.6 of his ET1. Two attempts were made by the Tribunal clerk to contact the claimant without success.
5. This was a claim of unlawful deduction of wages (by non-payment) brought under section 13(1) of the Employment Rights Act 1996 (“ERA”) which provides as follows –

“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.”

6. Section 23(1)(a) ERA gives the Tribunal jurisdiction to deal with a complaint that there has been a contravention of section 13. Section 24(1) ERA provides that where the Tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer to pay to the worker the amount of any deduction made in contravention of section 13.
7. The Tribunal cannot however make such a declaration and order unless it is provided with sufficient information to enable it to do so. It is for the party making the complaint of unlawful deduction of wages to provide that information. In the present case, the claimant had failed to do so.
8. I noted from the case file that the Tribunal’s correspondence of 16 October 2019 and 21 November 2019 had been sent to the claimant at the address stated by him in his ET1. I considered that it was reasonable to assume that he had received that correspondence.

9. In failing to (a) respond to the request for information made in the Tribunal's letter of 21 November 2019 and (b) attend the hearing set down for 8 January 2020, the claimant had not provided the information required by the Tribunal to determine the value of his claim.

10. In these circumstances I decided that it was appropriate to dismiss the claim. I believed that the claimant had been afforded adequate opportunity to provide the required information, either by responding to the Tribunal's letter of 21 November 2019 or by attending the hearing of which he had been sent notice on 16 October 2019.

Date of Judgement: 9th January 2020

Employment Judgement: W A Meiklejohn

Date Entered in Register: 10th January 2020

And Copied to Parties