



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102578/2024

5

Held in Glasgow via Cloud Video Platform (CVP) on 17 April 2024

Employment Judge P O'Donnell

10 **Mr William McClymont**

**Claimant
Represented by:
Mr L Knowles -
Lay Representative**

15 **Red Atlas Ltd**

**Respondent
No appearance and
No representation**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £6028 (Six thousand and twenty-eight pounds).

REASONS

- 25 1. The claimant has brought a complaint that the respondent had made an unlawful deduction of wages by failing to pay wages due to him on 1 December 2023.
2. The respondent has not lodged any defence to the claim. The Tribunal is satisfied that the claim has been properly served on the respondent. In these
30 circumstances, the Tribunal has decided to proceed with determining the case in the respondent's absence.

Findings in fact

3. The Tribunal made the following relevant findings in fact.

4. The claimant had previously worked for the distiller William Grant & Sons. In early 2021, he was contacted by a project leader at William Grant who had worked with him previously and was asked if he was interested in doing work from them as a project engineer.
- 5 5. The claimant was interested and it was explained that the work would be done via an agency, Adepto, with the claimant being employed by the respondent.
6. The claimant was put in touch with Alan Star of the respondent and they agreed the hourly rate to be paid as well as the hours to be worked by the claimant. This was all done verbally with no written contract or similar
10 documentation being provided by the respondent to the claimant. The claimant commenced his employment in March 2021.
7. The claimant was paid on the first Friday of every month for the work done in the previous month. He submitted time sheets to Adepto who invoiced William Grant. When Adepto received payment, they then would pay the
15 respondent for the claimant's services and the respondent would pay the claimant's wages.
8. This arrangement continued with no difficulty until 1 December 2023 when the claimant was due to be paid for the month of November 2023. He had worked 176 hours that month and his hourly rate at that time was £34.25.
- 20 9. No payment was received by the claimant from the respondent. All attempts to contact the respondent by telephone, email etc were unsuccessful. There was no explanation for why the payment was not made.

Relevant Law

10. Section 13 of the Employment Rights Act 1996 (ERA) provides that an
25 employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.

11. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.
12. Section 27 of the ERA defines “wages” which include any fee, bonus, commission, holiday pay or other emolument referable to a worker’s employment whether payable under the contract or otherwise. Section 27(2)(b) excludes the payment of expenses from the definition of “wages”.

Decision

13. The Tribunal is satisfied that the respondent has made an unlawful deduction of wages from the claimant. He was legally entitled to be paid a wage of £6028 (176 hours x £34.25 an hour) on 1 December 2023 and this has never been paid. He has, therefore, been paid less than he was legally entitled to be paid at this date.
14. The Tribunal orders that the respondent pay the sum of £6028 to the claimant in respect of this unlawful deduction of wages.

Employment Judge Peter O’Donnell
Employment Judge

17/4/24
Date

25 **Date sent to parties**

18 April 2024

30