

CS



# THE EMPLOYMENT TRIBUNAL

---

**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE SIDDALL  
(sitting alone)

**BETWEEN:**

**Mr J Chawla-Premi**

**Claimant**

AND

**Jaguar Platinum Limited**

**Respondent**

**ON:** 18 January 2017

**Appearances:**

**For the Claimant:** Mr N Shah, Solicitor

**For the Respondent:** Mrs P Hall, Consultant

**JUDGMENT** having been sent to the parties on 8 February 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following corrected judgment and reasons are provided.

## **CORRECTED JUDGMENT**

The Judgment of the Tribunal is that:

1. By agreement, the Claimant is entitled to damages for breach of contract in relation to four weeks' notice pay and is awarded the sum of £1500 net of tax.
2. It is declared that the Respondent made unlawful deductions from the wages of the Claimant and he is awarded the sum of **£9557.00** net of tax.
3. It is declared that the Claimant is entitled to payment for five days accrued holiday entitlement and he is awarded the sum of £346.00 net
4. The Respondent concedes that the Claimant was unfairly dismissed and the

- claim therefore succeeds.
5. The Claimant is awarded a basic award of £692.30 and a compensatory award of £7536.60 which includes an uplift of ten per cent to reflect the Respondent's failure to follow the ACAS Code of Practice before dismissing the Claimant.
  6. The Claimant is awarded a sum of £950 representing two week's gross capped pay in accordance with section 38 of the Employment Act 2002 because the Respondent had not provided him with written particulars of his terms of employment.

## **CORRECTED REASONS**

1. The merits hearing was arranged for today to consider the claims for unfair dismissal, for breach of contract, for unlawful deduction from wages and for failure to pay holiday pay. The Respondent had initially resisted the claims solely on the basis that the Claimant was self-employed, as recorded in the order which followed the preliminary hearing. At the start of today the Respondent made an initial concession that contrary to the position taken at the preliminary hearing they agreed that the Claimant had been an employee of the Respondent although they disputed that he had continuous employment which would entitle him to bring a claim for unfair dismissal. It was also conceded that the Claimant was entitled to notice pay. After we re-convened, following a break to allow me to read the witness statements, the Respondent made a further concession agreeing that the Claimant had continuous employment from 24 April 2013 until the date of his dismissal which I find was 8 January 2016. It was further conceded that the Claimant had been unfairly dismissed. On the basis of that concession we were able to proceed immediately to deal with the various money claims, and to decide what compensation for unfair dismissal was appropriate.
2. Turning to the different heads of claim some of these will be self explanatory. At the outset of the hearing the Respondent conceded that the Claimant was entitled to notice pay. The other sums claimed by the Claimant were all in dispute. I heard evidence today from the Claimant himself. The other witnesses for whom he submitted witness statements were not called as they had not provided evidence that was relevant to remedy. The Respondent's witness Mr Sharma had provided a witness statement in relation to his arguments about the Claimant's status but that witness statement did not deal with the remedy issues. The Respondent was provided with an opportunity today to give evidence in relation to the remedy hearing but did not wish to avail themselves of this opportunity.

### **Holiday Pay**

3. In relation to this claim the Claimant's witness statement makes it clear that during the holiday year which ran from 24 April 2015 to 23 April 2016 the Claimant had taken 10 days annual leave in August 2015. He was entitled to 28

days for the whole leave year. His accrued entitlement down to the date of dismissal was 21 days. From that I deduct bank holidays occurring over that period and annual leave already taken, and we are with a total of five days for which I have awarded a week's net pay of £346.

### Unlawful Deduction from Wages

4. Turning to the claim for unlawful deduction from wages the Claimant alleged that he had not been paid his proper salary from March 2015 onwards. Much of the evidence presented around this has been unclear. The Claimant was given the opportunity to produce further bank statements during the course of the hearing and a break was allowed for the Respondent to take these away and consider them. The Respondent stated that the Claimant had been paid all the sums he was due but the Claimant stated that the letters from his Bank which demonstrated payments into his bank account included payments made to him by the Respondent to allow him to settle third party invoices.
5. Having considered the bank statements presented (which showed payments in and matching payments out) and the evidence of the Claimant I accept that the Claimant had been paid a total of £11,756 to allow him to settle third party bills for the Respondent.
6. The calculation of unpaid wages has not been easy to do but the approach I have taken is as follows. I have looked at the total salary due to the Claimant from the period of 1 January 2015 to the 8 January 2016. That is a total of 53 weeks and on the basis of the figures in the Claimant's schedule of loss the total sum owed over that period will be £18,346. To that we added a figure representing 10% commission of £1,835 to reach a total of £20,181 being the Claimant's total entitlement to salary and commission for that period of time.
7. I have added up all the figures shown on pages 118 and 119 of the bundle which comes to £18,680 paid by the Respondent to the Claimant over that period. I have also noted that the Claimant conceded that he had been paid an additional sum of £2,350 in October not recorded on the bank letter, and also that he had been given two gold bars from which he had obtained a sum of £1,350. That gives me a total of £22,380 from which I must deduct the sum of £11,756 which was not the Claimant's money but was paid to him in order to settle bills on behalf of the Respondent. That gives me a net amount paid to him in respect of salary of £10,624. I deduct £10,624 from the total owed of £20,181 and that gives me a total due to the Claimant in relation to unpaid wages of £9557. **(I have corrected this amount – when I gave judgement on the day of the hearing my calculation was incorrect and I awarded a sum of £7924, which I have now amended).**

### Unfair Dismissal

8. I turn then to the claim for unfair dismissal. The Respondent argues that there should be no loss of earnings as the Claimant took new employment with a company called Martin & Co very quickly that was paying slightly more than the Claimant was entitled to from the Respondent. The Claimant left that job in

August 2016 and the Respondent says that demonstrates a break in the chain of causation. The Claimant argues that the Respondent was involved to some extent in that loss of employment and he claims loss of earnings. In order to calculate whether the Claimant should be paid anything in relation to this period of loss I have taken the period 8 January 2016 to 18 January 2017 ie from the date of dismissal to the date of this hearing, that is one year and 10 days. Over that period I have calculated the Claimant's losses as being £18,692.30 net. From that figure I have deducted all the sums earned by the Claimant over that period. I turn first to his employment with Martin & Co. The Claimant argues that he should only give credit for a net sum of £600 per month as he was paid on a self-employed basis. The actual amount paid by Martin & Co amounted to £2500.88 per month which was paid into his company account and he drew a PAYE salary from it.

9. I have not accepted the Claimant's argument that he should only give credit for £600 per month. It would be very surprising if a person who was being treated as self-employed basis but paid a very similar salary to that of someone who is employed was worse off under the self-employed arrangement than under a contract of employment. I accept that the Respondent should be given full credit for a sum of approximately £15,528 gross paid to the Claimant over a six month period from 1 February 2016 less a notional amount for Tax and National Insurance of 23%. I have therefore deducted a sum of £11,957 from the Claimant's loss of earnings over this period to represent his earnings from Martin and Co.
10. The Claimant has been working with Uber since August 2016. The total sum he has earned from Uber is £2,881 from which I have again deducted Tax of 23% (a sum of £663) resulting in a further deduction of £2,218. So my calculation of losses up to the date of hearing is as follows:

Total losses including 10% commission = £20,561.30  
Less earnings from Martin & Co - £11,957 and  
Less earnings from Uber £2,218  
Net loss of earnings therefore: £6,386.30.

11. I have considered whether to make any award for future loss to the Claimant. It seems to me that the Claimant is a resourceful man who is determined to do well and has made efforts to find employment since his dismissal by the Respondent. He continues to look for fresh employment. He is suffering a loss of earnings at the moment since becoming a driver with Uber.
12. I have considered the Respondent's argument that losses should end at the point at which he lost his job with Martin & Co. Having considered the correspondence on pages 152 of the bundle I am concerned that there does seem to have been contact between the Respondent and Martin & Co which has led to adverse comments about the Claimant and I am satisfied that this may have a bearing on the loss of his job in August 2016. On the basis of that I am prepared to allow losses beyond August 2016 up to the date of hearing but taking into account his Uber earnings.

13. Going forward I am hopeful that now the Respondent has conceded that the Claimant was unfairly dismissed and he is going to have an award in his favour the Claimant should be able to find fresh employment that is more appropriate for a man of his abilities and his status, within a reasonably short period. He is suffering an ongoing loss at the moment of approximately £58.15 per week and I award a sum of future loss representing eight weeks net losses which comes to £465.20.
  
14. Loss of earnings to the date of hearing plus future loss provides a total figure of £6,851.50. I have applied to that a 10% uplift for failure to follow the ACAS Code of Practice prior to dismissal and that gives me a total sum for the compensatory award of £7,536.50. The calculation for the basic award was not in dispute. I have added to that an additional sum of £950 representing an additional two week's pay capped at £475 to reflect the fact that Claimant had never been provided with written particulars of his employment.

---

Employment Judge Siddall  
Date: 18 January 2017