

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 27 June 2014

**Before**

**THE HONOURABLE MR JUSTICE WILKIE**

**(SITTING ALONE)**

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MR K STANBRIDGE T/A EXACT VENDING SERVICES

APPELLANT

MRS JUDITH BROOKES

RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## **APPEARANCES**

For the Appellant

MR KEVIN STANBRIDGE  
(The Appellant in Person)

For the Respondent

MRS JUDITH BROOKES  
(The Respondent in Person)

## **SUMMARY**

### **PRACTICE AND PROCEDURE**

1. The ET was wrong, in the absence of the Respondent, to raise with the Claimant a further claim she might have made and to adjudicate upon it, the Appellant having no notice of it and no opportunity to respond.
2. In any event the ET failed to spot that there was a statutory jurisdictional defence to that claim which it was appropriate to permit the Appellant to raise at the appeal for the first time.

## **THE HONOURABLE MR JUSTICE WILKIE**

### **Introduction**

1. This is an appeal by Kevin Stanbridge trading as Exact Vending Services against a decision of the Employment Tribunal, sitting at Birmingham, held on 6 June 2013. That Tribunal decided that Mrs Brookes succeeded in her claim against Mr Stanbridge. The decision was that Mr Stanbridge made unlawful deductions from Mrs Brookes' wages between 25 February and 1 March 2013 contrary to section 13 of the **Employment Rights Act 1996** and, in respect of that conclusion, ordered him to pay her £346.50 pursuant to section 24 of that Act. In addition the Tribunal decided that Mr Stanbridge breached his obligation to provide Mrs Brookes with a statement of the principal terms and conditions of her employment pursuant to section 1 of the **Employment Rights Act** and, pursuant to section 38 of the **Employment Act 2002**, ordered him to pay a further two weeks' pay, calculated at £692.30. The total amount of the award, therefore, was £1,038.45. Mr Stanbridge has appealed against both elements of the Tribunal's Decision.

### **The Background**

2. This claim by Mrs Brookes was launched on 10 April 2013 in the Regional Office in Birmingham. In that document she recounted that she was employed by Mr Stanbridge as a Telesales Executive, her employment started on 19 February and ended on 1 March 2013. She identified her pay before tax as £347. Her claim, she identified, as a claim for arrears of pay. Her claim was, briefly, stated in the following terms:

**"I was employed by an employment agency Manpower in January 2013. They placed me at Exact Vending Services. I worked at the employer through the agency for 5 weeks. I was then asked by the employer to work for him directly."**

3. She then gives a reason for her employment ending which is in dispute and a finding on which is unnecessary for my decision. She then continues:

**“I worked direct for the employer from Tuesday 19<sup>th</sup> February to Friday the 1 March. I worked one week in hand and the second week I was paid for 4 days. That week I worked for 5 days. The following week I was off work sick but in that week I was not paid from the previous week. I received texted messages from Mr Stanbridge, the owner of the company that week asking me to return company property, I took this to mean that he did not want me to continue working for him. I made requests for him to pay me but he didn’t. He ignored my requests and at this time I realised I could not continue to work for the employer.”**

4. Under the heading “What compensation or remedy are you seeking?” she said this:

**“I am seeking payment of money owed for the time I worked for the employer. I have not been paid for one weeks pay. I have made numerous requests for payment which the employer has ignored.”**

### **The Failure to Provide Particulars of Employment**

5. It is to be observed, and Mrs Brookes accepts, that in this claim she was not seeking compensation for failure to provide her with the particulars of employment. That seems to have been an issue which was first raised by the Employment Tribunal itself at the hearing of the claim, she having indicated that she had not received any particulars of employment. The Tribunal then appears, of its own initiative, to have gone on to make the finding and the award summarised in its Judgment. It is to be observed that, at the hearing of the Employment Tribunal, although Mrs Brookes was there representing herself, Mr Stanbridge was not in attendance nor was he represented. He has indicated to me today, and I see no reason to doubt what he says, that he had other important personal commitments which prevented him attending on the date fixed for the hearing, but he had asked for the hearing to be adjourned and that that had been refused.

6. In any event, the Tribunal had before it what Mr Stanbridge, at that stage, wished to say, because it had his response to the claim made by Mrs Brookes in the form ET3, remembering always that the only claim that he was responding was in respect of unpaid wages.

7. He said that he was resisting that claim and he set out the grounds upon which he was resisting it in the following terms:

**“The final week’s salary is being held pending return of the following items of Company Property. I made it clear to Judith that she would be paid what is outstanding following the return of these items. I have put an approximate value against each item so that it is clear the value that is attached to each....”**

He then sets out a list of items of property. He then concludes that he did not understand why she was refusing to return that property.

8. Mr Stanbridge accepts that he did not, in that document, refer to any term of the contract under which Mrs Brookes agreed that money could be deducted pending her return of company property at the end of the employment.

### **The Application for Review**

9. Following the decision of the Employment Tribunal Mr Stanbridge applied to the Tribunal for a review in a letter dated 13 June 2013. He gave two reasons. One, the Judgment was made in the absence of one side. Two, new evidence has become available since the end of the hearing to which the Judgment relates. He then goes on:

**“The deductions were not unlawful but clearly stated in the Employer’s Handbook. A copy of this document was given to Judith Brookes during her induction and discussed with her in detail. Judith was also made aware of the existence of an ‘Office Copy’ which is left on display in the main Office area (along with the Health and Safety Policy etc.) Judith verbally agreed to these Terms and Conditions and by accepting payment for her work has also clearly agreed to be bound by these Terms and Conditions.”**

That is what he says in respect of the deduction from wages matter. In respect of particulars of employment he says this:

**“Exact Vending has not breached its obligation to provide Judith Brookes with a Statement of the principle terms and conditions of her employment under section 1 ERA. Section 1 ERA states:**

**‘The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.’”**

He then continues:

**“Judith Brookes worked as a Contractor via an Agency up until the 18<sup>th</sup> February 2013. Judith Brookes worked directly for the Agency and was being hired out to my business on a Contract until the 18<sup>th</sup> February 2013. They were responsible for her PAYE and NI. Judith Brooke’s tenure for me was 9 days. This 9 day period is well within the 2 months stated in Section 1 ERA.”**

He then went on to say that it was in the interests of justice to carry out a review and he argued that the additional payment of two weeks’ wages in respect of the particulars of employment was excessive, given that Judith only worked for him for 9 days.

10. The application for a review was refused. The decision refusing that review dealt with his non-attendance by saying that he was able to make written representations and these were taken into account. Presumably that is a reference to the ET3. It then goes on:

**“2. The Respondent has provided no evidence that the Claimant agreed in writing that he would make deductions from her final week’s wages. A verbal agreement, if made, is not enough.”**

In respect of the particulars of employment matter, it said:

**“3. The Respondent has provided no evidence in support of his assertion that he provided the Claimant with a written statement of the principal terms and conditions of her employment within 2 months of her commencing work (i.e by 18 April 2013).”**

In the light of those matters, the Tribunal refused a review. Mr Stanbridge has then lodged his appeal.

### **The Present Proceedings**

11. In respect of the unlawful deduction, Mr Stanbridge raised the same issue which he sought to raise before the Tribunal in his application for a review. In respect of the Particulars of Employment he raises a new argument, which he had not raised in relation to the review, and it is this. Section 198 of the **Employment Rights Act 1996** states, in respect of short-term employment, that:

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**“Sections 1 to 7 do not apply to an employee whose employment continues for less than one month.”**

12. Relying on that and what Mrs Brookes had said about the duration of her employment, which was less than one month, Mr Stanbridge raised the argument that the Tribunal had erred as a matter of law in concluding that the obligation to provide Particulars of Employment did arise in respect of such short-term employment.

13. The matter went before HHJ Eady QC, pursuant to the sift arrangements, and she passed the matter on for a Full Hearing. She observed that there was an arguable point in respect of the jurisdiction of the Tribunal to make the award in respect of the failure to provide particulars of employment, as identified in the Grounds of Appeal. She did not believe that there was any arguable point of law in relation to the unlawful deduction because, on the evidence before it, the Employment Tribunal was entitled to reach its conclusion as to the unlawful deductions claim.

### **Submissions**

14. In support of the unlawful deduction claim, Mr Stanbridge has provided extracts from the handbook, to which reference is made in his review and Grounds of Appeal. In section 10 of that Handbook, headed “Ending of employment”, it provides:

**“All Company Property (including Uniform, Mobile Phones, etc – this relates to all Property of Exact Vending Services both physical and intellectual) must be returned before leaving. The cost of any Company Property not returned will be deducted from any outstanding wages/salary including Holiday Pay.”**

15. In her response to the appeal Mrs Brookes says, amongst other things:

**“I am resisting the appeal on the grounds that I have never received a set of terms and conditions and I have also not been made aware of a handbook at any point between the 7<sup>th</sup> January 2013 and the 1<sup>st</sup> March 2013. If I had received this, like any other employee I have previously worked for, I would have been obliged to sign this. Please ask Mr Stanbridge to provide these documents he had supposedly provided me with.”**



16. In helpful oral submissions before me, Mr Stanbridge has elaborated on what he has previously said. He says that the normal practice would be for a new employee to receive from him a letter of engagement which will contain a number of particulars in relation to the individual employee, for example their hours of work, their rate of pay and, if any is relevant, arrangements for commission.

17. He says that his normal practice is that, when that is handed over, either a copy of the handbook will be handed over or, alternatively, the employee will be taken through some of the relevant provisions in the handbook, which is available in the office. But in either event, both - the employer, and the employee - will countersign two copies of the letter of engagement, one to be retained by him as the employer, the other to be taken away by the employee. The letter of engagement refers to the handbook as containing the other contractual terms.

18. He accepts that, because of the particular circumstances in which Mrs Brookes came to be employed directly by him and because there was the possibility of some arrangements for commission still to be worked out and agreed, he never did provide her with a letter of engagement. He says that he cannot be sure, therefore, that he went through the handbook with her, though it would have been his normal practice to do so.

19. Mrs Brookes agrees with him that she never did receive any letter of engagement. She is adamant that she was never taken through any of the terms of the handbook and certainly that she did not receive one.

### **Conclusions**

20. Of course none of this was evidence before the Employment Tribunal. Nor indeed was this the line of defence which Mr Stanbridge was pursuing in ET3. Effectively Mr Stanbridge

in respect of this part of the claim is relying, as a defence, upon the provisions of section 13 of the **Employment Rights Act 1996**. That provides that an employer shall not make deductions 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 his writing his agreement or consent to the making of the deduction. In this particular case it is the relevant provision of the worker's contract which is said to give Mr Stanbridge a defence against the unlawful deduction claim.

21. Subsection (2) of section 13 provides that:

**“In this section ‘relevant provision’, in relation to a worker’s contract, means a provision of the contract comprised –**

**(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or**

**(b) in one or more terms of the contract... the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.”**

22. Neither of these provisions is satisfied here. Mr Stanbridge is not in a position to say that the written terms of the contract contained in the handbook were given to her on an occasion prior to the deduction in question. Indeed the particular circumstances in which Mrs Brookes came to work as a direct employee and the fact that she had not written any letter of engagement, such as would be his normal practice, militates against her having been given any copy of the handbook which is normally given in consequence of the letter of engagement being countersigned and provided to the employee. Certainly, going through a handbook, even if it was done orally, does not satisfy the second requirement, which is that the existence and effect of the relevant provision has to be notified to the worker in writing. And orally going through some of the terms of the handbook which may be relevant is insufficient.

23. In any event, the evidence in relation to this and the issue itself was something which ought to have been raised before the Tribunal. It was only raised by way of review when it was said to be new evidence which had subsequently come to light, which is an odd way of describing it. In my judgment, neither originally, or on the review, or here, has Mr Stanbridge established or begun to establish the defence given by the statute to which I have referred.

24. Therefore, in my judgment, his appeal against the unlawful deduction award of £346.15 fails and that award stands.

25. The position is very different, however, in respect of the award in respect of failure to provide the particulars of employment. As Mr Stanbridge pointed out in his Grounds of Appeal, the obligation on the employer to provide a written statement of particulars of employment within two months after the beginning of employment, provided for by section 1 of the **Employment Rights Act 1996**, is, by section 198 of that Act, disapplied to an employee if his employment continues for less than one month. It is common ground that Mrs Brookes' employment with Exact Vending Services did not last a month. It lasted from 19 February until 1 March. Accordingly, the Employment Tribunal did not have any jurisdiction to make a finding that there was a breach by Mr Stanbridge of his obligation under section 1 or to make any award in respect of such breach. It is particularly unfortunate that this Employment Tribunal took it upon itself to adjudicate a claim that Mrs Brookes had never made in her ET1, particularly where it was doing so at a hearing when Mr Stanbridge was not present, where he had applied for an adjournment which had been refused, and where the claim, on which they were adjudicating, was one of which he had no notice, because it had not been made by the then Claimant in the Employment Tribunal.

26. Furthermore, although, in his request for a review, Mr Stanbridge did not identify the real difficulty in law with the decision made by the Tribunal, because he did not refer to section 198 of the **Employment Rights Act 1996**, where the Tribunal was acting of its own motion it was particularly incumbent on it to be astute to any defences that there might be in statute to such a claim which they were taking on themselves to adjudicate. Accordingly, in my judgment, the mere fact that Mr Stanbridge only raised this issue in law for the first time in his Grounds of Appeal does not preclude him relying upon it because it is a ground which goes to the jurisdiction of the Tribunal to make the award which it did. It is perfectly clear that the Tribunal, in the particular circumstances of this case, did not have any jurisdiction to make that award and, accordingly, Mr Stanbridge's appeal in respect of the award of £692.30 for breach of the obligation to provide a statement of terms and conditions of employment, section 1 of the ERA, succeeds and that part of the award will be quashed.

27. Accordingly what remains is the award to Mrs Brookes of £346.15 in respect of the claim for unlawful deductions from wages.