



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Hasan

v

Haris Younas Limited

Heard at: Watford

On: 24 May 2017

Before: Employment Judge Bloch QC

Representation

For the Claimant: Ms V Logan, Solicitor

For the Respondent: Ms G Crew, Counsel

RESERVED JUDGMENT

The claimant is entitled to the following sums:

- In respect of his claim for unauthorised deduction from wages under S.13 of the Employment Rights Act 1996 ("ERA"):
13 weeks basic pay (23 March to 7 July 2016 = 15 weeks
less 2 weeks agreed unpaid leave) at £300

	£ 3900
Less wages already paid	<u>£ 100</u>
	£ 3800
- In respect of the claimant's claim under Regulation 4 of the National Minimum Wages Regulations 2015
13 weeks @ £40 net

	£ 520
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- Total

	£ 4320
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- Holiday pay pursuant to the Working Time Regulations
Accrued entitlement to 8 days (15 weeks of a 52 week

year) @ 9.5 hours a day = 76 hours leave

76 hours @ £7.20 gross £ 547
(subject to deductions for Tax and National Insurance)

4. In respect of the claimant's breach of contract claim:

1 week's statutory notice = 57 hours @ £7.20 gross £ 410
(subject to deductions for Tax and National Insurance)

5. The claimant's claim in respect of failure by the respondent to provide statement of terms and conditions of employment pursuant to s.38 of the Employment Act 2001
3 weeks' gross salary calculated in accordance with s.221 of the Employment Rights Act 1996 = (3 x £340)

£ 1020

6. The claimant's total entitlement is accordingly:

£ 6297

(Subject to tax and national insurance payable as referred to in paragraphs 3 and 4 above)

REASONS

Introduction

1. On 3 February 2017 the case came before Employment Judge R Lewis for a full merits hearing and was adjourned with a listing of one day when all issues were to be decided. A list of issues was agreed between the parties. as follows:
 - 1.1 What was the claimant's employment status between 23 March 2016 and 6 July 2016?
 - 1.1.1 The claimant says he was an employee or a worker within the meaning of s.230(1) and (3) of the ERA.
 - 1.1.2 The respondent says the claimant was a self-employed contractor.
 - 1.2 If the claimant was an employee or a worker, what was agreed, if anything, in relation to payment of salary, commission and petrol monies?
 - 1.3 What were the agreed hours and days of work, and what hours and days did the claimant work?

- 1.4 What was the claimant paid, if anything, and what shortfall, if any, falls due, taking into account the finding under 1.3 above as to hours worked and Regulation 4 of the National Minimum Wages Regulations 2015?
 - 1.5 Whether, if the claimant is an employee, the respondent terminated his contract on 6 July 2016 in circumstances where the claimant is entitled to statutory minimum notice under s.86 of the ERA?.
 - 1.6 If the claimant is an employee or a worker, whether the claimant was paid holiday pay and if not, how much holiday pay is he entitled to?
 - 1.7 If the claimant succeeds on any of the above issues, is the claimant entitled to compensation under s.38 of the Employment Act 2002 for the respondent's failure to provide a written statement of employment particulars?
2. Paragraph 7 of the Case Management Order referred to the issue of a stay of these proceedings in the light of related County Court proceedings. I was told that in the County Court proceedings which related to loans alleged to have been made by the respondent (or Mr Younas) to the claimant, judgment was granted against the claimant. He was at pains to say that he had arrived late on the date of the hearing and had not been able (or allowed) to give evidence. The question of a stay therefore did not arise although the respondent's counsel (without great enthusiasm) submitted that certain estoppel issues arose as a result of the County Court Judgment. I shall return to that.
 3. Under paragraph 9 of the Case Management Order, the respondent's application for leave to call expert evidence on a handwriting expert was refused on grounds of disproportionality and because that evidence was unlikely to assist the tribunal to resolve a conflict of oral evidence about authenticity of a document. I shall return to that point which relates to a document at pages 45 and 45(a) of the bundle.
 4. At the hearing it was confirmed that the 8th issue on the list of issues related to a potential claim for repayment of issue and hearing fees paid by the claimant in this case.
 5. On the day of the hearing before me, the parties produced a bundle of some 272 pages. I was told that that bundle had "grown" at a rapid pace shortly before the hearing. The parties had not applied to extend the time estimate of one day for this case and given the amount of documentation and cross-examination of the witnesses, it was a challenging task for all to complete the case within one day. Ms Crew on behalf of the respondent cross-examined the claimant at length (approximately two and a half hours) in addition to her cross-examination of a witness, Mr Yahiya. Ms Logan on behalf of the claimant (more briefly) cross-examined Mr Haris Younas, the director and (effectively) "owner" of the respondent company. Cross-examination, especially of the claimant, had (with the appropriate warnings

in advance) to be curtailed having regard to proportionality and the parties' firm wish to conclude evidence and submissions within the allotted one day.

6. Both parties accepted that the case turned not so much on legal points of the usual sort where the facts are not much in dispute and careful analysis is required (on a multi-factorial basis) of whether a particular provider of services is an employee (or worker) under s.230(1) and (3) of the ERA.
7. Instead in this case there was a stark conflict of evidence as to what services the claimant provided over the agreed period of 23 March 2016 to 6 July 2016 and what hours and days he actually worked.

The facts

8. It was agreed between the parties that Mr Haris Younas was the sole director of the respondent. The business of the respondent was buying and selling cars from and to members of the public. It collects cars from the premises of members of the public and the cars are then sold from the respondent's business premises. The business address consists of an office and a car yard/lot. (According to the respondent/Mr Younas, there were normally about 50 cars available for sale at the car yard and advertised on the website. The claimant put the figure at approximately 80 cars but nothing seems to turn on this difference.)
9. It was accepted that the claimant in 2015 provided services at the respondent's garage, largely or exclusively collecting cars at the premises of members of the public, over a period of 10 weeks and was paid £50 a day in cash. It was common ground that prior to 2016 the claimant had never worked as a car salesman.
10. On 23 March 2016 the claimant began again to provide services to the respondent.
11. The claimant said that his pay was to be the same as before, namely £50 a day.
12. The claimant maintained that after a few days Mr Younas asked him if he wanted a permanent job. He said he needed someone on a permanent basis to take the sales calls and sell the cars on the forecourt. The claimant hoped he could earn more than £50 a day as his wife and he were trying to get a mortgage. He asked Mr Younas if he could have commission and Mr Younas said he would pay 5% - but the claimant pressed him for more. After further thought Mr Younas agreed a commission of 10% of the sale price of all cars the claimant sold. The claimant also asked for petrol money to put in the car which had been given to him and for petrol he might put into any of Mr Younas' cars which he might drive. According to the claimant, Mr Younas said he would pay him £200 a month for petrol which the claimant understood was a flat payment, not dependent on the amount he actually spent. The claimant then says that he worked for six days a week, 9am to

7pm Monday to Saturdays until 6 July 2016. It was agreed by the parties that on that day Mr Younas on behalf of the respondent terminated the relationship.

13. The claimant maintained that there were three other employees at the garage besides himself. There were two men who were mainly in charge of car collections, a Romanian called Tomas and a Pakistani called Luqman. Their main job according to the claimant was to go and check out and buy cars from people. However, when they were in the garage they did a few other jobs. There was also a mechanic, a Polish man called "Damien". In his witness statement the claimant gave a detailed account of the duties he fulfilled during his working hours. According to the claimant, this included taking calls from people who would see the cars on the website and call in to say they were interested, making appointments for the potential customer to come and see the car they were interested in. The claimant would, according to his evidence, show them the car and go for a test drive with them. The customer would then ask him about the car and ask if there were any problems with it. According to the claimant, he could negotiate the price a little as long as he did not drop the price too low. If a customer wanted the large price drop he would go and get Mr Younas to deal with it. When he had the sale he would hand over the customer to Mr Younas for him to sort out the money. Mr Younas usually took only cash. His other duties included keeping an eye on which cars were due to have MOTs and he would drive the car where necessary to the garage and collect it after it had been given its MOT. He might take cars for MOT about twice a week. He would also inspect the cars which the respondent had for sale and see if any of them had to go to the paint shop. He also did appraisals of the cars which were bought. He would take the car out and test it and fill out a check list which he had to give to Damien, the mechanic. He would also take cars to the car wash and take photos of the cars and send them to Mr Younas for the website. He would sometimes help with the collections of cars which the respondent bought, although it was mostly Tomas and Luqman who did that. According to the claimant, there were various other jobs, which he performed including even cleaning the toilets on occasion.
14. The claimant said that during the period he worked for Mr Younas, Mr Younas texted him lists showing cars sold. He did this for the claimant and his colleagues. There is considerable dispute between the parties as to whether the documents to which the claimant referred were documents relating to cars sold. There was considerable confusion around these and other documents in the bundle, which are unnecessary for me to resolve.
15. Another matter in dispute concerned the Ford Mondeo which Mr Younas gave the claimant as a car for work and private use. He maintained that from April he was given the Ford Mondeo and used it until after his dismissal.
16. The claimant maintained that by the end of May he had not been paid any of his salary, commission or petrol monies but Mr Younas prevaricated. The claimant continued working through June but still did not receive any salary,

commission or petrol money. On a few occasions he asked Mr Younas for a little bit of cash because he desperately needed some. Mr Younas paid him a few times, small amounts in total around £100. According to the claimant, there were various discussions throughout June about the allegedly unpaid sums. The claimant says that he stayed working because he hoped the respondent would finally pay.

17. Eventually arising out of a car accident relating to a car being driven by the claimant, the claimant was dismissed on 6 July 2016. The details of that accident and an earlier accident are not relevant to the matters to be decided in this case.
18. What is clear is that from 11 July to 18 July the claimant sent numerous letters to the respondent/Mr Younas repeated by text, email and WhatsApp. In these he asked for his salary but not commission or petrol money. In evidence he said that he did not ask for commission and petrol monies because he thought he would have a better chance of getting the money out of Mr Younas if he asked him for the basic amount. He said that this approach was on the advice of ACAS although he also (inconsistently) said that the claim for salary (effectively) included the claim for commission and petrol monies.
19. There was no reply by Mr Younas to these demands for salary and instead by claim form dated 1 August 2016 he issued a County Court claim for £5,000 for various sums which included an advance of £460 and a loan of £550.
20. In the claim form (Particulars of Claim) the respondent/Mr Younas described the claimant as "my ... employee".
21. In his first witness statement dated 2 February 2017 (which would have been his only witness statement had the hearing of the case not been adjourned on 3 February 2017) Mr Younas said that he used around 15 different self-employed vehicle collectors/breakdown recovery people. Some of them he used once a year and some of them a few times a month. He asked for their help whenever it was needed and subject to their availability and capability. The claimant was one of these self-employed vehicle collectors. None of these people were, according to Mr Younas, employees. They were all self-employed. At paragraph 30 of his first statement he said that in 2016 (in the same way as 2015) the claimant collected a few cars for him and was paid for each collection as in 2015. In 2016 he paid him £55 for each car collection/appraisal.
22. In that witness statement Mr Younas also said that the claimant used his Ford Mondeo for vehicle collections and appraisals as he had done the previous year.
23. He also said that the letters which he received from the claimant from 11-18 July did not contain his address in order to reply. However, in cross-examination he accepted that he could have emailed back or responded to

the WhatsApp and SMS messages but he then explained that his real response was the issue of the County Court claim on 1 August.

24. He denied the agreement in relation to salary, commission and petrol monies. In relation to the 10% commission, he said it was almost impossible as the gross profit is equivalent to 10% sometimes.
25. Mr Younas referred to a document at page 45 and 45A of the bundle (being the document referred to above in respect of which permission to call expert handwriting evidence was refused). According to the claimant, the only handwriting of his on that document was "22-06-16 advance > [unclear sign] 20". Mr Younas in his first statement describes this document as a bank statement debit, credit and balance. This document was not explored in evidence and it is difficult to tie up Mr Younas' description of this document with what it says, so that I can derive very little assistance from it. In evidence it was suggested that the figures of £330 shown in respect of the claimant's salary was a multiple of the £55 per day which Mr Younas maintained was the claimant's salary. He also made the point that the claimant did not attach any original petrol receipts for the period of three months.
26. Mr Younas served a further witness statement dated 2 May 2017. This was 95 paragraphs long. In this statement he confirmed that he did not employ the claimant as a car sales assistant or in any other capacity. He confirmed that he only used his services as a self-employed car collector/appraiser.
27. In his second witness statement Mr Younas stated that he himself was the main car salesman. He worked six days a week from 9am to 7pm in the office Monday to Saturday at the car lot. He denied that the claimant carried out the duties which he alleged and said that all those duties were in fact duties which he, Mr Younas, carried out on a day to day basis. He carried out the sales at the car lot. He was responsible for replying to telephone messages, test driving of cars with customers, inspecting the cars, ensuring that the MOT/paint/repairs were carried out and arranging for the cars to be washed and the posting of the log books to the DVLA. Further he also occasionally did local appraisals, collections. This was not done by the claimant who simply provided his services to him as one of his car collectors/appraisers.
28. As far as the other people who work for him were concerned the claimant said that he did not employ any full-time members of staff. He said that he had only one employee, a Mr Damien Glowaty, who worked for him on a part time basis. His duties included assisting Mr Younas with car sales, appraisals and carrying out simple vehicle repairs. In addition he had a pool of self-employed individuals who used to collect the cars and appraise them on an "as and when" needs basis. He knew a lot of people who carried out this work for him over the years and thought that he had a pool of about 15 to 25 people whom he used as and when required. It was fair to say (according to Mr Younas) that some car collectors' services were used on a more regular basis than others, such as Mr Tomas, Mr Luqman, Mr Naeem,

Mr Fahem and Mr Ray who were car collectors that he used maybe four times a month or a couple of times a week. There were others whose services were used less regularly. He said that he paid his car collectors in cash, £50 to £200 per collection. The rest of the time he paid his car collectors at the end of the week. He said that the lists of cars upon which the claimant relied were not lists of cars that the claimant had sold but lists of cars that were collected as part of his business by individuals including the claimant. According to Mr Younas, he understood from the claimant that he was doing some part time job in an office on selective days in the week. Mostly he was available after 18.00 hours on his job day. On the days he was free he was available at any time. He confirmed that in March to April he was carrying out car collections for him, approximately two or four times per week but by June 2016 the number of collections he was doing for the respondent increased and he was using his services about five to six times per week.

29. According to Mr Younas, the claimant was not involved in sales at all and there was no commission arrangement with him. In his second witness statement Mr Younas referred to various bank statements which had been disclosed by the claimant pointing out expenditure on betting activities and entries to the effect that the claimant's wife and sister were supporting him with various payments. At the hearing it was suggested by or on behalf of Mr Younas that the payment of sums stated to be by the claimant's wife and sister into the claimant's bank account were in fact disguised payments reflecting salary cash payments being made by Mr Younas to the claimant.

The witnesses and documents

30. Turning to the witnesses in the case, the claimant called Mr Yahiya to support his case of working until 7pm in the evening. I found Mr Yahiya's evidence of very little assistance, being not only peripheral but partial. He was plainly a friend of the claimant who was trying to do the best for him. In particular, during cross-examination he alleged for the first time that he had actually seen the claimant working at the premises of the respondent and seen him going to his job early in the morning. These points were much more relevant than the ones made in his witness statement and yet they had not appeared in that statement. I concluded that I could not place any weight on this evidence.
31. Turning to the main protagonists in the case, it was clear that Mr Hasan and Mr Younas were motivated by extreme dislike for each other. At times it seemed to me that they were prepared to say almost anything which (they believed) would advance their respective cases against each other. At the end of the day I most reluctantly formed the conclusion that I had to treat the evidence of both with great caution, except in the limited respects on which there was agreement between them or where there were uncontested documents supporting their evidence or where what they were saying was inherently more likely than not. On balance, I was minded to place greater reliance on the claimant's evidence regarding the nature of his employment and the hours worked by him.

32. I have already given an example of the unexplained contradiction by the claimant regarding his failure in his initial complaint letters to mention commission and petrol money. As far as Mr Younas was concerned, he was at times uncontrollable as he gave his evidence using the occasion as an opportunity to argue the merits of the case rather than to answer the questions which were being put to him. On several occasions both I and Ms Logan pointed this out to him, but to no effect. At times his evidence was far-fetched going so far as to suggest that showing payments into his account as coming from his wife and sister rather than the respondent was part of a pre-hatched conspiracy to claim non-payment of sums paid to the claimant. The fact that the important assertion by Mr Younas that he was carrying out the detailed duties (alleged by the claimant to be his duties) only appeared in Mr Younas' second witness statement undermined his evidence in this regard. He was unable to provide an effective answer to this in cross-examination. As to his use of the word "employee" to describe the claimant in the Particulars of Claim, Mr Younas said that he had typed (or had typed) into the County Court claim form "employee" because of lack of space" to describe the claimant as self-employed. This explanation seemed quite extraordinary on the face of the document itself, which had space to describe the claimant as a "contractor" or other such phrase as much as it had space to describe him as an "employee"
33. Despite the size of the bundle there was very little in it to which I was referred and very little of that which had any real bearing on the issues before me. That said, it seemed to me that I could reach certain conclusions based upon a few uncontested documents and the inherent likelihood of what seemed to occurred in this case. To some extent my conclusions were also based on the absence of key evidence.

Submissions

34. Ms Logan submitted that the claimant was an employee or at least a worker within the meaning of the Employment Rights Act 1996. He had set out in his witness statement all the duties which he carried out and on the basis of that evidence it was plain that the usual tests of control and integration into the business of the respondent were made out.
35. She pointed out that there were no details, despite the substantial documentation before the tribunal, of any collections by the claimant during the relevant period. There was no record of any instructions to the claimant to collect a particular car and no evidence of any payments made by the respondent in respect of those collections. This was despite the fact that there were numerous electronic communications between the claimant and Mr Younas. She said with some force that surely Mr Younas would keep a track of collections and would know what had been collected and when, yet there was nothing in the bundle to support this.

36. She also relied on the fact that the claimant had the Ford Mondeo for the whole of his purported employment and there was evidence in the bundle supporting this although it was denied by the respondent that the car was held over the whole period. In my judgment it was more likely than not that the claimant did in fact enjoy the use of the car over the whole period up to July.
37. Ms Logan relied upon the fact that Mr Younas ignored the demands in July for payment of salary. I have already referred to this.
38. She also said that it was not plausible that the claimant would have made up this claim, first by sending the messages and the by bringing proceedings. She also made the point that the bank statements relied upon by the respondent show no cash payments into that account by the claimant.
39. Ms Logan also relied heavily upon the failure by the respondent to call Damien to give evidence.
40. Ms Logan also submitted that there was no evidence that 10% commission was impossible or impracticable and also referred to the payment of £200 for petrol as being a “perk”.
41. Ms Crew submitted a written note and also made oral submissions on behalf of the respondent. I have taken into account all those submissions and set out some of the key points below.
42. Ms Crew said that the claimant was estopped by convention as a result of the County Court judgment. She also suggested that based on the authorities running from Hendon & Henderson (1843) v Hare 100, 115 to Johnson v Gorwood & Co [2002] 2 AC 122 that courts have the inherent right to dismiss an action if a claimant seeks to raise in subsequent proceedings a matter which should have been litigated in earlier proceedings, albeit that the court will not exercise a discretion in such a way as to deny a claimant the right to bring a genuine subject of litigation before the court.
43. As to employment status, Ms Crew relied upon the well known Ready Mix test and accepted that the claimant was engaged personally to carry out his services and could not send a substitute. She said there was not mutuality of obligation since the claimant was free to decline work from the respondent and did so on occasions. An example of this was when the claimant did not return as planned from India. The document seemed to show that he was a few days later than initially indicated, which did not appear to me to contra-indicate employment. She denied that the control element was present other than providing the claimant with the address and method of payment. The respondent had very little actual control of the claimant. It was denied the claimant came back to the garage and worked when he was not carrying out car collections. While that may have been true on the respondent’s version of events, it was not so, on the events put forward by the claimant. The respondent relied upon the supporting

statements in the bundle of Toma Calin and Mr Glowaty. She of course accepted that neither had been subject to cross-examination and therefore this affected substantially the weight that could be given to their statements. I should say that while I was not taken to those statements during the hearing, I looked at them after the hearing, and they appeared in any event to be very sketchy. In all the circumstances of the case I do not place any substantial weight on them.

44. Ms Crew relied upon various matters as being matters about which the claimant would know if he had been an employee. The evidence in this regard was very unclear and in my view not of great assistance. Ms Crew made some trenchant points to the effect that it seemed unlikely that the claimant was much involved in car sales. He did not seem to know what the sale price was of each car and had in any event accepted in evidence that the final sale price would be agreed by Mr Younas. Again, I did not find these points particularly persuasive. While he may not have concluded every sale, it does not seem unlikely that he had some involvement in sales.
45. Ms Crew also relied on the fact (accepted by the claimant) that he had never worked as a salesman before. This seemed to me to be a relevant but not overwhelming point as against the others to be thrown into the balance.
46. In relation to the petrol claim, it was accepted by both parties that there was no breakdown of petrol usage nor any receipts other than a very few. It seemed most unlikely that the respondent would have agreed to pay £200 per month without any receipts. In relation to the sums (page 244 of the bundle) shown as payments from the claimant's wife and sister into his bank statement, Ms Crew maintained that these were evidence of the cash payments which had been made to the claimant.

Conclusions

47. In broad terms I found the evidence and submissions on behalf of the claimant in relation to his duties and the hours he worked as more likely and more persuasive than those by and on behalf of Mr Younas/the respondent. I do regard it (notwithstanding my reservations about the evidence of the claimant) as unlikely that the claimant would have made the claim up and would, as Mr Younas alleged in cross-examination, have plotted his claim in advance, in particular, by disguising the cash payments into his bank account as being payments from his wife and sister. This in my view strains credulity.
48. In my judgment the essential issue of whether the claimant was an occasional service provider or a regular employee at the garage was one which should have been capable of being quite easily determined by witness or documentary evidence. In particular, it was common ground that there were various people who worked at the garage and in particular Damien who (according to Mr Younas) worked 20 hours per week. The omission to

call evidence from an employee such as Damien is a matter from which I can draw certain inferences. He was plainly a witness who was under the “control” of the respondent as an employee and his evidence would have been vital. Ms Crew for the respondent, contended that Damien could have been called by the claimant under a witness order. While this is possible, it is obviously much harder for an employee to call a witness currently employed by the respondent, in particular, when there would unlikely to be an opportunity of obtaining a witness statement from him. Mr Younas’ description of the claimant in the Particulars of Claim as an “employee” and his extraordinary explanation of this also weighed against him.

49. My further reasons are to be found in the submissions of Ms Crew set out above in relation to the nature of the claimant’s work and the hours worked (but not in relation to commission and petrol money).
50. My conclusions are accordingly that the claimant was employed full time during the hours he alleged over the relevant period. (There did not seem to be any safe basis for a finding of hours worked between the two extremes suggested by the claimant and the respondent. That said, I do not find the claimant’s evidence about commission and petrol money to be credible. I regard it as highly significant that these sums were not claimed in the original complaint letters and emails during July and I find it telling that the claimant provided wholly contradictory explanations for this discrepancy. I accordingly accept Ms Crew’s submissions in relation to the commission and petrol money claimed.
51. I did not accept that the claimant was estopped in any way suggested by Ms Crew. The County Court judgment was in relation to the loans (and other monies) but it was not suggested that they directly affected any matter in issue in this case (other than possibly, credibility). Nor did I find the Hendon v Henderson principle applicable. While I found the claimant’s explanation that the counterclaim in the County Court for effectively the same relief as claimed in these proceedings as being a “mistake”, quixotic, I do not think that it ultimately is relevant in this case, given that the counterclaim was struck out when the fee for it was not paid and I would in any event exercise any discretion in favour of the claimant being allowed to pursue his claim in the normal way in the employment tribunal in the way he has. There was no evidence of any prejudice suffered by the respondent and I do not see that there has been any abuse of the process in these circumstances.
52. Returning to the agreed list of issues, I have concluded that the claimant was an employee within the meaning of s.230 of the ERA 1996. He was not a self-employed contractor. I have concluded that only salary as claimed by the claimant (£50 per day) at six days a week, namely £300 net that amounts to 13 weeks’ pay being 15 weeks less 2 weeks agreed unpaid leave amounting to £3,900, less wages already paid £100.
53. I found that there was no agreement in relation to commission or petrol monies as alleged. I find that the claimant is an employee who was entitled

to holiday pay and statutory notice as set out in the schedule of loss and that it is also appropriate to award three weeks' gross salary pursuant to s.38 of the Employment Act 2002 (failure to provide statement of terms and conditions of employment). I have awarded the higher sum given that I have found that the claimant was in fact employed by the respondent during the period and it seems that he made no effort whatsoever to provide a statement of terms and conditions of employment and indeed has on my findings falsely alleged that the claimant was not an employee. Further, the respondent's business appears to be a substantial one making use of many different people to provide services. It is of concern that this business is conducted with cash payments being allegedly made without any records and (apparently) no proper records of matters such as details of the vehicles collected from particular clients. I should add that both parties accepted that despite the large bundle before the tribunal, the records were obviously incomplete.

54. As to the payments which the respondent alleged he made to the claimant in cash, there is little that can be said about this. While it seems unlikely that the claimant would have continued to work for so many months without any payment, given the absence of records and any other clear evidence, I have been unable to find that any such payments were made beyond those admitted by the claimant. The risk of such a finding is inherent from running a business without proper records of payments being kept. As far as loans are concerned, that has been dealt with by the County Court.
55. Lastly, I should make clear that in relation to the calculation of loss I have relied on the Schedule of Loss. There were no submissions made on behalf of the respondent in relation to the accuracy of the Schedule of Loss (assuming the underlying issue of employment was found in favour of the claimant).

Employment Judge Bloch QC

Date: ...8 June 2017.....

Sent to the parties on:

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For the Tribunal Office