



EMPLOYMENT TRIBUNALS

Claimant: Mr D Marvell
Respondent: James Phillip Projects Limited.

Heard at: Leeds **On:** 1 August 2018
Before: Employment Judge Lancaster

Representation
Claimant: In person
Respondent: Did not attend

JUDGMENT

1. The Respondent has made unauthorised deductions from the Claimant's wages and is ordered to pay him compensation as follows:

1 week's gross salary	£625.00
9 nights attendance allowance	£225.00
1.04 weeks accrued gross holiday entitlement	<u>£624.00</u>
	£1474.00
2. The Respondent is further ordered to pay to the Claimant an additional award of 2 weeks' pay (capped at £508.00 per week) pursuant to section 38 of the Employment Act 2002., that is £1016.00
3. The name of the Respondent is properly James Phillip Projects Limited and not James Philips Projects.

REASONS

1. The Respondent did not attend. The Tribunal clerk therefore contacted Mr Phillip by telephone and was told that he had not been notified of today's hearing. That cannot be right because the notice of hearing was sent out in the same letter as that which required a Response and that was sent in by the due date.
2. Whilst it is correct that the Tribunal only informed the Respondent yesterday (31st July 2018) that the Claimant had confirmed on 24th July 2018 that he was not in fact bankrupt the case has always remained listed whilst that clarification was being requested. The Respondent has never applied to vacate the hearing.
3. Also in the Response (ET3) it is admitted that 1 week's pay and 9 nights' allowances are outstanding.

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4. Under rule 47 of the Employment Tribunals Rules of Procedure 2013 the hearing has therefore proceeded in the absence of the Respondent.
5. By a claim form (ET1) presented on 4th June 2018 the Claimant brought a complaint which he identified solely as one of “illegal” (that is unauthorised) deductions from wages.
6. There is no pleaded claim of breach of contract in the ET1. Therefore the Tribunal would have no jurisdiction to hear an employer’s contract claim / counterclaim: Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 The main argument in the ET3 is that the Respondent has incurred greater losses as a result of the Claimant resigning without notice and in breach of contract that it owes him in unpaid wages and that these sums should therefore be set off against the outstanding pay to defeat this claim. That is not, however , a defence to a claim of an unauthorised deduction from wages under Part II of the Employment Rights Act 1996. Nor in the absence of any contract claim in the ET1 has it ever been accepted as a “counterclaim” in these Tribunal proceedings.
7. The Claimant identifies 3 types of payment which he is owed as wages. These are his basic salary for the last week he worked (£600.00 gross) together with a premium “run in payment” of £10 per hour for the Saturday (£25.00); payment of 9 overnight allowances at £25 (£225.00) which is admitted in the ET3, and; accrued holiday entitlement up to the date of termination.
8. The Claimant has underestimated the amount he is due for accrued but untaken holidays when he claims only for 3 days. He worked from 19th February until 27th April. That is 68 days. His total minimum yearly holiday entitlement under the Working Time Regulations is 5.6 weeks (up to a maximum of 28 days – which is what it would work out at on a 5 day week). His pro-rata entitlement is therefore 1.04 weeks (68/365 x 5.6). As the Claimant took no holidays he is entitled to that full amount which is £624.00 gross - calculated on a basic weekly salary of £600.00.
9. There is no written authorisation for any deductions to be made, either in the contract of employment or any other document (sections 13 (1) and (2) of the Employment Rights Act 1996). The failure to pay the Claimant what he was owed is therefore unlawful.
10. Without any such written provision entitling the Respondent to deduct it there is no authority for the alleged costs of vehicle repairs to be offset against the Claimant’s final wages.
11. I therefore conclude that the Respondent must pay all the sums claimed which totals £1474.00. The sums are awarded gross though they will be liable to tax at the appropriate rate.
12. Also the Respondent has failed to provide a written statement of the particulars of employment as it should have done under Part I of the Employment Rights Act 1996 Therefore under section 38 of the Employment Act 2002 I must unless there are exceptional circumstances – which there are not – make an additional award of compensation. I assess that at the minimum 2 weeks; wages and do not, as I may

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have done, exercise my discretion to increase it to 4 weeks; pay. For these purposes a week's pay is capped at £508.00 , which is less than the actual gross wage of £600.00.

13. The Claimant is admittedly in breach of contract in having resigned without giving 1 week's notice. If the Respondent has in fact sustained loss as a result of that breach (or any other actionable damage) it must, if it wishes, pursue those claims against him in the County Court.

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EMPLOYMENT JUDGE LANCASTER

DATE 1st August 2018