



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Hussain

**Respondent:** Rasassi Limited

**HELD AT:** Manchester

**ON:** 17 January 2019 and  
18 January 2019 (in  
chambers)

**BEFORE:** Employment Judge Slater

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr T Goldup, paralegal

# JUDGMENT

The judgment of the Tribunal is that:

1. The respondent made an unlawful deduction from wages in respect of pay due for the period 15 August 2018 to 5 October 2018 and is ordered to pay to the claimant the sum of £171 being the total gross sum due.
2. The complaint of unlawful deduction from wages in respect of pay due for the period 23 June to 29 July 2018 is not well founded.
3. The complaint of breach of contract is not well founded.
4. The respondent made an unlawful deduction from wages by failing to pay the claimant in lieu of accrued but untaken holiday and is ordered to pay to the claimant the sum of £436.02 being the gross sum due.
5. The tribunal declares that the respondent failed to comply with its obligation to provide itemised payslips as required by section 8 Employment Rights Act 1996 in relation to the period of employment 23 June to 29 July 2018.
6. The complaint of failure to provide itemised payslips in relation to the period of employment 15 August 2018 to 5 October 2018 is not well founded.

# REASONS

## Claims and issues

1. The claimant claimed that he had not been paid his full wages for his periods of employment, that he had not been paid in lieu of holiday accrued but not taken and that his employment had been terminated by the respondent without notice in breach of contract. The claimant also claimed that he had not been provided with itemised pay slips on or before the date of payment of wages.

2. At the hearing, the parties agreed that the claimant had been employed for a period 23 June to 29 July 2018 and that period of employment had come to an end by the claimant giving two weeks' notice. The parties agreed that the claimant was re-engaged with effect from 15 August 2018.

3. In relation to the first period of employment, the parties agreed that the claimant had been employed on a fixed wage but there was a dispute as to the amount of wages which it had been agreed the claimant was to receive.

4. In relation to the second period of employment, there was a dispute as to the terms on which the claimant was engaged: the claimant says this was on the same terms as before, the respondent said he was engaged on a zero hours contract. There was a dispute as to whether the contract had come to an end and, if so, how and when. The claimant claims that his employment was terminated by the respondent without notice; the respondent denies it terminated the contract. The breach of contract claims relates to the alleged termination by the respondent of the second period of employment. Both parties agree that the last day the claimant did work for the respondent was 5 October 2018.

5. Both parties agreed that the claimant did not take any paid holiday during either period of employment. Neither party put forward any evidence that they had agreed contractual terms for holidays so the Working Time Regulations provisions will apply.

6. There was a dispute as to whether the claimant had been supplied with access to itemised payslips online during his employment. It was agreed that paper payslips had not been provided.

7. Although, in its response presented on 9 January 2019, the respondent had denied that any payments were due to the claimant, at this hearing, it was accepted on behalf of the respondent that it owed the claimant some wages for the first period of employment and owed him holiday pay. The claimant believed more was owed to him than conceded by the respondent. The respondent disputed that any wages were due for the second period of work. The respondent asserts that it has complied with its obligation to provide itemised payslips by providing the claimant with access to payslips online.

## Facts

8. The claimant's first language is Urdu. He understands and speaks English to a reasonable level but required services of an interpreter when giving evidence and to

understand some other parts of the hearing. It appears from WhatsApp messages produced in evidence that he communicated with the respondent's manager, Mr Pathak, in English, but his written English is not fluent.

9. Mr Pathak was the only witness for the respondent.

10. The respondent has an Indian restaurant in Altrincham.

11. The claimant started work for the respondent on 23 June 2018 as a Tandoori chef. The claimant came to work for the respondent because he had worked with Mr Pathak, the restaurant manager, in a previous job.

12. The claimant did two trial days before being taken on permanently with effect from 25 June 2018. I find that it was agreed that the claimant should be paid £70 for each of the two trial days and a total of £140 was paid into the claimant's bank account on 5 July 2018 in respect of work during the trial period.

13. The parties agree that the claimant was employed in the period 25 June to 29 July 2018 on fixed wages for full time hours. It appears the claimant normally worked between 40 and 45 hours per week. From the rotas for this period, it appears he worked between 5 and 7 days a week.

14. The respondent says the agreement was that the claimant should be paid a salary of £17,000 per annum. The claimant said the agreement he reached with Mr Pathak was that his pay would be £425 net per week i.e. after deductions for tax and national insurance.

15. Mr Pathak says that the claimant, in his presence, signed a letter of appointment dated 25 June 2018 confirming his employment at a salary of £17,000 from 25 June 2018. The document bears a signature which the claimant accepts appears similar to his signature. The claimant says he did not sign this or any other contract of employment. Although the claimant did not make any direct allegation that the respondent has fabricated the document, it appears that he is challenging the authenticity of the document. For the reasons explained later, I have not found it necessary to decide whether the document dated 25 June 2018 is an authentic contemporaneous document.

16. The claimant also challenges the authenticity of a further document, a "principal statement of terms and conditions" dated 17 August 2018, apparently bearing the signatures of the claimant and Mr Pathak.

17. The respondent showed me, at my request, the originals of these documents. Without expert forensic analysis, which is not available to me, it is impossible for me to assess whether the signature is that of the claimant and whether it was written on these documents or, for example, a scanned copy of a signature, transferred to the document. If it is necessary for me to make a finding on the authenticity of the documents, on the balance of probabilities, I will have to do so by reference to other evidence, including the oral evidence of the claimant and Mr Pathak.

18. Mr Pathak says that all the payments to the claimant were made into his bank account and no cash payments were agreed or made.

19. The claimant says that Mr Pathak told him that he would receive £277 per week into his bank account and the rest in cash. The claimant says he received some cash payments in the first month, as well as payments into his bank account, but, after that, the cash payments stopped. The claimant says that he asked Mr Pathak about the money he was owed but Mr Pathak said the restaurant was not busy at that time. The claimant never put anything in writing to Mr Pathak or anyone else at the restaurant about being owed money until October 2018. The claimant has not given evidence as to the amounts of cash paid during the first period of employment.

20. The claimant says he did not ask to be paid cash. His evidence on this point was not challenged by the respondent in cross examination.

21. In messages on WhatsApp, sent on 15 October 2018, by which time the claimant was alleging that the respondent owed him money and threatening to take them to court, Mr Pathak wrote:

“this country very good country, we all are pay very much tax, not like you, asked for cash in hand. Don’t think we are stupid,”

22. The claimant replied that he did not know what Mr Pathak was talking about.

23. Mr Pathak, in evidence, in answer to a question from me about these messages, said that the claimant had asked to be paid cash in hand because the salary of £17,000 was too high for him to claim benefits but Mr Pathak had said they could not pay cash in hand. The claimant was not recalled to give evidence about this but denied, when he was given an opportunity to cross examine Mr Pathak further, that this was true and said that he was not entitled to public funds.

24. I do not find, on a balance of probabilities, that, if the claimant was paid partly in cash, this was because the claimant had asked to be paid in cash. This is not a case where, therefore, the claimant is prevented from claiming amounts he says are due for public policy reasons (an illegal contract).

25. During the first period of employment, the claimant received the following payments into his bank account:

5 July 2018, a payment of £140 with the reference that this was for 23 and 24 June 2018 and a payment of £277.52.

20 July 2018, a payment of £555.04 with the reference that this was for July week 1 and 2.

17 August 2018, a payment of £555.04 with the reference that this was for July weeks 3 and 4.

28 August 2018, a payment of £67.70 with a reference that this was for July to August “performance”.

26. The payment of £277.52 on 5 July corresponds to an entry for “backpay” on a payslip dated 16 July 2018. The payment of £555.04 on 20 July corresponds to an

entry for “gross pay” on the payslip dated 16 July 2018. For reasons which have not been explained to me in evidence, there are no deductions for tax on any of the claimant’s payslips. However, the payslip dated 16 July 2018 indicates that a deduction of £61.03 was made for national insurance contributions so the net pay on that payslip was £771.53. The total net payment on the payslip is, therefore, less than the aggregate of the sums paid into the claimant’s bank account on 5 and 20 July 2018. This has not been explained in evidence. This disparity between the payslip and amounts paid lead me to believe that the payslip dated 16 July 2018 was not created on the date which it bears but at some later date, some time after 20 July.

27. According to a letter obtained from HMRC by the claimant, it appears HMRC have no record of the claimant being employed by the respondent in the tax year beginning 6 April 2018. The respondent has not been able to explain this to me, although I accept that they saw this letter for the first time at the hearing. I accept that they have not had sufficient time to make enquiries and provide evidence about this, so I do not rely on this letter in making my findings of fact or reaching my conclusions.

28. The payment of £555.04 into the claimant’s account on 17 August 2018 and the payment of £67.70 into the claimant’s account on 28 August 2018 correspond to entries on a payslip dated 17 August 2018 for “gross pay” and “performance bonus” respectively, expressed to be for the pay period 16 July 2018 to 12 August 2018. On this payslip there are no deductions for tax or national insurance contributions. The payments into the claimant’s account match the total of net pay on the payslip, although one of the payments was made 11 days after the date of the payslip.

29. The payments made into the claimant’s bank account do not correspond either to a salary of £17,000, which would give a gross weekly payment of £326.92 per week, or to weekly net pay of £425. Mr Goldrup, the respondent’s representative, suggested to me, when I was questioning Mr Pathak, that the claimant was not paid weekly payments of £326.92 per week due to confusion with the respondent’s accountant between gross and net pay. However, the respondent gave no evidence to this effect and it is hard to see how payments of £277.52 per week would come to be made if the misunderstanding was whether a salary of £17,000 was gross or net. Had they understood it to be net, the gross payments would have been higher, rather than lower, than £326.92 per week. Why the respondent paid the claimant the amount it did has not been explained in evidence. As late as 9 January 2019, when the respondent presented its response, the respondent was asserting that it had paid the claimant all sums due. In the respondent’s counter schedule of loss, put forward at this hearing, an admission was made that the claimant had not been paid his full wages in the period 25 June to 29 July 2018, on the basis of calculations done using a salary of £17,000. If the agreement as to wages was that the claimant be paid a salary of £17,000 for this period, the shortfall was, as indicated in the respondent’s counter schedule of loss, £247.

30. If the agreement was, as the claimant contends, £425 per week, the shortfall between the payments into the bank account and the amount due would be greater. Whether there was, in fact, a shortfall would depend on whether, and how much, cash was paid to the claimant in addition to the payments into his bank account. If no

cash payment was made for a week, the shortfall would be £425 - £277.52 = £147.48 net per week

31. The unexplained disparity between the salary of £17,000 in the document dated 25 June 2018 and the amounts paid into the claimant's bank account and the disparity between the net payment shown on the 16 July 2018 payslip and the amounts paid into the claimant's bank account lead me to believe that, whether the document dated 25 June 2018 is authentic or not, it does not set out the full agreement between the parties as to pay. I find, on a balance of probabilities, that Mr Pathak told the claimant that he would receive some cash payment in addition to the amounts paid into his bank account during the first period of employment. I find, on a balance of probabilities, that the claimant was told that he would receive a total of £425 net per week. This is consistent with the amounts which the claimant was seeking in his WhatsApp messages on 15 October 2018, referred to later in these reasons.

32. The claimant has not been precise about how much cash he received but has said that he received some cash payments in the first month, as well as payments into his bank account, but, after that, the cash payments stopped. Accepting the claimant's evidence on this point I find, on a balance of probabilities, that the claimant did receive some payments in cash. Since the claimant has not given evidence about how much cash he received, but said he received cash payments in the first month, the claimant has not satisfied me that he did not receive the full amount due to him, by a combination of cash and bank payments for the four weeks beginning 25 June 2018. I accept his evidence that he received no cash payments after that period, receiving only the payments into his bank account. The claimant's evidence, which I accept on this point, is that he received a cash payment of £300 when he returned to work in August, as part payment of the back pay. This needs to be set against the shortfall in pay in the first period of employment.

33. Since I have found that the document dated 25 June 2018 does not set out a full agreement as to pay, I do not find it necessary to make a finding as to whether the document is authentic. Had it been necessary to make a finding, I would have found, on a balance of probabilities, that the document was authentic. If the respondent had fabricated the document, I would have expected the salary to correspond correctly with the payments on the payslips.

34. The claimant gave two weeks' notice to terminate his employment by a WhatsApp message sent on or around 14 July 2018 which read: "I jop start as a Tandori chef 25/6/18 and finish jop 29/7/18".

35. There was a dispute between the parties as to the reasons for the claimant leaving. The reasons for the claimant leaving would only be relevant to this issues in this if they shed light on whether the claimant had been underpaid during the first period of employment. There is nothing other than the oral evidence of Mr Pathak and the claimant about the reasons for the claimant leaving. I do not consider I can confidently prefer the evidence of the claimant or Mr Pathak as to the reasons for the claimant leaving. I do not consider it would be appropriate to draw inferences from a finding which I would have to make on the basis of the burden of proof. I do not, therefore, make a finding of fact as to the reasons for the claimant giving notice to terminate the first period of employment. The reasons for the claimant leaving do

not, therefore, assist me in making my finding as to whether the claimant was underpaid in the first period of employment.

36. The claimant was re-engaged by the respondent with effect from 15 August 2018. There is a dispute as to the circumstances and terms of his re-engagement.

37. Mr Pathak says that the claimant contacted him by telephone on or around 13 August 2018 saying he wanted to return to work with the respondent as he could not find another job. Mr Pathak says he told the claimant they could not offer him a permanent position again as they had already recruited another person to fill the role he had left, but that they could engage him on a zero hours basis at a rate of £9.50 per hour. Mr Pathak told me that the person who filled the claimant's position was Claudiya. Claudiya appears, from the rotas, to have been working for the respondent from some time prior to the claimant leaving at the end of July. Mr Pathak said he told the claimant that he could not guarantee hours but may be able to give him 24 hours per week.

38. The claimant at first gave evidence that Mr Pathak had contacted him, asking him to come back, but then said he was not sure who had contacted who. His evidence was that Mr Pathak promised to pay the money owed to the claimant. He says Mr Pathak gave him £300 in cash on his first day back, 15 August 2018, and promised to pay the rest "slowly" but did not, in fact, make any further payments of back pay. The claimant says that there was no discussion about the hours he would be working or the rate and basis of payment, and that he understood he was to be re-engaged on the same terms as before i.e. £425 net per week, working 40-45 hours per week.

39. Mr Pathak denies paying the claimant £300 in cash and promising more payments. I have preferred the evidence of the claimant in finding that the claimant was paid £300 on returning to work but received no cash payments after that.

40. Mr Pathak says that the rotas he drew up show the hours worked by the claimant from 15 August 2018 until 5 October 2018. These show that the claimant was rostered to work 24 hours per week in each of the weeks from the week commencing 13 August 2018 to the week commencing 1 October 2018. Mr Pathak says that employees can only be paid for more hours than on the rota if they fill in a sheet showing the hours worked and this is agreed and signed by Mr Pathak.

41. I find that the rotas are authentic documents. They were only produced, during the afternoon of the hearing, as a result of a request by me for records of hours worked by the claimant. The respondent had not included them in the bundle of documents which it had prepared for this hearing, although no orders had been made for disclosure and preparation of a bundle. If the rotas had been created for the purposes of these proceedings, I consider it more likely that they would have been included in the bundle, rather than produced only in response to an enquiry from the judge.

42. The claimant received the following payments into his bank account for the period 15 August to 5 October 2018 inclusive:

Payment on 14 September 2018: £1037.47 for the period 13 August to 9 September. This corresponds to the net payment shown on a payslip dated 14 September 2018. The payslip shows pay at £9.50 per hour for 98 hours' work, totalling £931. There is, in addition on the payslip, a payment of £159.58 shown for performance bonus. There is a deduction for national insurance contributions but no deduction for income tax.

Payment on 12 October 2018: £924.03 for the period 10 Sept to 7 October. This corresponds to the net payment shown on a payslip dated 12 October 2018. This payslip shows pay at £9.50 per hour for 86.5 hours' work, totalling £821.75. There is, in addition on the payslip, a payment of £139.92 shown for performance bonus. There is a deduction for national insurance contributions but no deduction for income tax.

43. Gross payments for hours worked, leaving aside performance bonuses, totalled £1752.75 (£931 + £821.75).

44. The rotas showed the hours for the claimant in the period 15 August to 5 October 2018 inclusive to be 187 hours (if the claimant worked all the hours on 5 October, the day he was sent home). According to the payslips, the claimant was paid for 184.5 hours. The difference may be because the claimant did not work his full rostered hours on 5 October, being sent home. However, I heard no evidence as to what time the claimant was sent home from work.

45. The claimant had completed timesheets for the weeks he was employed. He left these sheets in a basket on the respondent's premises. Mr Pathak found the sheets for 15 August onwards in October and sent the claimant a photo of these on Whats App with a message asking what they were. The claimant replied "This is cash hours". Mr Pathak replied "We have all your hours." In the messages which followed, the claimant wrote that he worked every week over 24 hours. This was not in response to any reference by Mr Pathak to 24 hours per week. The claimant said he could not remember why he referred to 24 hours per week.

46. The days showing hours worked on the timesheets for 15 August to the end of September correspond to the work days on the rotas prepared by Mr Pathak. The hours recorded on the timesheets in large part correspond with those on the rotas but are sometimes an hour or so longer i.e. starting and/or finishing earlier. There is no signature from Mr Pathak on the timesheets.

47. Even if the timesheets show the hours actually worked by the claimant more accurately than the rotas, they do not indicate that the claimant was working between 40 and 45 hours per week from 15 August 2018 to 5 October 2018.

48. I find, on a balance of probabilities, that the claimant and Mr Pathak agreed that the claimant should start work again on a different basis from before; he would no longer be paid a fixed amount per week, but would be paid per hour. If the arrangements had been the same as before, the claimant would not have been rostered to work only 24 hours per week and the claimant would have had no reason to write in the WhatsApp message that he was working more than 24 hours per week.



49. As previously noted, Mr Pathak's evidence is that, when the claimant returned to work, he signed a zero hours contract dated 17 August 2018 which provided that there was no obligation to offer the claimant any minimum number of hours work but stated he would be paid at £9.50 per hour. The contract does not contain any provision that, to be paid for hours above those included on the rota, Mr Pathak's prior agreement and signature on the timesheet had to be obtained.

50. The claimant challenged the authenticity of the contract. As previously noted, I can only assess the authenticity by reference to other evidence. I find that the rotas, which I have found to be authentic documents, and the claimant's own time records, are consistent with this document. I find, on a balance of probabilities, that this is an authentic document.

51. I find it more likely than not that the hours recorded by the claimant in his timesheets were the hours he actually worked. It would not be surprising that working hours for a chef in the restaurant would vary to some degree, depending on how busy the restaurant was that night. It would perhaps be more surprising if the hours worked always corresponded exactly to the hours on the rota.

52. I find that the claimant worked, and was entitled to be paid at the rate of £9.50 per hour for the hours that he recorded on his timesheets, even though Mr Pathak had not signed the timesheets since there is no condition in the contract that the additional hours to those on the rota must be countersigned by Mr Pathak.

53. I have been given copies of timesheets covering the period 15 August to 30 September 2018. These show a total of 183.5 hours worked in that period. I have not been given a copy of a timesheet for the few days worked by the claimant in October. The claimant has not given me any evidence as to the hours worked on those days. I take the hours worked on 2-5 October 2018 to be those on the rota for that period i.e. 19 hours in total. I find that the claimant worked 202.5 hours in the period 15 August to 5 October 2018 and was entitled to be paid for that at a rate of £9.50 per hour. This would give an entitlement to pay of £1923.75 (202.5 x 9.5). This is higher than the amount the claimant was paid.

54. On 5 October 2018, the claimant and Mr Pathak had an argument. As a result of this, the claimant was sent home. The claimant accepts he received a warning letter dated 7 October 2018 which he signed. This set out what Mr Pathak regarded as misconduct and concluded:

“Please sign below to confirm that you understand the reason for receiving this warning letter, and that if this happens again in the future, we will terminate your contract.”

55. Although the terms of this letter suggest implicitly that the claimant will not be dismissed unless there is some further act of misconduct, Mr Pathak accepted that he told the claimant that there would be a management meeting, after this letter of warning had been given, for the directors to decide what to do. Mr Pathak was, therefore, informing the claimant that it was possible he could be dismissed, despite the terms of the letter. The claimant has asserted that he was dismissed by the respondent. However, on his own evidence, no one from the respondent ever told him he was dismissed.

56. There is some dispute as to who initiated contact after this, but there were some messages between Mr Pathak and the claimant. On 15 October 2018, Mr Pathak offered the claimant work on the evenings of Friday and Saturday that week. The claimant replied:

“Patak Bahi if u give me 5 or six days that’s fine. Other wise as u wish. I already apologise u. I don’t want hurt u. Because I am very respack.”

57. Mr Pathak replied that they may be able to give him more hours in future but asked him to let him know if he was available those days or not. The claimant replied: “I don’t need”. He wrote that he did not want any action for the respondent. He wrote that he did not need any wage slips or P45. Mr Pathak replied, asking what he was talking about by action against the respondent. He wrote that they could give the claimant his P45 when he left the company. The claimant replied that he would see him soon in the tribunal.

58. On 9 November 2018, by email, Mr Pathak wrote that he had put the claimant on the work schedule for 10 and 11 November and asked the claimant to let him know whether he was available to work. The claimant did not reply.

59. The claimant did no work for the respondent after 5 October 2018.

60. The respondent’s position in the response was that the claimant’s employment, under a zero hours contract, was ongoing at that date.

61. It is common ground that the claimant did not take any paid holiday during his employment with the respondent and was not paid in lieu of his accrued holiday.

62. It is common ground that the claimant was not given any paper payslips and that, in late November 2018, he was given access to payslips online.

63. The respondent asserts that the claimant would have been sent an email from their accountants early in his employment giving him information as to how to access payslips online. The only evidence in support of this assertion was Mr Pathak’s oral evidence that the claimant spoke to him about difficulty accessing payslips and Mr Pathak showed the claimant details of his pay on Mr Pathak’s email. The claimant says he was not told until the end of November about accessing payslips online.

64. In a WhatsApp message on 15 October, in answer to the claimant writing that he did not need any wage slips or P45, Mr Pathak wrote that “if you want your all payslips we can give you, send your email address.”

65. In an email dated 24 November 2018, the claimant asked one of the directors of the respondent to forward his payslips to his email address. Ms Patil wrote on 27 November 2018 that the system had already sent the claimant an email saying he needed to create an account access name and password. Once he did that, he could see and download all his payslips. She suggested he check his spam. Her email did not give any indication as to when the system would have sent the claimant the email.

66. For the reasons given above, I have found, on a balance of probabilities, that the payslip dated 16 July 2018 was not created at that date. I find, on a balance of probabilities, that the claimant was not given access to payslips online during the first period of employment.

67. I find, on a balance of probabilities, that the payslips relating to the second period of employment, which do match payments made, were created at the time indicated on the payslips and were available to the claimant online. I consider it more likely than not that the claimant would have been told that he could access these payslips online. I prefer the evidence of Mr Pathak that the claimant spoke to him about this and that Mr Pathak showed the claimant details of his pay on Mr Pathak's email.

68. In the WhatsApp messages on 15 October 2018, the claimant wrote that he was owed £1700 and £425 and £850.

69. The claimant presented his claim on 22 November 2018 after an ACAS early conciliation period of 22 October to 22 November 2018. In his claim form, the claimant wrote that he was seeking unpaid wages of £1700, 2 weeks notice pay of £850 and holiday pay of £425.

70. The respondent wrote to the claimant on 26 December 2018. The claimant accepts he received this letter and its enclosures. Enclosed with the letter were various documents including the documents dated 25 June and 15 August 2018 which the respondent asserted were contracts signed by the claimant. They denied they had dismissed him and wrote that he was still under a zero hours contract and had not informed them if he wanted to continue working or not. They asserted that they had paid him all wages due and asked how he had calculated holiday pay. They wrote that they calculated he was due for 2.8 days holiday, which they were happy to pay. However, in the response presented on 9 January 2019, the respondent denied that anything was due to the claimant.

71. The claimant and the respondent had a meeting on 30 December 2018. Both parties waived privilege to show me a note of the meeting. The claimant did not agree the note was accurate, saying that the respondent had not conceded anything was due to him and he was there at most 5-10 minutes. The note prepared by the respondent records that holiday pay was due to the claimant.

72. The respondent presented its response on 9 January 2019. As previously noted, this denied that any sums were due to the claimant (contrary to its note of 30 December 2018 which accepted that holiday pay was due).

### **Submissions**

73. Mr Goldup, for the respondent, submitted that the parties had agreed, in a document dated 25 June 2018, that the claimant would be paid £17,000 per annum. The respondent accepted that, during the first period of employment, the claimant had not received what he was due. The respondent did not accept the claimant should have been paid £425 per week. The respondent's position was that the claimant had got in touch with the respondent, after he had resigned, because he was struggling to find another job. The respondent asserted that the claimant would not have done this if he believed he had been underpaid. The respondent denied

there was any agreement to pay cash in hand. The respondent submitted that the claimant was re-engaged on a zero hours contract; the parties had signed a contract on 17 August 2018. Neither party had terminated the contract. The claimant would have received an automatically generated email from the respondent's tax service giving him details about how to access his payslips. The respondent accepted it was liable to pay holiday pay to the extent set out in the counter schedule of loss.

74. The claimant made no submissions.

### **Law**

75. Section 13(1) of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

76. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. The leave year begins on the anniversary of the start of the claimant's employment, unless a written relevant agreement between the employee and employer provides for a different leave year.

77. An employer who wishes to terminate a contract of employment must give the period of notice required by the contract of employment or, if no period of notice has been agreed, reasonable notice, which must be no less than the period of statutory minimum notice required by section 86 Employment Rights Act 1996. If an employer terminates the contract without notice, unless this is in response to a fundamental breach of contract by the employee, the respondent will be in breach of contract and the employee is entitled to seek damages for the breach.

78. Section 8 ERA provides that an employee has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement. If a tribunal finds that a statement is not given as required, it shall make a declaration to that effect (s.12(3) ERA) and may, where the tribunal finds that unnotified deductions from pay have been made, order the respondent to pay to the claimant a sum not exceeding the aggregate of the unnotified deductions so made (s.12(4) ERA).

### **Conclusions**

#### Pay for the period 23 June to 29 July 2018

79. The claimant was paid for the first two days, which was a trial period, at an agreed rate of £70 per day.

80. From 25 June 2018, the agreement was that the claimant was paid a fixed amount per week. I found this to be £425 after deductions. The claimant did not

satisfy me that he had not received the full amount of wages due for the first 4 weeks. I have found that, after that, he was paid at the rate of £277.52 per week, rather than £425 per week. This means there was a shortfall for one week of £147.48 (£425 - £277.52). However, the claimant's evidence was he was paid £300 cash towards the shortfall when he returned to work on 15 August. This is more than the shortfall. I conclude, therefore, that there is nothing still owing to the claimant in respect of wages for the first period of employment.

#### Pay for the period 15 August to 5 October 2018

81. I found that the claimant worked 202.5 hours in the period 15 August to 5 October 2018 and was entitled to be paid for that at a rate of £9.50 per hour. This would give an entitlement to pay of £1923.75 (202.5 x 9.5). This is higher than the amount the claimant was paid. The claimant was paid £1752.75 gross (£931 + £821.75) for hours worked in this period. The claimant was, therefore, underpaid in this period by £171 gross (£1923.75 - £1752.75). This was an unlawful deduction from wages and I order the respondent to pay the claimant this amount.

#### Breach of contract (notice pay)

82. Taking the claimant's evidence at its highest, I conclude that the respondent has done nothing which constitutes an actual dismissal of the claimant. The claimant was sent home from work on 5 October 2018 and given a written warning. This was not a termination of his employment by the respondent; indeed, the warning letter signed on 7 October 2018 makes it clear that the claimant's employment is continuing. Although Mr Pathak told the claimant, in effect, that the directors might decide to end his employment at the management meeting which was to be held, there is no evidence of anything said or done by the respondent after that which could constitute an actual dismissal by the respondent.

83. The claimant has not argued that he was constructively dismissed by the respondent. He did not argue that he had resigned in response to the respondent's actions.

84. I conclude that the respondent did not dismiss the claimant. The complaint of breach of contract in respect of failure to give notice is not, therefore, well founded.

#### Holiday pay

85. If the claimant remains employed by the respondent, as suggested by the respondent, he would not have been entitled to be paid in lieu of accrued but untaken holiday. However, the respondent has accepted that it owes the claimant holiday pay.

86. I have concluded that the claimant's employment was not terminated by the respondent. However, I conclude that, prior to the claimant starting proceedings against the respondent on 22 November 2018, the claimant had resigned by his actions and messages. The claimant had refused an offer of work on 15 October and another offer in early November. He made it clear by his actions and messages that he regarded his employment as at an end.

87. Since the claimant's employment has ended, he is entitled to be paid in lieu of accrued but untaken holiday. The parties agree that the claimant did not take any paid holiday during his two periods of employment.

88. There was no contractual agreement relating to holiday or relevant agreement about a leave year which displaces the terms of the Working Time Regulations. I, therefore, calculate the entitlement to holiday pay in accordance with those regulations. Since the terms on which the claimant was employed were different in the two periods of employment, I calculate the accrued entitlement in relation to each of these periods separately before adding the entitlements together.

89. An employee is entitled to 5.6 weeks' paid holiday in a year under the terms of the Working Time Regulations.

*Accrued holiday for the period 23 June – 29 July 2018*

90. This is a period of 5 weeks. I have found that the claimant was entitled to be paid £425 net per week. Since no deductions for tax were made, I take the gross figure to be the same as the net weekly pay figure.

91. The calculation of holiday pay due for this period is as follows:

$$5.6 \times 5/52 \times 425 = \text{£}228.85 \text{ gross}$$

*Accrued holiday for the period 15 August – 5 October 2018*

92. This is a period of 7.5 weeks. I have found the claimant was entitled to be paid at the rate of £9.50 per hour gross.

93. I have found that the claimant worked 202.5 hours in this period. He worked an average of  $202.5/7.5 = 27$  hours per week in this period.

94. The calculation of holiday pay due for this period is as follows:

$$5.6 \times 7.5/52 \times 256.50 = \text{£}207.17 \text{ gross.}$$

*Total holiday pay due*

95. This is  $\text{£}228.85 + \text{£}207.17 = \text{£}436.02$ .

### Payslips

96. I have found that the payslip dated 16 July 2018 was not issued on that date. Even if it was issued on that date, it was not provided, as required, at the time, or before the payment made on 5 July 2018 which was described on the payslip as "backpay". I have also found that payments made to the claimant's bank account for the first period of employment, which were recorded on payslips, did not constitute all the payments made to the claimant, since some payments were, I found, made in cash. I conclude, therefore, that the claimant was not provided with itemised payslips for all payments made for the first period of employment as required by s.8 ERA.

97. I have found that the claimant was given access to itemised payslips online in relation to the second period of employment, at the relevant time, although it appears he had difficulty in accessing these. I conclude that giving the opportunity to access payslips online is compatible with the obligation to provide written itemised payslips in section 8 Employment Rights Act 1996.

98. I make a declaration that the claimant was not provided with written itemised pay statements in relation to the period of employment 23 June to 29 July 2018.

99. The claimant is being compensated for the shortfall in wages and holiday pay. According to the payslips, no deductions were made for tax and only one modest deduction was made for national insurance contributions which, in practice, was not deducted from the amount paid into the claimant's bank account. In these circumstances, I do not consider this to be an appropriate case to order the respondent to pay to the claimant any sum in respect of unnotified deductions pursuant to s.12(4) ERA.

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Employment Judge Slater

Date: 24 January 2019

RESERVED JUDGMENT & REASONS  
SENT TO THE PARTIES ON

24 January 2019

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2417072/2018**

Name of **Mr S Hussain** v **Rasassi Limited**  
case(s):

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **24 January 2019**

"the calculation day" is: **25 January 2019**

"the stipulated rate of interest" is: **8%**

MR I STOCKTON  
For the Employment Tribunal Office



## INTEREST ON TRIBUNAL AWARDS

### **GUIDANCE NOTE**

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at [www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426](http://www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426)

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.