



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Smith

**Respondent:** Ebonycare Limited

**Heard at:** London South                      **On:** 2 January 2019

**Before:** Employment Judge Cheetham QC

## Representation

Claimant: in person

Respondent: Mr K Cadogan (director)

## JUDGMENT

1. The Respondent's name is confirmed as "Ebonycare Limited".
2. The Respondent will pay the Claimant the sum of **£2,251.08** in unpaid wages.
3. The application by the Respondent for reconsideration of this Judgment is refused.

## REASONS

1. This was a claim brought by Mrs Smith against her former employer, Ebonycare Limited, for unpaid wages and holiday pay.
2. The Tribunal heard evidence from the Claimant and from Mr Cadogan. Unfortunately, neither had prepared a witness statement, nor had they disclosed any documents to each other. The Claimant had brought with her (but not photocopied) various documents. However, most of the documents that Mr Cadogan felt were relevant to the case were on the tablet he had

brought with him to the hearing, but he seemed to have some difficulty finding them, which means I never got to see them.

### **Application to adjourn**

3. Mr Cadogan had sent an email to the Tribunal on the morning of the hearing requesting an adjournment. He said that the claim had been brought against “Ebonycare”, but it should have been brought against “Ebonycare Limited” and as a result the case needed to be adjourned. At the hearing, he explained that he had contacted his insurance broker, who had told him that cover could not be provided, because the claim had not been brought against the company. He said that he needed to obtain legal advice.
4. This was an unimpressive start to the hearing. First, there was no possible confusion over the identity of the Respondent; indeed, the Response Form had corrected the name to “Ebonycare Limited” and raised no issue at all about the identity of the Respondent. The most Mr Cadogan could say was that there had been no formal notice from the Tribunal confirming the change of name.
5. Secondly, this relatively low value claim had already been adjourned twice and it would have been wholly disproportionate and also unfair on the Claimant to adjourn it again. What appears to have happened is that, at the very last minute, Mr Cadogan decided to do something about the claim and contacted his insurers. Whatever dispute he may have with them is not the Tribunal’s (or the Claimant’s) concern and I dismissed the application to adjourn.

### **Findings of fact**

6. I found the Claimant to be a straightforward witness and I had no reason to doubt what she told me. She was very clear about what she said she was owed and she provided payslips, bank records and timesheets. Although these required a certain amount of sorting out, they provided a fairly clear picture.
7. Mr Cadogan disputed everything, but the difficulty he faced was that he had nothing to base that upon. He repeatedly told me there was a document somewhere that showed that the Claimant had or had not been paid. He would then spend time scrolling through his tablet, but invariably he could not find the document he needed. It is not a question of him being less credible than the Claimant, but that he simply did not have any documentary evidence, while the Claimant had a great deal.
8. I found it easier to divide the claim up as follows and to start at the end.
9. First, the Claimant said that she had not been paid wages for the 3 month period from 23 May 2017 in the sum of **£813.75**. The last payment she had received was paid into her bank account on 19 May. She was owed in respect of 38.5 hours from 23 May to 21 June, 63 hours from 22 June to 22 July and a further 7 hours from 23 July (after which her employment ended). She showed me documents that supported that claim, including her bank statements, which not only showed that last payment on 19 May, but also that there were no payments from the Respondent after that.

10. All that Mr Cadogan was able to say – repeatedly – was that he was sure she had been paid. Even when faced with evidence from his own PA seeming to support the Claimant’s case, he could only say that his PA must be incorrect. Therefore, I found that the Claimant had proved that she was owed this sum.
11. Secondly, the Claimant stated that she had not been fully paid between 22 September 2016 and 23 May 2017. From the documents she gave me and doing the best I could, I recorded the following sums. I have not included hours in the table below, but I was satisfied that the hours claimed accurately reflected the hours worked (and Mr Cadogan did not dispute this).

Dates	Payment due	Received	Shortfall
22.9 – 21.10.16	£570.00	£351.25	£218.75
23.10 – 22.11	£667.50	£365.25	£302.23
23.11 – 22.12	£525.00	£498.65	£26.35
23.12 – 22.1.17	£360.00 (inc. holiday pay)	£240.00	£120.00
23.1 – 22.2	£922.50 (inc. holiday pay)	£225.00	£697.50
23.2 – 22.3	£472.50	£240.00	£232.50
			<b>£1597.33</b>

12. Offset against this was the sum of £160, paid by the Respondent on 26.9.17 as outstanding wages, giving a total claimed of **£1437.33**.
13. In evidence, Mr Cadogan said that the Claimant was on a “zero hours” contract as a care worker and his initial position was that she should not have been paid for some of the hours at an hourly rate, because she was sleeping on site and therefore should only have received a fixed £25 per shift. However, on closer inspection of his tablet, it appeared that a sleeping rate was paid in respect of only one out of fifteen pay slips, so he did not take that argument any further.
14. He then said that the Claimant had been paid advances on salary to make up for underpayments, but I found that very difficult to follow. If the bank statements were reliable (and I have no reason to doubt that they were) and if payments were only made into that account (as was the case), then the Claimant had a clear record of what she was paid, whether it was by way of monthly payments of wages or advances.
15. Mr Cadogan clearly felt that there were additional payments unaccounted for. However, I could only proceed on the evidence before me and it was his responsibility to prepare for this hearing, but he had not done so. I therefore found that the Claimant had shown that she was also owed £1,437.33 in respect of the period from 22.9.16 – 23.3.17.

**Conclusion**

16. I concluded that the Claimant was owed the sum of **£2,251.08** (£1,437.33 + £813.75) in unpaid wages. I have not tried to separate wages and holiday pay and I do not think it is necessary to do so.

**Postscript - reconsideration**

17. The day after the hearing, Mr Cadogan sent an email to the Tribunal, which I treated as an application for reconsideration of the judgment.
18. First, he said that, "*I did not expect to go ahead in light of the fact that I have effectively been denied the benefit of legal advice as a result of Ebonycare Limited not having been joined to the case previously*". If that is an application for reconsideration of the decision not to adjourn the hearing, then it is refused. Mr Cadogan entered his Response on 26 June 2018, more than 6 months before this hearing. If he left it so late to obtain advice, then he really has only himself to blame. Further, as I found, he was completely aware that the correct name of the Respondent was "Ebonycare Limited", because that is what he entered on the Response Form.
19. Secondly, he attached a document entitled "Analysis of Bank payments made to Donna Smith vis-à-vis Hrs. agreed". He said that it appeared that, "*the payments made to the claimant via separate banks exceeds the Gross pay she was entitled to over the period of her employment*". He went on, "*I must also reserve the right to analyse any cash payments/advances made to Donna Smith that may improve my position further but that aside it appears that the Claimant was indeed overpaid and in credit throughout her employment*".
20. Insofar as I could follow the analysis, it showed nothing of the sort. It did not show any payments after 19 May 2017, apart from the payment of £160 and an unexplained payment of £16.68. There was one payment of £100 on 27 March 2017 that I could not tally with the payslips. The only figure that troubled me was a payment of £341.25 (17 December 2016), but again this did not tally with the payslips and Mr Cadogan had provided no explanation of this payment at all. About half of the payments on the analysis sheet pre-dated the period in respect of which the claim was made.
21. Therefore, the application for reconsideration is dismissed. Although Mr Cadogan stated that he must reserve his position, I am afraid the judgment is final.

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Employment Judge Cheetham QC

Date 15 January 2019