



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Adalat-Walker

**Respondent:** Mr M Patel

**Heard at:** Leeds **On:** 28 March 2019

**Before:** Employment Judge Bright (sitting alone)

## Representation

Claimant: In person

Respondent: In person

# JUDGMENT

1. The respondent made unauthorized deductions from the claimant's wages. The respondent must pay to the claimant the sum of **£2,067.52**.
2. The respondent failed to provide the claimant with a statement of initial employment particulars. The respondent must pay to the claimant compensation of **£826.56**.

# REASONS

## The claim

1. The claimant presented a claim on 24 September 2018 for unauthorized deductions from wages, arising from a failure to pay the national minimum wage during the period of his employment with the respondent.
2. The respondent disputed that the claimant was an employee, that he worked over the period identified or for the hours identified or that he was entitled to the amounts claimed.

## The evidence

3. I heard oral evidence from the claimant and the respondent. I also had the benefit of some documents provided by the respondent at the hearing.

## The issues

4. The issues I was required to decide were:
  - 4.1. Was the claimant an employee of the respondent?
  - 4.2. If so, for what period?
  - 4.3. How many hours per week did he work?
  - 4.4. What was he paid?
  - 4.5. If he was not paid the national minimum wage, how much was deducted?
5. It was apparent from the claim form that the claimant also identified that the respondent had not provided him with a statement of initial employment particulars. The respondent accepted at the hearing that he had not provided the claimant with any documentation. I therefore considered that I was obliged by section 38 Employment Act 2002 to make an award under that section. I therefore also considered what level of award would be just and equitable.

### **Findings of fact**

6. I made the following findings of fact. Where there was a dispute, I resolved it on the balance of probabilities on the evidence provided.
7. There was no paperwork or documentary evidence relating to the claimant's employment to assist me. I was therefore faced with deciding the facts almost entirely on the oral evidence of the two individuals in front of me at the hearing.
8. There were certain facts which were agreed. The respondent accepted at the hearing that the claimant worked for him and that he paid him £6 per hour in cash.
9. The respondent disputed the dates of employment, the regularity and hours worked. The respondent told me he could not remember the dates of employment but thought it was only two months. The respondent could not remember when the claimant worked. Initially he told me he needed someone to work evenings, then said that the claimant came in 'randomly' for about 2 and a half weeks. He then told me the claimant came in randomly for a period of about two months and worked a total of about 35 to 40 hours. The respondent said he dismissed the claimant because of his behaviour, but could not recall when the dismissal took place. He later said it was after a three month period. His evidence was inconsistent.
10. I preferred the evidence of the claimant. The claimant had clear recollections of the start of his employment in December 2017 and the end of his employment on 31 July 2018, the same day he approached Citizens Advice. He also had clear recollections of the hours worked per week, his pattern of work, the duties he carried out and how he was paid. I find that the claimant was employed for 8 months, for 28 hours per week. For the first 6 months he was paid £5 per hour. For the following 2 months he was paid £6 per hour. I accepted that he asked the respondent for the national minimum wage and was

told that because he worked on the shop floor he would not be paid as much as the other workers.

11. The respondent accepted that the claimant was 21 at the time he was employed. He accepted that the claimant was paid £6 per hour in cash at the end of each shift, out of the till proceeds. The respondent was unable to clearly account for the failure to pay the claimant the national minimum wage. Various throughout the hearing he told me that he asked his accountant how much he should be paying the claimant and paid him that amount, then that £6 per hour was “almost” the national minimum wage, then that shop floor workers would not get the same amount as workers at the post office counter and finally that he gauged the rate of pay by what the ‘students’ were receiving. The respondent produced paperwork to show that other employees received payslips and their pay was processed by his accountants. He accepted that the claimant did not receive payslips and that his wage was not processed by the accountants. It was not clear why this was the case, nor why professional accountants would have advised the respondent of an incorrect minimum wage rate for someone whose employment details they were not processing along with other employees and for whom there were no tax or national insurance payments being made.
12. The respondent blamed the claimant for failing to provide the necessary identification and other information and documentation to enable him to process the wages properly. However, the respondent was unable to explain why he continued to employ the claimant in the absence of that information or documentation. He later agreed that the claimant had provided some information, but said it was not sufficient and he needed to photocopy documents. The respondent’s evidence was inconsistent and implausible and it led me to prefer the claimant’s evidence that he provided the information required and a copy of his birth certificate. I accepted that he provided the information requested to enable the respondent to deduct tax and national insurance. I also accepted the claimant’s evidence that he believed he had done what was necessary to be lawfully paid the correct amount.
13. The respondent’s evidence was generally not credible. It was vague, inconsistent, implausible and contradictory. He obviously understood the importance of documenting employment, providing payslips and having payroll processed by his accountants but was unable to properly explain why he failed to do any of that with the claimant or why he had no records or documentation relating to the claimant’s employment. His evidence about why he thought it was appropriate to pay the claimant £6 per hour was contradictory and logically incoherent.

## **The law**

14. Section 13 of the Employment Rights Act 1996 says that a worker has the right not to suffer unauthorized deductions. A deduction is “Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion...”.
15. The National Minimum Wage Act 1998 and National Minimum Wage Regulations 2015 amend workers’ contracts of employment to provide a

minimum rate per hour below which they should not be paid. For workers aged 21 to 24, at the time of the claimant's employment, the rate was £7.38 per hour.

**Determination of the issues**

- 16. There was clearly an employment relationship between the parties. The relationship had all the hallmarks of employment and the respondent accepted at the hearing that he had employed the claimant.
- 17. The claimant was aged 21 at the time of his employment and was entitled to the national minimum wage rate of £7.38 per hour. That was the rate of pay to which the claimant was therefore contractually entitled. I find that the respondent paid him £5 per hour for the first 6 months and then £6 per hour for the remaining two months of his employment. The respondent therefore paid the claimant less than he was contractually entitled to be paid.
- 18. I find that the claimant worked 28 hours per week for the respondent for the whole period of 8 months. From the paperwork and evidence provided, I find that the respondent failed to pay the claimant the wages which were properly payable to the claimant. The respondent is clearly an intelligent man who knew about the formalities of employing people and has used accountants to assist in processing wages and handling payroll. I can only conclude from his account at this hearing that his treatment of the claimant was a clear and intentional breach of employment law.
- 19. I calculate that the respondent made the following unauthorized deductions from the wages which were properly payable to the claimant and that the claimant is therefore entitled to the following amounts:

Amount owed  
28 hours per week x £7.38 per hour = £206.64 per week x 52/12 x 6 months = £5,372.64  
Less amount paid:  
28 x £5 = £140 per week x 52/12 x 6 months = £3,640  
Sub total: £1,732.64

Amount owed  
28 hours per week x 7.38 per hour = £206.64 x 52/12 x 2 months = £1790.88  
Less amount paid:  
28 x £6 per hour = £168 x 52/12 x 2 months = £1456  
Sub total: £334.88

Total: £1,732.64 + £334.88 = **£2,067.52**

- 20. The respondent accepted that he had never provided the claimant with an initial statement of employment particulars. The failure to provide that statement is in breach of section 1 of the Employment Rights Act 1996. Section 38 of the Employment Act 2002 requires me to award a minimum of 2 weeks' wages where the employer was in breach at the time the successful claim was commenced. It permits me to award 4 weeks' wages where I consider it to be just and equitable. In view of the clear and intentional breach of employment law by the respondent in this case, necessitating the claimant pursuing a claim

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all the way to the Tribunal, I consider that 4 weeks' wages is just and equitable.  
I therefore award the claimant the following:

28 hours x £7.38 x 4 weeks = **£826.56**.

Employment Judge Bright

Date 01.04.2019