



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Christina Crawford  
**Respondent:** PM Construction Ltd  
**Heard at:** East London Hearing Centre  
**On:** Friday 27 September 2019  
**Before:** Employment Judge Burgher

## Representation

For the Claimant: In person

For the Respondent: Dwayne Williams, Director

## JUDGMENT

**1 The Claimant's claims for unpaid wages, accrued holiday pay and unlawful deduction of wages succeeds.**

**2 The Respondent is ordered to pay the Claimant the total sum of £977.07 in respect of her claims.**

## REASONS

1. The issues identified at the outset of the hearing were as follows:
  - 1.1 Payment of the accrued holiday pay and unpaid wages. The Claimant claimed £192.91;
  - 1.2 The Claimant claimed unlawful deduction of wages in relation to a replacement lock £40 pounds;

2. The Claimant stated that the Respondent had erroneously paid her £8.14 an hour when the minimum wage should have been £8.21 per hour from 1 April 2019 (£7.83 per hour before that). The Claimant therefore claimed 0.07p per hour for hours worked from 1 April 2019.

3. The Claimant also stated that she was not provided with any written statement of terms and conditions of employment and that she was provided with falsified payslips and P45.

### **Evidence**

4. I heard evidence from the Claimant who had prepared a witness statement and a bundle of documents.

5. I heard evidence from Mr Dwayne Williams, Director and owner of the Respondent company. He did not have a witness statement or any documents but referred text messages stored on his mobile phone to support aspects of his evidence.

### **Facts**

6. I have found the following facts from the evidence.

7. The Claimant commenced work with the Respondent as Construction Administrator on 4 March 2019. She was required to run the office and work 40 hours a week, Monday to Friday. She was paid £18,000 per annum or £8.65 per hour. She received her full pay worth during March 2019, namely £1,500 gross.

8. The Claimant was not provided with a written statement of terms and conditions of employment.

9. The Respondent operates a sick pay scheme that is at the discretion of management. I do not accept the Claimant's evidence that she was informed by Melicia Williams, the Co – Director that she would effectively be entitled to unlimited full pay whilst sick or that it was always paid. It would be astounding for a small employer to say that sick pay would be unlimited and it is unlikely that a discussion about taking time off for sick on commencement would have taken place as suggested.

10. The Claimant took 1 day holiday on 3 April 2019.

11. The Claimant gave notice by email to end her employment on 10 April 2019 but did not attend work to work out her notice after 11 April 2019. During this time, Mr Williams was in Jamaica as he had suffered a close bereavement and was having to manage that.

12. The Claimant failed to attend work on 12 April 2019 and did not manage to contact anyone at the Respondent to inform them of her non-attendance. The first time the Claimant notified anyone that the reason for non-attendance on 12 April 2019 was alleged sickness absence was by text on 3 May 2019. The Claimant intended to

take the remainder of her notice as holiday. The Claimant was not paid for the 12 April 2019.

13. The Claimant was a keyholder for a company lock and she did not notify the Respondent that she had returned the key to the lock until after an enquiry was made of her on 3 May 2019. By this stage the Respondent had changed the lock at a cost of £40 and deducted this sum from the Claimant's final wage.

## **Law and conclusions**

### Accrued holiday pay

14. The Working Time Regulations provide the Claimant with a statutory entitlement to 5.6 weeks holiday a year including bank holidays. The Claimant was therefore entitled to 28 days holiday a year. The Respondent erroneously believed that the Claimant was only entitled to 20 days holiday a year.

15. In this case the Claimant worked from 4 March 2019 to 11 April 2019 which was 5 weeks and four days (232 hours). The Claimant would therefore have accrued 3.12 days holiday. She took one day holiday on 3 April 2019 and is therefore entitled to 2.12 days accrued holiday. The Claimant was paid £69.23 per day. The Claimant is therefore entitled to **£146.77** in respect of accrued holiday pay.

### Wages

16. The Claimant was given a payslip for April 2019 work. However, it stated that only 7 days out of the 9 were paid. However, including the holiday taken on 3 April 2019, that should have been paid, the Claimant should have had 8 days' pay. There is therefore a shortfall of **£69.23**.

17. In addition to this, the Claimant's payslip says that she should have been paid £444.61 when only £415.84 was actually transferred to her. There is therefore a shortfall of **£28.77** due to her.

18. The total amount due to the Claimant for unpaid wages and accrued holiday pay is therefore **£244.77**.

### Deduction for lock

19. Section 13 of the Employment Rights Act 1996 sets out the right for a worker not to suffer unlawful deductions from wages. In order to be a lawful deduction, it should be agreed by the worker in writing. There is no agreement to the deduction in writing in this case.

20. Therefore, I do not conclude that the Respondent was entitled to deduct £40.00 from the Claimant in respect of the lock. In any event, the Respondent had two other keys to the lock and the issue seem to be whether the Claimant had returned her key to the lock. Whilst it is completely reasonable for the Respondent to seek to an increase in security by changing the locks in order to take the step of deducting money from the Claimant, it ought to have satisfied itself fully by contacting the Claimant and

given he had an opportunity to challenge the deduction before it was made. This was not done. The responsibility was on the Respondent not the Claimant to do this and therefore the Claimant's claim for **£40** in relation to the reduction for the lock succeeds.

Written particulars

21. Section 38 of the Employment Act 2002 provides for a sanction against an employer for failing to provide written statement of particulars. The Respondent did not send the Claimant any particulars in this case.

22. It is a statutory requirement for an employer, no matter how small, to provide a statement of terms and conditions to an employee. It is not the responsibility of an employee to ask for a contract of employment, which seemed to be the way that Mr Williams was seeking to establish in his questions of the Claimant. The Claimant had no need to do anything. The consequences of the failure to provide a written statement of particulars is an order of 0, 2 or 4 weeks pay.

23. I considered the fact that the Respondent is a small business and that the Claimant was employed to administer the company and run the office. I also considered the fact that Mr Williams was going through a difficult period at the time due to the bereavement he suffered and this may have had an impact on the administration of the company. Having said that, it is an important statutory requirement for a statement of terms and conditions to be given and had this been given, the dispute may not have got to the Tribunal. I therefore order the Respondent to pay the Claimant two weeks' pay, **£692.31**, for its failure to and provide a written statement of terms and conditions.

24. The Respondent is therefore ordered to pay the Claimant the total sum of **£977.07** in respect of her claims.

25. The Claimant did not pursue her application for a preparation time order.

Employment Judge Burgher

Date: 11 October 2019