



# EMPLOYMENT TRIBUNALS

**Claimants:** Ms P Tumba  
**Respondent:** London Property Guru

**Heard at:** London South **On:** 9 July 2019

**Before:** Employment Judge Martin

## Representation

**Claimant:** In person  
**Respondent:** Mr Clair - Solicitor

# RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim that the Respondent failed to provide particulars of employment is dismissed.
2. The Claimant's claim for unauthorised deductions from wages succeeds and the Respondent shall pay to the Claimant £135.10.
3. The Claimant's claim that the Respondent failed to provide her with an itemised payslip is dismissed.
4. The Respondent failed to pay the Claimant outstanding holiday accrued on termination of employment and shall pay to the Claimant and £126.92.

## RESERVED REASONS

1. by a claim presented to the Tribunal on 15 July 2018 Claimant claimed that the Respondent failed to pay the Claimant a car allowance and petrol allowance, provoked failed to provide an itemised payslip, failed to provide a written statement of terms of employment, failed to pay holiday and failed to pay commission.
2. This is a very difficult hearing for many reasons. First, the Respondent provided only one bundle meaning there is no bundle for the witness table. The Claimant had a copy of the bundle on her telephone as it been emailed to her which was not ideal. The order of the Tribunal: a case management discussion on 7 November 2018 was for the Respondent to bring at least five copies of the bundle to the Tribunal on the morning of

the hearing. The Claimant did not provide a witness statement and therefore her particulars of claim her claim form were used as her statement. During the evidence, it became apparent that both parties had failed in their duty to disclose documents which are relevant to the issues as ordered. For example, in his evidence Mr Stepani would say that he could bring the document to the Tribunal later date. The Claimant referred to other documents she had which were not in the bundle. This was less than ideal. The Tribunal proceeded and the decision was made on the basis of these documents which are before the Tribunal at the hearing. Both parties having had the opportunity and indeed the obligation to have disclosed them earlier.

3. Having read the witness statements I advised the parties that I was not prepared to listen to evidence about how good or bad they thought the other party was. This was something which was prevalent throughout the witness statements. Therefore, when the Claimant was cross-examining Mr Stepani he was the only person giving evidence, I stopped a line of questioning which was about Mr Stepani's reasonableness and behaviour within the business. Mr Stepani complained during the hearing that witnesses were being allowed to give evidence about his behaviour. I had asked his representative who has asking questions on his behalf why he was pursuing this line of questioning and I was told it was to go to the credibility of the witness. On this basis I therefore allowed it. Mr Stepani complained that he had come to the Tribunal to give his evidence. Mr Stepani did give his evidence and was allowed to give evidence on the matters which were relevant to the issues that I had to decide, but nothing else.
4. The Claimant was employed by the Respondent for a very short period between 4 April 2018 and 1 May 2018. The Claimant applied in response to an advertisement for a lettings administrator which would involve going out and about and viewing properties with potential tenants. At that time the Claimant did not have a car and therefore Mr Stepani, a director with the company who interviewed the Claimant suggested that she should work in the office to see if she liked it there before buying a car.
5. The interview was held on 13 March 2019 and on 14 March 2019 Mr Stepani sent the Claimant a text saying **"Good Morning Patricia. Okay the package I am offering to start with is 15,000 basic, 2000 car allowance (sic), 10% on each let, 3% of new listings. But the 10% goes high as you do more which I will explain. Also bonus each month and quarter and yearly. On target earning for first year 30k +"**. The Claimant replied later that dating saying **"I would love to accept your offer."** On the face of it therefore the Claimant accepted the position which included a car allowance. A petrol allowance was not part of the offer and therefore I find this was not part of any contract between them.
6. Mr Stepani accepted that he had made this offer, and said that he had made a mistake because what he had meant was to remove the car allowance because the Claimant would be office based. The evidence was however that the Claimant was to work in the office initially to see if she liked the role the inference being that she would ultimately be working in the same way as the other lettings negotiators and would be buying her

own car. On this basis, the car allowance would not be incompatible with the position the Claimant was employed to do. I reject the Respondent's argument on mistake. The submissions were brief on this point and that I do not accept this. The Claimant is therefore entitled to a car allowance for the period that she worked for the Respondent.

7. The Claimant left the Respondent without giving any notice. Respondent's argument is that she should have given one weeks notice to terminate her employment. However, the statutory minimum periods of notice set out in section 86 Employment Rights Act 1996 only apply after one months continuous employment. The Claimant worked for less than this period. The Respondent argued that the Claimant was required to give reasonable notice under common law. In assessing whether the Claimant should have given reasonable notice I considered the Claimant seniority and length of service. And length of service was very short, less than one month and she was not a senior employee within the organisation. In these circumstances I do not find that she was required to give notice.
8. The Respondent did not provide the Claimant with written terms and conditions of employment or a written statement of employment as required by section 1 Employment Rights Act 1996. The obligation on the Respondent by virtue of this section is to provide a written statement of employment within eight weeks of employment. The Claimant did not work eight weeks and is therefore this part of her claim does not succeed.
9. The Respondent did not pay the Claimant holiday which was outstanding on termination of her employment on the basis that she had not given the correct notice and was seeking to offset one against the other. Given that I have found that the Claimant was not required to give notice it follows that holiday pay is due. The Respondent pays statutory holiday only. The Claimant is entitled to be paid for 2.2 days holiday. The Claimant's daily rate of pay is £57.69 and the Claimant is therefore entitled to £126.92.
10. The Claimant is entitled to be paid for the car allowance for her period of employment. The car allowance is £2000 which equates to £38.46 per week. The Claimant worked roughly 3 ½ weeks and is therefore entitled to £135.10.
11. The Claimant's claim that the Respondent failed to pay her commission due on a property which she negotiated a tenancy for. The Claimant did not advise the Respondent in these proceedings of which property she was referring to and therefore the Respondent did not provide details of that property. There was a certain amount of confusion about whether the Claimant had mentioned this property in other communications she had when she left the Respondents employment but there was nothing before the Tribunal to substantiate this. The Tribunal note that the employee handbook which Mr Stepani said was given to all employees states that commission is only paid if the employee is still in employment at the time the commission was due. On balance and taking all this into account the Claimant has not shown that she was entitled to the commission claimed and this part of her claim is therefore dismissed.
12. The Claimant's claim that she was not provided an itemised payslip is

dismissed. The Respondent's evidence was that the Claimant did not provide the details required to put her on the payroll for example her national insurance number. The Claimant's evidence is that she gave all this information on a starters form and gave it her manager at the beginning of her employment. Respondent did not produce a starter form Mr Stepani said he had never seen one. The Tribunal has seen in the bundle payslips for two other employees and P 45 to other employees. The Respondent outsources its payroll to an external agency. On the basis that the Respondent does use an external agency, and that payslips were given to other employees on the balance of probabilities I find that the Claimant did not give the required information to the Respondent and that that is the reason why the Respondent did not provide a payslip.

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Employment Judge Martin  
Date 12 August 2019