



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Casagrande  
**Respondent:** Underground Retail Ltd  
**On:** 14 May 2020  
**Before:** Employment Judge Adkin (sitting alone)

## JUDGMENT

1. The Respondent has unlawfully deducted the Claimant's pay and is ordered to pay to the Claimant **£1,865.99**.
2. The Respondent's contract claim (counter-claim) fails and is dismissed.

## REASONS

1. As a result of the present Covid-19 pandemic it has not been possible to hold an open hearing to determine this claim. The parties have agreed to a determination of claim based on the papers.
2. The Claimant's claim, presented on 9 November 2019 is for £1,865.99, comprised of unpaid wages of £1,262.99 in June and £603.00 in July 2019.
3. The Respondent does not dispute that these sums are unpaid. It follows that the claim succeeds, although this is subject to any successful counter-claim.
4. By an order dated 15 April 2020 I gave both parties the opportunity to provide evidence and submissions in writing.
5. I have considered the claim (ET1), the response (ET3), evidence from the Claimant under cover of an email dated 17 April 2020, written submissions from the Respondent dated 5 May 2020 and the Claimant's reply dated 12 May 2020
6. The Respondent contends that the failure of the Claimant to work his full notice period has caused it loss. Specifically it is alleged that by only working 2 weeks instead of 4 weeks' notice the Claimant has cost the Respondent in excess of £1,200. Although the ET3 response does not contain an employer's contract claim

in part 7, I have treated the circumstances described by the Respondent as amounting to a counter-claim.

7. By its email of 5 May 2020 the Respondent says as follows:

“We contend the Claimant did not fulfil his requirement to work the required notice period and this caused disruption to our operations both at the Store, where the Claimant was employed, our Studio operations and had a “domino” effect in disrupting our Online and Wholesale operations.

As a direct result and in order to provide full-time cover at the Store we had to divert more Senior Staff from our Studio and from our Online and Wholesale operations until a suitable replacement had been found for the Claimant.

The majority of the Staff who were subsequently re-directed to the Store were unable to complete their own projects within the required timeframes and as a direct result we were unable to satisfy customer deadlines.

Following the receipt of the Resignation letter we had pleaded with the Claimant on several occasions to complete his obligations and work the full notice period. The Claimant eventually did not honour his obligations and his action did have consequences. The Claimant was aware of the disruption that would occur due to his decision, however, he stated he would not change his decision “because I received an offer I could not refuse”. As a small independent organisation this did impact on our operations.

We estimate with the re-direction of Senior Staff, the delay to project completion for our customers, due to the re-direction, the disruption to the working timetable and our obligations to on-going staff for pre-arranged holidays in July, we suffered costs in excess of approximately £1200.”

- 8. I find that the Claimant’s departure was in breach of his notice provision.
- 9. I accept that Respondent may have been caused a degree of inconvenience by the Claimant’s departure and that Senior Staff may have carry out some different duties.
- 10. On the balance of probabilities however, I do not consider that the Respondent has proven any financial loss, whether due to costs incurred or to revenue foregone. I therefore dismiss the Respondent’s contract claim.

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**Employment Judge Adkin**

Dated:

14/5/20.....

Sent to the parties on:

15/5/20.

For the Tribunal:

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