



# EMPLOYMENT TRIBUNALS

**Claimant:**

Mr Alex Tait

**Respondent:**

NTP Hoistaid Ltd

v

**Heard at:**

Reading by Cloud  
Video Platform

**On: 29 September 2020**

**Before:**

Employment Judge Chudleigh

**Appearances**

**For the claimant:** In person

**For the respondent:** No attendance or representation

## JUDGMENT

- 1 In breach of contract, the respondent failed to pay the claimant in respect of his notice period. The respondent is ordered to pay the claimant damages for the breach in the sum of £956.25.
- 2 The respondent made an unlawful deduction from the claimant's wages by failing to pay him in respect of the travel work he undertook in September 2019. The respondent is ordered to pay the claimant the sum of £700 in respect of that work. This is a gross sum – the respondent can pay the sum net of appropriate deductions.

## REASONS

1. In a claim presented on 28 November 2019, the claimant made complaints relating to the respondent's failure to pay him in respect of his notice period and a failure to pay him wages in respect of the work he undertook when travelling

(visiting customers premises) in September 2019. He also made a claim for holiday pay but did not pursue that at the hearing.

2. Prior to the hearing the parties were sent a link to a hearing that was taking place by way of Cloud Video Platform (CVP) but the respondent failed to attend at 10am. The case was put back to 10.20 am and the clerk tried to telephone the respondent unsuccessfully. The respondent was also sent a second link to the CVP hearing, but still failed to attend.
3. It transpired after the hearing that the respondent had applied for an adjournment on 25 September 2020 on the basis that it needed more time to prepare and wanted to appoint a representative. That request was not acted on before the hearing and accordingly, I would have expected the respondent to have attended and if necessary, renew the adjournment application at the outset of the hearing.
4. In the circumstances, the hearing proceeded in the absence of the respondent. It had received the notice of the CVP hearing and failed to attend.
5. The issues for determination were as follows:
  - 1) Whether the respondent breached the claimant's contract of employment by failing to pay him in respect of his notice period and if so, the amount of damages that would be appropriate to award for the breach?
  - 2) Whether the respondent made an unlawful deduction from the claimant's wages by failing to pay him in respect of his travel work for the month of September 2019?.
6. The claimant attended the hearing and gave evidence under oath.
7. I made the following findings of fact: -
  - 7.1 The claimant commenced employment with the respondent in around September or October 2018 as a Hoist Installer. The contract contained a 4-week notice period.
  - 7.2 His work involved working at customers premises – referred to as “travel work”. It was paid a month after the relevant work was carried out, e.g. for travel work in September, the claimant would be paid in the October payroll (the 23<sup>rd</sup> of every month).
  - 7.3 The claimant's work also included on-site work that was paid for in the month the work in question was done..
  - 7.4 On 30 September 2019 the claimant served notice of resignation from his employment. He indicated that he would cease work on 23 October 2019 which was two days short of the 4-week notice period. He put that

day down as it was payroll day. He made clear to David Barford the operations manager before he resigned that he was more than willing to work the extra 2 days. He followed this up with WhatsApp messages to the respondent where he repeated this assurance.

- 7.5 David Barford subsequently told the claimant that all contact with the respondent had to go through Richard Mosley, the director. However, the claimant couldn't get hold of Mr Mosley despite trying via email, text and phone call.
  - 7.6 The claimant reported sick with a bad back on 1 and 2 October 2019. He was not entitled to sick pay for those days.
  - 7.7 The claimant rang in on 3 October 2019 to ask what work was available for him to do, but could not get hold of Richard Mosley. I concluded that Mr Mosley must have been deliberately avoiding speaking to him.
  - 7.8 On 4 October 2019 the claimant received a communication from the respondent indicating that as he had not given the full 4 weeks' notice, he was only entitled to 1 week's statutory notice and his employment would terminate on 7 October 2019.
  - 7.9 My finding is that when the respondent sent this communication, it knew that the claimant was willing to work until 25 October 2019.
  - 7.10 I also find that the claimant was not well enough to work on 1 and 2 October 2019, but thereafter he was ready and willing to attend work and perform his part of the employment contract.
  - 7.11 The claimant was not paid any money in respect of the notice period or his travel work for September 2019. The respondent claimed to be entitled to deduct course fees, but I heard no evidence on this point from the respondent and I was not satisfied that they should be deducted.
  - 7.12 The claimant managed to bring forward his start date at his new employer and he began on 16 October 2019 which mitigated his losses, so he was unpaid for 9 days in October 2019 and in respect of his travel work for September 2019. His daily rate was £106.25 gross. For 9 days this would amount to £956.25 which would have amounted to around £765 net (assuming 20% for statutory deductions).
  - 7.13 The least the claimant was usually paid monthly for travel work was £700 gross.
8. The claimant did give notice of termination that was 2 days short when he resigned, but he made clear that he was prepared to work the extra 2 days. It was therefore a breach of contract on the part of the respondent to fail to pay the claimant in respect of all the days in his notice period when he was willing and able to work. There were 9 such days.

9. The damages for this breach amount to £765 which the respondent is ordered to pay.
10. Under section 13 of the Employment Rights Act 1996, it unlawful for an employer to make a deduction from wages of a worker employed by him save in certain circumstances.
11. I was satisfied that the claimant was owed wages in the sum of not less than £700 for travel work in September 2019 which were not paid. I was not satisfied on the evidence that there was any reason for the respondent to withhold those wages. Accordingly, I concluded that the respondent made an unlawful deduction from the claimant's wages by failing to pay him in respect of that travel work.

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Employment Judge Chudleigh

Date: 29 September 2020.

Reasons sent to the parties on

21/10/2020

N Gotecha  
For the Tribunal office