



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mitchell Brown

**Respondent:** M Bryan Groundworks Limited

**Heard at:** Newcastle CFCTC (By CVP)

**On:** 9 February 2021

**Before:** Employment Judge Newburn

**Members:**

***Representation:***

**Claimant:** In person

**Respondent:** Paul Clark (Solicitor)

**JUDGMENT** having been sent to the parties on 9 February 2021, and written reasons having been requested in accordance with Rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:-

## REASONS

### The Issues

1. The issues to be considered in this matter were as follows:

2. Time limits:

2.1. Were the Claimant's claims for unfair dismissal, wrongful dismissal, and unauthorised deductions made within the time limits in sections 111 and 23 of the Employment Rights Act 1996 ('the Act'), and article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994? I needed to decide:

2.1.1. Whether the unfair dismissal and wrongful dismissal claims were made to the Tribunal within three months (plus early conciliation extension) of the effective date of determination.

2.1.1.1. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

2.1.1.2. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2.1.2. Whether the unlawful deduction from wages claim was made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made.

2.1.2.1. If not, whether there was a series of deductions and had the claim been made to the Tribunal within three months (plus early conciliation extension) of the last one.

2.1.2.2. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

2.1.2.3. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

3. If the Claims were in time, I would need to consider:

4. Unfair dismissal

4.1. Was the Claimant dismissed?

4.2. If the Claimant was dismissed, what was the reason or principal reason for dismissal?

4.3. Was it a potentially fair reason?

4.4. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

5. Remedy for unfair dismissal

5.1. If I found there to have been an unfair dismissal, I then needed to determine if there were to be a compensatory award to the Claimant for unfair dismissal, and if so, how much should it be?

6. Wrongful dismissal / Notice pay

6.1. What was the Claimant's notice period?

6.2. Was the Claimant paid for that notice period?

6.3. If not, did the Claimant do something so serious that the respondent was entitled to dismiss without notice?

7. Unlawful deduction from wages

7.1. Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

**The Hearing**

8. I was presented with a bundle of documents amounting to 133 pages as well as three witness statements, one from the Claimant himself, and two from the Respondent, these being from Mr Bryan, the Respondent company Director, and Mr Smith, the Respondent Company's accountant. The Respondent's representative also provided a skeleton argument as well as a page of authorities, copies of which were sent to the Claimant.

9. I heard evidence from the Claimant and all Respondent witnesses on affirmation.

**Findings of Fact**

10. The Respondent company provides groundwork services to businesses in the construction industry. The Claimant was employed by the Respondent company as a groundworker from 25 April 2016. Mr Bryan is the director of the Respondent company; he was the Claimant's boss and gave evidence on behalf of the Respondent.

11. As a result of the national lockdown announcement on 23 March 2020, the Respondent's work sites were closed from 24 March 2020 and the Respondent sent a letter to employees dated 24 March 2020 providing details of lockdown and informing all employees that they would be put on furlough and paid 80% of their wages.

12. The Claimant was put on furlough and the Respondent had confirmed he would be in receipt of 80% of his salary from 24 March 2020. From this date he did not attend site or carry out any work for the Respondent company.

13. On Monday 27 April 2020, Mr Bryan sent a text message to the Claimant informing him that he was required to return to work the following Monday, 4 May 2020.

14. On Sunday 3 May 2020, the Claimant sent a response to that message stating that he would not be attending work for "*at least a week or 2*" due to completing some property works at his Grandmother's flat and stated that he would simply "*go on normal sick*" until this work was completed.

15. Mr Bryan replied by text shortly after to say, "*I need you [in] Tomorrow*", followed by a further message reading "*I want you there tomorrow mind*".

16. The Claimant responded to this by text stating that he would not return to site due to safety concerns relating to coronavirus as his Grandmother was vulnerable and

needed to shield. The Claimant further stated that his Aunt had set up furlough payment for a number of company workers and had advised him that employers could keep employees with shielding relatives on furlough wages but that was “ultimately up to the employer”. The Claimant further iterated to Mr Bryan the strength of his feelings on the subject stating:

*“I don’t care if I get it or sick or even 2000 a week it wouldn’t cover killing me granny off. I’ve already spent 700 pund for stuff for flat so I can comeback to work once it’s ready”.*

17. A few minutes after receiving this message Mr Bryan called the Claimant and a conversation took place. Mr Bryan informed the Claimant of the steps put in place to ensure the site would be safe.
18. The Claimant informed Mr Bryan that his position remained the same and confirmed he would not be returning to site on Monday. Mr Bryan told him if he did not attend work on Monday, not to bother coming back and terminated the conversation.
19. Shortly after this conversation Mr Bryan sent a message to inform the Claimant that he would was sending someone over to collect the company property, this comprising scaffolding equipment that Mr Bryan had permitted the Claimant to use for his personal renovation works. The scaffolding was collected later that week by another of the Respondent’s employees. The Claimant had a conversation with that employee who asked the Claimant why he had been dismissed.
20. The Claimant considered Mr Bryan’s actions in dismissing him to be unreasonable.
21. There was no contact between the parties thereafter until 26 May 2020, on which date the Claimant sent the Respondent a text requesting his P45, P60, a letter confirming the reasons for his termination, payslips, and holiday pay due to him.
22. The Respondent did not respond, however on 3 June 2020 the Claimant received a payment of £587 into his bank account from the Respondent. The Claimant did not receive any information to explain what the payment related to or comprised.
23. After sending his text message on 26 May 2020, but before 14 July 2020, the Claimant accessed and obtained advice from the Citizens Advice website.
24. On 14 July 2020, the Claimant sent the Respondent a letter by recorded delivery requesting the same information as detailed in his text of 26 May 2020.
25. On 25 July 2020, the Claimant received payslips for the tax years 2019/2020 and 2020/2021, as well as a P60 from the Respondent’s accountant.
26. Further to receiving the payslips the Claimant was able to speak with his Aunt who had experience in HR and payroll. He gave his payslips to her and she took them away to review them. She informed him he needed to seek some further

information from the Respondent as she believed the furlough calculation looked to have been carried out incorrectly.

27. On 4 August 2020, the Claimant sent a further letter by recorded delivery to the Respondent in which he suggested that he believed his furlough wages had been paid incorrectly and requested an explanation as to what the £587 payment he had received related to. He also requested a new P45 and confirmation as to why his employment had been terminated.
28. On 29 August 2020, the Claimant received a P45 along with a payslip dated 8 May 2020 regarding the £587 payment he had received on the 3 June 2020. The payslip stated this sum comprised 1 day furlough pay and 6 days salary.
29. On 8 September 2020, the Claimant contacted ACAS; the ACAS certificate was issued on 10 September 2020.
30. 6 days later, on 16 September 2020, the Claimant submitted an ET1 making claims in respect of unfair dismissal, wrongful dismissal, and unlawful deduction from wages.
31. The Claimant claimed that he had been dismissed on 3 May 2020 by Mr Bryan during their telephone call. The Respondent did not accept that Mr Bryan had dismissed the Claimant but submitted that if the Claimant had been dismissed on 3 May 2020, his claims were presented to the Tribunal out of time.
32. The Claimant stated that the reason he had presented his claims out of time was because the Respondent had not sent information that he had requested in his text and letters.

#### Furlough payments

33. The parties had agreed that the relevant pension contributions for the Claimant was 3% Employer pension contribution and 5% Employee pension contribution.
34. The Claimant received 5 weeks and 2 days furlough pay, this comprising 2 days furlough pay at a total sum of £156.40 on 26 March 2020, and thereafter 5 weekly payments in the sum of £391.00 received on 3, 14, 17, 24 April, and 1 May 2020, the total net furlough payment amounting to £2,11.40.
35. The Claimant claimed that the furlough pay was underpaid to him as the Respondent's calculation was incorrect.
36. Both parties agreed that the Claimant's furlough calculation should have been based on his normal weekly earnings, however the parties disagreed on what his normal weekly earnings were.
37. The Respondent's accountant gave evidence regarding the furlough pay. He confirmed that he created the Claimant's original payslips that had been sent to the Claimant on 25 July and 29 August 2020.

38. The Respondent's accountant had prepared a spreadsheet at pages 46 and 47 of the bundle from the RTI submissions made to HMRC demonstrating the information the Respondent had submitted to HMRC in respect of the Claimant's salary. It set out columns showing the Claimant's gross and net salary, and included details of the tax, national insurance, and employer and employee pension payments for each weekly payment.
39. The Respondent's accountant explained that the initial payslips sent to the Claimant were generated from his accounts software system. Ordinarily the Respondent accountant's clients, including the Respondent company, would contact him and confirm their employee's agreed salaries which he would input into the payroll system. The system then uses this figure when generating payslips and P60s, and when making RTI submissions to HMRC.
40. The Respondent accountant confirmed that unless the Respondent company contacted it to confirm a change to the initially detailed agreed salaries, the payroll system would continue to use the figures it had stored in the system to generate RTI submissions and payslips.
41. The original payslips sent to the Claimant, which appeared at 45J to 45L in the bundle, covering the furlough period, indicated that the Claimant's net weekly furlough pay was £322.52.
42. The Respondent's accountant had reviewed those payslips and concluded that they were incorrect. He believed they were incorrect because at that time the payroll software required an update. He believed that the payroll software had calculated the Claimant's furlough salary by taking 80% of his wage based on the average of his 13 weeks salary prior to the furlough payments. The Claimant's average wage had been depressed as during this 13-week period he had a number of absences.
43. The Respondent asserted the Claimant's average weekly salary was £589.50, giving an average net salary of £450.02.
44. The Respondent's accountant therefore amended the Claimant's payslips for the furlough period. On 10 December 2020, copies of the amended payslips were given to the Claimant and appear at page 42 – 45 of the bundle. The amended payslips showed furlough pay being calculated using £589.50 as the Claimant's normal gross weekly salary. 80% of this figure gave a gross weekly furlough sum of £471.60, and a net payment of £376.72.
45. The actual sum paid to the Claimant amounted to £391 per week and the Respondent thereby believed the Claimant had been overpaid.
46. The Respondent's accountant and the Claimant both suggested that the weekly furlough pay of £391 which he received into his bank account appeared to have been arrived at using a simple calculation of taking 80% of the Claimant's net weekly wage of £489.

47. In the Claimant's original Schedule of Loss dated 30 October 2020, the Claimant based his calculations on a weekly net payment figure of £468.88 which amounted to a weekly pay of £450 plus the employer's weekly pension contribution of £18.88. He took those figures directly from the payslips he had received from the Respondent on 25 July 2020.
48. On 16 December 2020, further to having received the amended payslips, the Claimant submitted an amended Schedule of Loss in which his calculations were instead based on the average weekly pay taken from his bank statements rather than his payslips. The Claimant said this was because the payslips provided to him by the Respondent did not reflect the sums he received into his bank account.
49. The Claimant's bank statements at 47F to 47K of the bundle demonstrated that the sums that appeared on his payslips were not equivalent to the sums he received. Clearly, some payslips showed he earned money on weeks when in fact no money was received into his account, and in other weeks the net sum stated on the payslips were less than he had received into his bank.
50. In April 2017, the Claimant had received a pay rise so that his net pay was increased from £400 to £450. Page 47B of the bundle shows the Claimant's bank statement for this period and demonstrates that Claimant's pay increased by a net of £50.
51. The following April, in 2018, the Claimant had a discussion with Mr Bryan during which it was agreed he would receive a further pay rise. It was agreed that the Claimant's net weekly salary should be increased by £50 so that his net weekly salary should be around £500 instead of £450. After payment of his pension contribution, the Claimant stated his normal net weekly salary was around £489.
52. The Claimant's bank statement at page 47B demonstrated that from June 2016 to May 2018 the Claimant's weekly pay was around £450, and page 47D to 47K demonstrated that from May 2018 the Claimant's net weekly pay increased to show an average net pay of around £489 per week.
53. The Claimant's amended schedule of loss used calculations in which he based his net weekly salary on £489.12. The Claimant used the website <https://listentotaxman.com/> to gross up his net pay, giving a gross salary of £658 per week alongside a 5% employee pension contribution. The screenshot of this calculation appeared at 41D and 41D1 of the bundle.
54. The Claimant therefore calculated that the total gross furlough payment that he should have received was £2,842.56.
55. The Respondent's accountant accepted that if the furlough pay were to be based on the Claimant's average net salary being £489.12, then furlough was underpaid.
56. However, the Respondent submitted that the Claimant had accepted in his ET1 that his salary was £589.50 gross and £450 net. The Claimant was also asked in evidence if he accepted that his salary had increased so that his net take home pay was £450, and he confirmed this to be correct.

## Relevant Law

### Time limits for claims of unfair dismissal, unpaid wages, and notice pay

57. By section 111(2) of the Act, a Tribunal shall not consider a complaint for unfair dismissal or wrongful an dismissal unless it is presented to a Tribunal:
- (a) before the end of the period of 3 months beginning with the effective date of termination; or
  - (b) Within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to have been presented before the end of that period of 3 months.
58. For unpaid wages claims, section 23 of the Act provides:
- (1) *A worker may present a complaint to an employment tribunal:*
    - a. *that his employer has made a deduction from his wages in contravention of section 13 ...*
  - (2) *Subject to subsection (4, an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with-*
    - a. *In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made ...*
  - (3) *Where a complaint is brought under this section in respect of-*
    - a. *A series of deductions or payments ... the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*
  - (4) *Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*
59. Article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 make similar provision. The time limit running from the date of deduction (or non-payment) of wages, the date payment should have been made, and the last day of employment.
60. The burden of proof in showing that it was not reasonably practicable to present the claim in time rests upon the Claimant; see Porter v Bandridge Ltd [1978] ICR 943 CA. If the Claimant does succeed in doing so then the Tribunal must also be



satisfied that the time in which the claim was in fact presented was in itself reasonable.

61. In Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 CA May LJ referred to the test as being in effect one of “reasonable feasibility” (in other words somewhere between the physical possibility and pure reasonableness).
62. In Asda Stores Ltd v Kauser EAT 0165/07 Lady Smith described the reasonably practicable test as follows: “the relevant test is not simply looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done”.
63. The Respondents Representative directed my attention to a number of authorities including Marks & Spencer plc v Williams-Ryan [2005] EWCA Civ 470, Wall’s Meat Co Ltd v Khan [1978] IRLR 499, Riley v Tesco Stores Ltd [1980] IRLR 103, Edwards v Surrey Police [1999] IRLR 456.

#### Unfair Dismissal

64. The test for an unfair dismissal is set out in sections 98(1), (2) and (4) of the Act as follows:
  - “(1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show:*
    - (a) *the reason (or, if more than one, the principal reason) for the dismissal; and,*
    - (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
  - (4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -*
    - (a) *depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and,*
    - (b) *shall be determined in accordance with equity and the substantial merits of the case.”*
65. The Respondents Representative directed my attention to a number of authorities including Martin v MBS Fastenings (Glynwed) Distribution Limited [1983] IRLR 198 CA, Sothorn v Franks Charlesly & Co [1981] IRLR 278, East Kent Hospitals University NHS Foundation Trust v Levy (UKEAT/0232/17/LA, Kwik-Fit (GB) Ltd v

Lineham [1992] IRLR 156, Edwards v Surrey Police [1999] IRLR 456, Sandle v Adecco UK Ltd (UKEAT/0028/16/JOJ).

Unlawful deductions:

66. Section 13(1) the Act provides:

*“13 Right not to suffer unauthorised deductions.*

- (1) *An employer shall not make a deduction from wages of a worker employed by him unless—*
- a. the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or*
  - b. the worker has previously signified in writing his agreement or consent to the making of the deduction. that a worker has the right not to suffer unauthorised deductions from wages.”*

**Conclusions**

Was the Claimant Dismissed?

67. The first issue to determine in this case was whether the Claimant was dismissed by the Respondent.
68. In this case the Claimant relied on Mr Bryan’s words during their telephone conversation of 3 May 2020.
69. The Respondent’s representative directed my attention to East Kent Hospitals University NHS Foundation Trust v Mrs P Levy [2018] WL 04339499 and submitted that Mr Bryan’s words were ambiguous and highlighted that in determining the true meaning of those words the test is an objective one. Where words of dismissal are considered ambiguous I should consider all the surrounding circumstances (both preceding and following the incident) and should ask how a reasonable employee would have understood those words in the light of those circumstances.
70. The Respondent’s representative further directed my attention to the case of Kwik-Fit (GB) Ltd v Lineham [1992] IRLR 156 and submitted that Mr Bryan’s words were said in the heat of the moment and while he was under extreme stress. He submitted that this amounted to “special circumstances” and the Claimant ought reasonably to have known that these words should not have been taken seriously.
71. Considering the authorities and applying the relevant legal test I reached the conclusion that a reasonable recipient of the words spoken in the surrounding circumstances would have considered them to mean the Claimant was dismissed.
72. Whilst it is possible to conceive of an argument that Mr Bryan’s words suggested an element of choice which could indicate ambiguity, the Claimant had been

unequivocal in his confirmation that he would not be attending work due to his health and safety concerns for his Grandmother and had set this out in his text messages to Mr Bryan and again during their telephone call.

73. In these circumstances, Mr Bryan's words did not provide an element of choice to the Claimant and so would not have been considered ambiguous.
74. However, even if I had considered that Mr Bryan's words were too ambiguous to amount to words of dismissal, or that they were words spoken in the heat of the moment and the Claimant ought thereafter to have sought further clarity on them, I find that the action of the Respondent in arranging for collection of the company property from the Claimant (the scaffolding) after this telephone call taken in conjunction with these words did provide such clarity and would be understood in conjunction with the Respondent's words by a reasonable employee as solidifying the Respondent's intention to dismiss.
75. In the circumstances, I find that the Claimant was expressly dismissed by the Respondent for the purposes of section 95(1)(a) on 3 May 2020, and that this was the effective date of termination of the Claimant's employment.
76. This precipitated a consideration as to the Tribunal's jurisdiction to hear the claim.

Time limit for unfair dismissal and wrongful dismissal

77. In accordance with S.111 of the Act and article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, further to his dismissal on 3 May 2020, the deadline for the Claimant to present his claim unfair dismissal and wrongful dismissal claims to the Employment Tribunal was 2 August 2020.
78. The Claimant did not commence Early Conciliation with ACAS until 8 September 2020. The ACAS Early Conciliation Certificate was issued on 10 September 2020 and thereafter the Claimant did not present his claim to the Employment Tribunal until 16 September 2020.
79. The Claimant stated that the reason for this delay was due to the Respondent's failure to provide him with information he had requested.
80. The Claimant gave evidence that he believed that he had been dismissed by Mr Bryan during their call on 3 May 2020 and that he had felt this was an unreasonable action. Further to his dismissal, the Claimant did not need any further information from the Respondent to commence Early Conciliation and thereafter to present his claim for unfair dismissal within the time limits.
81. The Claimant is an intelligent man who, since following the termination of his employment with the Respondent set up and now runs his own business. The Claimant felt that the Respondent's actions in dismiss him were unreasonable and he confirmed that he used the internet to obtain advice from Citizen's advice regarding his employment and its termination sometime before 14 July 2020. The Claimant therefore had access to, and was capable of, conducting the necessary

research or seeking out the necessary advice regarding a potential claim for unfair dismissal and the relevant time limit in order to submit his claim in time.

82. Even if I were to find that it was not reasonably practicable for the Claimant to present his claim in time, I would then have needed to decide whether he presented his claim 'within such further period as the Tribunal considers reasonable' (section 111(2)(b) of the Act). The relevant considerations under this test were set out by Mr Justice Underhill in Cullinane v Balfour Beatty Engineering Services Ltd EAT 0537/10.
83. The time limit for submitting the claim to the Tribunal was 2 August 2020. The Claim was not presented to the Tribunal until the expiration of a further 6 weeks on 16 September 2020.
84. In the circumstances of this case, I find that it was reasonably practicable for the Claimant's unfair dismissal and wrongful dismissal claims to be presented on time and, as a consequence, they are out of time. The Tribunal had no jurisdiction to hear those claims and they were dismissed.

#### Unlawful deduction from wages

85. The last payment the Claimant received into his bank was on 3 June 2020. The time limit for presenting his claim for unlawful deduction from wages therefore ended on 2 September 2020.
86. The Claimant did not enter into Early conciliation until 8 September 2020, and presented his claim to the Tribunal on 16 September 2020. The Claimant was therefore out of time in relation to his unlawful deduction from wages claim.
87. I therefore needed to consider whether it was reasonably practicable for the Claimant to bring his unlawful deduction from wages claim in time.
88. The Claimant had submitted the reason he had failed to present his claims to the Tribunal in time was because the Respondent had not provided him with information he had requested.
89. The Claimant had not received any regular payslips from the Respondent through his time working for the company and he had received none at all for the tax year 2019/2020 until 25 July 2020, further to his requests for the same. At this point he was provided with payslips for the 2019/2020 tax year as well as 4 weeks of the 2020/2021 tax year but this still did not include the payslip for his 3 June 2020 final payment. Thereafter, he did not receive his P45 and his final payslip until 29 August 2020.
90. Without this information, it would have been difficult for the Claimant to take a view on whether his furlough payment was correct or not. The Claimant made a number of efforts to obtain information which should have been provided to him in the ordinary course of his employment.

91. The furlough scheme was complex and guidance had been released in a piecemeal manner from the Government regarding how it should be operated, which changed a number of times over the course of April to October 2020. The Claimant would have needed additional time to consider this element of his claim and it was not therefore reasonably practicable for him to have brought this claim within the time limit having only received his final payslip and P45 from the Respondent on 29 August 2020.
92. I then considered whether the Claimant did then present his claim within such further period as would be considered reasonable.
93. The time limit for submitting the unlawful deductions claim was 2 September 2020. The Claimant did not receive his final payslip from the Respondent until 29 August 2020. The Claimant entered into Early conciliation on 8 September 2020 and the claim was presented on 16 September 2020 thereafter.
94. I consider, in light of the complexity of the furlough scheme and the significant delay in the provision of information from the Respondent, the Claimant did present his claim for unlawful deductions within a reasonable period of time after the deadline for presenting his claim.
95. Accordingly, the Tribunal had jurisdiction to hear the Claimant's claim for unlawful deduction from wages.

#### Furlough payments

96. The Respondent and the Claimant both accepted that the furlough payment should be based on the Claimant's average weekly salary. The Respondent confirmed his salary was £589.50 gross and £450 net.
97. The Claimant initially agreed that his weekly salary amounted to £589.50 gross and £450 net and these sums were included in his ET1.
98. In evidence the Claimant was directly asked if his weekly salary had been increased to £450 net and he confirmed this to be correct.
99. The Claimant's furlough payment would equate to the sums as set in the amended payslips at pages 42 to 45 of the bundle, these sums being less than the actual amount the Claimant was paid by the Respondent.
100. Accordingly, the Claimant was not due any further payment in relation to his furlough as he had been overpaid.

#### **Summary**

101. The Claimant's claims for unfair dismissal and wrongful dismissal are out of time and are dismissed.
102. The Claimant's claim for unlawful deduction from wages is not well-founded and is dismissed.

**EMPLOYMENT JUDGE NEWBURN**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 28 April 2021**

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The hearing of 9 February 2021 had been a remote hearing which has not objected to by the parties. The form of remote hearing was video (V). A face to face hearing was not held because it was not practicable, no-one requested the same and all the issues could be determined in a remote hearing.