



# EMPLOYMENT TRIBUNALS

**Claimant:** Jack Pearce

**Respondent:** National Business Communications Limited

**Heard at:** London South Employment Tribunal, sitting at Croydon, via CVP

**On:** 27<sup>th</sup> May 2021

**Before:** Employment Judge Apted

## **Representation**

Claimant: Mrs Rees-Biddle

Respondent: did not attend – not represented.

# JUDGMENT

**The hearing has been a remote hearing which was not objected to by the parties. The form of remote hearing was video by Cloud Video Platform (CVP). A face-to-face hearing was not held because it was not practicable because of the Covid-19 virus.**

1. The claimant's complaint that there was an unauthorised deduction from his wages is well founded.
2. The respondent is ordered to pay to the claimant the gross sum of £623.08 representing a week's notice pay of £346.15, 3.5 days accrued but untaken holiday pay at £242.31 and one half day's pay for the 5<sup>th</sup> July 2019 of £34.62.

# REASONS

These reasons are provided at the Respondent's request.

## **Introduction:**

3. The claimant, Jack Pearce, was employed by the respondent, National Business Communications Limited, on the 10<sup>th</sup> June 2019 as a Business Development Executive. The claimant was dismissed by the respondent on the 25<sup>th</sup> July 2019.

4. The claimant submitted a claim for unlawful deduction of wages on the 1<sup>st</sup> November 2019 on form ET/1 and the respondent replied on the 17<sup>th</sup> February 2020 on form ET/3.
5. At a hearing on the 30<sup>th</sup> April 2020, Employment Judge Cheetham QC identified the claims of unlawful deduction of wages as:
  - A shortfall in wages of £398.46
  - Wages for the 5<sup>th</sup> July 2019 of £69.23
  - One week's notice pay of £346.15
  - 3.5 days accrued but untaken holiday pay of £249.22 and
  - The deduction of training money of £260.
6. The total amount being claimed was therefore £1,323.06.

**Preliminary Issues:**

7. The case was listed for a final hearing on the 27<sup>th</sup> May 2021. On the 26<sup>th</sup> May 2021, the respondent applied to postpone the hearing. This application was considered and refused by Regional Employment Judge Freer on the same day.
8. On the 27<sup>th</sup> May 2021, at 10am, the Tribunal received an email from the respondent, saying that they would be unable to attend. I took that email to be a further request for a postponement. Contrary to what was said in that email, the respondent had been informed on the 28<sup>th</sup> April 2021 of the date of the hearing. The matters dated back to July 2019 and an application for a postponement had already been made and refused on the same grounds by the Regional Employment Judge. Having considered rule 30A of the Employment Tribunal Rules and the Presidential Guidance on Postponements, I refused to postpone the hearing. I also considered rule 47 of the Rules and decided to proceed in the absence of the respondent for the same reasons.

**The hearing:**

9. The claimant attended the hearing via CVP, represented by his grandmother. There was also a witness – Melanie Spencer – who attended on his behalf, also via CVP. Both the claimant and Ms Spencer gave sworn evidence.
10. I was in possession of an indexed and paginated bundle totalling 128 pages. This included witness statements submitted on behalf of the respondent. All of this evidence was taken into account in reaching my decision. I have only referred to evidence as is necessary to explain my decision. The fact that evidence is not referred to, does not mean that it was not considered.
11. At the outset of the hearing, the claimant accepted that in September 2019, he had received a further payment of £484.61 from the respondent. Accordingly, his claim for unlawful deduction of wages was amended as follows:
  - A week's notice pay at £346.15
  - 3.5 days accrued but untaken holiday pay at £242.31
  - Half a day's pay for the 5<sup>th</sup> July 2019 at £34.62
  - Cost of training course fees at £260.
12. The total amount now being claimed was therefore £883.08.

**The Law:**

13. Part II of the Employment Rights Act 1996 prevents an employer from making any deductions from the wages of workers, save in the specified circumstances. Once such circumstance under section 13 of the Employment Rights Act 1996, is if the worker has previously agreed in writing to the making of the deduction.
14. Under regulation 14 of the Working Time Regulations 1998, a worker is entitled to receive payment in lieu of any untaken leave in the leave year of termination, calculated proportionality to the leave year.

**The Facts:**

15. The relevant facts are as follows. The claimant was employed by the respondent on the 10<sup>th</sup> June 2019 as a Business Development Executive. Under the terms of his contract of employment he was to be paid a salary of £18,000 per annum, he would be entitled to 20 days paid leave per year and he was entitled to one week's notice of the termination of his employment during his probationary period.
16. In an agreement signed by the claimant on the 28<sup>th</sup> May 2019, the claimant agreed to reimburse to the respondent the sum of £260 for a Sales Training Course if the claimant was dismissed for any reason during his six-month probationary period. The contract of employment stated that such a sum would be deducted from wages.
17. On the 25<sup>th</sup> July 2019, the claimant's employment was terminated following a review of his attendance and performance with immediate effect. In a letter sent to the claimant on the same date, Melanie Spencer from Human Resources, on behalf of the respondent, confirmed that the claimant's last date of employment was the 24<sup>th</sup> July 2019.
18. Ms Spencer gave evidence that in June 2019, she was employed in the Human Resources Department of the respondent and that she was the person who had "hired" the claimant. She confirmed that he had been dismissed on either the 24<sup>th</sup> or 25<sup>th</sup> July 2019.
19. The claimant gave evidence that he had been dismissed on the 25<sup>th</sup> July 2019, having received the letter from Ms Spencer of the same date and that he had not been paid a week's notice pay, 3.5 days accrued but untaken annual leave and half a day's pay for the 5<sup>th</sup> July 2019 when he had been sent home from work early.
20. In an email dated the 26<sup>th</sup> July 2019, Ms Spencer had been reminded of her outstanding tasks, one of which referred to the claimant, which should have been completed by the 25<sup>th</sup> July 2019.

**Findings and conclusions:**

21. I therefore find that the claimant was dismissed on the 25<sup>th</sup> July 2019. There does not appear to be any dispute about that. Accordingly, under the terms of his contract of employment, the claimant was entitled to one week's notice pay.
22. There is a suggestion in the bundle that the claimant had not attended work between the 15<sup>th</sup> July 2019 and the 24<sup>th</sup> July 2019. However, given that the respondent's witnesses did not attend the hearing, there is little weight that I could attach to their evidence. Other documents in the bundle suggest that the claimant had attended work between the 15<sup>th</sup> July 2019 and the 24<sup>th</sup> July 2019 and I therefore find that the claimant did work up until the 24<sup>th</sup> July 2019.

23. It also appears to be agreed between the claimant and the respondent that he attended work on the 5<sup>th</sup> July 2019 and was sent home at about lunchtime. In my judgment, the differing reasons as to why he was sent home are immaterial. I find that he attended work, was ready to work and was then sent home, as is agreed. I therefore find that the claimant is entitled to be paid for that half day's work.
24. As at the date of termination, the claimant had accrued 3.5 days untaken annual leave. Having been dismissed, he is entitled to be paid for that untaken leave.
25. The terms of the contract of employment clearly stated that if the claimant were dismissed for any reason, the respondent was entitled to be reimbursed for the cost of the claimant's training course and such a sum could be deducted from wages. Having dismissed the claimant, in my judgment the respondent was therefore entitled to deduct the cost of this training course.
26. I therefore find that the claimant's claim for unlawful deduction of wages is well founded in part.
27. The respondent is ordered to pay to the claimant the gross sum of £623.08 representing a week's notice pay of £346.15, 3.5 days accrued but untaken holiday pay at £242.31 and one half day's pay for the 5<sup>th</sup> July 2019 of £34.62.

Employment Judge **Apted**

Date: 9<sup>th</sup> June 2021.