



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Hanus  
**Respondent:** IECC Care Limited  
**Heard at:** East London Hearing Centre  
**On:** 13 May 2021  
**Before:** Employment Judge Russell

**Representation**  
**Claimant:** In Person  
**Respondent:** Mr R Bhaskar (Manager)

## RESERVED JUDGMENT

1. The Claimant was not dismissed by the Respondent. The claim of unfair dismissal fails and is dismissed.
2. The Respondent made an unauthorised deduction from the Claimant's wages in respect of:
  - (i) Mileage expenses: 5789 miles @ 45p per mile: £2,645.55
  - (ii) Deduction for a car key: £100
  - (iii) Unpaid wages for 1.25 hours on 24 May 2019: £13.38
3. No other unauthorised deductions were made from the Claimant's wages.
4. The total sum of £2,758.93 is payable in 28 days.

## REASONS

1. By claim form presented to the Employment Tribunal on 4 December 2019, the Claimant brought complaints of unfair dismissal, unpaid holiday pay, unpaid wages, unpaid mileage expenses and for payment in respect of the deterioration of his car whilst using it for business.
2. I heard evidence from the Claimant on his own behalf assisted by an interpreter in the Czech language. For the Respondent I heard evidence from Ms T Gulumba (Care Co-ordinator), Mr K Omane (former Administrative Officer), Mr R Bhaskar

(Payroll Administrator) and Mr P Bhaskar (Manager). I was provided with an agreed bundle of documents and some additional documents supplied during the course of the hearing. I read those to which I was taken in the course of the evidence.

3. I was greatly assisted by the summary of the issues set out in the Preliminary Hearing Summary dated 13 March 2020 by Employment Judge Burgher. These are:

- 3.1 Was the Claimant dismissed by Mr P Bhaskar, the Respondent's operations manager, by telephone on 28 June 2019 following the Claimant raising complaints about shortfalls in payments due to him?
- 3.2 If so, was the sole or principal reason for dismissal the fact that the Claimant asserted his statutory right not to suffer deductions from wages? The Respondent's case is that the Claimant abandoned rostered shifts to 7 clients on 28 June 2019. The Claimant denies that he abandoned shifts.
- 3.3 Was the Claimant paid less than that to which he was contractually entitled for work done in the months of February to June 2019 inclusive? The disputes are:

Month	Hours Worked	Hourly Rate	Holiday	SSP	Deduction
3/19	2.25 hours	C: own car R: co car	C: 32 hours R: 16 hours		
4/19	1 hour  £364.88 days worked – C says not paid, R says paid in 6/19	C: own car R: co car	Bank holiday		
5/19	13.75 hours, 17/5/19  £364.88 days worked – C says not paid, R says paid in 6/19	C: own car R: co car		C: £188.15 R: £94.25	
6/19	35.5 hours (3 hrs wk1; 12.5 hrs wk 2; 17.5 hrs wk 3; 2.25 hrs wk4)	C: own car R: co car			£100 lost car key  £364.88: repayment of advance or deduction.
7/19	9 days' pay: C says enforced leave; R denies.	C: own car R: co car			

- 3.4 Was the Claimant contractually entitled to mileage expenses of £5,739.75 (14,959 miles @ HMRC rate of 40pence per mile)? The Claimant relies upon an agreement with Mr Bhaskar; the Respondent denies any such agreement as the Claimant was provided with a company fuel card.

## Law

4. The Employment Rights Act 1996 (“ERA”) s.13 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deductions are required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker’s contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

5. A deduction occurs when an employee or worker is paid less than the amount due on any given occasion including a failure to make any payment, s.13(3) ERA.

6. I must first consider whether there has in fact been any deduction, in other words what amount was due to the claimant under the terms of his contract. In the event that I conclude that a lesser sum was paid, I must consider whether the provisions of the contract amounted to a relevant provision authorizing such deduction.

7. An employee may present a complaint of unfair dismissal to the Employment Tribunal the contract of employment is terminated by the employer or if he resigns in circumstances where he is entitled to treat himself as dismissed by reason of the conduct of the employer, section 95 Employment Rights Act 1996. No minimum period of continuous service is required where the dismissal is solely or principally because the employee has asserted a statutory right, section 104 ERA. The Claimant in this case asserts that there was an express dismissal by the Respondent; the Respondent says that the Claimant resigned.

8. In deciding whether there was a dismissal by the employer, the question is “who *really* ended the contract of employment?”, see **Martin v Glynwed Distribution Limited** [1983] IRLR 198.

9. Where the employer uses language which it did not intend to constitute a dismissal but which the employee interpreted as a dismissal, the Tribunal must have regard to the words used and the context in which they occurred to decide whether they did indeed constitute a termination by the employer.

## Findings of Fact and Conclusions

10. The Claimant was employed by the Respondent as a Domiciliary Care Support Worker from 16 January 2019. The offer letter provides for a basic starting salary of £9.70 per hour when using the company vehicle and £10.70 per hour using your own vehicle. Mr P Bhaskar would review the job role and salary after four weeks and, after three months’ service, certain long-distance clients would attract a higher rate of £12.70 per hour.

11. A written contract of employment was provided to the Claimant and signed by him. Clause 7 sets out the rates of pay consistent with the terms of the offer letter. Clause 8 reserves the right of the Respondent to make deductions from wages for losses sustained during employment caused through the employee’s conduct, carelessness, negligence, recklessness, breach of company rules or dishonesty. The hours of work as stated at 40 per week organised according to a rota to be provided by the company in advance. There is no guaranteed specific shift pattern and there is an express provision allowing for hours to be modified in accordance with the needs of the company. Employees were required to complete a monthly or weekly time sheet

submitted by a specified deadline to ensure receipt of payment at the correct time. The pay cut off dates for the year are published in advance.

12. The holiday entitlement is 28 days in a leave year running from 1 January to 31 December. Clause 22 provides that where required to use your own vehicle to carry out your duties, the employee must ensure that the vehicle is insured accordingly for business use. The Employee Handbook provides that the company will reimburse authorised and legitimate expenditure reasonably incurred during the proper performance of duties, such as travel, upon completion of an expenses claim form and support by submitting valid receipts.

13. The Claimant signed an authority to make deduction from wages where his carelessness or negligence caused the company or customers to suffer loss or damage to work equipment. Where particularly serious, the employee may be liable to pay the full or part cost of repair or replacement or insurance excess if appropriate.

#### *Own car/company car rate*

14. The Claimant was provided with a company car, EN08VRX, and a company fuel card. The Claimant's evidence is that due to problems with the company car, he started using his own car from mid-March on an ad hoc basis and then regularly from 19 April 2019. The Claimant's fuel card records give the registration number as captured on the petrol station vehicle recognition system. The records show that the first time that the Claimant used a different registration number was on 1 April 2019. I consider this to be reliable evidence and find that until 19 April 2019 the Claimant was predominantly using the company car with use of his mother's car, E53 BWV, on some occasions. This is consistent with contemporaneous text messages between the Claimant and Mr P Bhaskar referring to an impact with a pheasant whilst driving, photographs showing damage to the front of the vehicle which required work at a garage and a change from 19 April 2019 to register his fuel card to vehicle 8T2 1951, his own Czech registered car. Prior to 19 April 2019, there are no text messages referring to problems with the company car or use of the Claimant's own car.

15. Clause 22 refers to use of the employee's own car where "required" and I find that that employees were not entitled to choose when to use their own car and attract a higher hourly rate of pay. In the circumstances, it was only for the period 19 April 2019 to 24 June 2019 when the company car was in the garage that the Claimant was contractually entitled to own car rates of pay.

#### *Hours of Work*

16. Several versions of the rotas for the months of March to July 2019 are included in the bundle. There are 9 lists of clients (referred to as "lines") requiring visits from the care team of two individuals; the rota gives the names of the clients to be visited in the morning, afternoon, evening and overnight shifts. The rotas are subject to regular change often at short notice to the Respondent or the carers due to visit, for example, where clients are admitted into hospital and no longer require care. The rota would be amended by hand to cross out the client not visited and the employee would be paid according to the amended rota.

17. Text messages between the Claimant and Mr R Bhaskar indicate that he was raising queries about his pay from as early as 13 February 2019 as Mr P Bhaskar had agreed that he would be entitled to the higher rate following the four week review. The

Respondent agreed. The Respondent has produced a series of spreadsheets and an accompanying narrative in support of its case that the Claimant was properly paid in full for all hours worked. The Claimant has also produced his own spreadsheet analysis of each month's pay. I resolved the disputes by having regard to each analysis, the original rotas, the amended rotas, the Claimant's time sheets, contemporaneous documents supporting changes in client needs and text messages between the parties.

18. The dispute on the March 2019 pay is in respect of 2.25 hours deducted on 25 February 2019. The amended rota for the day has deleted care visits for a client, ST. On his time sheet, the Claimant has claimed for his hours on the original rota. He disputes that ST's visits were cancelled. The Respondent's invoice to Essex County Council in respect of ST's care show 18 hours' care provided in the week ending 23 February 2019 and none thereafter. This is consistent with the Respondent's evidence that ST was admitted to hospital and no care was provided thereafter. On balance, I find that the Claimant did not work the 2.25 hours on 25 February 2019 and there was no underpayment.

19. The dispute on the April 2019 payslip is for one hour on 19 March 2019. The Claimant's time sheet records an hour when he was stuck at the client's home due to maintenance problems on the road. The total number of hours claimed on the timesheet is 60.75; the Respondent's spreadsheet and the payslips show that the Claimant was paid for 60.75 hours that week. The Claimant's comments in his analysis suggest that the issue was not the number of hours for which he was paid but the rate at which he was paid (see the own car issue above). On balance, I find that the Claimant was not underpaid by an hour in April 2019.

20. The dispute on the May 2019 payslip is whether the Claimant should have been paid for a further 13.75 hours. Comparing the rotas and analysis provided by the Claimant and the Respondent, there are also minor discrepancies for 11 May, 14 May, 16 May and 17 May 2019 in respect of a client called Edward. A contemporaneous handwritten amendment to the rota states that an ambulance was called and this is consistent with a text message the same day. On balance I find that Edward was taken to hospital by ambulance, remained in hospital, care was not provided to him on any of those days and the rota was amended accordingly. It reflected poorly on the Claimant's credibility that in the face of compelling contemporaneous evidence that Edward was in hospital, the Claimant maintained that his timesheet based on the original rota was correct. I conclude that the Claimant was generally submitting his time sheets on the basis of the pre-prepared rota and was not adjusting to take into account last minute changes caused by client need.

21. As for 17 May 2019, the Respondent's case is that the Claimant's shift was cancelled and the Claimant did not work. The Claimant's case is that he did work that day. Having regard to the contemporaneous text messages between the Claimant and Mr P Bhaskar, I find on balance that the Claimant had a road traffic accident on 16 May 2019 which caused damage to his mother's car which he was using at the time. The Claimant expressed concern about working the 17 May 2019 as he had little sleep. The Claimant relies on text messages sent to a colleague shortly before 8 a.m. on 17 May 2019 confirming that he was on his way to the work meet up point as evidence that he did attend work that day.

22. The Claimant's copy of the rota shows him as due to work but his own time sheet records him as absent on 17 May 2019. The Respondent's rota for 17 May 2019 has been amended to cross out the Claimant's name and substitute that of a colleague. On balance, I do not accept that the Claimant made an error on his timesheet at the time due to stress. The time sheets were submitted on a weekly basis and it is highly unlikely that the Claimant would have omitted a day worked given his consistent efforts throughout his employment to ensure that he was paid in full. I prefer the evidence of the Respondent and the amended rota: even if the Claimant initially intended to go to work, with the agreement of the Respondent, he did not in fact work that day due to his fatigue. The Claimant was not underpaid for hours worked in May 2019.

23. To resolve the dispute about hours worked in the June 2019 pay period, I looked at the time sheets and rotas for each of the weeks. The discrepancy in week 1 appears to relate to 24 May 2019, where the Claimant's analysis claims 14.25 hours whereas the Respondent's figures show that only 12.25 hours were paid. The difference appears to relate to a visit to a client called Roy. Unlike other clients relevant to this case, there are no contemporaneous documents to confirm when Roy went into hospital or whether the amounts charged by the Respondent to Essex County Council were altered to reflect a reduction in the hours of care provided. There is nothing confirmed on the rota. On balance, I prefer the Claimant's evidence that on 14 May 2019 he did provide care to Roy and he should have been paid for a further 1.25 at the own car rate.

24. In week 2, the Claimant's time sheet claimed 48 hours but the Respondent reduced the hours paid in respect of sickness on 1 June 2019. The Claimant accepted that he was absent due to sickness on 1 June 2019. The Respondent's amended rota shows that a colleague worked the shift instead. The Claimant was not underpaid in week 2.

25. The discrepancy in week 3 is said to be 17.5 hours. The Claimant was absent from work from 1 June 2019. A return to work discussion took place on 3 June 2019 and is recorded on a form signed by both the Claimant and Mr P Bhaskar. The Respondent's rota shows that a colleague worked the Claimant's shift on 3 June 2019 and that he returned on 4 June 2019. The Claimant's rota is unamended and he has ticked the hours worked on both 3 and 4 June 2019. In a text message sent on 3 June 2019 at 15:54, Mr R Bhaskar says "**thank you, you are back to work from tomorrow, heard that you were not well**". The Claimant replied: "**yes I am back to work from tomorrow, yes I found some difficulties about my sickness**". Based upon the contemporaneous evidence of the messages which is consistent with the Respondent's amended rota, I find that the Claimant returned to work on 4 June 2019.

26. The Claimant's spreadsheet claims 13.25 hours worked on 5 June 2019; the Respondent's spreadsheet shows 10.75 hours. The difference relates to the client, Edward who had been taken to hospital in May 2019. Edward's name is crossed out on the amended rotas for both 3 and 4 June 2019 when the Claimant was not working that line. This is consistent with the fact that Edward was in hospital and was not receiving care. On balance, I am not satisfied that those hours were in fact worked by the Claimant. There was no underpayment in week 3.

27. The discrepancy of 2.25 hours in week 4 of the June 2019 pay period relates to a client called Rebecca on 13 June 2019. Again, the Claimant's hours claimed on his time sheet are those which are all ticked by him on the unamended rota. By contrast,

the Respondent's rota has been amended to cross out Rebecca's name for all care on 14 June 2019. Rebecca's name was crossed out on all rotas from 10 June 2019 (including 14 June 2019) and I accept on balance that from that date the Respondent did not provide care to her. The Claimant was not underpaid on 13 June 2019.

#### *Holidays and Bank Holidays*

28. The Claimant's case is that he has been underpaid for holiday accrued during his employment. The Claimant says that he was entitled to 32 hours' pay in respect of four days holiday in March 2019. The Respondent's case is that two of the days were unauthorised. Following the Preliminary Hearing before Judge Burgher, the Respondent paid the Claimant a further £892.47 in respect of holiday. This was calculated as 8 hours per day of holiday, based on an average of 18 shifts per month (being some 158 to 164 hours per month). The Claimant now says that he was entitled to more hours' pay as he worked more shifts each month. However, that is not consistent with the Respondent's spreadsheet or the basis of his initial claim for 8 hours for each day of holiday.

29. The Claimant was employed for 5 months and 13 days, accruing an entitlement to 13 days' holiday or 104 hours. Having regard to the money earned by the Claimant in the period prior to termination and the Respondent's explanation of the way it calculated holiday pay, the Claimant has not shown on balance that he was entitled to more holiday pay than calculated at the Preliminary Hearing before Employment Judge Burgher or that he has been underpaid for his holiday.

30. In 2019, Good Friday fell on 19 April 2019 and Easter Monday on 22 April 2019. The April 2019 pay period ran from 18 March to 22 April. As a result, the only bank holiday in the April 2019 pay period was Good Friday, with Easter Monday being paid in the May 2019 pay period. The Claimant worked both days.

31. Clause 13 of the Claimant's contract of employment provided that he was entitled to time and a third for Good Friday and to time and a half for Easter Monday. The Claimant's April 2019 shows three hours paid as bank holiday. This would appear to be an underpayment but the base hours worked on a bank holiday are included in the "hours" part of the payslip with only the enhancement shown separately under the bank holiday heading. The payslip shows that in April 2019 the Claimant was paid for 296.5 hours; his time sheets claimed for 297.5 hours. As set out above, the one hour discrepancy related to 19 March 2019. I find that the Claimant was not underpaid for bank holidays in the April 2019 payslip although I entirely understand his confusion given the complicated way in which the pay system worked (bank holidays in April straddling two pay periods and bank holiday enhancement being shown separately).

32. In the May 2019 pay period, to 19 May 2019, there were two bank holidays (Easter Monday 22 April 2019 and Monday 6 May 2019). The Claimant worked only Easter Monday, not 6 May 2019 as he was then absent due to sickness. The May 2019 payslip does not include any enhancement for the bank holiday, which at time and a half should have been 4.87 hours. The Respondent accepts that the bank holiday payment was not included in the May pay but avers that it forms part of the £364.88 correcting payment made on 5 June 2020. As this is the subject of further deduction complaints, I shall address these below.

*Deductions from wages*

33. The Claimant was confused about the sums paid and information on his payslips. He complained to Mr R Bhaskar that he had not been paid the own car rate to which he was entitled, had not been paid the higher long-distance rate for some clients and had not been paid for bank holiday hours. On 31 May 2019, Mr R Bhaskar agreed that there was an underpayment. In a message sent on 3 June 2019, he provided a breakdown of the sums due, confirming that the two bank holidays for payment in May were Easter Monday and the early spring bank holiday and setting out the additional long-distance payments. Mr R Bhaskar subsequently confirmed that there would be a further amendment to reflect own car use with a final sum of £364.88. The Claimant raised no further query about that period and thanked Mr Bhaskar for his help.

34. The Claimant was paid late for May 2019 as he had submitted his time sheets late and missed the cut off date. The Claimant asked for the money to be paid before the next pay date due to his financial commitments. The Claimant received £364.88 on 5 June 2019.

35. The June payslip shows a deduction of £364.88 under the heading 'advance'. It is understandable that this was confusing – the Claimant was expecting £364.88 to show as a payment and not a deduction. However, I accept that this is because the Respondent treated the payment on 5 June 2019 as an advance to be repaid. At first glance, this would suggest that the Claimant had not in fact received the balancing payment at all as the two cancel each other out. This is not in fact the case.

36. The Claimant's time sheets for the relevant pay period, 22 April to 19 May, claim for 122.75 hours. The May payslip records payment for 105.75 hours worked and the difference in the figures relates to the dispute about work on 17 May 2019 and varied rotas for the client Edward. For reasons set out above, I have found that the Claimant was not entitled to payment for those hours.

37. The Respondent's case is that having paid the sum of £364.88 in advance of the June payslip, it then calculated the additional hours to be put through the payroll to achieve a figure of £364.88 properly subject to tax which it paid and then recouped the original advance. The Respondent's spreadsheet is consistent with this explanation. As a result, the number of high paid hours on the June 2019 payslip were increased by 28.73 hours. The time sheets for the June pay period of 20 May 2019 to 16 June 2019 record 60.75 hours worked for the long-distance higher rate clients. The figure is adjusted to 89.48 hours on the June payslip, in other words an addition of 28.73 hours. On balance and despite the convoluted way in which it has been done, I am satisfied that the Claimant was paid an additional £364.88 in his June payslip by way of enhancement of the hours worked. As his hours were increased to pay the £364.88, the deduction to recoup the advance for the same sum was justified and the Claimant has not been paid less than the sum to which he was contractually entitled.

38. On or about 26 May 2019, the Claimant notified Mr P Bhaskar that his car keys had been stolen. On 3 June 2019, he gave Mr R Bhaskar a police incident reference number for the theft. The Claimant's case was that the car key was never lost, it was stolen when he was staying at a friend's house, and therefore was a result of neither negligence nor carelessness on his part. The Respondent's case was that the Claimant was in breach of the rules on use of the company vehicle as he should not have had it at a friend's house on a day when he was not working.



39. The Claimant was entitled to use the company car to travel to and from work, on this occasion he did so from his friend's house. I was not taken to any part of the contract or employee handbook which stated that it was not permitted to drive to and from work from an address other than the employee's home address. On the evidence I heard, there was no breach of any company rule by the Claimant. I accept the Claimant's evidence that the car key had been stolen – there was no negligence, carelessness, dishonesty or breach of policy by the Claimant such as to entitle the Respondent to deduct the cost incurred.

40. By letter dated 19 June 2019, the Respondent informed the Claimant that it would be deducting £100 in respect of the vehicle key, explaining that this was the insurance excess incurred in obtaining a new key. The invoice was from Factory Lane Autos Limited, dated 24 May 2019 and purports to show a visa debit receipt for £100 paid on 19 June 2019. The figure has been manually altered; whilst it is not clear what the original figure is, it was not £100 which was the manual alteration. Even if the deduction were authorised by the contract (and I have found that it was not), I would not have been satisfied that this invoice provided reliable evidence of the amount to be deducted.

41. The Respondent unlawfully deducted £100 from the Claimant's wages in respect of the car key.

#### *Statutory Sick Pay*

42. The Claimant was absent from work on 29 April 2019 by reason of sickness. The signed contemporaneous note of the return to work interview states that Claimant returned to work on 11 May 2019. The Claimant's self-certification form dated 23 May 2019 gives the period of absence as 29 April 2019 to 8 May 2019. A GP fitness for work statement gives dates of absence from 1 May 2019 to 8 May 2019.

43. The Claimant's case is that he was entitled to 12-days' pay for his absence on the basis that he would have worked every day in the period otherwise. I do not accept this as reliable evidence. The Claimant's time sheets for the period preceding absence show that he always had one day a week, and on occasion two days a week, when he did not work. This is consistent with the Claimant's analysis set out immediately behind his May 2019 payslip in which he says that he was entitled to SSP for 10 days. He was actually paid one week's statutory sick pay in the sum of £94.25. The Respondent's case is that the Claimant was only entitled to one week's SSP as he was absent for eight days' pay.

44. On balance, I find that the period of sickness absence was from 29 April to 8 May 2019 although the first shift worked once fit was on 11 May 2019. This is consistent with the self-certificate completed by the Claimant at the time. As the self-certificate makes clear, after seven days sickness the employer may request a medical certificate from a doctor. A claim for SSP cannot be made until the fourth day of absence, the first three days do not fall within the SSP scheme. There is no contractual entitlement to company sick pay. For these reasons I conclude that the Claimant was properly paid for this period of sickness absence.

*Mileage*

45. The Claimant claims that he was contractually entitled to additional payment for mileage expenses incurred whilst using his own car following the company car accident on 19 April 2019. The Respondent denies that there was any agreement to pay mileage expenses and relies upon the fact that the Claimant had already been provided with a fuel card. There is no written agreement and the Claimant relies upon an oral agreement with Mr P Bhaskar. The Claimant, Mr P Bhaskar and Mr R Bhaskar have each disclosed copies of text messages exchanged during the period of employment and in resolving the dispute, I had regard to the contemporaneous communications. The Claimant referred to Mr P Bhaskar as "PRABHOO" in these messages.

46. On or around 25 April 2019, the Claimant sent a message to Mr R Bhaskar in which he claimed that Mr P Bhaskar had agreed to pay him in respect of mileage incurred using his own car during the period that the company car was being repaired. The Claimant said that he had the distances in kilometres rather than miles. Mr R Bhaskar replied that he would check with Mr P Bhaskar and told the Claimant to save the petrol receipts. The Claimant replied that Mr P Bhaskar had said he did not need petrol receipts as it would be on the fuel card report. Mr R Bhaskar agreed and said that he had suggested it to be on the safe side.

47. On 26 May 2019, the Claimant sent a further message to Mr R Bhaskar referring to a conversation with Mr P Bhaskar about using his mother's Czech car, suggesting that he had covered some 5,879 miles and that Mr P Bhaskar had said that he would pay for it in some way. Mr R Bhaskar replied that he would look into the various pay queries raised by the Claimant, although he did not specifically refer to the mileage for own car use query. The Claimant raised the issue with Mr R Bhaskar again on 3 June 2019, stating that he had done 4896 miles and that:

**"As I was speaking with PRABHOO at that time when was all company cars in garage for repairs and I was using my mums expensive car but Czech car with Czech insurance and everything and he said that he know that its different so he will do compensation for that month of using my mum car."**

48. Mr R Bhaskar replied that regarding the mileage in his mother's car, the Claimant should speak to Mr P Bhaskar.

49. The messages between the Claimant and Mr P Bhaskar confirm that they had a telephone call on 26 April 2019 which lasted just under three minutes. On 7 May 2019, the Claimant had messaged Mr P Bhaskar asking whether he should still use his mother's car. On 17 May 2019, the Claimant sent Mr P Bhaskar photographs of damage to his mother's car and suggesting that the repair would cost him £225 as the international insurance would not cover it fully.

50. Mr P Bhaskar has disclosed text messages from the Claimant on 19 April 2019 with regard to vehicle recovery and the need to activate the fuel card to use it on a new vehicle. A photograph of that vehicle is included, it is the Czech registration number 8T2 1951. In this disclosure, there are no messages from Mr P Bhaskar to the Claimant, although the content of the Claimant's messages suggests that he was replying to something said by Mr P Bhaskar.

51. The Claimant's disclosure of the messages on 19 April 2019 include the same messages from him but also numerous entries, each of which has a small picture of a bin and reads "PRABHOO Mng IECC CARE deleted a message" and next to each is the same photograph shown for Mr P Bhaskar's messages on 10 March 2019. In his messages, the Claimant addresses Mr P Bhaskar as "Prabhoo". Two of the deleted messages are immediately after the Claimant has told him about the fuel requirements of the Czech car and, after which, the Claimant thanks Mr P Bhaskar. The same deletion message appears on 9 separate occasions in the texts sent on 19 and 20 April 2019 and again in messages on 7 May 2019 and 17 May 2019.

52. I reject Mr P Bhaskar's evidence that his messages on 19 and 20 April 2019 and 7 and 17 May 2019 were lost when upgrading or changing his mobile telephone. On 10 March 2019, the Claimant and Mr P Bhaskar exchanged messages about damage to the company vehicle. The message disclosed by Mr P Bhaskar includes a photograph of the vehicle, a message from him advising that all cars are tracked to monitor speeding for insurance purposes, the Claimant's response and a further message from Mr P Bhaskar at 09:35. The same exchange was disclosed by the Claimant. It is implausible that Mr P Bhaskar's messages on 10 March 2019 are still available when those sent around the time of the Claimant's use of his mother's Czech car are not. Mr P Bhaskar sought to suggest that these existed only because he had taken a screen shot of the damage to the car. I find that explanation to be lacking any weight as the following are inconsistent with a single screen shot on 10 March 2019:

- (a) the messages disclosed by Mr P Bhaskar cover two pages in the bundle;
- (b) the top of the message shows "EE WiFiCall 00:07 and a battery life of 76%". The preceding messages printed in the bundle show the same time, with battery life of 77% then 76%. The following pages of messages covering the period 19 April 2019 to 3 June 2019 have times at the top starting at 00:13 with a battery life of 76% and ending at 00:22 with a battery life of 72%. On each, as the minutes pass, the battery life diminishes.
- (c) The same messages on 10 March 2019 are available on the Claimant's telephone and there is no suggestion that he took a screen shot.

53. On balance, I find that Mr P Bhaskar deliberately deleted his messages to the Claimant on 19 and 20 April 2019 and 7 and 17 May 2019. This is the period immediately following the accident with the company car and the discussion with the Claimant about use of his mother's Czech vehicle. I draw an adverse inference from the deliberate deletion of his side of the message exchange and find that Mr P Bhaskar did agree to pay an additional sum by way of mileage expense for the period of use of the Czech vehicle. That is consistent with the references to the Czech car and the additional expense of its insurance in the messages between the Claimant and Mr R Bhaskar on 3 June 2019. I accept the Claimant's evidence that the terms of the agreement were that for the period in which the Czech car was being used, the Claimant would be entitled to an additional mileage payment. I find that the rate of the mileage allowance was the HMRC rate of 45p per mile for that one month. The company car was not available from 19 April 2019 to 24 June 2019, however the Czech car was only used from 19 April to 16 May 2019 when the Claimant accepts at paragraph 5 of his witness statement that it could no longer be used due to the damage caused in the accident. The Claimant gave a contemporaneous figure of 5,879 miles in the Czech car which I regard as more credible and reliable than his

subsequent estimates.

54. For these reasons, I conclude that the Claimant was contractually entitled to a mileage expense payment of £2,645.55, calculated as 5,879 miles @ 45p per mile. The agreement is not inconsistent with the provision of a fuel card as the purpose of the agreement was to reimburse the Claimant for the depreciation and increased insurance costs, not petrol alone. Even if were, however, the Tribunal's role is to decide whether there was an agreement and the terms agreed; it is not to comment on the wisdom of that agreement or save a party from a bad agreement which it has chosen to enter into.

#### *Dismissal and July Pay*

55. In the pay period 17 June to 21 July, the Claimant worked only on 18, 26 and 28 June 2019. His case is that the other days were unwanted days off as he was not given any work. The Respondent's case is that on his return to work from sickness absence between 1 and 4 June, the Claimant had said that he wanted to reduce his shifts. The Claimant denied making any such request.

56. The return to work interview sheet signed by the Claimant on 3 June 2019 does not make any reference to reduction of shifts. The Claimant sent messages to Mr R Bhaskar on 5 June, 21 June, 24 June, 27 June and 28 June 2019. In none of the messages did the Claimant ask for shifts, question why he was not working or suggest that he was being prevented from working, despite raising a lot of other queries about his pay. On balance, I prefer the evidence of the Respondent on this issue and find that the Claimant was not prevented from working, he chose not to do so for health reasons. There was no unauthorised deduction from his wages.

57. The messages sent by the Claimant to Mr R Bhaskar throughout June 2019, and in particular from 21 June 2019, express particular concern that he was not being paid correctly. The Claimant received his payslip on 28 June 2019 and immediately questioned the £100 deduction, sick pay, deduction of the advance and rate of pay. Mr Bhaskar sought to assure him that there was no error and that an explanation would be provided. The Claimant was not persuaded and asked to see Mr R Bhaskar in the office at 2.30pm. Mr Bhaskar replied that he would not be available as he would be in a meeting. The Claimant was naturally concerned that any irregularities in pay were sorted out quickly as he was relying upon his salary to pay his bills.

58. At 15:41 Mr R Bhaskar explained the deductions for the car key and advance and offered to meet the Claimant on the following Monday. The Claimant said that this was unacceptable and he would call Mr P Bhaskar. At 15:50, Mr R Bhaskar replied '**yes, you can speak to him, but nothing is going to change**'. It is evident from his messages that the Claimant was angry about what he regarded as persistent underpayment. I find that this was his state of mind when he telephoned Mr P Bhaskar. There is a dispute as to what was said during the telephone call.

59. The Claimant's evidence is that Mr P Bhaskar said that he had already spoken to Mr R Bhaskar and asked what the issue was. The Claimant said that it was regular incorrect salary payments. Mr P Bhaskar replied that he was doing it to himself and demonstrated a horrible, unprofessional and nasty attitude towards him. The Claimant says that he tried to stay calm and to explain that he had to be paid correctly and on time. He says that Mr P Bhaskar said '**fuck you radek**' and hung up on him. The effect

upon his physical and mental wellbeing was such that he could not attend to his shift which was due to start at 4.15pm that day. After the call ended, Ms Gulumba telephoned him to ask him to work, he refused as he considered that he had been dismissed by Mr P Bhaskar.

60. Mr P Bhaskar's evidence says that in the conversation at about 4pm he offered to speak with payroll and arrange a meeting the following Monday. The Claimant started arguing and threatening legal action. Mr P Bhaskar told him not to argue as he could not do anything over the telephone without checking. The Claimant replied that he would report the company to the Care Quality Commission (the Claimant accepts that he said this but as a promise, not a threat). The Claimant did not want to listen to him and was aggressive, saying that he would not work anymore and concluded by saying 'you're messing with the wrong person, I will teach you a lesson'. Mr P Bhaskar told the Claimant to go away and that he could not speak to a manager in that way. The Claimant then ended the call. Mr P Bhaskar accepted that he raised his voice during the conversation but denied using unprofessional language.

61. Mr R Bhaskar's evidence was that he was in the office during the telephone call as he and the office staff had returned from their meeting. He largely confirmed Mr P Bhaskar's evidence, stating that the Claimant had demonstrated an unprofessional attitude and refused to work his shift. At no point did Mr P Bhaskar use inappropriate or abusive language to the Claimant, nor did he dismiss him. After the call ended abruptly, Mr P Bhaskar told him that the Claimant would not work his shift. He did not hear whether or not the Claimant was swearing.

62. Ms Gulumba's evidence was that she telephoned the Claimant shortly after the Bhaskar call ended and tried to tell the Claimant that he had not been dismissed and that he should work his shift. The Claimant refused and said that he was going to terminate his employment. Mr Omane covered the shift.

63. Given my findings about the reliability of Mr P Bhaskar's evidence about the deletion of the earlier messages regarding mileage, I viewed with caution the reliability of his evidence about the conversation on 28 June 2019. I also added little weight to the evidence of Mr R Bhaskar as it appeared to be more designed to support Mr P Bhaskar than a reliable account of what in fact took place. However, their account was to some extent corroborated by the evidence given by others who I accept were present in the office at the time of the telephone call. Mr Omane described hearing what he said appeared to be a disagreement but at no point did he hear Mr P Bhaskar dismiss the Claimant. Neither he, Ms Gulumba nor Mr Akatobi heard Mr P Bhaskar swear at the Claimant.

64. The Claimant was angry when he telephoned Mr P Bhaskar by both what he perceived to be persistent underpayment and the dismissive message received from Mr R Bhaskar immediately prior to the call. I find that he was argumentative, threatened legal action and referred to the CQC. Mr P Bhaskar became annoyed by what he regarded as inappropriate behaviour by the Claimant and raised his voice. On balance, I find that Mr P Bhaskar was particularly annoyed by the Claimant's refusal to work his imminent shift and the impact that it may have on service users. This is why he told the Claimant to go away and it was not said in the calm and polite manner which he claimed in evidence. However, I do not accept that Mr P Bhaskar said "fuck you radek" as the Claimant alleges; if such an offensive comment had been made, I consider that the Claimant would have included it in his letter dated 14 August 2019

whereas the phrase he uses in speech marks is “go away” and I accept as reliable the evidence of Ms Gulumba and Mr Akatobi that no swear word was used.

65. On 1 July 2019, the Respondent wrote to the Claimant alleging that he had abandoned his rostered shifts and required an explanation within 72 hours as to why disciplinary action/dismissal should not be taken for gross misconduct. The Claimant says that the letter included his P45 which gave 29 June 2019 as his termination date and this, combined with the comment made by Mr P Bhaskar on the telephone, amounted to a dismissal. Mr Akatobi, who sealed the envelope and posted the letter to the Claimant, denied that the P45 was included.

66. There are two copies of the P45 in the bundle: that produced by the Claimant is dated 2 August 2019 whereas the Respondent’s version is dated 19 August 2019. Each accuses the other of modifying the date on the P45. The metadata available to the Tribunal was limited, it shows a modification date of 19 August 2019 but does not show a creation date. I do not need to resolve this dispute. Even the P45 disclosed by the Claimant post-dates the letter sent on 1 July 2019. I find that the P45 was not included with the letter.

67. On 16 August 2019, the Respondent received a reference request from Heritage Manor which stated that the Claimant had applied for a job as a Care Assistant.

68. The Respondent invited the Claimant to a meeting on 26 August 2019 to discuss his complaint of underpayment of wages. The meeting was adjourned as there was no independent third party minute taker, as requested by the Claimant. It was not reconvened.

69. On balance, I find that the Claimant was not dismissed by the Respondent either in the telephone call on 28 June 2019 or by the combination of the call, the 1 July letter and the P45. Although Mr P Bhaskar did tell him to “go away” in the heated telephone conversation on 28 June 2019, it was in the context of the Claimant’s own intemperate language, references to the CQC and refusal to work his shift. The Bhaskar call was followed by immediate telephone calls which made it clear that the Respondent expected him to work his shift. It was the Claimant who refused to do so. The request for an explanation of the refusal to work and reference to possible disciplinary proceedings is not consistent with a dismissal and the letter did not include the P45. I conclude that the Claimant decided that he no longer wished to work for the Respondent whom he believed to be a bad employer, responsible for persistent underpayment of wages. In the circumstances, the language and conduct of the Respondent did not terminate the contract of employment, nor was it such that the Claimant was entitled to treat himself as dismissed.

70. Even if the Claimant had been dismissed, I would not have concluded that the sole or principal reason was because he had asserted a statutory right. The Claimant refused to work his shift providing care to seven clients on 28 June 2019. He did not attend work thereafter. This was the reason why the Respondent treated the contract as terminated and subsequently issued the P45.

71. I have upheld the unauthorised deduction claims in respect of mileage, £100 key deduction and 1.25 hours worked on 24 May 2019 at the own car rate. The total sum of £2,758.93 is payable in 28 days. All other claims fail and are dismissed.

**Employment Judge Russell**  
**Date: 9 August 2021**