



# EMPLOYMENT TRIBUNALS

**Claimant:** Craig Henderson

**Respondent:** Utility Alliance Limited (in Administration)

## JUDGMENT

- 1. The claim of unfair dismissal is well founded and succeeds. The Respondent is ordered to pay the Claimant a basic award of £1,614.**
- 2. The claim of unlawful deductions in respect of accrued and unpaid holiday pay as at the date of termination of employment is well-founded and succeeds. The Respondent is ordered to pay to the Claimant the gross sum of £3,352.47.**
- 3. The claim in respect of arrears of pay (unlawful deduction of wages) up to the date of termination of employment is well founded and succeeds. The Respondent is ordered to pay to the Claimant the gross sum of £7,403.85.**

## REASONS

1. The claimant was employed by the Respondent from 01 June 2017 to 14 August 2020. He submitted his resignation on 23 July 2020 and was placed on garden leave until 14 August.
2. He presented a Claim Form on 02 September 2020. At a case management preliminary hearing on 06 November 2020, Employment Judge Garnon identified the following complaints:
  - a. Unfair constructive dismissal,
  - b. A claim for arrears of pay (unlawful deduction of wages),
  - c. A claim of unlawful deduction of pay in respect of accrued but untaken holiday at the date of termination of employment.
3. The Respondent resisted the claims. Judge Garnon gave directions for preparation for a four day hearing, which was listed on 08 December 2020 for a hearing starting on 23 August 2021. The case management orders were stayed on 12 January 2020 by Judge

Jeram. Subsequently, on 12 February 2021, the Respondent entered into administration. There was then a case management preliminary hearing before Judge Morris on 08 March 2021. However, he could do nothing in respect of the litigation as the Claimant had not by then obtained consent of the Administrator to continue the proceedings. Consent was obtained from the Administrator on 15 June 2021. In the meantime the claim remained listed for a four day hearing, commencing 23 August 2021.

4. The Administrator has taken no part in the proceedings and did not attend the hearing or resist the Claimant's claims. I proceeded with the hearing in accordance with rule 47 of the ET Rules 2013. I lifted the stay on case management orders and treated the Claimant's email of 11 December 2020 to the Tribunal (in which he sets out his account of the events leading to his resignation) as his witness statement. The Claimant swore to the truth of the statement.
5. Having considered the material before me, consisting of the ET1, ET3, Amended Response, the Claimant's witness evidence and the payslip provided by the Claimant for the month of July 2020 I was satisfied on the material before me and in the absence of any resistance by the Respondent, that the matters set out in his witness statement amounted to a fundamental breach of the Claimant's contract of employment in that the Respondent, without reasonable and proper cause conducted itself in a manner which was calculated or likely to seriously damage the relationship of confidence and trust. The Respondent did not advance any fair reason for dismissal. The complaint of unfair constructive dismissal was made out.
6. I was also satisfied from the Claimant's evidence that he was not paid any remuneration for the month of July 2020 or for the period 01 to 14 August 2020.
7. In addition, the Claimant had accrued 17.5 days holiday which remained untaken in the 12 month period ending with the date of termination of employment. Five of those days he had purchased from the Respondent, for which he had been paying £80 a month. He was contractually entitled to payment in respect of those holidays and was entitled to payment for accrued holidays in accordance with the Working Time Regulations 1998.
8. The Claimant's complaints of unfair dismissal and unlawful deduction of wages are therefore upheld.

### **Remedy**

#### **Unfair Dismissal**

9. The Claimant claims a basic award only. He was aged 38 at the date of dismissal, by which date he had been employed for 3 complete years. His gross weekly wage was £961.54.
10. For the purposes of the calculation of the basic award his gross weekly pay is capped at £538. Therefore, he is entitled to a basic award of £1,614 (£538 x 3).

#### **Holiday pay**

11. The Claimant had accrued 17.5 days' annual leave in the 12 months ending with the date of termination. Five of those days he had purchased under an annual leave

purchase scheme. His daily rate of pay was £191.57. Therefore, the total amount of gross pay due to him on termination was £3,352.47.

**Arrears of pay (wages)**

12. The Claimant's payslip for July 2020 shows a total gross payment due to him of £4,626.54. That is calculated as follows: £4,166.67 [basic pay] + £540 [bonus] - £80.13 [holiday purchase]. He did not have a payslip for the month of August 2020. However, for the 14 days worked in that month he was entitled to a gross payment of £2,777.13. Therefore, the total amount which was properly payable to him in respect of July and August 2020 was £7,103.75.

Employment Judge **Sweeney**

Date: 23 August 2021