



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R A Antwi

**Respondent:** Nojrul Islam Miah t/a Aim Recruit

**Heard at:** East London Hearing Centre (by telephone)

**On:** 14 December 2021

**Before:** Employment Judge Housego

## Representation

**Claimant:** In person

**Respondent:** Appearance not entered; did not attend; sent no representations

## JUDGMENT

1. The claim is not struck out.
2. The Respondent is ordered to pay to the Claimant the sum of **£4,516.83**.

## REASONS

### Law

1. A claim for unfair dismissal must be presented within 3 months of the effective date of termination<sup>1</sup>, extended in a variety of ways by the requirement to obtain an Early Conciliation Certificate from ACAS before filing a claim. What the extension is depends on when the notification is given by the Claimant and when the certificate is issued<sup>2</sup>. If not so filed, time may

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<sup>1</sup> Employment Rights Act 1996 S 111 Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three 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 be presented before the end of that period of three months.

<sup>2</sup> S207B of the Employment Rights Act 1996.

be extended for such further time as is reasonable, but only if it was not reasonably practicable for the claim to have been filed in time.

2. The law is clearly set out by Eady J in Paczkowski v Sieradzka (Jurisdictional Points : Extension of time: reasonably practicable) [2016] UKEAT 0111\_16\_1907 (19 July 2016), particularly at paragraph 19 onwards.
3. James Ash v ISS Facility Services Ltd UKEAT/0098/20/00 sets out that rejection is mandatory. The Tribunal must write and tell the Claimant who may then correct the error in the early conciliation certificate number.

### Amendment

4. The Respondent is a sole trader, and I amend the name of the Respondent, as above.

### Chronology

5. The chronology is as follows:
  - 5.1 On 09 September 2019 Mr Antwi started work for Certas Energy UK Ltd, as an agency worker employed by the Respondent.
  - 5.2 On 17 April 2020 Mr Antwi resigned his employment.
  - 5.3 There was an acas certificate, and the period was 14 July-12 August 2020. The prospective respondent was "Aim Recruit". The time expired on 12 September 2020 (as the 3 months ended during the early conciliation period the limitation date is 1 month after the date of the certificate).
  - 5.4 The claim was filed on 13 August 2020.
  - 5.5 In this case on 12 August 2020 Mr Antwi filed a claim, and the name of the Respondent did not accord with the early conciliation certificate – Mr Antwi did not put "Aim Recruit" but "Noz Miah". It is clear from the website of Aim Recruit that it is Mr Miah's trading name, as a sole trader. They are one and the same. The claim was rejected for this reason. Mr Antwi did not get the letter telling him so.
  - 5.6 Mr Antwi chased his claim, and found out at the end of November 2020 that it had been rejected.
  - 5.7 On 05 December 2020 this claim was filed. It is for underpaid wages (he says he was to be paid £16 an hour for 12 weeks then £17 an hour, but was paid at £14.28 an hour and is owed £3,992.81 in consequence).
  - 5.8 On 07 July 2021 EJ Russell made orders at a case management hearing.
    - 5.8.1 First, this preliminary hearing was ordered, to decide whether to strike out the claim as out of time, and if not then to decide the claim itself.
    - 5.8.2 Secondly the Claimant was ordered to do the following:

*“3. Not less than 28 days before the re-listed hearing, the Claimant must send to the Tribunal and to the Respondent:*

*(a) a statement explaining why it was not reasonably practicable to present the claim in time. The statement must cover the entire period from 17 April 2020 to 5 December 2020;*

*(b) a written explanation of the sums said to be due and copies of any documents relied upon in support, this should include any contract or offer letter.”*

## **Facts**

6. These are in part set out above, and the other facts are set out in the reasons below.

## **Late filing of the claim – reasons advanced**

7. In his claim form Mr Antwi says that it was not reasonably practicable to file the claim earlier were that:
- 7.1 his employer first said that it was a payroll issue and he would resolve it; then
  - 7.2 failed to answer his telephone calls or emails;
  - 7.3 so he went to the Employment Agency Standards Inspectorate for help, but he says they could not come to an agreement with his former employer so then he contacted Acas;
  - 7.4 Acas told him that they had been told by his former employer that he did not have the money to pay Mr Antwi, and so issued the early conciliation certificate so that the claim could be issued;
  - 7.5 and he then issued it.
8. In the hearing Mr Antwi said that he had issued within the time limit but his early conciliation certificate was for *“Aim Recruit”* and the claim form was *“Noz Miah”* and was rejected for that reason: but that he did not get the letter saying so. He says that he chased up and then resubmitted it. He says he did not chase for a while as the letter from the Tribunal acknowledging receipt said not to do so.
9. Mr Antwi emailed the Tribunal, about his claim and got an acknowledgement, and understandably did not follow up for a while:

**From:** "EastLondonET" <eastlondon@Justice.gov.uk>  
**To:** "Richie Antwi" <richieantwi@yahoo.com>  
**Cc:**  
**Sent:** Mon, 22 Nov 2021 at 21:57  
**Subject:** RE: Case no. 3220355/2020

- Thank you for your email which has been safely received by the Employment Tribunal. There is no need to call us for further confirmation of receipt. This will allow us to deal with your email more efficiently.”

10. Mr Antwi forwarded to me an email, below:

**APPLICATION FOR RECONSIDERATION OF THE DECISION TO REJECT MY CLAIM. (Case number :3202060/2020)**

**From:** "Richie Antwi" <richieantwi@yahoo.com>

**To:** "EastLondonET" <eastlondon@justice.gov.uk>

**Cc:**

**Sent:** Sun, 29 Nov 2020 at 19:16

**Subject:** APPLICATION FOR RECONSIDERATION OF THE DECISION TO REJECT MY CLAIM. (Case number :3202060/2020)

TO WHOM IT MAY CONCERN.

Dear Sir/Madam,

Thank you for emailing me the letter of Judge Taylor Rejection of my claim against Aim Recruit after my lengthy conversation on the phone with one of the Tribunal's Customer Service lady on 24th November 2020 at 15:15pm who was very,very helpful.

On the 20th of November 2020 i rang the Employment Tribunal office for an update on my Case/Claim then i was told by the lady on the phone that my Claim has been rejected by Judge Taylor because the prospective respondent name on the Acas Early Reconciliations Certificate is different from the Prospective Respondent on the ET1 form that i fill and sent to the Employment Tribunal office.

Sir ,I will like to take this opportunity to explain the reason why i am applying or asking the Tribunal or Judge Taylor to Reconsider the decision of rejecting my claim against Aim Recruit due to an issue concerning the propective respondent of my Case.

First ,I must say i did every thing required of me and within the time frame before submitting my claim form via email on the 13th August 2020 to the Employment Tribunal and just after the email submission of the ET1 form i received an acknowledgement email with a claim number....322012510000 . After few weeks i rang and emailed the tribunal several times for an update but each time i rang the phone rings and then it goes straight to voice mail but with the emails, i always received an email back informing me that my emails has been receive by the employment tribunal and therefore there is no need for me to call the tribunal for further confirmation of receipt. So i kept waiting and checking my email on a regular basis just incase an update regarding my case has been sent to me but i received nothing until when i rang again on 20th August 2020 when a lady answered then i ask her for an update on my case, so she ask me to give her my claim number so i gave her the number that was on the first acknowledgement email i received when i first submitted my ET1 form to the Employment Tribunal but she said to me that that claim number is not recognized so she took my details as in my date to birth and my full name then after few seconds she told me that my claim was rejected by the Judge Taylor on 24th August 2020 and a letter was sent to me through the post with a claim number on it informing me of the reasons of Judge Taylor decision to reject my claim and also an advice on the action for

me to follow to rectify the mistake on the form and also how to ask for the tribunal to Reconsider its decision for Rejecting my claim.

So immediately i told her that i have not received any letter or email from the tribunal regarding the rejection of my claim since i file my claim on 13th August 2020 , and also not even a single email or a letter updating me of any development on my claim upto date, so she said me that if that is the case then she will Re-post the Judge rejection letter again to my address for my attention , so i waited for 4 days and i never received any letter at my address so i rang the Tribunal again and a different lady answered the phone and took my details and gave me the same information about the Judge rejecting my claim, so i told her the whole conversation i had with one of her colleague on my previous phone call and she told me that the Judge dealing on my claim works from home so she can't speak to her now but she will take my contact number and my details then forward it to the judge.

So let me stress once again that i did not receive any letter or email regarding the Judge Taylor's rejection of my claim to enable me rectify the problem as instructed by the judge so therefore i am pleading and asking the tribunal to rectify the mistake on my behalf by changing the name of the prospective respondent on my ET1 form i submitted to the tribunal to match the one on my/the Acas early Conciliation certificate.

There is one more important thing i will like to draw the Employment Tribunal and the Judge Taylor's attention to is that , Nojrul Islam Miah is the proprietor of Aim Recruit, he was the person i always contact when i use to work for Certas Energy UK Ltd through Aim Recruit and also he is the person that i use to fax my time sheet to and raised any wages issue with, so hence why on the ET1 forms when ask to write the NAME of the Respondent details, i wrote down Nojrul Islam Miah rather than Aim Recruit because i thought since he own Aim Recruit my claim will be against him as well.

I will like to conclude by applying and asking the Tribunal or Judge Taylor to Reconsider the decision for rejecting my Claim, Then you.

Yours sincerely,

Richard Appiah Antwi.

11. Mr Antwi says that he did comply with the orders of EJ Russell, sending documents by track and trace, signed for by the Tribunal on 10 November 2021 at 10:11.
12. Mr Antwi emailed this to me and I checked the Tribunal file and it was there. It says:

Upon the tribunal order requesting me to give a statement explaining why it was not reasonably practicable to present my claim against Aim recruit on time is as follows.....

In April 2020,I lost my job as a Tanker driver working for a company called Certas Energy UK Ltd, I worked for Certas Energy for 8 months from 9th September 2019 to 17th April 2020 as an agency Tanker driver through Aim Recruit and before i started the job, the Agency director Mr Nojrul Islam Miah agree to pay me £16.00 per hour for the first 12 weeks and then increased it to

£17.00 per hour thereafter but instead i was paid £14.28 per hour through out the 8 months i worked for Certas Energy , so i raised my concerns regarding me being underpaid hourly and ask Aim Recruit / Mr Nojrul Islam Miah to pay me the difference own to me but during that period was when the national lockdown on Covid 19 was in place so he said to me that his accountant is on lockdown so she is not in the office and also him Nojrul cant get access to the office computer to determine how much arrears Aim recruit owns me, but i did not left it there, but rather i kept on reminding Mr Nojrul Miah director of Aim recruit occasionally but after a while i realize he was just buying time with me to run down the clock just in case i wanted to file a claim against Aim recruit ,So i lodge a complain and file a claim aswell against Aim Recruit through Employment Agency Standard who contacted Aim recruit Agency and Mr Nojrul Islam Miah who is the director of Aim recruit to negotiate a settlement but Mr Miah told the inspector of Employment Agency Standards who's name is Mr Adam Patel who was handling my claim/case that he has no money to settled the my Claim/Case, So Employment Agency Standard contacted me to advice me of the next steps to follow since they couldn't come to settlement agreement or early reconciliation with Aim recruit so therefore they will have to close my Case .

So i contacted Acas and reported the case to them which they ask me to file and log in my case via email which i did with all the necessary details and information requested from me but unfortunately Acas also after few weeks or month of communications and negotiations with Aim recruit and Mr Nojrul Islam Miah , the case handler called Mr Wayne Dalton emailed me to inform and advice me that Acas tried to negotiate settlement through early reconciliation but Mr Nojrul Miah stated that he has no funds to settled the claim so they will issue me with an Early Reconciliation Certificate which will allow me to make a claim through Employment tribunal .

So after when my early reconciliation certificate was issued to me i quickly Submitted my claim via online on the 13th August 2020 which i received an acknowledgement email with the claim number..322012510000 ,after few weeks i rang and emailed the tribunal on several occasions and times for an update on my claim but each time i rang the tribunal the phone rings and then goes to voice mail but with my emails, i always received an email back advising me that my email has been receive by the employment tribunal and therefor I do not need to call the tribunal for further confirmation of receipt, So i kept waiting and checking my emails on a regular basis just in case an update concerning my claim has been sent to me but i received nothing until when i rang again and a

lady answered and i ask her for an update on my Case/Claim, so she ask me of my claim reference number which i gave her the number i received when i first submitted my ET1 form to the employment tribunal but she said to me that the claim number i have given her is not recognised so she took my details as in my date of birth and my full name then after a few seconds she told me

that my claim was rejected by the judge on the 24th August 2020 and a letter was sent to me to that effect through the post with a new claim reference number in it informing me of the reasons of the judge decisions of rejecting my claim and also an advisory letter advicing me of the action to take to rectify the mistake on my ET1 form and also how to ask the tribunal to reconsider its decisions for rejecting my (the)Caim, So immediately i told her that i havent receive any letter or email from the employment tribunal regarding the rejection of my claim since from when i presented my ET1 form on 13th August 2020 and also not even a single email or a letter updating me of any new development on my claim. So she said to me if that is the case then she will re-post the rejection letter to my address again for my attention so i waited for 4days and i still didnt receive any letter so i rang the tribunal again and this time a different lady answered so i told her about my previous telephone conversation i had with one of her colleague's during my previous call regarding my claim and she told me that the judge dealing g with my Case/Claim works from home so she can't get hold of her but she will forward my contact details to her and some one will contact me, and after few days or a week i receive an email with the judge rejection letter and reasons plus a guidelines on how to rectify the issue and resubmit the ET1 form again for the tribunal reconsideration.

And when i finally received the rejecton email i notice that the judge reasons for rejecting my claim was because i made a mistake on filling the ET1 form by stating the prospective respondent as Mr Nojrul Islam Miah rather then Aim Recruit which is stated on my Acas Early Reconciliation Certificate, So i followed the advice and guidelines instructed by the judge on the rejected email and rectify the mistake made on my previous ET1 form and Re-Submitted a new ET1 form with the correct prospective Respondent name on it since i am not allowed to amend it on the previous form.

So this is the reason why it seems like my ET1 form regarding my Claim/Case to the employment tribunal was presented late,

But Judge Russell, please note that my first actual ET1 form for my Claim was submitted to the Employment Tribunal on time at on the 13th of August 2020 but because there was mistake made on it and was rejected and i didn't receive the letter on time.

I hope this my explanatory statement will meet your consideration in this matter ,thank you.”

### Consideration of reasons

13. The original claim was filed within the time limit.
14. It was rejected because the Respondent was not as shown in the early conciliation certificate – Aim Recruit.
15. The early conciliation certificate number was correct.
16. Had the ET1 named Aim Recruit the name of the Respondent then the name of the Respondent would have to have been changed, as I have done.
17. In fact, the name on the Acas early conciliation certificate and on the claim form were the same person – Nojrul Miah trading as Aim Recruit. Accordingly, while the Tribunal was inevitably going to reject the claim, on reconsideration it would have been accepted.
18. When lodging the claim online Mr Antwi got the standard response telling him not to contact the Tribunal until the Tribunal wrote further, and so it was reasonable not to do so until November 2020, particularly when lockdown was delaying matters.
19. He did not get the letter rejecting his claim. Had he got it he had time to reodge the claim (as he did later), as the claim was filed on 12 August and the time expired on 13 September 2020.
20. Mr Antwi did not know that his in time claim had been rejected and so it was not reasonably practicable for him to file it again until he did know. Then he filed a new claim in a matter of a very few days.

### Conclusions

21. I decide that it was not reasonably practicable for Mr Antwi to file his claim in time, and that he filed it within a further reasonable period.

### Decision

22. The claim is not struck out as out of time.

### Merits of claim

23. Mr Antwi set out his claim thus:

“So i will like to take this opportunity to give you the breakdown of the hours and the amount of the pay arrears own to me by Aim Recruit....

**Form 9<sup>th</sup> September 2019 to 02<sup>th</sup> December2019.**

Total Hours Worked : **254.25 hours**

Therefore £14.28 per hour paid – Supposed £16.00 per hour agreed Rate =£1.72per hourly own to me.

Therefore Total Hours Worked £254.25 × £1.72 per hour = **£437.31.**

**From 02<sup>th</sup> December 2019 to 17<sup>th</sup> April 2020.**

Total Hours Worked :**730 hours.**



Therefore £14.28 per hour paid – Supposed £17.00 per hour agreed Rate =£2.72 per hourly Own to me.

Therefore Total Hours Worked: 730 × £2.72 per hour =£1986.96 .

So £437.31 + £1986.96 = £2424.27.

My Allowances Entitlements after 12 weeks of working for[at]the same company ( Agency Worker Regulations. )

1.London Waiting Allowances : £76.66 per Month =£613.28 for 8 Months

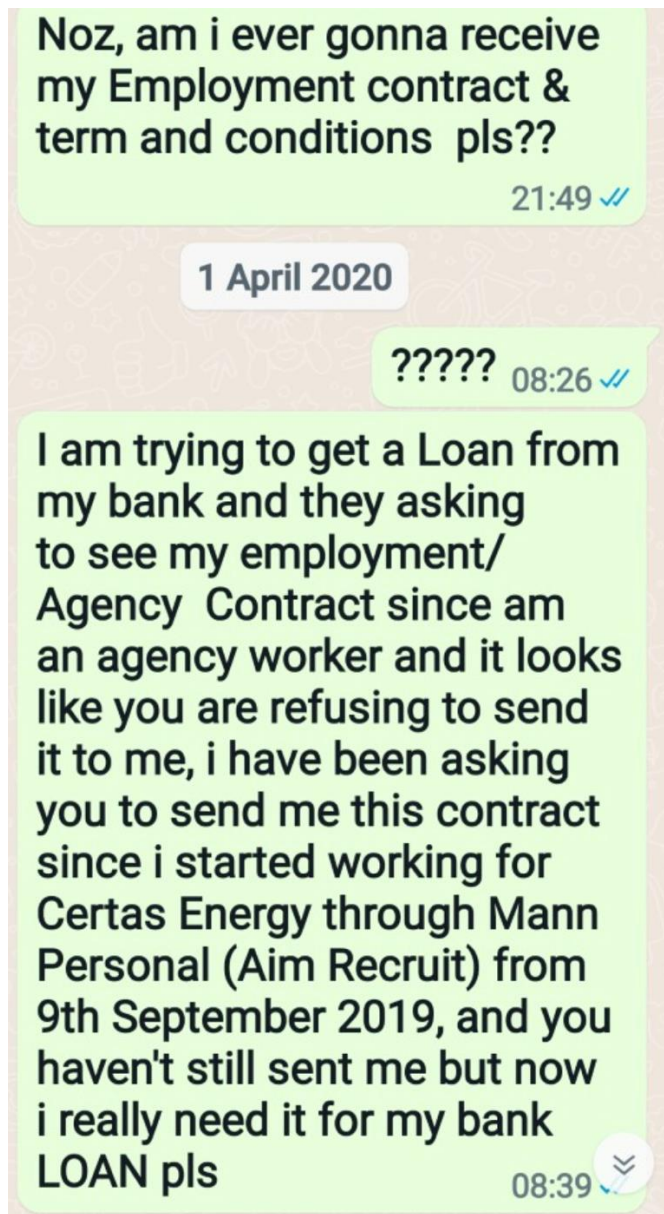
2. Night Working Allowances :£100.00 per Month =£800.00 for 8 Months

3.Lunch Allowances :£84.91 per Month =£679.28 for 8 Months.

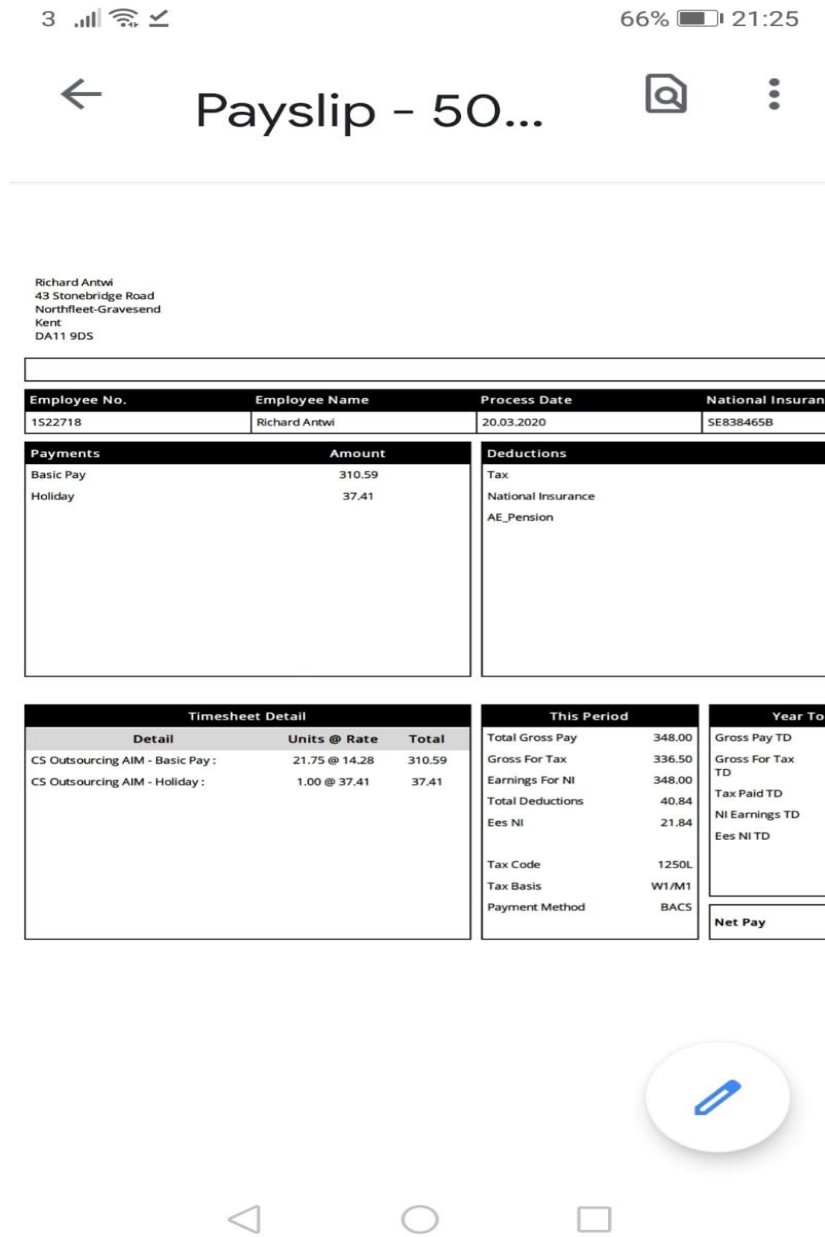
Total Allowances payments own to me is = £2,092.56.

So therefore the total Overall pay arrears own to me by Aim Recruit for both my Hourly Rates and Allowances from 9<sup>th</sup> September 2019 to 17<sup>th</sup> April 2020 **Excluding** my daily overtime hours which i don't know is ..... : **£4,516.83.”**

24. Mr Antwi did not get a job offer letter, nor a contract of employment. He exchanged text messages with Mr Miah. For example:

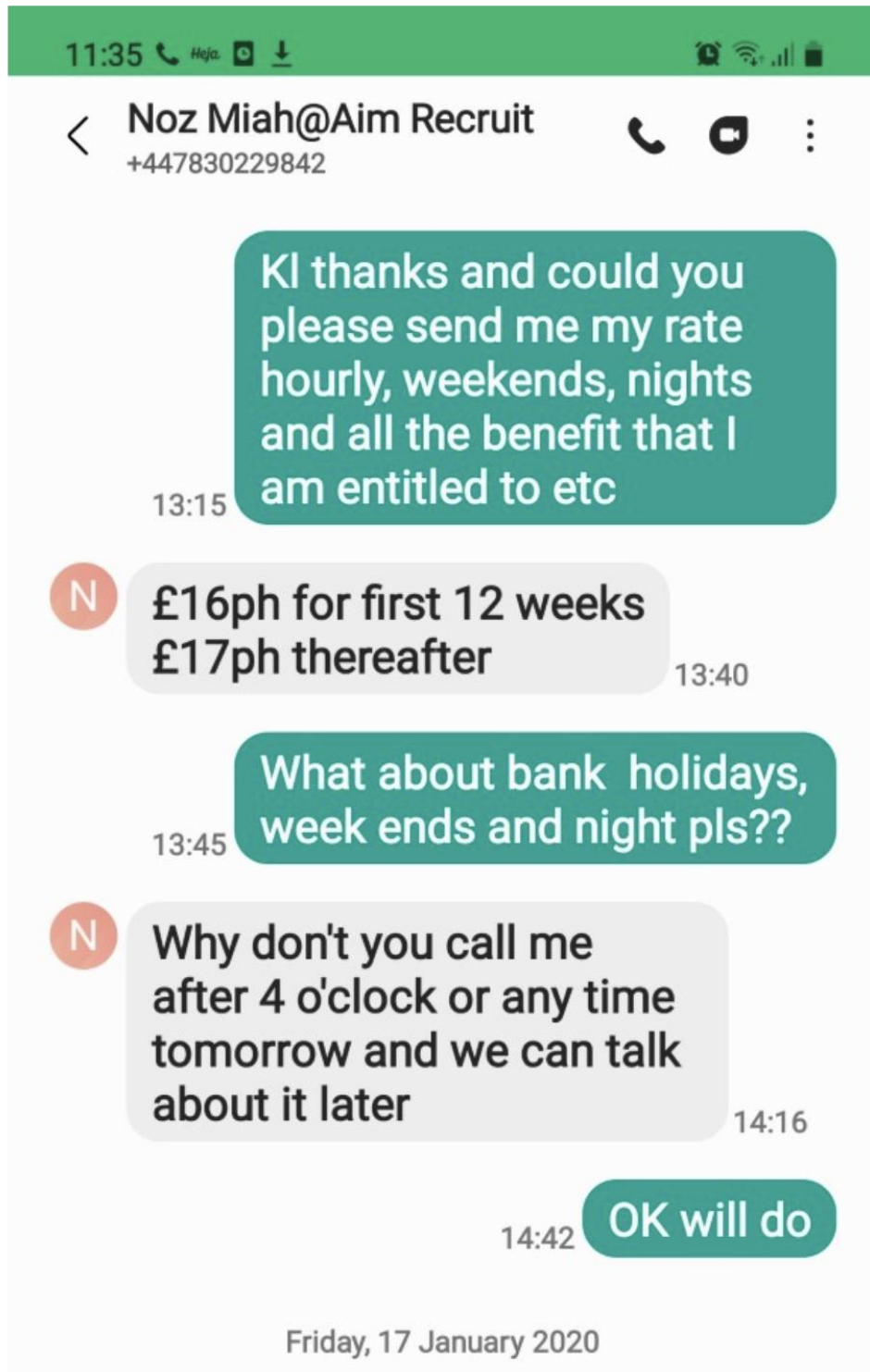


25. Mr Antwi sent me a payslip with a text he sent to Mr Miah on 19 March 2020 following receipt of his March 2020 payslip. The payslip clearly shows the pay rate of £14.28 an hour.

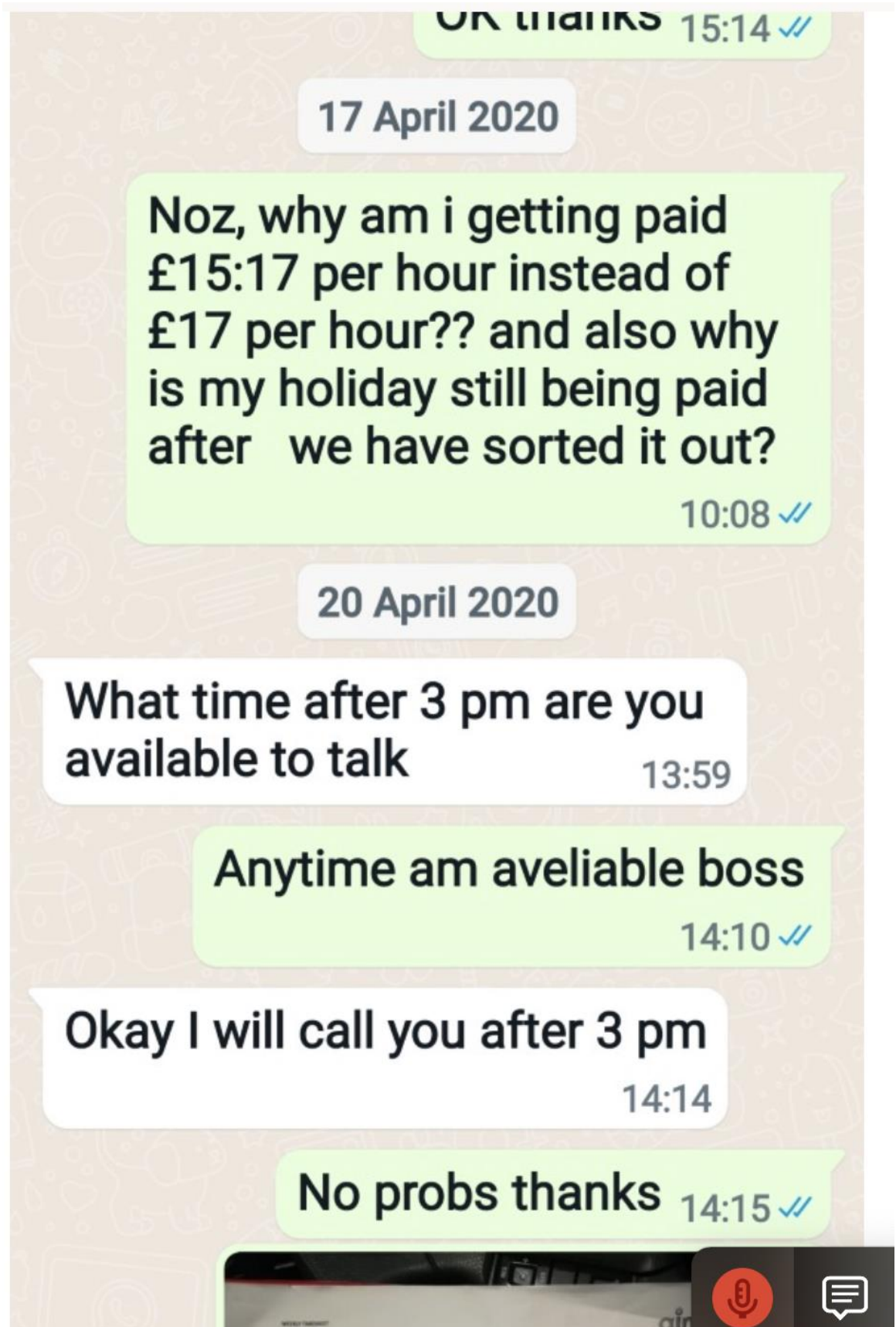


Noz, please what's is actually goin on with this my hourly RATE plus the holiday payment ?? I thought we settle this holiday and my hourly pay rate issue last week after me speaking with Carol at the payroll department per your request, but still I'm being paid £14:28 per hour instead of the agreed £17:00 per hour.????

26. Another message clearly indicates that the pay rate was as Mr Antwi says:



27. Another example is:



28. The Respondent has chosen not to engage with these proceedings. I find Mr Antwi to be a truthful witness, and his account is backed up with contemporaneous documents. In so far as they are inadequate, I accept Mr Antwi's evidence that this was because Mr Miah did not provide them.

29. The amount of this calculation is larger than the amount in the claim form. That goes to quantum rather than liability and does not require amendment. If amendment had been required, I would have granted leave to amend.
30. Accordingly, I give judgment for Mr Antwi in the amount claimed.

**Employment Judge Housego  
Dated: 14 December 2021**