



EMPLOYMENT TRIBUNALS

Claimants: Miss M Howes (1) and Mrs R Howes (2)

Respondents: Mr J Saunders (1) and Mrs E Saunders (2)

Heard at: Bristol (remotely by CVP) **On:** 1 April 2022

Before: Employment Judge Leverton (sitting alone)

Representation

Claimants: In person

Respondents: Mr J Saunders

RESERVED JUDGMENT

Miss Megan Howes (the 'first Claimant')

1. The claim for unlawful deduction from wages under Part II Employment Rights Act 1996 is well-founded and the Tribunal grants a declaration to that effect. The Tribunal orders the Respondents to pay the first Claimant the sum of **£289.64** in respect of that claim, comprising £279.24 (gross) for unpaid wages and £10.40 for bank charges.
2. The claim for payment under regulation 14 Working Time Regulations 1998 for annual leave untaken at the first Claimant's termination date is well-founded and the Tribunal grants a declaration to that effect. The Tribunal awards the first Claimant compensation of **£132.02** (gross) in respect of that claim.
3. The Tribunal awards the first Claimant **£162.38** under section 38 of the Employment Act 2002 for the Respondents' failure to provide a written statement of employment particulars.

Mrs Rosemary Howes (the 'second Claimant')

4. The claim for unlawful deduction from wages under Part II Employment Rights Act 1996 is well-founded and the Tribunal grants a declaration to that effect. The Tribunal orders the Respondents to pay the second Claimant the sum of **£2,321.55** in respect of that claim, comprising £2,285.55 (gross) for unpaid wages and £36 for bank charges.
5. The claim for payment under regulation 14 Working Time Regulations 1998 for annual leave untaken at the second Claimant's termination date is well-founded and the Tribunal grants a declaration to that effect. The Tribunal awards the second Claimant compensation of **£551.43** (gross) in respect of that claim.
6. The Tribunal awards the second Claimant **£461.10** under section 38 of the Employment Act 2002 for the Respondents' failure to provide a written statement of employment particulars.

REASONS

The claims

1. By two claim forms presented on 26 November 2021, Miss Megan Howes and Mrs Rosemary Howes (the 'Claimants') each brought two claims:
 - a. unpaid wages under Part II of the Employment Rights Act 1996 (ERA) (unauthorised deductions from wages), and
 - b. holiday pay for annual leave accrued but not taken on termination of employment under regulation 14 of the Working Time Regulations 1998 (SI 1998/1833) (WTR).
2. On 24 January 2022 Employment Judge Cadney ordered that the claims be heard together as they appeared to give rise to common or related issues of fact and law.
3. The first Claimant, Miss Megan Howes, stated at the hearing that she did not want to bring a claim for pay in lieu of notice, and Mr Jeremy Saunders (the 'first Respondent') said that he did not wish to pursue a counterclaim against either of the Claimants.
4. It was apparent that the Respondents had failed to provide the Claimants with itemised pay statements under section 8 ERA. However, the Claimants made no reference under section 11 ERA asking the Tribunal to determine what particulars ought to have been included in their payslips, and in any event the limited evidence provided would not have been sufficient to enable me to determine that issue.

Evidence and procedure

5. The hearing was conducted remotely. I heard oral evidence from both Claimants and from the first Respondent.
6. The case management order that accompanied the notice of hearing required the parties to provide witness statements and an agreed bundle of documents in advance. They failed to do so. However, the Respondents provided some documents to the Tribunal in advance – namely, a generic contract of employment, screenshots of text communications with the Claimants concerning the termination of their employment, a breakdown of wages said to be due to Mrs Rosemary Howes for the period May – August 2021, and P45s for both Claimants.
7. I have also had regard to an email exchange between Mrs Rosemary Howes and Mr Jeremy Saunders during the weekend of 26/27 March 2022 concerning the sums that were claimed and the possibility of a counterclaim by the Respondents (which in the event was not pursued). This exchange had been forwarded to the Tribunal on 28 March 2022 by Mrs Rosemary Howes with her comments, but I did not receive it from the tribunal office until the hearing was already underway.
8. The absence of an agreed bundle, coupled with the lateness of some of the evidence, meant that I was not in a position to deliver oral reasons at the conclusion of the hearing and had to reserve my judgment.

Findings of fact

Miss Megan Howes

9. The first Claimant, Miss Megan Howes, was born on 20 November 2002. She was employed by the Respondents as a farm worker from 20 March 2021 until her dismissal on 3 July 2021.
10. There was a dispute as to whether Miss Howes ever received a written contract or statement of her terms and conditions from the Respondents. Mr Saunders did not consider that she was entitled to a formal contract until she had completed her probation period. However, he told the Tribunal that he sent her a WhatsApp message on 19 April 2021 (i.e. around a month after her employment had begun) with various information attached, including what he described as a ‘temporary contract’. The document that he provided to the Tribunal was a generic template of standard terms and conditions, not specific to Miss Howes or her job. It did not include Miss Howes’s name, job title, start date, hours of work, rate of pay or the number of days’ annual leave to which she was entitled. It was this document that he said he sent to Miss Howes on 19 April.
11. Mr Saunders did not provide the Tribunal with a copy of the WhatsApp message with the generic contract attached, and Miss Howes said that she had never received a contract from him. I am satisfied on the balance of probabilities that Miss Howes did not receive a written contract or statement of terms and conditions from the Respondents.

12. Miss Howes worked on Saturdays and Sundays for an average of 11.5 hours per week. She was paid the national minimum wage, which for a worker aged 18–20 was £6.45 per hour until the end of March 2021, and £6.56 per hour from 1 April 2021. There was a verbal agreement with the Respondents that she would receive an hourly supplement of 50 pence once she had completed her three-month probation period. Her hourly rate of pay therefore increased to £7.06 on 20 June 2021. She only received one payslip from the Respondents, in April 2021.
13. There was no agreement, verbal or otherwise, as to Miss Howes's entitlement to annual leave or the start of her holiday year. The generic contract contained terms and conditions relating to the leave year, carry-over of annual leave and payment for unused leave on termination of employment but, as stated above, I am satisfied that Miss Howes never received it. She took no paid holidays during the short period for which she was employed.
14. On 3 July 2021, Miss Howes was driving a truck on the Respondents' premises. She took off the handbrake and it rolled into Mr Saunders' mother's car, causing damage to the car's light unit. Immediately after the accident, Miss Howes became distressed and suffered a panic attack. She was assisted by colleagues, who arranged for her mother, Mrs Rosemary Howes, to come and pick her up. When Mrs Howes arrived, she discussed the accident with her daughter's supervisor, Clare Fordham, who said that she would speak to Mr Saunders herself. The Claimants did not speak directly to Mr Saunders, who was not on site that day.
15. That evening, Miss Megan Howes received a text from Mr Saunders dismissing her without notice. He stated in the text that he had just been told about the accident by his parents and that he was 'utterly fuming' that she had not contacted him. He concluded: 'Don't come in tomorrow and we will call it a day from here on.' Mr Saunders regarded the alleged lack of communication or apology from Miss Howes, rather than the accident itself, as gross misconduct, and it was this that resulted in Miss Howes's dismissal.
16. Miss Howes has not been paid her wages for eight working days during the period 29 May to 3 July 2021. Mr Saunders did not dispute that he owed Miss Howes her wages for the days she had worked. However, the parties were not in agreement as to the amount that was due. I will return to this under 'Discussion and conclusions' below.
17. As a result of Mr Saunders' failure to pay her wages, Miss Howes suffered consequential losses. Two direct debits were not processed because there were insufficient funds in her bank account, and she incurred bank charges of £10.40.
18. Mr Saunders did not make any payment to Miss Howes for holidays accrued but not taken on termination of employment.

Mrs Rosemary Howes

19. The second Claimant, Mrs Rosemary Howes, was employed by the Respondents as a farm worker from 3 March 2021 until 5 August 2021.
20. There was a dispute as to whether Mrs Howes ever received a written contract or statement of her terms and conditions from the Respondents. Mr Saunders said that he had sent her a copy of the generic contract referred to above, but he provided no evidence to support that. In the absence of such evidence, I am satisfied that Mrs Howes did not receive a written contract or statement of terms and conditions from the Respondents.
21. Mrs Howes generally worked 21 hours during the week, with additional hours at weekends. She was paid the national minimum wage, which was £8.91 for workers aged 23 and over from 1 April 2021. There was a verbal agreement with the Respondents that she would receive an hourly supplement of 50 pence once she had completed her three-month probation period. Her hourly rate of pay therefore increased to £9.41 on 3 June 2021. She received only one payslip from the Respondents, in April 2021.
22. There was no contractual agreement as to Mrs Howes's entitlement to annual leave or the start of her holiday year. She took no paid holidays during the period for which she was employed.
23. By the end of July 2021, Mrs Howes was finding the job physically demanding and experiencing health issues. In late July or early August, she had a conversation with Mr Saunders. Her recollection of that conversation was that she explained her difficulties to him and gave him a week's notice of resignation. Mr Saunders had a different interpretation. His recollection was that Mrs Howes told him only that she was considering leaving, and that they agreed that she would consider the matter further and let him know her decision.
24. On 6 August 2021 Mrs Howes failed to report for work. Mr Saunders sent her a WhatsApp message: 'Guys say you haven't made it in this morning. Just checking you are okay?'. Mrs Howes replied: 'It's a tough decision I've had to make... I have to think of my own health.' Mr Saunders responded that he was keen to make things work. He referred to a previous discussion where Mrs Howes had agreed to have a think and let him know her decision. Mr Saunders concluded: 'Is this you letting me know? Or having a sick day?'.
25. On the basis of this evidence, I am satisfied that Mrs Howes did not give clear, unambiguous and effective notice of her resignation when she spoke to Mr Saunders in late July or early August. It is not disputed that the last day on which she worked, 5 August 2021, was her final day of employment.
26. Mrs Howes is owed unpaid wages for the final weeks of her employment. Mr Saunders does not dispute this but there is a lack of consensus as to the

amount that is properly due. I will return to this under 'Discussion and conclusions' below.

27. As a result of Mr Saunders' failure to pay her wages, Mrs Howes suffered consequential losses. Direct debits were not processed because there were insufficient funds in her bank account, and she incurred bank charges of £36.

28. Mr Saunders did not make any payment to Mrs Howes for holidays accrued but not taken on termination of employment.

Legal framework

Unauthorised deductions from wages

29. Section 13 ERA provides, in so far as material:

'(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.'

30. Section 23 ERA 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...'*

31. Section 24 ERA deals with remedies:

'(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer –

(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13...

(2) Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.'

Annual leave

32. Under regulation 13(1) WTR, a worker is entitled to four weeks' annual leave in each leave year. Regulation 13A confers an entitlement to a period of additional leave of 1.6 weeks. The worker's aggregate entitlement under both these provisions is subject to a maximum of 28 days.

33. Regulation 13(3) WTR provides:

'A worker's leave year, for the purposes of this regulation, begins –

(a) on such date during the calendar year as may be provided for in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply –

... (ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.'

34. Regulation 14 WTR deals with payment for untaken leave on termination of employment:

'(1) Paragraphs (1) to (4) of this regulation apply where –

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be –

(a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula–

(A × B) – C

where –

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.'

35. Regulation 16 WTR provides for statutory holiday pay to be calculated according to the 'week's pay' formula in sections 221 to 224 ERA. For workers without normal working hours, pay and remuneration are averaged over a period of 52 weeks. Where a worker has been employed for less than 52 complete weeks, the reference period is '*the number of complete weeks for which the worker has been employed*' – regulation 16(3)(e)(i).

Written statement of employment particulars

36. Section 38 of the Employment Act 2002 provides:

'(3) If in the case of proceedings to which this section applies –

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1)... of the Employment Rights Act 1996 [duty to provide a written statement of particulars of employment]... ,

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3) –

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.'

Discussion and conclusions

Miss Megan Howes

Unpaid wages

37. By his own admission, Mr Saunders did not pay Miss Megan Howes her outstanding wages. This amounts to an unauthorised deduction from wages contrary to section 13 ERA.

38. Mr Saunders calculated Miss Howes's outstanding wages as £193.52 for June 2021 (29.5 hours @ £6.56) and £49.20 for July 2021 (7.5 hours @ £6.56), giving a total of £242.72 (gross). His calculation did not identify the hours that had been worked on particular days, and it failed to take into account the increase in Miss Howes's hourly rate of pay on 20 June 2021.

39. Miss Howes provided a detailed breakdown of the hours she had worked each day during the relevant period, giving a total of £279.24 gross wages for 41.5 hours' work. Miss Howes's evidence was more detailed than Mr

Saunders' and I conclude that £279.24 is the correct amount owing to her. The calculation is set out below:

Date	Hours worked	Wages
29 May 2021	5.5 hours @ £6.56	£36.08
5 June 2021	5.5 hours @ £6.56	£36.08
6 June 2021	6 hours @ £6.56	£39.36
12 June 2021	5.5 hours @ £6.56	£36.08
13 June 2021	5 hours @ £6.56	£32.80
20 June 2021	5.5 hours @ £7.06	£38.83
26 June 2021	4.5 hours @ £7.06	£31.77
3 July 2021	4 hours @ £7.06	£28.24
<i>Total gross wages</i>		£279.24

40. Under section 24(2) ERA, I also award £10.40 to compensate Miss Howes for the bank charges incurred because of the unauthorised deductions from her wages.

Holiday pay

41. Mr Saunders' stance was that Miss Megan Howes had forfeited any right to accrued holiday pay by not communicating with him about her accident or apologising to him. In his view, her behaviour amounted to gross misconduct.
42. This overlooks the fact that Miss Howes was in a state of distress after the incident and that her mother reported the incident to Ms Fordham, who said that she would speak to Mr Saunders herself. In any event, even if Miss Howes had been guilty of gross misconduct, there was no provision – statutory, contractual or otherwise – that could have permitted Mr Saunders to withhold her accrued holiday pay.
43. Miss Howes's holiday entitlement is governed by the WTR. Her leave year began on 20 March 2021 under regulation 13(3)(b)(ii) WTR, and she was entitled to 5.6 weeks' annual leave (i.e. four weeks' basic leave under regulation 13 plus 1.6 weeks' additional leave under regulation 13A). She is entitled to a payment for statutory leave accrued but not taken on termination of employment, calculated in accordance with regulation 14 WTR.
44. Miss Howes worked on average 11.5 hours per week, so in her case 5.6 weeks' annual leave equates to 64.4 hours. The calculation is $64.4 \text{ hours} \times \frac{106}{365} \text{ days}$ (the proportion of the leave year for which she was employed) = 18.7 hours' leave. Multiplied by her hourly rate of £7.06, this gives a total payment for untaken annual leave of £132.02 (gross).

Failure to provide written statement of employment particulars

45. I have found that the Respondents did not provide Miss Megan Howes with a written statement of employment particulars. I must therefore make an award under section 38 of the Employment Act 2002. I award the minimum amount of two weeks' pay at a weekly rate of £81.19 (11.5 hours x £7.06), giving a total award of £162.38.
46. The Respondents are a small employer with limited access to HR or legal advice. They appear to have been under the genuine but mistaken impression that it was not necessary to provide a formal statement of terms and conditions until Miss Howes had completed her probation period. In light of this, I do not consider it just and equitable to award the higher amount of four weeks' pay.

Mrs Rosemary Howes

Unpaid wages

47. Mr Saunders did not pay Mrs Rosemary Howes her outstanding wages for the final weeks of her employment. This amounts to an unauthorised deduction from wages contrary to section 13 ERA.
48. Mrs Howes said in evidence that she was owed a total of 202.5 hours' wages for June and July 2021. She said that 21 hours were payable at the lower rate of £8.91 per hour, and the remainder were payable at the increased rate of £9.41. However, she did not provide a monthly breakdown of the hours she had worked.
49. Mr Saunders' evidence was that Mrs Howes was owed 98 hours' pay for July 2021 and 40.5 hours' pay for August 2021, a total of £1,246.50 (gross). However, he calculated her outstanding pay at the uniform rate of £9 per hour, whereas I have found that she was entitled to £8.91 per hour from 1 April 2021, increasing to £9.41 on 3 June 2021. He also said that she worked 105.5 hours in June 2021.
50. Doing the best I can with the limited information available, and bearing in mind that Mr Saunders by his own admission had not attempted the calculation himself, I am satisfied that £2,285.55 is the correct amount owing to Mrs Howes, calculated as follows:

Month	Hours worked	Wages
June 2021	21 hours @ £8.91	£187.11
	84.5 hours @ £9.41	£795.15
July 2021	98 hours @ £9.41	£922.18
August 2021	40.5 hours @ £9.41	£381.11
<i>Total gross wages</i>		£2,285.55

51. Under section 24(2) ERA, I also award £36 to compensate Mrs Howes for the bank charges incurred because of the unauthorised deductions from her wages.

Holiday pay

52. Mr Saunders believed that he was entitled to withhold payment for unused annual leave because Mrs Howes had resigned without notice. However, there was no provision, contractual or otherwise, that allowed him to do so.
53. Mrs Howes's holiday entitlement is governed by the WTR. Her leave year began on 3 March 2021 under regulation 13(3)(b)(ii) WTR, and she was entitled to 5.6 weeks' annual leave (i.e. four weeks' basic leave under regulation 13 plus 1.6 weeks' additional leave under regulation 13A). She is entitled to a payment for statutory leave accrued but not taken on termination of employment, calculated in accordance with regulation 14 WTR.
54. Mrs Howes worked variable hours, and I therefore calculate her holiday pay by reference to her average hours during the period of 22 weeks for which she was employed. I accept Mr Saunders' evidence that she worked the following hours: March 2021 – 94.5 hours; April 2021 – 97 hours; May 2021 – 103 hours; June 2021 – 105.5 hours; July 2021 – 98 hours; August 2021 – 40.5 hours. The total number of hours worked during her employment is 538.5, which equates to 24.5 hours per week.
55. In the case of Mrs Howes, 5.6 weeks' annual leave equates to 137.2 hours. The calculation is $137.2 \text{ hours} \times 156/365 \text{ days}$ (the proportion of the leave year for which she was employed) = 58.6 hours' leave. Multiplied by her hourly rate of £9.41, this gives a total payment for untaken annual leave of £551.43 (gross).

Failure to provide written statement of employment particulars

56. I have found that the Respondents did not provide Mrs Rosemary Howes with a written statement of employment particulars. I must therefore make an award under section 38 of the Employment Act 2002. I award the minimum amount of two weeks' pay at a weekly rate of £230.55 (24.5 hours x £9.41), giving a total award of £461.10.
57. Because the Respondents are a small employer with limited access to HR or legal advice, I do not consider it just and equitable to award the higher amount of four weeks' pay.

Employment Judge Leverton

Date: 11 April 2022

Reserved Judgment & reasons sent to parties: 25 April 2022

FOR THE TRIBUNAL OFFICE