



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Jamie-Lee Jason Last

**Respondent:** Chameleon Accident Repair Centre

**Heard at:** Cardiff (Remote)

**On:** 31<sup>st</sup> March 2022

**Before:** Employment Judge Grubb  
(sitting alone)

## REPRESENTATION:

**Claimant:** No attendance

**Respondent:** No attendance

## Judgment

1. The claimant's complaint that there was an unauthorised deduction from his wages and for breach of contract is dismissed.

## Reasons

1. This is a claim brought by the Claimant under s. 13 of the *Employment Rights Act 1996* for unlawful deduction of wages. Specifically, the Claimant alleges that he was not paid for 12.8 days untaken holiday and arrears of pay comprising of £244 for April 2021 as well as sums from June to 16<sup>th</sup> August 2021, which is stated as the date of termination of employment in the ET1. He is also claiming 2 weeks' unpaid notice pay.

2. He filed the ET1 in the employment tribunal on 11<sup>th</sup> August 2021.

3. No Response was filed by the Respondent. As a result, the Respondent is only entitled to notice of hearings, but is otherwise not permitted to participate at a hearing unless the judge allows it r. 21 of the Employment Tribunal Procedure Rules ('ETPR').
4. In any event there has been no attendance by or on behalf of the Respondent. However, in order to give judgment for the Claimant, the tribunal still needs to have evidence before it to satisfy itself that it is more probable than not that the Claimant was entitled to the sums he claims and was not paid them.
5. The tribunal has before it the ET1, the contract of employment and payslips from November and March 2021 showing what the Claimant would normally have received by way of ordinary pay.
6. I also had sight of the covering email to which the contract and payslips were attached dated 5<sup>th</sup> January 2022 providing some explanation of the surrounding circumstances.
7. What the tribunal did not have before it was any payslips for the period between April 2021 and August 2021 evidencing what payments were or were not made. The claim for holiday pay also included an assertion that the employer had agreed that the Claimant could carry over some days holiday. These were both issues on which the tribunal needed to hear further evidence.
8. It was perhaps for this reason that a hearing was fixed for today's date. Notice of hearing was sent to the Claimant on 13<sup>th</sup> September 2021. As noted above, on 5<sup>th</sup> January 2022, the Claimant provided the tribunal with his email and supporting documents.
9. On 23<sup>rd</sup> March 2022 the tribunal emailed the Claimant with joining instructions listed for today. The Claimant responded that same day asking whether it was morning or afternoon as he had to book time off work. He was informed by the tribunal via email on 25<sup>th</sup> March 2022 that the hearing was listed to start at 2.
10. On 28<sup>th</sup> March, the Claimant emailed the tribunal questioning whether he needed to attend the hearing as he had been advised he was not obliged to, but it was in his best interests to do so. The matter was referred to Employment Judge Harfield who stated that the Claimant needs to attend as the tribunal needs to hear evidence from him to explain his losses as there is not sufficient information on the documents provided. This information was relayed to the Claimant via email on 30<sup>th</sup> March.
11. An email was received by the tribunal this morning from the Claimant saying that he was unable to get the hours off from his employer to attend, but would continue to try.
12. The Claimant was not in attendance at 2pm and so attempts were made by the court clerk to contact him by telephone. The Claimant rang the tribunal at around 2.13

pm stating that he could not get the time off as he was due to finish with his current employment tomorrow. He would however be free after that.

13. Attempts were made to again contact the Claimant to get him to attend the hearing at least briefly by telephone in order to provide some more information about his circumstances and availability for the purpose of considering whether it was appropriate to postpone the hearing. There was no response, presumably because the Claimant was at work.

14. The Claimant has not expressly asked for a postponement of the hearing. I nevertheless considered whether to do so under the general power of the tribunal to make a case management order of its own initiative under r. 29 of the ETPR. Rule 30A deals with postponements and states:

- (1) An application by a party for a postponement of a hearing shall be presented to the tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.
- (2) Where a party makes an application for a postponement of a hearing 7 days before the hearing begins, the tribunal may only order a postponement were:
  - a. All the parties consent and...
  - ii. it is otherwise in accordance with the overriding objective.
  - b. ...
  - c. There are exceptional circumstances.

15. As the Claimant is the only party to proceedings, I consider the matter under r. 30A(2)(a). The material question is whether postponing would be in accordance with the overriding objective which is set out in r. 2 ETPR, which requires the tribunal to deal with cases in ways that are proportionate to the complexity and importance of the issues, avoiding unnecessarily formality and seeking flexibility in proceedings, avoiding delay so far as is compatible with consideration of the issues and saving expense.

16. I consider that adjourning the matter today would not be in accordance with the overriding objective. The Claimant has known about this hearing since 13<sup>th</sup> September 2021 and so had ample time to ensure that he had booked time off work. While the tribunal had some notice that the Claimant may not be fully prepared to attend the hearing on 28<sup>th</sup> March, the Claimant only informed the tribunal the morning of the hearing that he would likely be unable to attend. This has resulted in tribunal time being lost as it was too short notice for another hearing to be listed.

17. Sadly, the Claimant was not even able to attend briefly to provide further explanation or assurance that he would attend on the next occasion should the matter be re-listed. While the Claimant said that he was finishing in his current employment tomorrow, I am informed the next listing date would be weeks/months in the future.

18. The tribunal has sought to be flexible by waiting sometime today for further information and an explanation from the Claimant. Having waited that time I consider

that it would not be proportionate to postpone this matter. Tribunal time is an important resource and currently at a premium. It would be disproportionate to re-list without assurance that there would be attendance on the next hearing date.

19. Consequently, under r. 47 ETPR, it is open to the tribunal to dismiss the claim or proceed with the hearing in the absence of a party. Before doing so it shall consider any information which is available to it, after any enquiries that may be applicable, about the reasons for the party's absence.

20. Whichever choice the tribunal makes under r. 47 the result would be the same in this case, which would be for the claim to be dismissed. The evidence before the tribunal as set out above is simply insufficient to persuade me that it is more likely than not that there are wages, holiday pay and notice pay outstanding. Most significantly, there are no payslips available for the months of April – August. There were however a number of other issues that needed to be clarified by the Claimant and he sadly was not here to do that.

21. For these reasons I dismiss the claim.

Employment Judge Grubb

Date: 31<sup>st</sup> March 2022

REASON SENT TO THE PARTIES ON 8 April 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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