



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**  
Mr Robert Hiles

AND

**Respondent**  
Alliance Parking UK Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD BY VIDEO (CVP)**

**ON**

17 November 2022

**EMPLOYMENT JUDGE** N J Roper

**Representation:**

**For the claimant:** In Person

**For the respondent:** Mr K McManus, Director

## **JUDGMENT**

**The judgment of the tribunal is that:**

- 1. The claimant succeeds in his claim for unlawful deduction from wages and the respondent is ordered to pay the claimant the gross sum of £80.00; and**
- 2. The respondent failed to issue the claimant with a written statement of the particulars of his employment and the respondent is also ordered to pay the claimant two weeks' pay in the gross sum of £380.00.**

## **RESERVED REASONS**

1. In this case the claimant Mr Robert Hiles brings monetary claims for unlawful deduction from wages against the respondent his ex-employer Alliance Parking UK Limited. The respondent denies the claims. An earlier judgment which had been entered under Rule 21 has now been revoked for the reasons set out in the attached Reconsideration Judgment of today's date.
2. This has been a remote hearing by video (Video Hearing Service) as requested and consented to by the parties.
3. I have heard from the claimant. I have heard from Mr Kevin McManus, a director of the respondent on behalf of the respondent.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The claimant's claim is for unlawful deduction from wages, and it consists of two elements. The first is for £500.00 of earnings by way of bonus which he says has fallen due but has

- not been paid. The second is for £320.00 of credit card usage to compensate him for the financial difficulty caused by the non-payment. The circumstances are as follows.
6. The claimant was employed as a parking attendant by the respondent from 21 April 2022 until 24 May 2022. He worked 20 hours per week which consisted of four shifts of five hours each, at the rate of £9.50 per hour. His gross weekly pay was therefore £190.00. He resigned his employment with immediate effect by WhatsApp message on 24 May 2022. The claimant's employment therefore lasted for fewer than five weeks, and he did not give any notice of termination of his employment. The respondent asserts that its normal starting contractual notice period is one month either way, but it accepts that it did not issue the claimant with a written statement of the particulars of his employment, which it says it normally issues after eight weeks of employment.
  7. The respondent company is an operator of parking facilities. It is a member of an Approved Trade Association, namely the International Parking Community (the IPC). A requirement of its accreditation is that its members (including the respondent) adhere to the Code of Practice issued by the IPC. Section 28 of that Code of Practice allows its members to use incentive schemes to motivate staff and improve productivity, but it does not allow its members to use incentive schemes which focus "solely on the volume of Parking Charges issued". It requires its members to act responsibly, and states in paragraph 28.2 of the Code of Practice "to avoid simply encouraging the issue of a high volume of Parking Charges, operators should employ schemes which encourage a high standard of work."
  8. The respondent operates an incentive scheme which it describes as discretionary. The starting point for the scheme is that the respondent's parking staff are awarded £5.00 for each qualifying Parking Charge which is issued over and above a baseline target. The baseline target is set at one Parking Charge for each 1 ½ hours worked. However, each Parking Charge is subject to an internal quality control process which it has to pass before counting towards the incentive scheme. If a Parking Charge is issued in error, or without the correct photographic evidence having been obtained, and/or with clerical or procedural errors (including the employee being overzealous) then that Parking Charge will not qualify towards the incentive or bonus payment.
  9. In addition, in circumstances where an employee leaves without giving due contractual notice, the respondent declines to pay any incentive. There are two reasons for this: the first is that the incentive scheme is to encourage professionalism (and leaving without notice is said to be unprofessional); and secondly, it is not uncommon for employees to be overpaid their incentive on the grounds that they may have initially been paid on the basis of Parking Charges which do not qualify, but where a defect in the Parking Charge has not yet come to light.
  10. Following the termination of his employment, the claimant was paid for the shifts which he had worked, and for the appropriate accrued but unpaid holiday pay. The claimant claims that he was not paid under the respondent's bonus scheme which in the first place should have been paid to him, and which should have been paid on the basis of the Parking Charges which he issued.
  11. The respondent agrees that the outline terms of the bonus or incentive scheme were explained to the claimant, even though the written terms are not provided. The respondent also accepts that the claimant was entitled to be paid under the incentive scheme, but subject to the terms of that scheme. The claimant agrees that he was told that he would benefit under the scheme but did not receive any written confirmation of its terms.
  12. The information provided by the respondent in defence of this claim is that the claimant worked 51 hours during his employment and the target number of Parking Charges during that period was 34. The claimant issued 86 Parking Charges during this period, but 36 of these did not qualify towards the incentive scheme. On this basis the claimant issued 50 qualifying Parking Charges against a target of 34, and 16 Parking Charges therefore qualified for a bonus at £5.00 each. The potential bonus for this period was therefore £80.00, and not the £500.00 as claimed by the claimant.
  13. The claimant has complained that the respondent has not given full disclosure of all of the parking Charges which he raised and an explanation as to why 36 of these were defective. In addition, the claimant refers to text messages from his previous manager which indicated

- that his work was of a high quality. However, the respondent has produced a random selection of 10 of these defective Parking Charges, with a sensible explanation as to why each of these was defective, having first invited the claimant to select the random 10. He declined to do so. The respondent says that it is simply not proportionate to go to the time and trouble of proving the remainder because it is too time-consuming. I can understand that concern, but in any event, I accept the respondent's evidence on the balance of probabilities that only 16 of the Parking Charges issued by the claimant qualified for the bonus of £5.00 each because they were the only 16 that were not defective (over and above the baseline target of 34 valid Parking Charges).
14. The respondent then declined to make this payment of £80.00 otherwise due to the claimant because he resigned his employment in breach of contract.
  15. The claimant also claims the sum of £320.00, which includes credit card charges and interest, and "sums not paid to HMRC", because he says he had to live off his credit card following the respondent's failure to pay him the sums due.
  16. Having established the above facts, I now apply the law.
  17. The claimant claims in respect of deductions from wages which he alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996 ("the Act").
  18. Under section 24(2) of the Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a 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.
  19. Under section 1(1) of the Act, where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment. Under section 1(2)(b) the statement must be given not later than the beginning of the employment.
  20. Under section 38 of the Employment Act 2002, if the employer was in breach of his duty to give a written statement of initial employment particulars and the employment tribunal finds in favour of the employee or makes an award to the employee, then the tribunal must increase the award by an amount equal to two weeks' pay, and may, if it considers it just and equitable in all the circumstances, increase the award by four weeks' pay instead.
  21. The claimant's claim is for payment under the respondent's bonus scheme and the first question which arises is whether or not the claimant is entitled to be paid under this scheme. A written explanation of the bonus scheme was never given to the claimant because of the respondent's mistaken assumption that a statement of the terms and conditions of employment need only be issued after eight weeks of continuous employment.
  22. I find that it was clear that the parties both expected that all other things being equal the claimant would be entitled to a bonus based on Parking Charges issued. It makes sense that the bonus would only be payable on Parking Charges which were correctly issued, otherwise an employee could issue no end of defective Parking Charges and expect to be paid when the respondent would receive no return from them if they were defective. To that extent I am satisfied that the bonus scheme would only operate to reward an employee such as the claimant in respect of Parking Charges properly issued.
  23. I accept the respondent's evidence that the claimant worked 51 hours during his employment and the baseline or target number of Parking Charges during that period for the purposes of the incentive scheme was 34. The claimant issued 86 Parking Charges during this period, but 36 of these were defective and did not qualify towards the incentive scheme. On this basis the claimant issued 50 qualifying Parking Charges against a target of 34, and 16 Parking Charges therefore potentially qualified for a bonus at £5.00 each. The potential bonus for this period was therefore £80.00, and not the £500.00 as claimed by the claimant.
  24. The next question which arises is whether the respondent was entitled to withhold this payment of £80.00. The respondent asserts that in the first place the incentive scheme was discretionary, and secondly in any event if an employee leaves a breach of contract without giving notice then there is no entitlement to payment of the bonus.

25. In my judgment the first difficulty which the respondent faces is that the terms of the incentive scheme now relied upon by the respondent were not put in writing and notified to the claimant. It was the expectation of both parties that the claimant would be paid under the incentive scheme in respect of Parking Charges which exceeded his target and were not defective. The claimant was not notified that any such payment would be subject to the restrictions which the respondent now relies upon. These limitations on the payment of the bonus were not agreed between the parties.
26. I therefore find that there was an unlawful deduction from the claimant's wages in the sum of £80.00, and the respondent is ordered to pay this sum to the claimant.
27. In circumstances where the claimant resigned his employment without notice, and the sum due to him was only £80.00, I do not agree with the claimant's contention that £320.00 worth of credit card charges, or interest, or difficulties with payroll and/or HMRC, or other payments were in any way caused by or otherwise attributable to the respondent's failure to pay the £80.00, particularly as he was also in other paid employment. I therefore dismiss the claimant's claim for this further sum under section 24(2) of the Act.
28. However, the claimant has succeeded in his primary claim, and at the relevant times the respondent was in breach of its statutory obligation to provide the claimant with a written statement of the particulars of his employment. I therefore also award the claimant two weeks' pay under section 38 of the Employment Act 2002.

Employment Judge N J Roper  
Date: 17 November 2022

Judgment sent to Parties: 24 November 2022

FOR THE TRIBUNAL OFFICE