



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Michael Stewart

**Respondent:** Denton Homes Limited

**Heard at:** London South Employment Tribunal (at Croydon)  
(Hybrid Hearing)

**On:** 8 to 10 November 2022 (3 days)

**Before:** Employment Judge McCann

## Representation

Claimant: In person

Respondent: Mr K Aggrey-Orleans (Counsel)

# JUDGMENT

1. The claimant was at all material times a worker of the respondent within the meaning of section 230(3)(b) of the Employment Rights Act 1996; but was not employed under a contract of employment.
2. The Tribunal does not have jurisdiction to hear the claims for unfair dismissal claim or breach of contract and, consequently, those two claims are dismissed.
3. The Tribunal has jurisdiction to hear the claim for unpaid holiday (Regulations 13, 14 and 30 of the Working Time Regulations 1998).
4. The claim for unpaid holiday succeeds; and the respondent failed to pay the claimant in respect of his paid holiday entitlement which had accrued on termination of the working relationship and is ordered to pay to the claimant the sum (agreed between the parties) of **£11,700** being the GROSS sum due.
5. The Tribunal does not have jurisdiction to hear the complaints of unlawful deduction from wages because they were presented outside the prescribed time limit in section 23(2) and (3) of the Employment Rights Act 1996; and the claimant has not shown that it was not reasonably practicable for him to present his complaints in time. In any event, on the Tribunal's findings of fact, there were no deductions made from the claimant's wages, as alleged.
6. The complaints of unlawful deduction from wages are, accordingly, dismissed.

7. The Tribunal declines to make an award under section 38 of the Employment Act 2002 because, when the claimant commenced working for the respondent on 1 February 2016, the duty (under sections 1 to 4 of the Employment Rights Act 1996) only applied in respect of employees (employed under a contract of employment), not workers. In any event, the Tribunal would have declined to make an award, by virtue of s38(5) of the Employment Act 2002.

Employment Judge **McCann**

Date 11<sup>th</sup> November 2022

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.

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.