



EMPLOYMENT TRIBUNALS

Claimant: Mr D Tench

Respondent: For the Road Limited

Heard at: ET London South (via CVP)
On: 27 September 2022 & 27 October 2022

Before: EJ Swaffer

Representation

Claimant: Mr P O'Callaghan, Counsel

Respondent: Ms G Melani, Director, For the Road, in person

RESERVED JUDGMENT

1. The claim for a declaration under Section 12(3) Employment Rights Act 1996 that payslips were not provided in accordance with Section 8(1) Employment Rights Act 1996 is not well founded, and fails. The claim is dismissed.
2. The respondent accepted that it owes the claimant the sum of £970.38 described as two weeks work in hand. The claim for unauthorized deductions (work in hand) is well founded and succeeds. The respondent is ordered to pay the claimant £970.38 (gross) within 21 days of the date of this judgment.
3. The claim for breach of contract ("alleged furlough") is not well founded and fails. The claim for breach of contract (alleged furlough) is dismissed.
4. The claim for holiday pay is well founded and succeeds. The respondent is ordered to pay the claimant the sum of £1754.40 (net) within 21 days of the date of this judgment. This sum is calculated as follows:
 - a. 28 days annual leave per annum
 - b. 10 months holiday, pro rata = 24 days
 - c. Working week = 5.25 days (including alternate Saturdays for half a day)
 - d. Daily rate of pay £1663 x 12 = £19,956
 - e. £19,956 ÷ 52 = £383.77 weekly pay (net)
 - f. £383.77 ÷ 5.25 days = £73.10 daily pay (net)
 - g. 24 days annual leave x £73.10 a day = £1754.40
5. The claim for unauthorized deductions (loans, cars, cash advances) is well founded and succeeds. The respondent is ordered to pay the claimant £3699.90 (gross) within 21 days of the date of this judgment.

6. The claim for unauthorized deductions (fines/enforcement) is not well founded and fails. The claim for unauthorized deductions (fines/enforcement) is dismissed.
7. The claim for breach of contract (underpayment) is well founded, and succeeds. The respondent is ordered to pay the claimant £3387.34 (net) within 21 days of the date of this judgment.
8. The respondent accepted that it owed the claimant notice pay. The claim for breach of contract (notice pay) is well founded and succeeds. The respondent is ordered to pay the claimant £1225.00 (net) within 21 days of the date of this judgment. This sum is calculated as follows
 - a. £1663 = one month's net pay
 - b. £1663 - £438 (payment received by the claimant from new employment) = £1225.00.
9. The claim for a declaration that the respondent failed to comply with the National Minimum Wage Act 1998 is well founded and succeeds. By virtue of the unlawful deductions it made, the respondent failed to comply with the requirements of the National Minimum Wage Act 1998.
10. The employer's counterclaim is not well founded, and fails. The employer's counterclaim is dismissed.
11. The total award to be paid by the respondent to the claimant within 21 days of the date of this judgment is £5358.58 gross plus £6366.74 (net). These sums are calculated as follows:
 - a. £970.38 + £3699.90 = £4670.28 (gross)
 - b. £1754.40 + £3387.34 + £1225.00 = £6366.74 (net)

REASONS

Introduction

1. The claim and counterclaim were heard together.
2. The respondent is small family business which operates a specialized garage for high specification cars. There are two directors, Ms Gloria Melani and Mr Umberto Chmeit. Mr Chmeit is Ms Melani's son. Mr Chmeit's focus is the practical work of the business (mechanics), and Ms Melani deals with administrative matters. The claimant was employed as a technician (mechanic) by the respondent from 9 October 2020 until he was dismissed on 29 June 2021.
3. On 16 September 2021 the claimant made a number of claims against the respondent. These are for:
 - a. A declaration that the respondent failed to provide him with payslips as required by section 8(1) Employment Rights Act 1996 (ERA)
 - b. A declaration that the respondent made unauthorised deductions from his wages, which the claimant has described as:
 - i. Two weeks work in hand
 - ii. Repayments of cash advances
 - iii. Repayments of a car loan for the car MW57ZJY
 - iv. Repayments of a car loan for the car LB08ZDR
 - v. Repayments for fines
 - c. A declaration that by virtue of the unauthorised deductions, the respondent failed to comply with the requirements of the National Minimum Wage Act 1998

- d. Breach of contract, by virtue of differences between the amounts paid by the respondent to the claimant and the amounts described on the payslips
 - e. Breach of contract, on the basis that the claimant denies that he was placed on furlough
 - f. Breach of contract, in the form of notice pay as the claimant was dismissed without notice
 - g. Holiday pay, which was not paid on termination of employment
 - h. Other losses, which relate to a list of the claimant's possessions which he states the respondent has refused to return to him.
4. On 21 October 2021 the respondent filed a response, resisting all claims on the basis that payslips were provided to the claimant, that the claimant took holiday without permission, that he published without permission photographs of cars belonging to the respondent's clients on his own social media platforms, that he used the personal account of a director of the respondent to buy a car without permission, that the claimant harassed a woman whilst on duty for the respondent, that the claimant bullied an apprentice, and that the claimant used his own cars which were insured by the respondent under its company policy for personal journeys. The respondent submits that all deductions from the claimant's pay were made in accordance with the contract of employment, and with the claimant's agreement. The respondent also states that the claimant was dismissed for gross misconduct on 29 June 2021.
5. The respondent also filed an employer's counterclaim, seeking repayment from the claimant of the following:
- a. The cost of repairing damages to a car and a wall
 - b. The cost of the claimant's use of company premises and property to work on his own cars
 - c. The cost of keeping the claimant's car LB08ZDR on its premises
 - d. The cost of accommodation and food provided to the claimant
 - e. The cost of tyres provided by the respondent when the claimant damaged the tyres on his own car
 - f. The cost of instructing solicitors to reply to a letter received from the claimant's solicitors.

Preliminary matters

6. By email dated 23 September 2022, Ms Melani requested that the hearing should be held in person, or as a hybrid hearing. This was on the basis of:
- a. her concerns about her technical abilities
 - b. the fact that the respondent was not represented
 - c. the fact that English is not her first language
 - d. the fact that one of the respondent's proposed witnesses was not comfortable to appear via CVP, and
 - e. the fact that there had not been sufficient time for the respondent to copy and send bundles electronically due to the parties being informed at short notice that the hearing would be held remotely.
7. As a preliminary matter, Mr O'Callaghan resisted an adjournment. When I discussed the application with Ms Melani, it emerged that she was now happy for the hearing to proceed via CVP and was no longer requesting an

in person or hybrid hearing. She also had no concerns that being unrepresented in a remote hearing would leave the respondent at a disadvantage. She was confident in her English language ability, and was clear that she did not need or want an interpreter. She was no longer planning to call the witness (Mr Bradley George) who felt uncomfortable appearing via CVP due to his personal characteristics. She was content to proceed today as listed.

8. Ms Melani applied to call her fellow director Mr Chmeit as a witness. He had not provided a witness statement for several reasons: he felt hurt by the claimant's claims; he found disputes stressful, and because the respondent had not realized that it would be possible for him to submit a statement after the deadline for exchange of witness statements. He had however produced a document in the form of an email written by him, he stated on 7 September 2022, which Ms Melani wished to adduce. Mr O'Callaghan objected, submitting that it would be prejudicial to the claimant to allow the respondent to introduce an additional witness who had not submitted a statement in advance.
9. I adjourned to consider the application to admit Mr Chmeit as a witness. I decided that it would be in accordance with the overriding objective for the parties and Tribunal to see the document prepared by Mr Chmeit. I adjourned again for the document to be provided and to allow Mr O'Callaghan to take instructions. On resumption, Mr O'Callaghan again objected to the document being admitted, as it was undated and might have been prepared after the respondent received the claimant's witness statement, and was not in the form of a witness statement with numbered paragraphs. However, Mr O'Callaghan indicated that the claimant was also keen not to postpone the hearing. Mr O'Callaghan accepted that he would be able to deal with the document if I admitted it today, and also with Mr Chmeit's evidence. I therefore decided that it was in accordance with the overriding objective to admit the document, and to allow the respondent to call Mr Chmeit as a witness.
10. The respondent appeared in the person of Ms Melani, who gave sworn evidence. As well as Ms Melani's own evidence, the respondent called three witnesses, Ms Emily Baxter former officer support worker/administrator for the respondent, Mr Aidan Wedgbury (apprentice with the respondent), and Mr Chmeit, all of whom gave sworn evidence. The claimant also gave sworn evidence.
11. It was not possible to conclude the hearing on 27 September 2022, in part due to the time taken to deal with the preliminary matters. By consent the remainder of the hearing took place on 27 October 2022.
12. There was no list of issues prepared in this case. Mr O'Callaghan stated that the updated schedule of loss dated 4 July 2022 narrowed the issues, and suggested that we should use that as the starting point for the list of issues. I therefore took the claims as set out in the claimant's updated schedule of loss as the starting point. The issues I needed to consider were:
 - a. Did the respondent provide the claimant with payslips?
 - b. What was the claimant's notice period?

- c. Was the claimant paid for that notice period?
- d. If not, did the claimant do something so serious that the respondent was entitled to dismiss without notice?
- e. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?
- f. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?
- g. Was any deduction required or authorised by a written term of the contract?
- h. Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- i. Did the claimant agree in writing to the deduction before it was made?
- j. Did this claim arise or was it outstanding when the claimant's employment ended?
- k. Did the respondent do the following:
 - i. Underpay the claimant?
 - ii. Fail to place the claimant on furlough?
- l. Was that a breach of contract?
- m. Did the claimant do the following:
 - i. Damage a car and a wall causing the respondent financial loss?
 - ii. Use company premises and property to work on his own cars?
 - iii. Leave his car LB08ZDR on the respondent's premises, causing the respondent financial loss?
 - iv. Fail to pay for accommodation and food provided by the respondent
 - v. Fail to pay for tyres provided by the respondent when he had damaged his own tyres
 - vi. Cause the respondent to incur the cost of instruction solicitors to reply to a letter received from his own solicitors?
- n. Was that a breach of contract by the claimant?
- o. Did the respondent retain the claimant's property and does this fall within the Tribunal's jurisdiction?
- p. How much should the claimant and/or respondent be awarded?

Findings of fact

13. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the bundle of documents provided by the claimant. Details of some undisputed facts are included here as relevant background to my decision.

14. The claimant was employed to work 42 hours a week, including half days on alternate Saturdays. His pay was £24,000 gross per annum, which amounted to £1663 net per month. He was entitled to 28 days paid annual leave including public holidays, with the holiday year running from 6 April-5 April. There was no entitlement to carry over unused annual leave. On termination, the claimant was entitled to be paid for any accrued but unused annual leave. After completion of the 6-month probationary period, the claimant was entitled to full pay and contractual benefits during any period of sickness absence up to 2 weeks in any 12-month period. After successful

completion of the probationary period, the notice period was a calendar month for each party.

15. This case involves a number of interrelated issues and claims. All of the claims appear to be linked to the consequences of the blurring of the employment and the personal relationships between the claimant and the respondent, in the persons of Ms Melani and Mr Chmeit, and then a deterioration in those relationships. It is agreed that the initial relationship between the claimant and the respondent was good. Ms Melani offered the claimant accommodation with her when he lost his home, and provided him with food. Their relationship was like that of a mother and son and Mr Chmeit treated the claimant as a brother.
16. The claimant was in financial difficulties when he began employment with the respondent. The claimant accepts that he asked for an advance on his wages on 16 October 2020, and received £500, which he states that he agreed to pay back (without interest) when he could. He also accepts receiving advance payments of £200 on 18 October 2020 and £400 on 18 May 2021. He complains that all other deductions from his pay were unauthorized.
17. The claimant had intended to resign on 29 June 2021, but before he could do so he was dismissed that same day. The respondent states that he was dismissed for gross misconduct, specifically poor attendance, unauthorized absences, causing the respondent financial loss by failing to pay fines and for cars purchased, using photographs without the respondent's permission on his own Instagram account, and poor performance, including negligence which caused the respondent financial loss. The dismissal letter (pages 256-257) said the claimant would be paid two weeks work in hand, for holidays not taken, and for 1 months' notice. The letter stated that the respondent would retain LB08ZDR and his tool box until monies it believed it was owned by the claimant were paid. It is agreed that those monies were not paid. The claimant states that he was forced to sign the dismissal letter and asked to leave the building, and was not allowed to take any of his belongings or cars when he left.

Payslips

18. I find that the claimant was given payslips during his employment. The evidence of Ms Baxter and Mr Wedbury was clear that payslips were handed out in hard copy in person to staff, every month on or around the 27th of the month, as submitted by the respondent. The payslips were handed out to everyone at the same time. I find that Ms Baxter herself gave the claimant his payslip in November 2020. I accept that Mr Wedbury saw the claimant being given a payslip. Ms Baxter and Mr Wedbury were clear that the claimant paid little or no attention to his payslips when he received them, for example discarding them or putting them in his tool box. Mr Chmeit said that everyone received a payslip every month, "including me". He recalled seeing the claimant with his payslip in his hand on one occasion. He said that the respondent still had a number of the claimant's possessions, including his payslips.

19. The claimant has provided a spreadsheet, number 1 headed discrepancies in payslips HMRC. The Tribunal has no jurisdiction to consider whether the respondent fulfilled its requirements with HMRC. The spreadsheet does not support his claim that he was not provided with payslips.
20. Ms Melani accepted that she had not provided copies of the claimant's payslips when his solicitors asked for copies by letter dated 27 July 2021, received on 28 July 2021. I find that the respondent, in the person of Ms Melani, did not understand the contents or implications pre-action letter, or her solicitors' response. I find that the delay in the respondent providing the payslips to the claimant was due to the respondent's lack of understanding of the process.
21. On the balance of probabilities, given the evidence of the respondent and its witnesses, I do not accept the claimant's evidence in the context of his not receiving payslips. I do not accept that he repeatedly asked the respondent for payslips during his employment but did not receive them. I find that he did receive monthly payslips, but did not attach importance to his payslips, and discarded or misplaced them when he was given them.

Unauthorised deductions

22. The respondent accepted making deductions from the claimant's pay "every month". Deductions were made for "car parts, money, cars... [the claimant] used our wallet as his, he buys and spends and then we pay". The respondent states that it gave the claimant loans and cash advances to help him, and he agreed to deductions from his pay, and often asked for advances. The respondent said it was entitled to make the deductions, and relied on the claimant's agreement to deductions being made, and also the contract of employment which states at clause 14 (page 70) that the *employer is entitled to deduct from the employee's payment or from any other compensation in whatever form, any applicable deductions and remittances as required by law*. Ms Melani relied on "the law of morality", stating that the respondent relied on a "verbal contract, shake of my hand" to amount to a legal contract with the claimant. She had lent money and made advances on wages to the claimant in good faith and due to her sympathy for the claimant and his difficulties. Mr Wedgbury said that Ms Melani kept a document detailing all advances on pay made to staff. No such document was provided in evidence.
23. There are signed documents for advances of £100 dated 9 October 2020 and 15 October 2020 (pages 184-185). There is also a loan of £500. The claimant accepted receiving loans totaling £700.
24. On around 16 October 2020, the claimant's landlord came to the respondent's premises, shouting and "making a scene" as the claimant owed him rent. The respondent gave the claimant's landlord £500 to avoid further disruption to its business. The claimant accepted in evidence that the incident had happened, that he was behind with his rent and needed £500. He said that he "was going to pay it back" when he got his wages.
25. There was much discussion about the car LB08ZDR. It is agreed that the claimant was permitted to drive the respondent's courtesy car LB08ZDR to

travel to and from work as he did not have his own transport, and that this happened shortly after him starting work. The claimant was driving LB08ZDR to London outside the scope of his employment when he crashed it one night in around November 2020, and was not therefore covered by the respondent's insurance policy. I find that whilst there was an oral agreement that the claimant would buy the car and pay £1000 for LB08ZDR in installments over 4 months, the respondent has not provided evidence that the claimant agreed that the installments could be taken from his wages, in particular there is no written evidence to prove this agreement. In the absence of evidence to the contrary, I accept the claimant's evidence that he agreed to repay the respondent each month after he had been paid. I find that the respondent was not therefore authorized to make deductions from the claimant's pay in respect of LB08ZDR.

26. The car MW57ZJY had belonged to a client of the respondent. The car was damaged, on Mr Chmeit's evidence deliberately by the claimant, and the client did not wish to pay for it to be mended. The respondent paid for MW57ZJY. The claimant said that he agreed to buy MW57ZJY for £500 and he paid the respondent on 21 December 2021, evidenced by his bank statement. The claimant replaced the fuel injectors on MW57ZJY using injectors from LB08ZDR as that car's engine was "stripped and on the bench" at the time. He had an accident in MW57ZJY in January 2021 and the respondent paid for the repairs. The claimant submitted that he should have received a related insurance payment received by the respondent in May 2021. I find that the claimant paid £500 for MW57ZJY on 21 December 2021. I find no evidence that deductions were made in respect of MW57ZJY. The issue of the entitlement to any insurance payment is not within the Tribunal's jurisdiction.
27. The respondent accepts that it deducted £970.38, described as two weeks work in hand on his payslips, at the start of the claimant's employment. The dismissal letter stated the claimant would be paid the two weeks work in hand and for accrued holiday. I find that the claimant was not paid the two weeks work in hand, as accepted by the respondent.
28. The respondent accepts that it made deductions for fines and enforcements in May and June 2021 of £344.10 and £344.20 respectively, which relate to payments it made on behalf of the claimant for sums incurred by him. This was supported by a copy of an attachment of earnings order at page 223. This order was dated 15 April 2021 for the sum of £1580. The table of deductions was not provided with the order. I find that these deductions were authorized by the attachment of earnings order, given that the deductions were made in May and June 2021, after the respondent would have received the attachment of earnings order.
29. The respondent accepts that it made deductions totaling £1500 for advances on the claimant's pay in May and June 2021. I find that these deductions were unauthorized, as there is no evidence that the claimant agreed to the deductions being made from his pay. These deductions were not authorized by the contract of employment.
30. I find that the claimant did indeed request advances of his pay and other loans from the respondent. I find that the respondent made those advances

to the claimant. I find that due to the close relationship between the claimant, Ms Melani, and Mr Chmeit, the respondent did not seek prior written agreement from the claimant when those deductions were made from his pay. I find that the respondent relied on the close relationship with the claimant, and did not consider that written confirmation of his agreement was needed. I find that there was no prior written agreement by the claimant to the disputed deductions made by the respondent. I find that the respondent believed that it was also entitled to make deductions under the contract of employment. I also find that the deductions made by the respondent for loans, advances were not permitted by the employment contract, as they did not fall within the definition of *any applicable deductions and remittances as required by law*.

31. In particular, I find that the deductions made by the respondent as set out in the updated schedule of loss at Section 2 Unlawful Deductions, a) *two weeks work in hand*, b) *loans for MW57ZJY and LB08ZDR*, were unauthorized deductions.

Breach of contract - underpayment

32. The respondent accepts that the claimant did not always receive by bank transfer the full amount due as set out in his payslip each month. The respondent states that this is because the claimant often asked for part of his pay to be made in cash rather than by bank transfer. The claimant denies this. Ms Melani accepted that the respondent had made “deductions” to the value of £3387.34 as set out in spreadsheet 3 (discrepancies in payslips).

33. The respondent provided no evidence to support its claim it had paid the claimant in cash for the balance of the pay due to him in December 2020, January 2021, March 2021, April 2021, or May 2021. I therefore accept the claimant’s evidence that he did not receive the full amounts stated in his payslips as net pay in December 2020, January 2021, March 2021, April 2021 or May 2021.

Breach of contract – notice pay

34. The claimant was not paid notice pay for the notice period of one calendar month. The respondent accepted that it owed the claimant 4 weeks’ notice pay. I find that the respondent owes the claimant 4 weeks’ notice pay.

Holiday pay

35. The claimant was entitled to 28 days holiday a year. The contract did not permit him to carry over unused leave from one holiday year to the next. However, I note that the claimant was on flexi-furlough for 5 months during his employment. The claimant denies taking any holiday during his employment. The respondent accepted that it had not paid the claimant any holiday pay, but he was not entitled to any such pay as he had taken all the holiday to which he was entitled and more without permission”.

36. I find that the respondent did not pay the claimant any holiday pay during the course of his employment. There is no reference in the payslips to holiday pay being paid to the claimant. The respondent did not provide any records of the claimant having requested or taken holiday. I find that the claimant did not take any holiday during his employment. I find that the

claimant is entitled to be paid for all the annual leave accrued during the course of his employment.

Furlough

37. I find that the claimant placed on flexi furlough in November 2020 and therefore worked part time whilst on flexi furlough. I find that there was a meeting in November where all eligible employees were told that they were being placed on "part time" furlough. The claimant's payslips from November 2020 to April 2021 inclusive all refer to furlough pay. I find that in his own evidence when discussing his claim that he did not receive payslips, the claimant stated that he did not get payslips as "furlough was not paid on time. You said furlough was behind on payments". Given his own evidence, and the clear evidence of the respondent's witnesses, I cannot accept the claim that the claimant was not placed on furlough. I find that he was placed on furlough.

Other losses

38. The Tribunal has no jurisdiction with regard to the matters claimed under the heading "Other losses". However, it noted that the respondent accepted that it had the following items belonging to the claimant: the car LB08ZDR, a black tool box which contains tools, a Machine Mart Vice, Machine Mart Wall racking, a 1.6 engine which belongs to LB08ZDR, and a Mikita Radio. The respondent told the Tribunal that the claimant was welcome to come and collect his possessions.

Employer's counter claim

39. The respondent claims a total of £17620 (plus VAT where applicable) from the claimant. These claims are broken down as: damages to a car and wall (£2900 plus VAT and £250 for repair of wall), £1080 plus VAT for personal use of the respondent's premises and supplies for working on his own cars, £8100 plus VAT for parking for LZ08ZDR, £4050 for accommodation and food, £400 for the cost of 4 tyres which the claimant agreed to return but did not return, and £840 plus VAT for the cost of instructing solicitors to reply to the letter from the claimant's solicitors dated 27 July 2021.

40. The respondent also claims that the claimant falsely stated that he was a qualified mechanic as he did not provide the relevant certificates. I accept the claimant's evidence about his qualifications. I find that he was not dismissed because the respondent discovered that he was not qualified. I find no evidence that the claimant breached any material term of his contract by not providing the certificates, and in finding this I note that the respondent continued to employ the claimant despite not receiving the certificates.

41. The respondent further claims that the claimant published photographs of its customers and other cars on social media without its permission. The claimant accepted that he had published photographs of cars on his personal social media, and denied acting without permission. I was provided with no evidence that the claimant's publication of photographs of cars on his social media was in breach of the contract of employment, and

there was no evidence that the respondent had taken any disciplinary action in relation to the publication of the photographs.

42. The respondent submitted the claimant had taken cars without permission. I find no evidence that the claimant took cars without permission. Whilst there are extracts from exchanges via social media provided in the bundle, on the balance of probabilities I find that these images do not amount to evidence that the claimant was acting without permission. I find that if he had taken cars without permission and this was of concern to the respondent at the time, the respondent would have acted. I find no evidence of any such action being taken by the respondent.
43. With regard to claim for damages to a car and wall, I find that if the respondent had considered this incident to have been a breach of the claimant's contract it would have acted at the time. I find no evidence that any action was taken by the respondent at the time of the incident, for example I find that the respondent did not seek to make deductions in respect of any alleged financial loss. The claimant denies that he was negligent. I find that there is nothing in the contract to indicate that the respondent is entitled to be reimbursed for any such losses. I find no evidence that this incident was a breach of the claimant's contract.
44. With regard to the claim for the cost of the claimant using ramps, supplies, and oils to work on his own cars, I was provided with no evidence that this was in breach of the claimant's contract or the claimant acted without permission. I find that there was no evidence of any agreement that the claimant should pay the respondent for any such items.
45. With regard to the claim for the cost of parking LB08ZDR, I find no evidence that there was an agreement that the claimant would pay for the cost of parking his car on the respondent's premises either in the contract of employment or otherwise. Ms Melani stated that she had asked the claimant to remove the car, and the claimant refused. This is insufficient to form a basis for the counter claim. I find that there is no basis for this claim.
46. In terms of the claim for the cost of accommodation and food, the claimant agrees that the respondent provided him with accommodation and food, and that he agreed to pay £250 a month for accommodation and that deductions were made from his pay for these costs (paragraph 12 of his witness statement). In contrast, Ms Melani said that she had never asked the claimant to pay rent when he lived with her. From the payslips, I find no evidence of any specific deductions being made of £250 for rent. I find that the claimant did not pay any rent to the claimant. I find that any agreement between them that he would pay rent was an oral agreement, and did not arise from the contract of employment. I found no evidence of any such specific deductions being made. There is no evidence that he ever agreed to pay for food.
47. With regard to the cost of the tyres, I was not provided with any documentary evidence to support this claim. The claimant accepts that he borrowed two tyres and did not return them. There is no evidence of any agreement or provision in the contract of employment that the claimant would pay for the cost of those tyres.

48. There is no basis for the claim for the cost of instructing solicitors. This is not a head of damage and such costs are not recoverable costs.
49. I do not consider that the allegation of harassment of a woman is material to the claims before me. The allegation is denied by the claimant, and was not put to him in questioning. Similarly, the allegation that the claimant is a “scammer” appears to be outside the scope of the Tribunal’s jurisdiction.
50. The claimant denies that he was negligent when carrying out his duties. I find that there is no evidence of any negligence by the claimant, and in particular I find that there is no evidence of any disciplinary action being taken by the respondent in relation to any such negligence prior to his dismissal on 29 June 2021. I find no evidence that MW57ZJY was damaged by the claimant prior to his ownership of that car.
51. I find no evidence that the claimant worked on his own cars in breach of his contract of employment, or used the respondent’s premises for his own business. I find that there is no evidence of any disciplinary action being taken by the respondent in relation to any such alleged breach.
52. Ms Melani was unable to point to any specific agreements in relation to the counter claims and relied on the contract of employment, Clause 14, as the basis for the counter claims. I find that the claims set out in the employer’s counterclaim did not amount to breaches of the contract of employment by the claimant.

Legal principles

53. Section 8(1) ERA provides that a worker has the right be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemized pay statement. Section 11 ERA provides that where an employer does not give a worker a statement as required by Section 8(1), the worker may require a reference to the Employment Tribunal. Section 12(3)(a) ERA provides that where the Employment Tribunal finds that the employer failed to give a worker a pay statement in accordance with Section 8, the Tribunal shall make a declaration to that effect.
54. Section 13(1) ERA provides workers with the right not to suffer an unauthorized deduction. Section 13(1) provides that an employer shall not make a deduction from wages of a worker employed by him unless a) the deduction is required or authorized 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. Of particular relevance in this case is that the worker’s written agreement to a deduction must be obtained before the event giving rise to the deduction. If a deduction is authorized by a relevant provision of the employment contract or a written agreement by the worker obtained before the event giving rise to the deduction, the Tribunal must then consider whether the deduction made is justified. This would include for example the employer providing evidence of costs incurred, and that the worker is responsible for example for damage to the employer’s property.

55. Exempt deductions are set out in Section 14, that is deductions that an employer can lawfully make. These are an overpayment of wages, an overpayment of expenses, a deduction made pursuant to a statutory requirement (for example income tax, national insurance and attachment of earnings orders), a deduction made pursuant to an arrangement agreed to by the worker in writing (for example pension contributions and trade union subscriptions), a deduction on account of the worker taking part in a strike or other industrial action and a deduction to satisfy a court order or tribunal decision requiring payment by the worker to the employer. It is for the employer to show that an exemption under Section 14 applies.
56. National Minimum Wage Act 1998 (NMWA) provides that workers have the right to receive the national minimum wage, and the right is governed by the NMWA and the National Minimum Wage Regulations 2015 (the NMW Regulations). The rates for the NMW are increased annually. In this case the relevant rate is that for over 23s, in the years 2020/2021 and 2021/2022.
57. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the Order) gave employment tribunals the power to deal with breach of contract claims. Jurisdiction under the Order is limited to breaches of contract outstanding on the termination of employment.
58. Under Regulation 4 of the Order, if a claimant brings a breach of contract claim in the employment tribunal, the employer can make an employer's contract claim, known as a counterclaim, against the claimant in respect of any alleged breach of contract by the claimant. A counterclaim must relate to a claim for damages for breach of the contract of employment or a sum due under such a contract or the recovery of a sum in pursuance of any enactment relating to the terms of performance of such a contract.
59. Claims for holiday pay can be brought as a breach of contract claim, a complaint of unauthorized deductions under Section 13 ERA, or as a complaint under the Working Time Regulations 1998 (WTR). Claims for holiday accrued but unpaid on termination of employment can be made as a claim of unauthorized deductions or under the WTR. The Working Time (Coronavirus)(Amendment) Regulations 2020 (2020 Regulations) introduced a temporary relaxation to the rule that leave cannot be carried over. Regulation 13(10) provides that where it was not "reasonably practicable" for the worker to take some or all of their leave in the relevant year as a result of the effects of Covid19, they are entitled to carry forward such untaken leave. Regulation 14 provides that if the employment terminates before the leave has been taken the worker can receive a payment in lieu of this carried over leave.

Conclusions – application of law to the facts

Payslips

60. I find that the claimant did receive payslips during his employment with the respondent. The reasons for this finding are set out in paragraphs 18 and 21 above. No declaration is made under Section 12(3) ERA.

Unauthorised deductions

61. I find that the respondent made unlawful deductions from the claimant's pay in breach of Section 13(1) ERA with respect of loans, cars, and advances. The relevant reasons are set out paragraphs 25, 27, 29, 30 and 31 above. The respondent has always accepted that it made the deductions (see paragraphs 22, 29 and 30 above). I find that whilst the respondent believed that it was entitled to make such deductions by virtue of the contract of employment and the law of morality, this belief was misplaced. The deductions made by the respondent did not fall within the scope of those by Clause 14 of the contract, as the interpretation of a deduction *as required by law* is narrow. The deductions made by the respondent did not fall within the definition of deductions required by law. The respondent did not obtain the claimant's prior written agreement before making the deductions. The deductions made by the respondent in respect of two weeks work in hand, loans, cars, and advances were unauthorized (see paragraphs 27, 29, 30 and 31 above).
62. I also find that by virtue of the unauthorized deductions, the claimant received less than the minimum wage during his employment. However, I find that this is addressed by my findings in relation to the unauthorized deductions and related awards.
63. I make no discretionary award with regard to the unauthorized deductions. This is due to my findings of fact with regard to the nature of the relationship between the claimant and the respondent (see paragraphs 15, 22 and 30 above), and my finding that the respondent believed (wrongly) that it was entitled to make the deductions after the claimant had asked for advances and loans which the respondent made to him (see paragraph 30 above).
64. I find that the deductions made by the respondent with regard to fines/enforcement were not unlawful. These deductions were made pursuant to the attachment of earnings order dated 15 April 2021, and therefore they were exempt under Section 14 as they were made pursuant to a statutory requirement (see paragraph 28 above).

Breach of contract

65. I find that the respondent breached the contract of employment by underpaying the claimant in December 2020, January 2021, March 2021, April 2021 or May 2021 (see paragraphs 32 and 33 above). The claimant did not receive the amount described as due in his payslips for those months, as evidenced by his bank statements. The respondent accepted that it did not transfer the full amount to his bank in those months. It accepted that it had made deductions, and submitted that at times the claimant had asked to receive part of his pay in cash rather than as a bank transfer. There was no evidence to support the respondent's claim that the claimant asked to be paid partly in cash in December 2020, January 2021, March 2021, April 2021 or May 2021, or that he was so paid.
66. I find that the respondent breached the contract of employment by failing to pay the claimant for his notice period on termination of his employment (see paragraph 34 above). The respondent accepts that it did not pay the claimant for his notice period, and that it is required to do so.

67. I find that the claimant was placed on furlough during his employment with the respondent. The claim for breach of contract due to underpayment as a result of the claimant being incorrectly recorded as being on furlough is therefore not well founded (see paragraph 37 above).

Holiday pay

68. I find that the claimant did not take any holiday during the period of his employment with the respondent. Whilst his contract of employment did not permit him to carry over unused holiday from one year to the next, I find that the 2020 Regulations entitled him to do so. I find that the claimant did not receive any payment for the holiday accrued but unused during his employment (see paragraphs 35 and 36 above). I accept the claimant's submission that he is entitled to payment for 24 days holiday, calculated pro-rata from his annual entitlement of 28 days and noting that he was employed for 9 months and then entitled to one month's notice during which holiday would continue to accrue.

Employer's counterclaim

69. I find that none of the claims put forward by the respondent in its counterclaim are well founded (see paragraphs 40 to 52 inclusive above). The respondent was unable to establish that any of its claims arose from a breach of the contract of employment by the claimant.

Employment Judge **Swaffer**

Date 25 January 2023