



# EMPLOYMENT TRIBUNALS

**Claimant:** Marko Samuel

**Respondent:** (1) Eco Cleaning Services  
(2) Solus Facilities Limited

**Heard at:** Bury St Edmunds (via CVP)

**On:** 21 June 2023

**Before:** Employment Judge Graham

## Representation

**Claimant:** In person  
**Respondent:** Did not attend

# JUDGMENT

1. The claim for Breach of Contract succeeds. The Second Respondent must pay the Claimant **£5,806.40**.
2. The claim for holiday pay succeeds. The Second Respondent must pay the Claimant **£880** subject to statutory deductions.

# REASONS

## Background

1. The Claimant engaged in ACAS Early Conciliation on 10 May 2022 and his ACAS EC Certificate is dated 20 June 2022. The Claimant issued his ET1 claim form on 22 June 2022 which was within the deadline of 20 July 2022 to issue his claim after taking into account the extension of time to allow for the Early Conciliation period.
2. In his claim form the Claimant said that he was seeking holiday pay and other payments. In the narrative the Claimant said that he was seeking wages, expenses and furlough payments. The First Respondent failed to respond. On 19 February 2023 the Tribunal re-served the claim on the Second Respondent, however no response was received.
3. On 19 April 2023 the Tribunal wrote to both Respondents warning that a judgment may be made under rule 21 Employment Tribunals Rules of Procedure 2013 and

confirming that the case had been listed for a full merits hearing on 21 June 2023. The Respondents did not attend the hearing.

## **The Hearing**

4. The Claimant filed a small bundle of documents including his payslips, WhatsApp and email conversations with the Respondents together with correspondence from the First Respondent about pension auto-enrolment. I was not provided with a copy of the Claimant's employment contract although he confirmed that he had signed one online but it had not been provided to him. The WhatsApp conversations helpfully provided sufficient detail as to some of the contractual terms in issue in order to allow me to make a determination of the claims. I was not provided with a witness statement from the Claimant however he relied upon the contents of his ET1 claim form.
5. The Claimant gave evidence on oath in order that I could clarify some points in his ET1 claim form, but I was mindful of the fact that it is not the job of the Tribunal to cross examine the Claimant nor to take on the role of an adversary in this situation.
6. The Claimant's evidence was given via CVP which worked well without any sound issues. I was able to hear everything the Claimant said.
7. I reserved judgment.

## **The claim**

8. The Claimant states that he was employed by the Respondents to work as a mobile driver starting from 6 October 2020 and that he was underpaid wages on numerous occasions throughout his employment. The Claimant also says that he was owed expenses for the fuel of using his own car which were unpaid, and that he was not permitted to take annual leave. The Claimant says that he also worked as a cleaner for the Respondents. The Claimant says he ceased working for the Respondents on 6 March 2022.
9. Other relevant matters include that the Claimant was furloughed under the government furlough scheme from January 2021 to September 2021, however he says that the Respondents required him to work whilst on furlough.
10. The Claimant says that the First Respondent took part in early conciliation and an offer was made to him. However the Respondents have not responded to the claim or to any communications from the Tribunal or the Claimant about the claim.
11. In relation to underpayments or non-payment of wages, expenses and holidays the Claimant claims as follows (all figures are gross):
  - 11.1 Holiday Pay
    - 11.1.1 The Claimant claims that he was refused leave for the duration of his employment. He claims £880 in unpaid holiday pay.
  - 11.2 Unpaid wages
    - 11.2.1 The Claimant claims that he was not paid his contractual wage on a number of occasions and claims £5,808 in unpaid wages. I was provided with copies of the Claimant's payslips and a breakdown of how the sums were calculated in the Claimant's ET1.

11.3 Expenses

11.3.1 The Claimant claims that he was owed expenses of £600 for 2021 and £500 for February and March 2022. The expenses are those associated with the use of his own car and fuel costs to drive the Area Manager to and from meetings.

- 12 The Claimant confirmed to me that he was pursuing a claim for breach of contract for his unpaid wages and expenses.

**Findings of Fact**

- 13 The Respondents have not contested the claim. The Claimant provided documentary evidence of pay received, and gave evidence on oath. On the basis of his uncontested evidence, I make the following findings.
- 14 The First Respondent is a trading name of the Second Respondent and has no legal identity of its own. No record appears on Companies House for a business of that name at the business address.
- 15 The Claimant's payslips are from Eco Cleaning Services and the address provides is the same as for Solus Facilities Limited which is named as the Second Respondent. This business appears on the Register of Companies. The Tribunal was referred to WhatsApp correspondence between Philip Walker and the Claimant about his employment. Mr Walker is named on Companies House as director of Solus Facilities Limited.
- 16 I have been provided with copies of email correspondence between the parties, and in the email footer it confirms that Eco Cleaning Services is a trading name of Solus Facilities Ltd.
- 17 I therefore find that the Second Respondent was the Claimant's employer.
- 18 The Claimant commenced employment with the Respondents as a mobile driver from 6 October 2022. The Claimant's role was to drive the Respondents' Area Manager Zina Gomes to various locations inside and outside of London. The Respondent are cleaning businesses and have contracts with various organisations to clean their premises. The Claimant's role was to drive Ms Gomes to meetings about cleaning contracts, and on occasion this would take him from his home in Grays to collect Ms Gomes from her home in Southend On Sea to meetings as far away as Las Iguanas in Bristol at weekends over four weeks in May and June 2021.
- 19 The Claimant also carried out cleaning duties for the Respondents when they were short staffed.
- 20 The Claimant was provided with an online contract of employment to sign, however he was not provided with a copy of the contract. The Claimant was salaried and did not work fixed hours but it was agreed that he would be paid £880 per month and his annual leave entitlement was agreed as one month.
- 21 The Respondents paid the Claimant in arrears on or around the fifth of each month. In addition to Ms Gomes (Area Manager) and Mr Walker (director and owner), the Claimant had dealings with Clint (Operational Manager) and Matt (Marketing Manager). The Tribunal was provided with copies of WhatsApp messages between the Claimant and those named.

- 22 In his ET1 the Claimant said that his employment ended on 6 March 2022. I was referred to WhatsApp messages from 11 March 2022 where the Respondents sought to engage the Claimant on a similar role but on different terms. I therefore find that the Claimant's employment terminated on 6 March 2022 as the Claimant alleges.
- 23 The Claimant was paid intermittently by the Respondents as set out in the table below.

<b>Pay date</b>	<b>Amount paid</b>
October 2020	£0
November 2020	£0
December 2020	£880
January 2021	£704 (furlough)
February 2021	0
March 2021	£633.60 (furlough)
April 2021	£633.60 (furlough)
May 2021	£633.60 (furlough)
June 2021	£633.60 (furlough)
July 2021	£633.60 (furlough)
August 2021	0
September 2021	£633.60 (furlough)
October 2021	0
November 2021	0

- 24 An examination of the Claimant's payslips from October 2020 to November 2021 show that his gross monthly salary was £880 per month and that his net salary was £869. This salary was payable from the start of his employment in October 2020 up to the date that he was furloughed in January 2021.
- 25 I have found that from February 2021 the Claimant's furlough pay was 80% of that amount which is £704 net and I note that the Claimant was paid that amount in February 2021, however from March 2021 the Claimant was paid £633.60 net which is 70% of his normal monthly salary, therefore there was a difference of £70.40 from March to July 2021 and again on September 2021. For the month of August 2021 the Claimant was not paid anything at all when he would have been entitled to have been paid £704. I find that the Claimant was entitled to be paid his full salary from October 2021 when he was no longer furloughed.
- 26 The Claimant says that he raised queries with the Respondents concerning his pay and was directed by them to engage with their payroll provider however no satisfactory response was provided. I have been provided with copies of emails from the Claimant dated 14 and 22 March 2021 to the Respondents where he queried whether he would be paid furlough. Someone within the Respondent organisation replied on the same date to advise:

*"We have looked further into your enquiry with our accounting team and it seems they are able to claim the furlough payment for you. Please bear with us whilst we rectify this payment issue and make payment for you."*

- 27 I was referred to a WhatsApp message from Mr Walker to the Claimant dated 31 May 2021. In that message, Mr Walker said:

*"Hello Marko, my name is Philip Walker. I am the owner of Eco Cleaning services. It has been fed back through out [sic] operational team that you have refused to take Zina to work due to a fuel allowance issue. I am here to get*

*this resolved as this is causing us logistical problems. Please outline your issues to me in this group. Many thanks."*

28 An examination of the WhatsApp message suggests that Mr Walker set up the group chat on 31 May 2021 and then left the group chat the following day on 1 June 2021

29 I was also provided with a copy of an email dated 27 September 2021 where the Claimant queried why he had not been paid for October and November 2020. The Claimant also queried the amounts he had been paid for furlough since March 2021 which were £633.60 and the Claimant said that they should have been £704. The Claimant also said that he had not been paid his expenses for jobs done in Hitchin, Bristol, and Cambridge for the amount of £500 which had been submitted for payment by Ms Gomes. The Claimant also said that he had not been paid for any holiday for a year.

30 I was then referred to an exchange of WhatsApp messages on 11 March 2022. The Claimant messaged the Respondents to again query his missing payments. Various people were added to the chat, including Zina and Matt. The Respondents replied to the Claimant:

*"Hi Marko. I know there is a lot of confusion around wages and what's owed to you regarding when it was Covid times in furlough, there was lack of communication too from parts and still is when you help out, this is why we set this group up to stop this, as last time I offer something to you was in Dec, but never heard anything back from it. Then I hear your helping out again, so I would like you to come on board and help out as Zina speaks very highly of you."*

31 The message went on to discuss the proposed terms and conditions for this new role, and I noted that there was a reference to travel expenses needing to be submitted weekly.

32 The Claimant repeated that he was still owed for the missing payments and I note the response from the Respondent which was

*"Marko, this has really just come to light with us. I know there was some furlough paid to you in goodwill as you wasn't on the books and was taking Zina places, but never submitted any expenses to us, again a lot has been lost due to lack of communication. This is where it stops and as I said earlier we can monitor it better now."*

33 Matt (Marketing Manager) took part in this WhatsApp chat and said:

*"Likewise. The only information that I have been privy to or seen is a three months backdated expenses that Zina provided on 09/03/2022."*

34 There was further reference from the Respondents that they had seen that Zina had submitted some expenses for the Claimant previously. I also note the email from the Respondent:

*"Marko, was you on the books officially, and given a payroll number and pin? We are nearly talking two years ago now but something I'll look into but slate clean now as Matt message are you coming on board so every is officially done by the book."*

35 The Claimant responded to confirm that he was on the books and that had a payroll number and that he didn't have a pin because he had been put on a salary. The

Claimant reiterated that he wanted to be paid the money he was owed. I was not referred to any further correspondence between the parties.

- 36 I find based upon the contents of the WhatsApp messages between the Claimant and the Respondents that he was entitled to claim expenses for petrol and the use of his vehicle. This was clear from the message of 31 March 2021 which mentioned the entitlement to a fuel allowance and also the two messages on 11 March 2022 at 3.49pm and 4.55pm where it was confirmed that the Claimant was able to claim expenses. This was also confirmed in the message at 4:58pm also on 11 March 2022 from Matt. I of course note that no figures were discussed in those messages nevertheless as a starting point I find that the Claimant was contractually entitled to claim expenses.
- 37 The Claimant has told me that he was not permitted to take his annual leave by the Respondent. I was not provided with any evidence demonstrating where he had made a request to take annual leave and it had been refused. Nevertheless I have noted the manner in which the Respondents have engaged with the Claimant via WhatsApp which I find to be dismissive and unhelpful. I also note the contents of those messages where the Respondent appear to suggest that they used staff "off the books." I also note that the Respondents have failed to take part in the Employment Tribunal proceedings. I therefore accept the Claimant's evidence that he was not permitted to take his annual leave.

## **Decision and Reasons**

### Breach of contract

- 38 The Tribunal has jurisdiction to consider a claim for breach of contract under the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994. I find that the breach of contract complaints were outstanding upon the termination of the Claimant's employment. I also find that they have been brought within three months of the effective date of termination under Article 7a of the Order and also within the six year time limit under s. 5 of the Limitation Act 1980. I therefore have jurisdiction to consider these complaints.
- 39 I have already found that the Claimant had a contractual entitlement to claim expenses. The Claimant is seeking payment of £600 for 2021 and £500 for February and March 2022. I was not provided with any proof of these expenses as the Claimant says that the receipts were taken by Zina Gomes. I need to assure myself that these expenses were incurred and payable by the Respondent.
- 40 I note from the Claimant's email of 27 September 2021 to the Respondents he indicated that he was seeking reimbursement of £500 in travel expenses from the Respondent. This is less than the £600 now being claimed for the same period. I find that on the balance of probabilities and taking all the evidence into account, the Claimant was entitled to £500 expenses for 2021 and that the Respondents were in breach of contract by failing to reimburse those expenses.
- 41 However, I am not persuaded that the Claimant was entitled to expenses of £500 for February and March 2022. This is due to the lack of any corroborating evidence. Whilst I note that the Claimant says that Zina Gomes took his receipts, I do require some evidence that the expenses were incurred by him. I have reviewed the Claimant's messages to the Respondents on 11 March 2022 however there is no reference to expenses for February and March in those messages. Whilst I accept that the messages were sent only part way through March, I see no reason why the Claimant did not raise the issue of his February expenses at that time given that he was raising the issue of being underpaid. I therefore cannot uphold the breach of

contract complaint with respect to the £500 payment for February and March 2022 due to the lack of evidence.

- 42 I will now turn to the breach of contract claim as it relates to unpaid wages. I have already found that the Claimant's gross monthly salary was £880 per month and that his net salary was £869, and that his furlough pay was £704 per month. I also found that the Claimant was entitled to be paid his full salary from October 2021 when he was no longer furloughed. Accordingly, I have calculated the sums owing to the Claimant as follows:

<b>Pay date</b>	<b>Amount paid</b>	<b>Shortfall</b>
October 2020	£0	£869
November 2020	£0	£869
December 2020	£880	0
January 2021	£704 (furlough)	0
February 2021	0	£704
March 2021	£633.60 (furlough)	£70.40
April 2021	£633.60 (furlough)	£70.40
May 2021	£633.60 (furlough)	£70.40
June 2021	£633.60 (furlough)	£70.40
July 2021	£633.60 (furlough)	£70.40
August 2021	0	£704
September 2021	£633.60 (furlough)	£70.40
October 2021	0	£869
November 2021	0	£869

**Total: £5,306.40**

- 43 I therefore calculate the total of the Claimant's breach of contract award to be **£5,806.40** which is made up of the £500 expenses and the remainder is the underpayment of wages to the Claimant.

#### Holiday Pay

- 44 I was not provided with a copy of the Claimant's contract of employment and as such I cannot find that there was a contractual right to carry over leave.
- 45 However, under Regulation 13A of the Working Time Regulations 1998 (the Regulations) a worker is entitled to 5.6 weeks per annum, pro-rated where the worker is part time. Under Regulation 14 a worker is entitled to claim pro rata for holiday untaken in a holiday year at the date of termination.
- 46 Under Regulation 13(9)(a) untaken leave cannot be carried over to the following year except under the exception for untaken leave arising because of the effects of coronavirus as set out in Regulation 13(10).
- 47 In ***Smith v Pimlico Plumbers Ltd [2022] IRLR 347*** the Court of Appeal confirmed the finding of the Court of Justice of the European Union in ***King v Sash Window Workshop and anor [2018] ICR 693***, that a worker can carry over leave from one leave year to the next where the worker has been prevented from taking annual leave. While acknowledging that it had no power to draft regulations it suggested that such an interpretation could be read into Regulation 13, and suggested wording as follows:

*Reg 13 (16) Where in any leave year an employer (i) fails to recognise a worker's right to paid annual leave and (ii) cannot show that it provides a facility for the taking of such leave, the worker shall be entitled to carry forward any leave which is taken but unpaid, and/or which is not taken, into subsequent leave years.*

- 48 I have found above that on the uncontested evidence of the Claimant he was denied the opportunity to take leave by the Respondent and I find that it follows from that refusal that the Claimant would not then consider that the position was any different while he was furloughed. I find that the Claimant is entitled to payment for untaken holiday, calculated on a pro rata basis of the statutory minimum of 5.6 weeks per annum for the final year of his employment with the Respondent. Based upon what the Claimant says was agreed with the Respondent this would equate to one month's salary. I therefore uphold the claim for holiday pay as pleaded.

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Employment Judge **Graham**

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Date 26 June 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

21 July 2023

FOR THE TRIBUNAL OFFICE