



EMPLOYMENT TRIBUNALS

Claimants: Mr Ryan Cardiff, Ms Annalisa Bruno, Mr Nathibed Wongkampoo, Mr Steve Dillon, Mr Renato O’Leary, Mr Onur Yoruk, Mr Gerson Ventura and Mr Tamas Toth

Respondent: London Stock Photography Ltd

Heard at: London South Employment Tribunal (by CVP video conference)

On: Thursday 13 July 2023

Before: Employment Judge Musgrave-Cohen

Representation:

Claimants	Mr Ryan Cardiff
Respondent	No appearance or representation

JUDGMENT

1. The claims were issued in the London South Employment Tribunal on 10 February 2023. The Respondent failed to present a valid response on time and did not attend the hearing. The Tribunal proceeded to hear and determine the claim in the absence of the Respondent and in the absence of a Respondent’s ET3 in accordance with rules 21 and 47 of the Rules of Procedure.
2. In relation to the Claimant Mr Ryan Cardiff:
 - (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £8,998.59 gross.
 - (b) The Respondent dismissed the Claimant by reason of redundancy on 31 January 2023 and is ordered to pay to the Claimant the statutory redundancy payment in the sum of £1,142.
 - (c) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,500 gross.
 - (d) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.

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- (e) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £1,999.72 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
 - (f) The total sum payable by the Respondent to Mr Cardiff is £15,640.31.
3. In relation to the Claimant Ms Annalisa Bruno:
- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £6,773.32 gross.
 - (b) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,083.33 gross.
 - (c) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
 - (d) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £1,554.66 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
 - (e) The total sum payable by the Respondent to Ms Bruno is £11,411.31.
4. In relation to the Claimant Mr Nathibed Wongkampoo:
- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £7,085.32 gross.
 - (b) The Respondent dismissed the Claimant by reason of redundancy on 31 January 2023 and is ordered to pay to the Claimant the statutory redundancy payment in the sum of £961.54.
 - (c) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,083.33 gross.
 - (d) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
 - (e) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £1,617.06 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
 - (f) The total sum payable by the Respondent to Mr Wongkampoo is £12,747.25.
5. In relation to the Claimant Mr Steve Dillon:
- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £6,750 gross.
 - (b) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,250 gross.

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- (c) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
 - (d) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £1,550 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
 - (e) The total sum payable by the Respondent to Mr Dillon is £11,550.
6. In relation to the Claimant Mr Renato O’Leary:
- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £10,234.30 gross.
 - (b) The Respondent dismissed the Claimant by reason of redundancy on 31 January 2023 and is ordered to pay to the Claimant the statutory redundancy payment in the sum of £2,284.
 - (c) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £3,083.33 gross.
 - (d) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
 - (e) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £2,246.86 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
 - (f) The total sum payable by the Respondent to Mr O’Leary is £18,848.49.
7. In relation to the Claimant Mr Onur Yoruk:
- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £10,207.17 gross.
 - (b) The Respondent dismissed the Claimant by reason of redundancy on 31 January 2023 and is ordered to pay to the Claimant the statutory redundancy payment in the sum of £1,142.
 - (c) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,916.67 gross.
 - (d) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
 - (e) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £2,241.43 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
 - (f) The total sum payable by the Respondent to Mr Yoruk is £17,507.27.
8. In relation to the Claimant Mr Gerson Ventura:

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- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £8,333.32 gross.
- (b) The Respondent dismissed the Claimant by reason of redundancy on 31 January 2023 and is ordered to pay to the Claimant the statutory redundancy payment in the sum of £961.54.
- (c) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,083.33 gross.
- (d) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
- (e) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £1,866.66 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
- (f) The total sum payable by the Respondent to Mr Ventura is £14,244.85.

9. In relation to the Claimant Mr Tamas Toth:

- (a) The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 October 2022 to 31 January 2023 and is ordered to pay to the Claimant the sum of £8,474.80 gross.
- (b) The Respondent dismissed the Claimant by reason of redundancy on 31 January 2023 and is ordered to pay to the Claimant the statutory redundancy payment in the sum of £1,142.
- (c) The Respondent was in breach of contract by failing to pay the Claimant one month contractual notice pay on termination of employment and is ordered to pay to the Claimant the sum of £2,500 gross.
- (d) The Respondent was in breach of contract by failing to pay the Claimant bike expenses due between 1 October 2022 and 31 January 2023 and is ordered to pay to the Claimant the sum of £1,000 gross.
- (e) The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and the award made to the Claimant is increased by £1,894.96 being a 20% uplift to the award for unauthorised deduction from wages and breach of contract in respect of expenses.
- (f) The total sum payable by the Respondent to Mr Toth is £15,011.76.

10. Applying the guidance in Walters t/a Rosewood v Barik UKEAT/0053/16/BA, the awards for unlawful deduction from wages, notice pay and expenses are a gross amount which the Respondent can satisfy by payment to the Claimant of the net amount due and payment to HMRC of any tax and national insurance which falls to be deducted at source.

REASONS

Introduction

1. The 8 Claimants were employed by the Respondent as photographers for varying periods between 01.04.2018 and 31.01.2023. ACAS was notified under the early conciliation procedure on 2 December 2022 and the certificate was issued on 13 January 2023. The ET1s were presented on 10 February 2023. The Respondent failed to present an ET3.

Procedure and Evidence

The multiples

2. The 8 Claimants approached ACAS for Early Conciliation as a group and the names and addresses of all 8 are recorded together as a schedule attached to the Early Conciliation certificate.
3. The claims were then issued as two separate claims listing four Claimants on each form. Each claim form was accompanied by a 2 page identical document titled "Claim details" which began by listing all 8 Claimants. It is evident that while the case was brought as 2 separate claims, this was purely administrative and all 8 claims proceeded on the same basis.
4. The 2 claims were assigned two different multiple numbers as follows:

Multiple Number 2300363

<u>Claimant</u>	<u>Case Number</u>
Annalisa Bruno	2300661/2023
Onur Yoruk	2300662/2023
Renato O'Leary	2300663/2023
Ryan Cardiff	2300664/2023

Multiple Number 2300364

<u>Claimant</u>	<u>Case Number</u>
Nathibed Wongkampoo	2300665/2023
Gerson Ventura	2300666/2023
Tamas Toth	2300667/2023
Steve Dillon	2300668/2023

5. On 9 March 2023, the Tribunal sent both claims to the Respondent. Each claim was sent with a notice of claim containing a date for a response to be provided and the warning that "A judgment may be issued against a respondent who does not submit a response in time. If there is a hearing, that respondent will only be entitled to participate in it to the extent permitted by the Employment Judge".
6. The Claimants from both multiples indicated that they wished Mr Ryan Cardiff to be their lead Claimant and to speak on their behalf.

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7. Mr Cardiff was therefore also added to Multiple Number 2300364 and given the additional case number 2301090/2023.
8. A note was made that the claims should be linked and they were case managed as one group.

Rule 21

9. The Respondent failed to respond to either claim.
10. As the Respondent had failed to respond to the claim, the Tribunal had the power to issue a judgment. On 12 June 2023, the Tribunal wrote to Mr Cardiff, as lead Claimant, to tell him that the Tribunal would not issue a judgment at that time as it was not possible to determine the nature and quantum of the claims without a hearing. The 13 July 2023 hearing would remain listed.
11. On 12 June 2023 the Tribunal wrote to the Respondent in respect of case number “2300664/2023 and others” noting that the Respondent had failed to present a response to the claim and that a judgment may be issued. The Respondent was told that they would only be able to participate in any hearing to the extent permitted by the Employment Judge hearing the case.

Lack of attendance from respondent

12. The Respondent did not respond to the Tribunal’s correspondence and did not attend the hearing on 13 July 2023.
13. I proceeded to hear the claim under rule 21 and 47 Rules of Procedure.
14. I gathered the required information to calculate sums claimed in respect of all 8 Claimants and this judgment relates to all 8 claims. There is no need for any of the Claimants to provide any further information.

Procedure

15. In advance of the hearing, Mr Cardiff provided a short presentation setting out the chronology of events and the sums claimed for “overdue salaries”. The document also set out what was requested in the claim form, namely that the Claimants be compensated for redundancy pay and holiday pay as well as the terms of their contracts to be honoured which I understood to be a reference to the request for notice pay within the claim form. The Claimant’s sought costs and any other relief deemed just and appropriate by the tribunal including statutory remedies.
16. The presentation contained a hyperlink to an online folder which the Claimants had each populated with the documents relevant to their individual circumstances. Several of the Claimants had folders already in their name with documents such as their contracts of employment, recent payslips and relevant correspondence.
17. I reviewed some of the documentation in advance of the hearing and considered each document that I was taken to by Mr Cardiff or others during the hearing itself. In response to my questions, some Claimants added contractual documents or pay slips to the online folder so that I could review them.

18. At the end of the hearing, I asked Mr Cardiff to download all of the documents within the online file at the time that I had seen the file and send them to the Tribunal using the Document Upload Centre. I stressed the importance of not adding to, or removing, any documents but rather sending it all to the Tribunal. I asked the Tribunal clerk to provide Mr Cardiff with the details of the Document Upload Centre.
19. All of the Claimants attended the hearing, some by video and some by telephone. A couple of Claimants had connection problems but all were able to join for at least part of the hearing.
20. I am grateful to Mr Cardiff for clearly articulating the basis of the claims on behalf of himself and the other Claimants. I am also grateful to him for communicating with those who had connection problems at various times to ensure that their answers to my questions were provided.
21. Mr Cardiff presented the case on behalf of the Claimants in a straightforward and clear way. I was grateful for the force with which he presented the case but also the sensible approach he took to acknowledging when the evidence was lacking, such as in respect of holiday pay. It was due to his conduct of the case that we were able to complete the hearing in the allocated time.

The issues

22. The issues in the case were:

Termination of contract

- 21.1 Was the Claimants' employment terminated and if so, on what date?
- 21.2 What was the reason for termination?

Redundancy payment

- 21.3 Are the Claimants entitled to a redundancy payment and if so how much?

Breach of contract – notice pay

- 21.4 Were the Claimants contractually entitled to a notice payment and if so how much?

Breach of contract – bike expenses

- 21.5 Were the Claimants contractually entitled to payment of bike expenses and if so how much?

Unlawful deduction of wages

- 21.6 Did the Respondent make an unauthorised deduction from wages from any of the Claimants by withholding payment of wages between October 2022 to January 2023, and if so, how much?

Holiday pay

- 21.7 Are the Claimants' entitled to payment for any accrued but untaken holiday pay and if so how much?

Findings of Fact

23. The Claimants were all employed on full time permanent employment contracts with the Respondent as photographers. Each had different start dates and annual salaries. I reviewed a number of contracts of employment to evidence the annual salaries and start dates. Where that information was lacking, I was able to establish the salary data by considering the payslips and verbal accounts of the Claimants.
24. Each Claimant had passed their probation period and had a 1 month notice period.
25. The Respondent provided estate agents around London with photography, video, floorplans and any other marketing material they may need. The Director of the Respondent was Owen Dredge Thompson.
26. The Claimants' role as photographers was to log on to their online scheduler each day then travel, generally by motorbike, to the various properties to photograph them. The Respondent provided a bike allowance for this purpose. At some point in the summer of 2022, this allowance was increased from £150 to £250 per month for each Claimant. All of the Claimants' contracts of employment that I saw refer to expenses being paid. The payslips that I was provided with show the bike allowances of £250 gross being paid on a monthly basis from the summer of 2022 onwards.
27. The Claimants would carry out anything from 1 to 6 photography jobs per day, generally with an average of 3 jobs per day. At the end of each day they would return home to fill in a spreadsheet of the jobs completed and upload the photographs. The photographs would be sent to a team in India who did the editing work on the photographs before returning them the next day.
28. The Claimants were not required to attend a physical work office. They travelled to photography jobs from home then returned to their homes to carry out the computer based tasks. They remained in contact with their scheduler during the day.
29. Between May and September 2022, the Claimants began to receive their salary payments late. The precise date varied between each and on occasion some Claimants received their salary over a number of part payments.
30. When the Claimants queried their late payments with Mr Owen Thompson they were told that there were payroll issues and that money was arriving from late invoices and loans. They were told that they would be paid eventually.
31. In October 2022, some Claimants received only part payments of salary and some received no salary at all. The Claimants were told that they would receive their salary late but some did not.
32. In November 2022, the Respondent made one or two payments but most Claimants did not receive any salary. No notice of those deductions was given. The Claimants continued to work as normal in the hope that pay would follow.

33. The Head Photographer, Mr Renato O'Leary met with Mr Thompson who asked him to consider setting up his own company to receive Mr Thompson's clients or alternatively to reduce the number of employees.
34. On 5 December 2022, Mr Thompson called a meeting to explain that he was having financial difficulties and to ask the photographers to either wait for a company loan or start a 'phoenix company'. After the meeting, he sent an email asking the photographers if they would continue work for a period of time in order for invoices to come in and be paid. I saw the email to Mr Toth dated 5 December 2022 at 16:01 referring to Mr Toth having been to the "meeting earlier". Mr Toth replied, with a message which I find fairly represented the position of all of the Claimants, saying:
*"From our last meeting on Monday the 5th of December 2022 I understand that London Stock Photography Ltd has had issues collecting outstanding payments from clients, however it is your responsibility as my employer to pay my salary on the time agreed. Salary payments have now gone into arrears, this is an unlawful deductions from my wage.
Despite these unlawful deductions I have still been available for work, and there have been no demands outside our contractual agreement. Obviously this breach of contract has put tremendous financial pressure on myself and my family but I have continued to check my work dashboard everyday and I am ready to attend jobs ever since."*
35. In mid December 2022, Mr Thompson stopped assigning jobs to the Claimants on their daily job tracker.
36. A meeting was held with Mr Thompson where he reassured the Claimants that he was waiting on a loan payment. The Claimants remained available for work.
37. The Claimants contacted ACAS on 22 December 2022 however efforts to speak to Mr Thompson became increasingly difficult. I accept the evidence of the Claimants that they made every possible effort to engage in meaningful discussions with the Respondent regarding the overdue salary payments. Multiple attempts were made through various channels, including phonecalls, emails and written communications. Regrettably, no response or acknowledgement was received from the Respondent. The Claimants' effort to resolve their dispute was met with silence.
38. At some point during the ACAS early conciliation window, the Claimants provided the schedule of overdue salary payments in the sum of £53,446.74. This schedule broke down the payments that were due but unpaid in respect of each Claimant and in respect of each month from October 2022 – January 2023.
39. By the end of January 2023 the Claimants had still not been paid their overdue salaries and had been unable to contact Mr Thompson directly or through ACAS. No work was being assigned to the Claimants on their daily scheduler. The Claimants effectively resigned on 31 January 2023 as from this date they accepted they were not being paid and would not be paid and so did not need to hold themselves out as available for work for the Respondent any more.
40. At this point in time, each Claimant had various amounts of accrued but unpaid holiday leave. Other than Mr Wongkampoo who I discuss further below, each

Claimant acknowledged that they were unable to evidence the amount of accrued but unpaid leave.

41. I asked each Claimant to confirm their date of birth, start date, annual salary, bike allowance and notice period and to comment on their position in respect of annual leave. The Respondent did not have a contractual redundancy policy and so any entitlement for redundancy payment would be calculated on the statutory basis only.
42. In respect of each Claimant, I also noted the following:

Ryan Cardiff

43. Mr Cardiff commenced employment with the Respondent on 3 August 2020. His salary had increased to £30,000 by September 2023 as shown by the sum of the two payments that he received on 1 and 2 September 2023. Mr Cardiff explained that there had been a commitment to increase his salary to £35,000 but he acknowledged that this was not recorded in writing and had not in fact taken effect. I find that his salary was £30,000.

Annalisa Bruno

44. Ms Bruno started her employment with the Respondent on 16 June 2021 and remained on an annual salary of £25,000 throughout. Ms Bruno acknowledged that she had not yet worked for the Respondent for 2 years and as such she would not be entitled to a redundancy payment.

Renato O'Leary

45. Mr O'Leary was the head photographer with the longest length of service. He had not produced his contract of employment in the bundle of documents I was shown. I was satisfied that his start date was 1 April 2018 as he did show me email correspondence of 8 April 2018 where he was introduced to the company and separately where he was asked to provide his documents and passport.

46. Mr O'Leary's salary was £37,000 per year as evidenced by his most recent payslips.

Onur Yoruk

47. Mr Yoruk joined the hearing by telephone but was unable to make his microphone work. Mr Cardiff provided me with Mr Yoruk's date of birth and start date on Mr Yoruk's instructions. During the course of the hearing Mr Yoruk uploaded his September 2022 payslip to the Claimants' shared drive of documentation. This showed that he was receiving a salary of £35,000 as of September 2022.

Steve Dillon

48. Mr Dillon explained that his salary had increased from £27,000 to £30,000. However similarly to Mr Cardiff, he was unable to evidence this and quite properly acknowledged that his most recent payslip still showed the equivalent of an annual salary of £27,000. I find that his annual salary was £27,000.

49. Mr Dillon acknowledged that he had not yet worked for the Respondent for 2 years and as such he would not be entitled to a redundancy payment.

Nathibed Wongkampoo

50. Mr Wongkampoo received an annual salary of £25,000. He explained that he knew he had 10 days of annual leave outstanding as he recalled taking holiday in November and emailing Mr Thompson to explain that he had 10 days outstanding. He acknowledged that there was an annual shut down at Christmas each year when employees were required to take annual leave. I do not doubt Mr Wongkampoo's honesty however in the absence of documentary evidence and in light of the annual shut down which would have used up some if not all of the outstanding annual leave in December 2022, I decline to make a finding of any outstanding annual leave due.

Gerson Ventura

51. Mr Ventura had connection difficulties and gave his instructions through Mr Cardiff. He said he earned an annual salary of £25,000. He had not provided any documentation to support his claim. While the numbers he provided in the spreadsheet were not wholly consistent with a salary of £25,000, on balance I was satisfied that the Claimants had been diligent in preparing the schedule of unpaid wages and had been honest in explaining their annual salaries to me. I found that it was more likely than not that Mr Ventura's annual gross salary was £25,000 per year plus a £250 bike allowance and that he had not been paid any sums between October 2022 and January 2023.

Tamas Toth

52. Mr Toth was able to evidence his annual salary at £30,000.

Applicable Law

Constructive dismissal by reason of redundancy

53. Sections 136-146 Employment Rights Act 1996 details the right to a redundancy payment. Section 136(1)(c) Employment Rights Act 1996 provides that there is a dismissal for the purposes of the redundancy provisions when the employee terminates the contract with or without notice in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. That conduct must amount to a repudiatory breach of contract entitling the employees to leave without notice. This is commonly known as constructive dismissal.

54. The constructive dismissal is by reason of redundancy where the reason for the employer's breach of contract fits the statutory definition of redundancy.

55. Redundancy is defined in section 139 Employment Rights Act 1996 as including situations in which the requirements the business for employees to carry out work of a particular kind in the place where the employee was employed by the employer has ceased or diminished or are expected to cease or diminish.

Breach of contract

56. Proceedings may be brought before an Employment Tribunal in respect of a claim for the recovery of damages or other sum if the claim arises or is outstanding on the termination of the employee's employment (Regulation 3, The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994).

57. An employer will be in breach of contract if they terminate an employee's contract without the contractual notice to which the employee is entitled, unless the employee has committed a fundamental breach of contract which would entitle the employer to dismiss without notice.
58. A claim for unpaid expenses might properly be brought as a claim for breach of contract where that claim is outstanding on the termination of the employee's employment.
59. A claim for unlawful deduction of wages may also be brought as a claim of breach of contract as the Claimants in this case have rightly referenced.

Unlawful deduction from wages under section 13 Employment Rights Act

60. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.
61. The definition of "wages" in section 27(1)(a) Employment Rights Act 1996 includes holiday pay.
62. The definition of "wages" expressly excludes payments "in respect of expenses" under section 27(2)(b) Employment Rights Act 1996. Allowances such as car allowances are generally not considered to be wages.

ACAS Code of Practice on Disciplinary and Grievance Procedures (2015)

63. The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) applies to claims of unlawful deduction from wages pursuant S.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and Schedule A2. It does not apply to redundancy situations.
64. The tribunal may increase or decrease an award by up to 25% if it considers it just and equitable to do so if the employer has unreasonably failed to comply with a relevant code of practice relating to the resolution of disputes, this includes the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Conclusion

65. In applying the relevant law to my findings of fact I reach the following conclusions in respect of each of the issues identified at the outset of the hearing.

Date and reason for termination of contract of employment

66. I find that the Respondent did commit a repudiatory breach of contract in failing to pay the Claimants their proper wages due under their contracts of employment in part or whole between October 2022 and January 2023 and in stopping sending the Claimants work via the online scheduler.

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67. Throughout the period of non payment the Claimants were available to work and continued to check the online scheduler to see which jobs they were required to do however no jobs were assigned to them. The Claimants tried to contact Mr Thompson of the Respondent to discuss the lack of work and lack of proper pay but he failed to respond to them.
68. I find that the Claimants were entitled to resign and did so resign with effect from 31 January 2023. From 1 February 2023 onwards, the Claimants accepted the breach of contract, effectively resigned and no longer remained available for work.
69. The reason for the employer's breach of contract was because they no longer required the Claimants to carry out photography work as evidenced by stopping assigning them jobs on the online scheduler. This cessation of work applied to all 8 photographers previously employed by the Respondent. This meets the statutory definition of redundancy such that I find the Claimants were constructively dismissed by reason of redundancy.

Breach of contract – notice payment

70. The Respondent breached the Claimants' contracts of employment by dismissing them without notice. I find that each Claimant is entitled to compensation for one month notice period. The sums awarded are shown in the following schedule:

Claimant	Annual salary	Monthly gross pay	One month notice pay awarded gross
Ryan Cardiff	£30,000	£2,500.00	£2,500.00
Annalisa Bruno	£25,000	£2,083.33	£2,083.33
Nathibed Wongkampoo	£25,000	£2,083.33	£2,083.33
Steve Dillon	£27,000	£2,250.00	£2,250.00
Renato O'Leary	£37,000	£3,083.33	£3,083.33
Onur Yoruk	£35,000	£2,916.67	£2,916.67
Gerson Ventura	£25,000	£2,083.33	£2,083.33
Tamas Toth	£30,000	£2,500.00	£2,500.00
TOTAL SUMS DUE			£19,499.99

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Redundancy payment

71. I find that the Claimants are all entitled to a redundancy payment bar Ms Bruno and Mr Dillon who had not worked for the Respondents for 2 whole years at the date of dismissal.
72. The sums are calculated by application of the statutory formula which takes into account age, weekly pay and number of years' service. Each Claimant provided their date of birth to me from which I established their length of service.
73. The statutory maximum gross weekly salary applicable for dismissals between 6 April 2022 and 5 April 2023 was £571. This means that those who earned more than this per week will see that redundancy sum is capped at this level.
74. The sums awarded are shown in the following schedule. Note that these sums are not subject to tax.

Claimant	Age at 31.01.23	Start date	Number of years service	Weekly gross pay	Redundancy payment due
Ryan Cardiff	39	03/08/2020	2	£576.92	£1,142.00
Annalisa Bruno	47	16/06/2021	1	£480.77	£0
Nathibed Wongkampoo	31	10/12/2020	2	£480.77	£961.54
Steve Dillon	45	04/10/2021	1	£519.23	£0
Renato O'Leary	35	01/04/2018	4	£711.54	£2,284.00
Onur Yoruk	37	13/02/2020	2	£673.08	£1,142.00
Gerson Ventura	39	10/12/2020	2	£480.77	£961.54
Tamas Toth	41	06/01/2021	2	£576.92	£1,142.00
TOTAL SUMS DUE					£7,633.08

Unlawful deduction of wages

75. The Respondent did make an unlawful deduction of wages from each Claimant in failing to pay them part or all of their salary due under their contract of employment between October 2022 and January 2023.
76. I accept the sums provided by the Claimants in their schedule for all Claimants other than Mr Ventura and award these sums on a gross basis as shown in the below schedule. I have used the core information provided in the schedule and during the

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hearing before me to calculate how much was outstanding in each month based on the gross salary provided less the sums already paid.

77. I found that Mr Ventura had a gross annual salary of £25,000 providing for a gross monthly salary of £2,083 per month. I further found that no payments had been made between October 2022 – January 2023 and accordingly all payments were ordered as unlawful deduction from wages.

78. The Respondent may make the tax deductions at source and pay the tax due to HMRC and the net sum due to the Claimants.

Claimant	Annual salary	Monthly gross pay	Oct-22	Nov-22	Dec-22	Jan-23	Gross unpaid wages awarded
Ryan Cardiff	£30,000	£2,500	£1,499	£2,500	£2,500	£2,500	£8,998.59
Annalisa Bruno	£25,000	£2,083.33	£1,083	£1,523	£2,083	£2,083	£6,773.32
Nathibed Wongkampoo	£25,000	£2,083.33	£835	£2,083	£2,083	£2,083	£7,085.32
Steve Dillon	£27,000	£2,250	£302	£1,948	£2,250	£2,250	£6,750.00
Renato O'Leary	£37,000	£3,083.33	£984	£3,083	£3,083	£3,083	£10,234.30
Onur Yoruk	£35,000	£2,916.67	£1,457	£2,917	£2,917	£2,917	£10,207.17
Gerson Ventura	£25,000	£2,083.33	£2,083	£2,083	£2,083	£2,083	£8,333.32
Tamas Toth	£30,000	£2,500	£1,452	£2,022	£2,500	£2,500	£8,474.80
TOTAL SUMS DUE			£9,697	£18,160	£19,500	£19,500	£66,856.82

Breach of contract – expenses

79. The Respondent breached the Claimants' contracts of employment by failing to pay them a bike allowance between October 2022 and January 2023. This is a sum equivalent to £250 gross per Claimant per month multiplied by 4 months. The gross sums awarded are shown in the below schedule. Again the Respondent may deduct the tax due at source and pay the tax to HMRC and the net sum to the Claimants.

Claimant	Monthly bike allowance	Gross bike allowance awarded
Ryan Cardiff	£250	£1,000

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Annalisa Bruno	£250	£1,000
Nathibed Wongkampoo	£250	£1,000
Steve Dillon	£250	£1,000
Renato O’Leary	£250	£1,000
Onur Yoruk	£250	£1,000
Gerson Ventura	£250	£1,000
Tamas Toth	£250	£1,000
TOTAL SUMS DUE		£8,000

Holiday pay

80. I do not doubt the integrity of those Claimants who said they were owed holiday pay. However, I am unable to award any some for accrued but untaken holiday pay as I do not have evidence of the numbers of days taken in the last holiday year for each Claimant such that I can calculate how many days might be outstanding.

ACAS Code of Practice

81. The Claimants made several attempts to resolve their pay dispute without litigation. This included phone calls, emails and written communications. The Claimants provided a schedule which broke down the total sum of overdue wages sought by reference to the pay period and each individual Claimant to ACAS as part of the early conciliation process. That schedule remains the schedule relied on before me. The Respondent had sufficient information to know the unpaid wages and to engage with a plan to pay it however they failed to reply to the Claimants queries and made effort to resolve the pay dispute.

82. I consider that the Claimants have acted reasonably throughout and have all been willing to accept where they do not have evidence to sustain any particular claims. I consider that the Respondent would have been able to try to resolve these matters at the first opportunity had they chosen to do so.

83. I recognise that there was a meeting on 5 December 2022 at which Mr Thompson set out his financial difficulties but from approximately that date onwards there was silence.

84. I conclude that the wages due and the bike allowance should be increased by 20% to reflect the respondent’s failure to engage with the grievance and so comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. I do not

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award the full 25% to account for the one meeting that did take place on 5 December 2022. This provides for the following figures:

Claimant	Gross unpaid wages awarded	Gross bike allowance awarded	Gross unpaid wages plus bike allowance	ACAS Uplift at 20%
Ryan Cardiff	£8,998.59	£1,000	£9,998.59	£1,999.72
Annalisa Bruno	£6,773.32	£1,000	£7,773.32	£1,554.66
Nathibed Wongkampoo	£7,085.32	£1,000	£8,085.32	£1,617.06
Steve Dillon	£6,750.00	£1,000	£7,750.00	£1,550.00
Renato O'Leary	£10,234.30	£1,000	£11,234.30	£2,246.86
Onur Yoruk	£10,207.17	£1,000	£11,207.17	£2,241.43
Gerson Ventura	£8,333.32	£1,000	£9,333.32	£1,866.66
Tamas Toth	£8,474.80	£1,000	£9,474.80	£1,894.96
TOTAL SUMS DUE	£66,856.82	£8,000	£74,856.82	£14,971.36

Summary

85. In summary the Respondent is ordered to pay the following sums:

Claimant	Notice pay	Red. pay	Gross unpaid wages	Gross bike allow.	ACAS Uplift at 20%	Total sum due
Ryan Cardiff	£2,500.00	£1,142.00	£8,998.59	£1,000	£1,999.72	£15,640.31
Annalisa Bruno	£2,083.33	£0	£6,773.32	£1,000	£1,554.66	£11,411.31
Nathibed Wongkampoo	£2,083.33	£961.54	£7,085.32	£1,000	£1,617.06	£12,747.25
Steve Dillon	£2,250.00	£0	£6,750.00	£1,000	£1,550.00	£11,550.00
Renato O'Leary	£3,083.33	£2,284.00	£10,234.30	£1,000	£2,246.86	£18,848.49

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Onur Yoruk	£2,916.67	£1,142.00	£10,207.17	£1,000	£2,241.43	£17,507.27
Gerson Ventura	£2,083.33	£961.54	£8,333.32	£1,000	£1,866.66	£14,244.85
Tamas Toth	£2,500.00	£1,142.00	£8,474.80	£1,000	£1,894.96	£15,011.76
TOTAL SUMS DUE	£19,499.99	£7,633.08	£66,856.82	£8,000	£14,971.36	£116,961.25

Employment Judge Musgrave-Cohen
Date: 25 July 2023