



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr W Palac

**Respondent:** Casekirk Ltd t/a Everglade Windows

**Heard at:** Manchester (remotely; by CVP)

**On:** 4 August 2023

**Before:** Employment Judge Phil Allen  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Parry

# JUDGMENT

The judgment of the Tribunal is that:

1. The respondent made an unauthorised deduction from the claimant's wages of the gross sum of £460 and it is ordered to pay to the claimant that sum.
2. The claimant's claim for holiday pay did not succeed and is dismissed.
3. The respondent did not include on the pay statement made on 21 October 2022 the particulars of the deduction made.

The above **JUDGMENT** having been signed on 4 August 2023, and written reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. The claimant was employed by the respondent from 12 August 2021. His employment ended on 21 October 2022. He brought a claim for unauthorised deduction from wages and unpaid holiday pay. He also asserted that he had not received the final payslip which he should have received where deductions from wages would be recorded.

## Procedure

2. The claimant represented himself at the hearing. Mr Parry represented the respondent. Mr Sirovica of the respondent also attended, but when I confirmed that the respondent should have one person representing the company, Mr Parry chose to take that role. The hearing was conducted by CVP remote video technology with both parties attending remotely.

3. In advance of the hearing neither party had provided the Tribunal with a bundle of documents or a witness statement. The respondent asserted that it had sent some documents to the Tribunal previously, but that was not in accordance with any orders made. Neither party had fully prepared for the hearing.

4. In the respondent's claim form, it had ticked the box for bringing a counterclaim. The Tribunal had not processed that counterclaim. I explained to the respondent that because the claimant was claiming for unauthorised deduction from wages and holiday pay, but not bringing a claim which was one for breach of contract (or at least his claim was not bringing a claim which was treading outside the normally understood employment tribunal jurisdiction), the respondent could not bring a counterclaim for breach of contract. It was Mr Parry's assertion that the value of the counterclaim exceeded the deductions which had been made.

5. As a result of the lack of documentation, at the start of the hearing I arranged for the key documents to be sent to the Tribunal. The respondent sent a copy of the contract on which it relied. The claimant had a copy of the contract. Later in the hearing, the respondent also sent a copy of the relevant payslip and, when the claimant identified that he had not seen it, that was also copied to the claimant.

6. Neither party had experience of Tribunal hearings. I proposed at the start of the hearing that: the claimant would be sworn in and would then be given the opportunity to both give the evidence which he wished to which was relevant and explain his claim; and I would then swear in Mr Parry who would respond with his evidence and explanation under oath. Both parties agreed with that approach. At the end of each party's evidence, I did give the other party an opportunity to ask questions.

7. At the end of the evidence and arguments I highlighted to the parties some important issues and gave them a further opportunity to say anything they wished to on those issues. I then adjourned to consider my decision. When I returned, Mr Parry

made one further point that he wished to make. I then told the parties my decision and provided my reasons for it orally.

8. After providing my oral Judgment and reasons, neither party requested written reasons on the day of the hearing. However, I have since received an email from the claimant asking for written reasons. I think he has done so before receiving the written Judgment (albeit I have already signed the Judgment, but it has not yet been entered on the register or sent to the parties).

## Facts

9. The claimant was employed by the respondent from 12 August 2021.

10. I was provided with a contract agreed between him and the respondent on 12 August 2021 (the respondent was wrongly named in the contract but there was no issue that the contract provided was the one entered into with the respondent).

11. The claimant was required to give one week's written notice in order to terminate his contract, under the contract's terms. The contract said "*Failing to provide the Company with your contractual notice period may result in the Company making a deduction from your final pay, equal to any additional costs incurred*". The contract also entitled the company to make deductions from the claimant's wages where he was indebted to it. The contract explained how holiday would be calculated.

12. The claimant gave verbal notice to the respondent on 19 October 2022. There was a disagreement between the parties about when on that day the notice was given. I did not need to decide when (on that day) notice was given, in order to determine the claims before me.

13. The claimant did not give written notice at all.

14. The claimant only worked until 21 October 2022. He did not return to work for the respondent the following week as he should have done if he had acted in accordance with his contractual obligations.

15. On 21 October 2022 the claimant's employment ended.

16. The claimant asserted that other employees had left without working their full notice period. Mr Parry explained why he had treated them differently. Nothing material turned upon whether others had not been required to work their notice period, or whether others had not done so.

17. The parties agreed that the claimant had taken twenty-one days annual leave during the leave year 2022, for which he had been paid.

18. The claimant was not paid for the last week he worked. The respondent asserted that it was entitled not to pay the sum due because of what the contract said about deductions and not working notice.

19. I was provided with the claimant's final pay slip dated 21 October 2022. It recorded that the claimant had been paid £460 gross pay. It detailed deductions for

pension, tax, and National Insurance. There was no detail included of any other deductions at all, such as deductions made for breaching the contract. Mr Parry's evidence was that pay slips were retained in the office and were given to employees on the Tuesday of the week after.

## Law

20. A claim for unauthorised deduction from wages is brought under section 23 of the Employment Rights Act 1996. It relies upon section 13 of the Employment Rights Act 1996 which provides that:

*“An employer shall not make a deduction from the wages of a worker employed by him unless:*

- (a) The action is required or authorised 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.”*

21. In practice, for this unauthorised deduction from wages claim, I needed to determine whether the deduction made from the payment of wages due, was otherwise authorised in one of the ways described.

22. Section 8 of the Employment Rights Act 1996 provides that a worker has the right to be given by his employer a written itemised pay statement. The statement must be given at, or before, the time at which any payment of wages is made. It must also set out the amounts of any deductions from the gross amount and the reasons why the deduction has been made. Section 12(3) provides that where a statement is not provided as required, I can make a declaration to that effect. Section 12(4) provides that if I find that any unnotified deductions were made (whether or not the deductions were in breach of contract) I can order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions made.

23. The entitlement to paid annual leave is provided for in the Working Time Regulations 1998. A claim for money not paid arising from the right to leave otherwise due, can be a claim for unauthorised deduction from wages or a claim under those Regulations. A worker's entitlement under the Regulations is to 5.6 weeks of paid leave in each leave year. For a worker who works five days a week, that equates to twenty-eight days per annum. The Regulations also provide for payment in lieu of any outstanding but untaken annual leave on termination. An employee's contract can also include provisions which apply to the leave entitlement and to payments in lieu of annual leave on termination.

24. Neither party in the hearing referred to any law.

## My decision (applying the law to the facts)

25. The claimant breached his contract of employment when he did not work for a week after giving written notice. He never gave written notice to terminate his contract as he should have done. Even based upon the verbal notice which he gave, he should have worked until 25 October 2022. He worked only until 21 October.

26. The respondent asserted that the claimant breached his contract of employment. The respondent was correct.

27. I have already quoted what was said in the important clause in the contract, but I would particularly emphasise what was said at the end of it:

“Failing to provide the company with your contractual notice period may result in the company making a deduction from your final pay **equal to any additional costs incurred.**”

28. I accepted that there may be a cost to the respondent of the claimant not working his full notice period, as Mr Parry asserted. However, the respondent did not prove the additional costs incurred. There was no evidence from the respondent which identified precisely what the cost had been of the claimant not completing his notice period, aside from a broad assertion about the loss which resulted. The respondent did not prove that the deduction made had been equal to the additional costs incurred.

29. I was also satisfied from the evidence I heard from Mr Parry, that the respondent did not at the time calculate the additional costs incurred. The contractual clause required a calculation of the additional costs to be undertaken, because that is what it said. Without calculating or identifying the additional costs, the costs incurred being deducted could not fall within what was said in the clause. As I explained in the hearing, there is a good reason for the wording used in the clause, as without it the provision would be what is called an unenforceable penalty clause.

30. Therefore, I found that the respondent was not entitled to deduct the amount which it had from the claimant's wages. It could only deduct a sum equal to any additional costs incurred and, as it had not identified the additional costs incurred or proved them at the hearing, it was not entitled to make the deduction by virtue of the clause upon which it relied.

31. As a result, I found that the respondent made an unauthorised deduction from the claimant's wages of the gross sum of £460 to which he had been entitled (as recorded on his payslip and less the deductions required for tax and national insurance).

32. I also explained that there was an additional point which would have meant that the claimant would have succeeded in his claim in any event. Even had I not made the finding which I did based on the contractual clause, there was (as I have set out) a requirement under the Employment Rights Act 1996 for the particulars of any deduction made to be recorded in writing on the payslip. In this case the deduction made was not recorded in writing and, accordingly, I would have awarded the claimant £460 under that provision in any event.

33. In the holiday pay claim, it was for the claimant to prove that he had not been paid the sum to which he asserted he was entitled. The difficulty was, that whilst he asserted that he had been entitled to a greater amount of annual leave and therefore should have received some pay in lieu of annual leave on termination, he could not explain to me why he believed he was entitled to a greater amount. He relied upon

an on-line calculation he had undertaken, but he did not explain the numbers which he had used or why he said the twenty-one days was wrong. The respondent also could not explain the claimant's annual leave entitlement and what he had been paid, save for explaining that the amount paid was what the respondent had been told was the claimant's entitlement by its advisors.

34. On the claimant's claim for holiday pay, he took twenty-one days' annual leave in 2022. I did undertake the calculation for holiday provided for in the claimant's contract. That resulted in the claimant having accumulated twenty-one days at the date of termination, based on that calculation. The claimant in practice did not present any argument about why that calculation was wrong. The claimant did not prove that he was entitled to any further pay for annual leave or in lieu of it. His claim for accrued but untaken annual leave did not succeed as a result.

### Summary

35. In summary, my decision was that:

- (1) The respondent made unauthorised deductions from the claimant's pay of £460 (gross);
- (2) The claimant's claim for holiday pay did not succeed and was dismissed; and
- (3) The respondent did not include on the payslip for 21 October 2022 the particulars of the deduction which it made.

Employment Judge Phil Allen

Date: 9 August 2023

REASONS SENT TO THE PARTIES ON

Date: 21 August 2023

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FOR THE TRIBUNAL OFFICE

### **Public access to employment tribunal decisions**

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## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2401570/2023**

**Mr W Palac v Casekirk Ltd t/a Everglade Windows**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 21 August 2023

"the calculation day" is: 22 August 2023

"the stipulated rate of interest" is: **8%**

Mr P Guilfoyle  
For the Employment Tribunal Office

## INTEREST ON TRIBUNAL AWARDS

### **GUIDANCE NOTE**

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at [www.gov.uk/government/collections/employment-tribunal-forms](http://www.gov.uk/government/collections/employment-tribunal-forms)

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.