



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Lewis-Donaldson

**Respondent:** Mastermind Group Ltd

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

**On:** Monday 30 October 2023

**Before:** Employment Judge Musgrave-Cohen

**Representation:**

<b>Claimant</b>	In person
<b>Respondent</b>	Mr Eastwood of Mastermind Group Ltd

## JUDGMENT

1. The claim was issued in the London South Employment Tribunal on 2 June 2023. The Respondent failed to present a valid response on time. The Respondent attended the hearing but did not confirm whether they wished to defend the claim. The Respondent participated in preliminary matters but was not permitted to participate in the hearing.
2. The Respondent made unauthorised deductions from wages by failing to pay the Claimant the full amount of wages due between 1 March 2023 to 12 May 2023 and is ordered to pay to the Claimant the sum of £3,617.94 being the total gross sum deducted.
3. The Respondent breached the Claimant's contract of employment by failing to pay him 1 week notice pay. The sum of £442.31 gross is accounted for under the unpaid wages award.
4. 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 £904.49 being a 25% uplift to the award for unauthorised deduction from wages and breach of contract
5. Applying the guidance in Walters t/a Rosewood v Barik UKEAT/0053/16/BA and the statutory rules on Post Employment Notice Pay, 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 Claimant was employed by the Respondent as an Artist Development Assistant at their premises at 165 The Broadway, Wimbledon, between 30 May 2022 and 12 May 2023. ACAS was notified under the early conciliation procedure on 31 May 2023 and the certificate was issued on 2 June 2023. The ET1 was presented on 2 June 2023. The Respondent failed to present an ET3.
2. The Claimant attended the hearing having provided a bundle of evidence, his contract of employment and summary of the sums sought.
3. Following enquiries from the Tribunal, Mr Eastwood of the Respondent attended the hearing by telephone. I expressed my thanks to Mr Eastwood for attending.

## Procedure and Evidence

4. The notice of claim was sent to Mastermind Group Ltd at their business address in Wimbledon on 8 June 2023 but they failed to provide a response. The notice of hearing was sent on the same date.
5. Mr Eastwood told me today that the Respondent had left that premises during the first weekend in June and that no forwarding arrangements had been made. He did not know who now occupied the premises.
6. On 27 June 2023, the Claimant sent Mr Eastwood of the Respondent an email providing his evidence for his Employment Tribunal claim. The email read:

*Dear Mr Micheal Eastwood,*

*Please find attached the document of claims and supporting evidence relevant to the employment Tribunal set for 30th October 2023.*

*This email references orders 1.1 and 1.2 of the Tribunal, providing the Respondent (Mastermind Group Ltd), within 4 weeks from the 8th June 2023, with the required documents.*

*Yours Sincerely*

*Benjamin Lewis-Donaldson*

7. Mr Eastwood confirmed that the email address this was sent to was his email address. He did not recall receiving the email. The email contained sufficient detail that it was apparent the Claimant had pursued an Employment Tribunal claim against the Respondent. The attachments detailed the sums claimed and the reason why. The full evidence file before me today was sent to Mr Eastwood on that same date.
8. On 29 September 2023, the Tribunal re-sent the notice of claim, notice of hearing, Claimant's ET1 claim form and a blank ET3 Response form to the Respondent at their registered address of 78 York Street.

9. Mr Eastwood explained that this was an administrative address and that post sent there would have been forwarded to the Wimbledon office. He explained that within a couple of months of leaving the Wimbledon office he had notified York Street that he had moved.
10. Mr Eastwood was not in a position to confirm whether he wished to defend or concede the claim and he did not present a response form and application for an extension of time. He wanted to obtain legal advice before doing so. He recognised that the Claimant had not been paid his full salary but he wished to obtain legal advice about financial losses that the business had incurred that they may seek to deduct from the sums due to the Claimant.

#### Postponement application

11. Following clarification as to the options open to me and the relevant rules of procedure, Mr Eastwood confirmed that he wished me to postpone the hearing to give him time to take legal advice.
12. I considered rule 30A Employment Tribunal Rules of Procedure and the circumstances in which I may postpone a hearing I reminded myself of the Overriding Objective particularly the need to act fairly and justly, to avoid delay and to save expense. The application was made on the day of the hearing. The Claimant did not consent to it. I considered the application was not due to the conduct of the Claimant or the Tribunal and there were no exceptional circumstances, the claim form having been served on the Respondent at their registered address and their attention having been further directed to its existence and today's hearing in correspondence from the Claimant. I declined to postpone the hearing.

#### Procedure

13. I proceeded to hear the claim under rule 21 Employment Tribunal Rules of Procedure as I had sufficient material before me to properly determine the claim and issue judgment.
14. The Claimant was sworn in and confirmed the evidence that he had provided the Tribunal containing a summary of the payments he sought, his contract of employment, details of payments due and payments received for the months of March, April and May 2023.
15. The Claimant confirmed that he was making a claim for unpaid wages and notice pay only and that there were no other payments due.
16. I did not permit Mr Eastwood to participate in the hearing other than to ask me clarification questions and to give him an opportunity to explain his position. He explained that it was likely the Claimant's sums were correct but that there were arguments he may want to make as to conduct matters that may mean the Respondent was entitled to deduct sums from those payments. Further the Respondent faced financial difficulties at the time which had a bearing on why they had been unable to pay the Claimant in accordance with his contract. He needed to obtain legal advice before confirming his position.

17. I was grateful to Mr Eastwood for his openness and involvement in the hearing. Nonetheless in the absence of a response or confirmation of the Respondent's position on liability, I did not permit the Respondent to participate in proceedings nor did I make any findings of fact based on Mr Eastwood's representations.

### **The issues**

18. The issues in the case were as follows:

#### Unlawful deduction of wages:

- 18.1 Was the Claimant entitled to receive payment for work done between 1 March 2023 and 12 May 2023 inclusive?
- 18.2 Did the Respondent make an unauthorised deduction from wages by withholding payment of those sums due?

#### Breach of contract:

- 18.3 Was the Claimant entitled to a notice payment and if so how much?
- 18.4 Did the Respondent fail to pay the notice payment?

### **Findings of Fact**

19. The Claimant was employed by the Respondent as an Artist Development Assistant at their premises at 165 The Broadway, Wimbledon, between 30 May 2022 and 12 May 2023.
20. On 5 May 2023 the Claimant sent a Whatsapp message to Mr Eastwood to complain that he had not been paid correctly. He referred to previous verbal conversations about the same. The conclusion of the Whatsapp conversation was a message from Mr Eastwood saying "Please don't come back into the office on Tuesday". The Monday was a bank holiday.
21. On 7 May 2023, Mr Eastwood sent an email to the Claimant saying that he was dismissed as of 5 May 2023 and would be paid any outstanding salary up to 12 May 2023 "as soon practicable".
22. The email contained some matters of conduct relating to the Claimant which were briefly mentioned to the Tribunal by Mr Eastwood today. I have not made any findings about these matters noting that there is no response to the claim before me today.
23. The Claimant's employment was terminated by email of 7 May 2023 with the effective date of termination being 12 May 2023.
24. The Claimant's contract of employment states that his salary was £23,000 per year equating to £1,916.66 gross per calendar month or £442.31 gross per week.
25. It follows that between 1 March 2023 and 12 May 2023 the Claimant was contractually entitled to receive £4,717.94 made up of salary and 1 weeks' notice pay.

26. The extracts of the Claimant's bank statements provided show that he received regular and complete payments by bank transfer for his salary from 30 May 2022 until end of February 2023. In respect of work done between 1 March 2023 and 12 May 2023 he received payments totalling £1,100. He therefore suffered a shortfall of £3,617.94 gross.
27. The Claimant complained again to Mr Eastwood after his dismissal again asking when he would be paid. He explained that the situation was stressful. This was essentially a further grievance about the unpaid wages. He did not receive a response.
28. On 22 May 2023, the Claimant wrote to Mr Eastwood's assistant called Tom as he had not received a response from Mr Eastwood. He set out again the sums he believed he was entitled to. Tom did not reply.
29. The last correspondence from Mr Eastwood about the unpaid wages was on 22 May 2023 in response to the email sent to Tom. Mr Eastwood said that the team were committed to fulfilling their obligations regarding the Claimant's salary and said that he would be paid "as soon as participate (sic) and we can't give a specific date right now".
30. On 27 June 2023, the Claimant sent his bundle of evidence to Mr Eastwood by email. This confirmed again the sums due and how they had been calculated. The Claimant confirmed that he had still not received payment.

## **Applicable Law**

### Unlawful deduction from wages under section 13 Employment Rights Act

31. 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.
32. A claim about an unauthorised deduction from wages must be presented to an employment Tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

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

33. 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.

34. 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 Grievance Procedures.

## Conclusion

35. 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.

### Unlawful deduction from wages

36. The Respondent made an unauthorised deduction from wages by failing to pay the Claimant the full amount of wages due between 1 March 2023 and 12 May 2023 and is ordered to pay to the Claimant the sum of £3,617.94 being the total gross sum deducted.
37. The Respondent may make the tax deductions at source and pay the tax due to HMRC and the net sum due to the Claimant.

### Breach of contract

38. The Respondent breached the Claimant's contract of employment by dismissing him without payment of 1 week of notice pay that he was entitled to receive.

### ACAS Code of Practice

39. The Claimant made a complaint about his unpaid wages while still employed. He complained verbally and on whatsapp. Mr Eastwood's response to the complaint, or grievance, was to conclude the conversation by dismissing the Claimant. This was then followed up with a written dismissal.
40. In response the Claimant again requested payment of unpaid wages by email. He provided a breakdown of the sums he believed he was due by email directly and on 27 June 2023 in response to the Tribunal's orders. Each time that the Claimant raised a grievance about the failure to pay him his salary his concerns were either ignored or dismissed.
41. The Respondent had sufficient information to know the detail of the unpaid wages that were due and to engage with a plan to pay it. They acknowledged that they money was due but failed to pay the Claimant at any time. Commitments to pay the Claimant the money were did not come to fruition as the Claimant has still not been paid the sums due several months later.
42. I conclude that the wages due should be increased by 25% to reflect the Respondent's complete and unreasonable failure to respond to the grievance in compliance with the ACAS Code of Practice, specifically failing to meet the Claimant to discuss his concerns but instead electing to dismiss him, failure to allow the Claimant to be accompanied at any such meeting, failure to set out how the Respondent would pay the Claimant the monies due and failure to offer the Claimant a right of appeal. This equates to a sum of **£904.49**.

43. This gives a total of **£4,522.43**.

---

Employment Judge Musgrave-Cohen  
Date: 10 November 2023