



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E. Fejzo  
**Respondent:** Lillywhite Property Group Limited  
**Heard at:** East London Hearing Centre (via CVP)  
**On:** 4 March 2024  
**Before:** Employment Judge Chudleigh (sitting alone)

## Appearances

For the claimant: in person  
For the respondent: did not appear and was not represented

## JUDGMENT

- 1 In breach of contract the respondent failed to pay employee and employee pension contributions on the claimant's behalf for the months of April, May, June, July and August 2023 despite deducting employee contributions from the claimant's wages.
- 2 The respondent is ordered to pay the claimant damages for breach of contract in the sum of £1450.03
- 3 The employer's contract claim brought by the respondent is not well founded and is dismissed.

## REASONS

1. The claimant was employed by the respondent as a Plumbing and Gas Engineer from 1 February 2023 until 31 August 2023. In a claim presented on 13 November 2024 the claimant complained about non-payment into a pension scheme by the respondent of both employer and employee contributions.
2. In the response the respondent did not provide any details relating to the defence of the claimant's claim although it was indicated that it was defended. Furthermore, the respondent raised an employer's contract claim alleging that

the claimant advised on his CV and in interview that he was capable of carpentry work but he was not.

3. The issues for determination were:
  - 1) Whether the terms of the claimant's contract provided for the respondent to make employee and employer contributions to a pension scheme?
  - 2) Whether in breach of contract the respondent failed to make such contributions for the months of April, May, June, July and August 2023?
  - 3) Whether the respondent made deduction from the claimant's pay in respect of employee pension contributions?
  - 4) The appropriate level of damages in the event of a breach by the respondent?
  - 5) Whether the claimant indicated to the respondent at the outset of his employment that he was capable of carpentry work?
  - 6) Whether when he was asked to make a simple shower base the claimant advised the respondent that he could not do carpentry work, just plumbing and heating?
  - 7) If so, whether this was a breach of contract by the claimant?
  - 8) The appropriate level of damages in the event of a breach by the claimant?

### **Facts**

4. The respondent did not appear despite having been sent a notice of hearing on 28 December 2023.
5. The claimant gave evidence and I made the following findings of material fact:
  - 1) The claimant was employed by the respondent as a Plumbing and Gas Engineer from 1 February 2023 until 31 August 2023.
  - 2) His contract provided for enrolment onto an automatic enrolment pension scheme and he was so enrolled.
  - 3) £183.45 was deducted from the claimant's wages every month by way of employee pension contributions.
  - 4) The total payable to the SMART pension scheme every month was £293.52 except for August 2023 when it was £275.95.
  - 5) The respondent made no employee or employer contributions to the pension scheme for the months of April, May, June, July and August 2023

despite deducting employee contributions from the claimant's wages. The total not paid into the pension fund was £1450.03.

- 6) When he was first employed the claimant did not say he was a carpenter in interview or on his CV. He did state he had been involved in a kitchen installation but there was a carpenter on the project and he was the plumber. Indeed, his contract of employment says he was employed as a Gas Engineer / Plumber Maintenance Operative, not a carpenter.
- 7) In the circumstances, the claimant did not make any misrepresentation to the respondent about his abilities.

### Submissions of the parties

6. The claimant submitted that he has suffered significant stress as a result of the respondent's actions and what the respondent had done amounted to fraud as the employee pension contributions were deducted from his pay.

### Law

7. Pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, section 3 employees may make claims for breach of contract that arise or are outstanding on the termination of their employment:

*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*

*(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*

*(b) the claim is not one to which article 5 applies; and*

*(c) the claim arises or is outstanding on the termination of the employee's employment.*

8. Section 4 provides for employer's contract claims:

*Proceedings may be brought before an employment tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*

*(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*

*(b) the claim is not one to which article 5 applies;*

*(c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and*

*(d) proceedings in respect of a claim of that employee have been brought before an employment tribunal by virtue of this Order.*

**Conclusions**

9. It was a term of the claimant's contract that the respondent would make employee and employer pension contributions into a pension scheme. The appropriate scheme was a SMART scheme and contributions were made until April 2023.
10. The respondent did not pay the appropriate employee or employer pension contributions for the months of April, May, June, July and August 2023 despite deducting employee contributions from the claimant's wages. The total not paid into the pension fund was £1450.03.
11. In not making the pension contributions the respondent was in breach of the claimant's contract of employment. The respondent is ordered to pay the claimant damages in the sum of £1450.03.
12. The claimant claimed other sums including in respect of money he borrowed from people, but those sums were too remote to be recoverable.
13. The claimant did not represent that was capable of carpentry work at the outset of his employment and accordingly was not guilty of a misrepresentation or a breach of contract.

**Employment Judge Chudleigh  
Dated: 4 March 2024**