



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Isabelle Robinson

**Respondent:** BKC Read Limited

**HELD AT:** Manchester by CVP **ON:** 14 May 2024

**BEFORE:** Employment Judge Fairhurst (sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Miss A Bibia (Senior Litigation Officer, Peninsula)

# JUDGMENT

1. The Respondent's name is substituted for BKC Read Limited.
2. The complaint of unauthorised deductions from pay contrary to Part II of the Employment Rights Act 1996 is well founded. The Respondent made an unauthorised deduction from the Claimant's pay. The Respondent is ordered to pay the Claimant the gross sum of £1,271.25 deducted from pay.
3. The complaint in respect of holiday pay is well-founded. The Respondent is ordered to pay the Claimant the gross sum of £182.30.
4. The Respondent failed in its duty to provide the Claimant with a written statement of the main terms of employment complying with section 1/section 4 of the Employment Rights Act 1996. Pursuant to section 38 of the Employment Act 2002 the above award is increased by the sum of £900, being two weeks' gross pay.

The following reasons are provided in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013:

# REASONS

## Introduction

1. The Claimant brought a claim for unauthorised deductions from wages and payment in lieu of untaken holiday.

## Procedural background

2. The Claimant initially brought her claim against Benjamin Read and Kelsey Little. The Claimant provided in evidence that she did this because she had not been provided with a contract of employment and these were the individuals paying her at the Respondent. Kelsey Little is listed as a Director of "BKC Read Limited" on the Companies House website and Benjamin Read and Kelsey Little are listed as the persons with significant control.
3. The Claimant provided two early conciliation certificates from ACAS, both in the name of "BKE Read Limited" and both with certificate number R251731/23/38.
4. Employment Judge Johnson considered this and rejected the claim against Kelsey Little and accepted the claim in relation to "BKE Read Limited". A Notice of Claim and Notice of Hearing was sent to "BKE Read Limited".
5. On 16 January 2024, the Respondent made an application for an extension of time to present the ET3, referring to "BKE Read Limited" as the name of the Respondent. The application was granted by Employment Judge Childe on 9 February 2024. A response form was then received listing "BKC Read Ltd" as the Respondent.

## Respondent's application for strike out

6. The Respondent made an application to strike out the Claimant's claim on the basis that the name on the early conciliation certificate did not match the name in the claim form and the early conciliation certificate listed "BKE Read Limited" as the respondent (whereas the correct respondent's name is "BKC Read Limited").
7. The Respondent's representative asserted that the Claimant should have taken appropriate legal advice and put the correct name on the claim form.
8. In response to the strike out application, the Claimant made submissions that she named the individuals on the claim form who had been paying her and that she did not receive a written contract of employment or written particulars of employment in order to determine the name of her employer.

9. I considered the Respondent's application for strike out and denied the application.
10. I was not satisfied that any of the limbs of regulation 37 of the Employment Tribunal Rules of Procedure 2013 had been met.
11. I was satisfied that, although the claim had been brought in the names of Kelsey Little and Benjamin Read and the early conciliation certificate[s were] [was] instead in the name of "BKE Read Limited", this was an error in that the individuals named in the claim form were the only shareholders of "BKC Read Limited" and the correct address for "BKC Read Limited" was listed on both the claim form and the early conciliation certificate.
12. The Claimant was a litigant in person and had brought the claim against the individuals she understood to be paying her. The correct respondent had clearly engaged in the proceedings and would not be disadvantaged by the claim proceeding.
13. It would not be in the interests of justice to deny the Claimant's claim on the basis that she had incorrectly named the shareholders of "BKC Read Limited" as the Respondent, nor that there was an error on the early conciliation certificate to refer to "BKE Read Limited" rather than "BKC Read Limited".
14. Accordingly, I denied the Respondent's application for strike out.

### **Substitution of a party**

15. It was clear that the Respondent should be named as BKC Read Limited. I therefore made a decision, on my own initiative, to remove BKE Read Limited which had been wrongly included as a respondent and to substitute BKE Read Limited for BKC Read Limited.

### **Issues**

16. The issues in this case were as follows:
  - a. Was the deduction made from the Claimant's wages authorised under s13(1)(a) of the Employment Rights Act 1996? If yes, was the deduction justified?
  - b. Did the Claimant have an entitlement to holiday which was untaken at the end of her employment?
  - c. Had the Respondent made an unauthorised deduction from the Claimant's pay by failing to pay holiday pay?

### **Evidence**

17. Witness statements were not provided in advance of the hearing by either of the parties. The Claimant gave oral evidence. The Respondent's witness, Kelsey

Little, did not attend the hearing to give oral evidence. I was informed by the Respondent's representative that she did not have instructions in respect of the witness' non-attendance and that she had last heard from the witness at 00:52 on 14 May to say that she had just landed in the UK but, at that time, she had not explained that she would not be in attendance at the hearing.

18. The Respondent's case was, in summary, that:

- a. no money is due to the Claimant.
- b. the Claimant was presented with a contract of employment.
- c. the contract of employment contained a right to make deductions on the basis of gross misconduct.
- d. the wages were deducted as a result of gross misconduct on the part of the Claimant (including that she had failed to attend her role as she was employed in another role, she was often late, she was found to be giving away free drinks, drinking on shift and stealing bottles from the bar and she had often cancelled shifts with no reason given).
- e. no holiday pay is owed to the Claimant.

### **Further procedural issues**

19. During cross examination, the Respondent's representative questioned the Claimant regarding the fact that she had not provided exact figures for her holiday pay claim and indicated to the Claimant that this was necessary to pursue her claim.

20. Following the Respondent's comments, the Claimant indicated that she was withdrawing her claim on the basis that she could not provide exact figures.

21. In order to put the parties on an equal footing, I explained to the Claimant the effect of a withdrawal of that part of her claim and the way that the Tribunal assesses a holiday pay claim. The Claimant then said that she wanted to pursue that element of her claim.

22. The Claimant provided evidence relating to how she had calculated a figure for holiday pay. In cross examination it became clear such sum had been calculated on the basis of the Claimant working full time, whereas the Claimant had worked irregular hours during her period of employment.

23. The Claimant and Respondent then agreed that, if any holiday pay was due, the amount due was £182.30.

### **Relevant legal principles**

24. Pursuant to Part II and section 13 of the Employment Rights Act 1996, a worker has a right that the employer shall not make a deduction from their wages unless

certain statutory criteria are fulfilled. Section 23 of the same Act gives the worker a right to apply to the Employment Tribunal if they wish to allege that wages have been unlawfully deducted or not paid at all, which is what the Claimant did in this case.

Section 13 of the Employment Rights Act 1996 is below:

*13 Right not to suffer unauthorised deductions.*

*(1) An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a) 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*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*

*(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

*(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

*(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*

*(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*

*(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.*

*(8) In relation to deductions from amounts of qualifying tips, gratuities and service charges allocated to workers under Part 2B, subsection (1) applies as if—*

*(a) in paragraph (a), the words “or a relevant provision of the worker’s contract” were omitted, and*

*(b) paragraph (b) were omitted.*

### **Relevant findings of fact**

25. In cross examination, the Claimant provided evidence that:

- a. she had not been provided with a written contract of employment or written particulars of employment by the Respondent.
- b. she had been late for work on one occasion. In relation to that occasion, she had pre-warned the Claimant that she would be late, she was a maximum of 15 minutes late and the Respondent did not raise any issues at the time with this.
- c. she had not given away any free drinks and was not stealing bottles from the Respondent.
- d. she had cancelled one shift during her employment, which was her final shift. She had done this because she had not been paid for some of her previous shifts. She had told the Respondent that she would attend the shift if she had been paid for previous shifts by the time the shift started, but the Respondent had failed to pay her.
- e. she was told that she wasn’t being paid due to an accountancy issue and was only told after her employment ended that her wages had been withheld for gross misconduct.
- f. she had offered to work her notice period, but the Respondent had told her not to do so.
- g. she had not been paid for shifts over a period of four weeks of her employment amounting to £1,271.25 (each of which is detailed in her claim form).
- h. she had not set out how much holiday pay she was owed in her initial claim form and had only since calculated an estimated figure rather than

an exact calculation, because she had not received a written contract of employment and did not know how her employer calculated holiday pay.

26. I find that no contract of employment or written particulars of employment were provided to the Claimant. I was satisfied with the Claimant's evidence on this point and the Respondent did not produce any documentation to evidence that a written contract of employment or written particulars were ever prepared, nor that the contract contained a right to make deductions for gross misconduct. As the Claimant was not provided with any contract of employment, the Claimant did not have a relevant provision in her contract of employment authorising deductions for gross misconduct.

27. I further find that no acts of gross misconduct occurred, such that the Respondent would have been justified in making a deduction from the Claimant's wages. The Claimant gave convincing oral evidence in relation to the alleged acts of gross misconduct and no oral evidence was provided by the Respondent in relation to the alleged acts.

28. I find that the Claimant had leave which was untaken at the end of her employment.

### **Conclusions**

29. The deduction from the Claimant's wages was not authorised by virtue of a relevant provision of the Claimant's contract of employment under s13(1)(a) of the Employment Rights Act 1996.

30. The Claimant had leave which was untaken when her employment ended in the agreed sum of £182.30.

### **Decisions**

31. The Respondent's name is substituted for BKC Read Limited.

32. The complaint of unauthorised deductions from pay contrary to Part II of the Employment Rights Act 1996 is well founded. The Respondent made an unauthorised deduction from the Claimant's pay. The Respondent is ordered to pay the Claimant the gross sum of £1,271.25 deducted from pay.

33. The complaint in respect of holiday pay is well-founded. The Respondent is ordered to pay the Claimant the gross sum of £182.30.

34. The Respondent failed in its duty to provide the Claimant with a written statement of the main terms of employment complying with section 1/section 4 of the Employment Rights Act 1996. Pursuant to section 38 of the Employment Act 2002 the above award is increased by the sum of £900, being two weeks' gross pay.

Employment Judge Fairhurst

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Date 29 June 2024

REASONS SENT TO THE PARTIES ON

8 July 2024

FOR THE TRIBUNAL OFFICE





## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2412020/2023**

Name of case: **Miss I Robinson** v **BKC Read Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 8 July 2024

**the calculation day** in this case is: 9 July 2024

**the stipulated rate of interest** is: **8% per annum**.

For the Employment Tribunal Office