



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L C Agnero

**Respondent:** Sports Group International UK Limited

**Heard at:** Midlands West Employment Tribunal by CVP On: 3 July 2024

**Before:** Employment Judge Kight

## Representation

Claimant: In person

Respondent: Mr Jamie Strong, Director

# RESERVED JUDGMENT

1. The Claimant's claim for unlawful deductions from wages is well founded in part. The Respondent must pay to the Claimant the gross sum of **£1424.60**.
2. The Claimant's claim for payment in respect of accrued but untaken holiday pay is well founded. The Claimant was entitled to 18.4 hours holiday covering the duration of his employment. He took 15 hours holiday during his employment, leaving 3.4 hours accrued but untaken. The Respondent must pay to the Claimant the gross sum of **£72.08**.
3. The Claimant will be responsible for the payment of any tax or employee national insurance contributions payable on those sums.

# REASONS

## BACKGROUND

1. The Claimant was employed by the Respondent as an FE Sports Lecturer from 4 September 2023. He resigned on 22 November 2023 with immediate effect. Early conciliation started on 9 January 2024 and ended on 23 January 2024. The claim form was presented on 23 January 2024.
2. The Claimant pursued claims for unpaid holiday pay accrued as at the termination of employment and for unlawful deductions from wages in respect of pay for time he claimed to have worked but not been paid for.

## THE HEARING

3. The Claimant was representing himself and the Respondent was represented by Mr Jamie Strong, who is a director of the Respondent. I heard evidence from the Claimant and on behalf of the Respondent from Mr Scott Evenden, who described himself as a HR Consultant employed by the Respondent in his witness statement. Both the Claimant and Mr Evenden had prepared written witness statements, which stood as their evidence in chief, and gave live evidence.
4. The parties had not prepared a bundle of documents for the hearing. However, the Respondent had uploaded twenty-four separate documents to the Document Upload Centre. I categorized the documents into three categories:
  - 4.1. Category one: were marked without prejudice save as to costs and I explained to the parties that I would not therefore look at those documents.
  - 4.2. Category two: were documents which were either pleadings, correspondence between the tribunal and the parties, or documents prepared during or for these proceedings (such as a chronology and a “list of issues” – which I explained appeared to be submissions). I explained that I had read these documents, but these were not contemporaneous evidence.
  - 4.3. Category three: were contemporaneous documents relevant to the issues I had to determine. These comprised: the claimant’s contract of employment, an October 2023 pay-slip, a “catch-up” appointment dated 22 November 2023, the Claimant’s P45, and email exchanges between the parties between 30 November 2023 and 11 December 2023.

5. I identified that there were five documents referred to in the claimant's witness statement which were missing from the bundle. Of those documents, I ascertained that three were without prejudice documents which I did not need to see and two documents (an email acknowledging the claimant's resignation and a screenshot of the claimant's holiday calculation using the gov.uk website) which I asked the claimant to email to the Tribunal. Mr Strong confirmed that he had copies of these documents.
6. I also identified that there were no pay-slips or evidence of payments being made by the Respondent to the Claimant for September 2023 and November 2023 and I asked Mr Strong to send to the Tribunal any documentary evidence to demonstrate whether such payments were made. Mr Strong sent screenshot of the Respondent's bank transactions making payments to the claimant.
7. I heard submissions from both the Claimant and Mr Strong.

## **THE ISSUES**

8. The issues which fell to be determined were therefore identified as follows:
  - 8.1. When did the claimant start working for the respondent?
  - 8.2. What wages were properly payable to the claimant, including any holiday pay?
  - 8.3. Was the claimant paid all, some or none of those wages?
  - 8.4. If not, was there a lawful reason why the wages were not paid, for example were deductions authorized or excluded?

## **FINDINGS OF FACT**

9. The claimant worked for the respondent as a FE Sports Lecturer. He reported to the Curriculum Manager, who was David Hay.
10. The claimant said in his claim form that his employment started on 4 September 2023. In his witness statement he said he started work on 11 September 2023. The claimant said in evidence that David Hay sent him a lesson plan on 8 September 2023 but that he did not in fact start carrying out work for the respondent until 11 September 2023.
11. In his witness statement the claimant said that his job involved: delivering courses including theoretical knowledge and practical skills for 433 academy students at a range of levels, in order to achieve high quality learning experiences and excellent outcomes for learners; and undertaking course administration including lesson planning, schemes of learning, student

progress tracking, registers etc and other course related duties to ensure efficient delivery of the curriculum and accurate course administration.

12. In terms of classroom timetable, the claimant gave oral evidence that he was required to work in the classroom Monday and Tuesday half days of three hours each and Thursday 10am-4pm, which he later corrected to 10am-4:30pm with a thirty-minute break, a total of twelve hours classroom time. He said that he had been in the week before and had also been doing emails and other administrative tasks during September. I accept this is an accurate description of what the claimant and Mr Hay for the respondent agreed the claimant was required to do.
13. The claimant understood that he was expected to work three hours per week on administrative tasks and that this essentially covered all tasks relating to the students outside of the classroom. He accepted that he did not prepare lesson plans, he said because they had already been prepared for him. He said that he spent this time, and more, collecting assignments, helping students with homework and getting them logged into different tools which the respondent had put in place. He explained that assignments would be sent to him by WhatsApp, and he would then have to spend time putting them into word documents and saving them in the tools. I find that these duties fall into the category the claimant described in his witness statement as “other course related duties to ensure efficient delivery of the curriculum and accurate course administration. He said he had been told he was also required to do marking, but that David Hay had agreed to show him how to do this with the first assignment, and this did not happen. As such, the claimant accepted, and I find that he did not do any marking.
14. The respondent asserted that the claimant’s employment did not commence until 29 September 2023, and that the claimant did not actually start work until 11 October 2023 when the academic timetable commenced. The claimant acknowledged at one point in cross-examination that he may not have started teaching until 11 October 2023, but I find that this concession is unreliable bearing in mind his working days, that 11 October 2023 was a Wednesday and that this was inconsistent with both his oral evidence and his witness statement that he started on 11 September 2023.
15. In his evidence Mr Evenden stated that the academic timetable did not start until early October 2023. He had no understanding of what the claimant was doing in September 2023, he said, because he was busy with other sites and the delay in enrolments and with onboarding students. He said he had in person sessions in Stoke with the claimant to introduce himself and how he could help the claimant going forward.
16. On 29 September 2023 the claimant was provided with a contract of employment. He was not provided with a job description. The copy of the

contract produced to me was unsigned, but the claimant confirmed he did receive it. It included the following terms material to this dispute:

**3 Responsibilities and Duties**

*3.1 You are employed as a FE Sports Lecturer and you will report to the Curriculum Manager. Your duties are set out in your job description.*

*3.2 You may be required to undertake other duties from time to time as we may reasonably require.*

**4 Commencement and Duration**

*4.1 Your employment with us shall be for a fixed term of 12 months commencing on 4<sup>th</sup> September 2023 and terminating on 4<sup>th</sup> September 2024, unless terminated earlier in accordance with this Contract.*

**5 Place of work**

*5.1 Your normal place of work is ST5 4BT; however, you will be required to frequently work at various other sites as per the requirements of your role.*

**6 Salary**

*6.1 Your basic gross salary is based on 12 hours teaching rate of £22.00 per hour with 3 hours of administration at a rate of £18.00 which shall accrue from day to day and be payable monthly in arrears on or about the end of each month directly to your bank or building society account.*

...

*6.3 If, either during or on the termination of your employment, you owe the Company money as a result of any loan, overpayment, default on your part or any other reason whatsoever, the Company shall be entitled to deduct the amount of your indebtedness to it from any payment or final payment of wages which it may be due to make to you. Such deductions may include, but are not limited to:*

- An overpayment of, or advancement on, wages, bonus, commission or expenses, whether made by mistake or otherwise.*
- Annual leave taken as at the date of the termination of your employment which is in excess of your accrued entitlement.*
- Any losses, insurance excess payments or insurance premium increases sustained by the Company as a result of the loss of, damage to, or unauthorized use of any Company property (including Company cars), or that of any client, customer or supplier, which is caused through your carelessness, negligence, willful default or dishonesty.*
- Any loans including season ticket loans,*

- *Any fines, charges, penalties or other monies paid or payable by the Company to any third party for any act, omission or offence on your part for which the Company may be held vicariously liable (for example, speeding fines, parking tickets and congestion charges).*
- *The market value of any unreturned Company property on the termination of your employment.*
- *Where you leave the Company the balance of any training assistance given.*
- *The repayment of any contractual or discretionary sick pay where the sickness absence reporting requirements have not been followed or your absence is unauthorized.*
- *Payment of wages representing the time period for lateness.*

*6.4 Any amount deducted under this clause is a genuine attempt by the Company to assess its loss and is not intended to act as a penalty.*

....

*6.7 You will be paid monthly in arrears by credit transfer to your bank account. Payments will be subject to deduction of income tax and national insurance contributions due from you and any other sums which you have agreed in writing may be deducted from your salary. Any changes to pay arrangements are subject to affordability.*

*6.8 For the avoidance of doubt on termination of your employment for whatever reason, SGI may deduct from your pay any sums outstanding in respect of any advance of pay or loans or floats for expenses or any amount due to the SGI or any other outstanding sums due from you to the SGI and in accepting these terms and conditions you will be signifying your explicit consent to the making of such deductions.*

## *7 Hours of work and rules*

*7.1 Your normal hours of work are 15 hours per week as directed by the Curriculum Manager and set out as per the academic timetable for your place of work and any administrative duties from time to time between Mondays and Fridays with an unpaid lunch break of thirty minutes on each working day. You may be required to work such additional hours as may be necessary for the proper performance of your duties without extra remuneration.*

*7.2 It is a condition of your employment to adhere to the Company's cloud-based productivity software in order to support the measure of your performance during the period of employment.*

## *8 Holidays*

8.1 *You shall be entitled to the statutory minimum holiday entitlement under the Working Time Regulations 1998. You will not normally be required to work during normal term time holidays.*

...

8.4 *You are entitled to 20 days' holiday during each holiday year inclusive of Bank and Public Holidays. You will be paid your normal basic remuneration during such holidays. The Company's holiday year runs between 1<sup>st</sup> September until 31<sup>st</sup> August. If your employment starts or finishes part way through the holiday year, your holiday entitlement during that year shall be calculated on a pro-rata basis.*

17. On 8 October 2023, the claimant was paid £710.40. Mr Strong in submissions described this payment as “an advance”, but he provided no explanation as to how it was calculated or what specifically it was an advance for. I am not persuaded that the payment made to the claimant on 8 October 2023 was “an advance” and find as a fact that the payment was made to the claimant by the respondent in respect of the claimant’s work in September 2023.

18. Taking all the above evidence into account, I find on the balance of probabilities that there was some delay to the start of the academic timetable which meant that the claimant did not carry out any work between 4-10 September 2023 and his academic timetable did not start properly until potentially as late as early October 2023. However, the claimant did start working from 11 September 2023, dealing at the very least with student enrolment, associated enquiries and course administration.

19. Although it is the respondent’s case that the claimant did not carry out the administrative tasks he was expected to do, the respondent has not produced any documentary evidence to support its assertion that the claimant was not carrying out the administration work it expected of him at this time, or at any point during the claimant’s employment. There is no documentary evidence of the claimant being taken to task by the respondent over not completing at least three hours of administrative work per week.

20. The respondent used a software application called Jibble, to record the movements of its tutors. Tutors were required, when attending site to perform classroom duties, to clock in upon arrival and clock out when they left. They were also expected to clock in and out to record breaks. The claimant was trained on the use of this software by Mr Evenden, who attended the Stoke site where the claimant worked and instructed the claimant on how to download it to his phone and use it. Mr Evenden also downloaded the software to the claimant’s laptop as a back-up. Mr Evenden could not recall when he had this in-person session with the claimant but thought it would have been early October 2023. The claimant believed he had received Jibble software and was trained on and told to use it by Mr Evenden sometime in October.

21. Mr Strong asked the claimant in cross-examination about a clock in record on 5 October 2023 which recorded him clocking in at 12:21 but not clocking out. The tribunal was not provided with a copy of this record. The claimant appeared somewhat confused about this and was not assisted by not having a document to look at. He thought that it may have been a break time when he clocked in. He said he must have been on site otherwise his absence would have been reported. It appeared that the claimant did not really remember this entry at all and seemed to have been second guessing possible explanations.
22. The claimant conceded that despite being trained on using Jibble he did forget to clock in and out and he did not really master its use. He said sometimes he remembered at home in the middle of the night he had not clocked out and would get up to clock out. He intimated that the Jibble records were not an accurate record of the hours he was actually working.
23. Exhibited to Mr Evenden’s statement were some screenshots of the claimant’s Jibble entries in the weeks of 16-22 October 2023, 23-29 October 2023, and 6-12 November 2023. The full entries were provided for: Monday 16 October 2023, Monday 23 October 2023 Thursday 26 October 2023 and Thursday 9 November 2023 and one other unknown date. It is clear therefore that by 16 October 2023 the Claimant was using Jibble software, and possible that he started to use it from 5 October 2023.
24. According to the Jibble entries in the week of the 16-22 October 2023, the claimant clocked in at 12:59 on Monday 16 October 2023 and clocked out at 7:53pm. This was a day when the claimant was scheduled to work three hours of classroom time and so it appears that he forgot to clock out until much later after he had finished his classroom time. This was supported by a map which Mr Evenden said showed the claimant’s location when he clocked out as being near to or at his home address.
25. For the remainder of that week, the specific clock in and out times were not displayed, but the total number of hours the claimant was clocked in were. He was clocked in for 10 hours 59 minutes on 17 October, 4hours 43 minutes on 18 October (a non-working day), and 13hours 31 minutes on 19 October 2023.
26. The other available weeks’ Jibble records show:

<b>Day</b>	<b>Total hours</b>	<b>Clock in/out times</b>
23 October	10h 55m	1:04PM IN 2:06PM BREAK 2:43PM IN
24 October	10h 16m	
26 October	4h 26m	9:59AM IN 11:06AM BREAK



		11:17AM IN 12:26PM BREAK 1:07PM IN 2:26PM OUT
6 November	10h 59m	
7 November	23h 59m	
8 November (NWD)	15h 47m	
9 November	4h 57m	10:18AM IN 2:04PM BREAK 2:31PM IN 3:15PM OUT

27. Save in one respect, as I set out below, I find that the Jibble records are not an accurate representation of when the claimant was at work, and they are not therefore reliable evidence of the claimant not working his contracted hours. It is evident from the records, and clearly a frustration of the respondent's – Mr Evenden described raising it with the claimant and asking him about certain entries – that the claimant had not mastered using Jibble. The respondent asserted that the claimant was intentionally misusing Jibble to disguise that he was not working his contracted hours. I am not persuaded by this assertion and do not find that the claimant was deliberately not clocking in or out to try to hide his working hours.

28. One of the entries that the respondent drew to the tribunal's attention was the clocking out entry on Thursday 9 November. Each entry had a photograph of the claimant's location at the time of the action and in this photograph, it was clear that the claimant was in a vehicle and not on site. The respondent used this as evidence that the claimant had not worked his full 6 hours on that day and had left early. I find that the claimant did leave early on this day, having not worked 6 hours. I also find that the claimant left early on Thursday 26 October 2023, his photograph shows him standing at 2:26pm outside what appears to be a house.

29. However, there is no context to either of these entries or whether there was any particular authorized reason for the claimant to have finished early on those days. The claimant asserted that Mr Hay (who did not give evidence) would also finish classes early on occasion. What is clear, is that there was no attempt on either of these occasions to mask the early finish, which I find demonstrates on the balance of probabilities that the claimant not clocking out on other occasions was due to him forgetting rather than trying to mislead the respondent.

30. Whilst Mr Evenden said in evidence that he did challenge the claimant on some of his Jibble entries, he said that he told the claimant it was important to accurately clock in and out but did not take any other action. There is no documentary evidence showing the respondent formally challenging the

claimant in respect of him not working his contractual hours, or him starting late or finishing early without permission.

31. Later in October 2023, the claimant and Mr Evenden attended a video call, delivered by a company called Century, about the delivery of maths and English tuition. The respondent asserted that this was a part of the claimant's duties which he did not fulfil. The claimant explained, and I accept, that he understood that this requirement was only from the start of November 2023 and that he had understood his first task was to get the students registered to the software then help them with questions about maths, which he did.
32. The week commencing 30 October 2023 was half term. The claimant did not carry out any duties that week and accepts that he took annual leave. The respondent asserts that the claimant took five days annual leave. I do not accept this, given that the claimant only worked two half days and one full day per week. I find that the claimant took annual leave amounting to his normal working hours of fifteen hours.
33. On 31 October 2023 the claimant was paid the gross sum of £1204.00 which according to his pay slip covered the period 1-31 October 2023.
34. The claimant returned to work after half-term on 6 November 2023 and worked until Wednesday 22 November 2023 when he decided to resign with immediate effect. The claimant was invited to a catch-up meeting at 2:00pm that day but was not persuaded to rescind his resignation, which was accepted by email on 24 November 2023.
35. The claimant did not receive any pay for work he carried out in November 2023, nor did he receive a pay slip for November 2023 and therefore there is no record of the balance of the claimant's annual leave as at the termination date.
36. The claimant received a P45 which accurately recorded the claimant's last day of employment but only referred to the gross payment the respondent had made to the claimant on 31 October 2023. The claimant therefore emailed the respondent to flag that the P45 was not accurate, that he had not received any pay for November 2023 and that he needed urgent help to understand. He sent a chaser email on 4 December 2023.
37. On 5 December 2023, Mr Hay responded to the claimant, pointing to the terms of his contract and the fact of the claimant's resignation. He stated "*You will be paid as a goodwill gesture for the hours you completed in November. As always payroll is on the 8<sup>th</sup> Nov, so please refrain from hassling SGI employees. Can you return SGI company property to the below address*". The claimant posted the respondent's laptop and wires to the respondent on 11 December 2023. He emailed a certificate of posting to Mr Hay that day.
38. No further payments were made to the claimant by the respondent.

39. In its ET3 form, the respondent asserted that it had in fact overpaid the claimant by almost 13 hours. It relied upon the Jibble software records to support this but failed to produce them all in evidence. As I have set out above, I find that the Jibble records are not reliable evidence of hours worked and from the records produced I can only identify two obvious potential short hours discrepancies. The respondent also referred to the deductions clause in the claimant's contract and asserted that it had suffered losses as a result of the claimant's poor performance which it described as a "default on [the claimant's] part in his contract". A lengthy list of alleged losses and/or breaches was provided but the respondent has produced no evidence to support these allegations and I cannot therefore find that such losses were in fact suffered.
40. The claimant produced a screenshot of a gov.uk holiday calculator tool which identified that the claimant's holiday entitlement as at the date of termination was 18.4 hours. I address this calculation in my conclusions below.

## LAW

### Unlawful deductions from wages

41. The relevant statutory provision is section 13 of the Employment Rights Act 1996, which states:

#### 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.
42. Section 14 of the Employment Rights Act 1996 identifies several types of excepted deduction to which section 13 does not apply: I need not set them out here.
43. The case of **Delaney v Staples (t/a De Montfort Recruitment) 1991 ICR 331 CA** is authority that an employment tribunal has jurisdiction to resolve any issue necessary to determine whether a sum claimed under section 13 of the Employment Rights Act 1996 is properly payable, including an issue as to the meaning of the contract of employment.
44. Lord Justice Underhill in **Agarwal v Cardiff University and anor 2019 ICR 433 CA** confirmed, in overturning the earlier EAT decision to the contrary, that Employment Tribunals have the power to interpret contractual terms to determine claims for unauthorised deductions from wages.
45. Determining what wages are “properly payable” requires consideration of all of the relevant terms of the contract, including any implied terms (see **Camden Primary Care Trust v Atchoe 2007 EWCA Civ 714, CA.**)
46. Remuneration earned when specific tasks are carried out, such as commission from sales, will only become “properly payable” once the applicable task is completed (see **Lucy and ors v British Airways plc EAT 0033/08.**)
47. When an employer relies upon a contractual provision authorising a deduction, the tribunal is required to scrutinize the contractual term carefully to ensure that it authorises the deduction in question and the clause must also be enforceable at common law.

### Holiday pay

48. The relevant statutory provisions are the Working Time Regulations 1998, specifically Regulations 13(1) and 13A(2) which provide workers with an entitlement to 5.6 weeks' paid holiday in each leave year, subject to a maximum of 28 days statutory annual leave.
49. Regulations 14(1) and 14(2) provide that a worker is entitled to a payment in lieu of accrued but untaken holiday where their employment is terminated during the course of the leave year and on the termination date the proportion of statutory annual leave they have taken under Regulations 13 and 13A is less than the proportion of the leave year that has expired. Regulation 14(3)

provides that where a worker is entitled to a payment in lieu of holiday entitlement, the sum due shall be determined either by reference to a relevant agreement or to the statutory formula set out in Regulation 14(3)(b) which provides that the calculation as follows:

(minimum period of leave entitlement x proportion of leave year expired up to termination date)  
less  
leave taken by the worker

## **CONCLUSIONS**

### **Unlawful deductions from wages**

#### **Dates of employment**

50. The claimant's employment with the respondent commenced on 4 September 2023, as per the express term in his contract. However, he began carrying out work on 11 September 2023 and I find that the claimant agreed with the respondent to vary his contract so that he would begin to receive wages from that point, his first week effectively amounting to an authorised week's absence without pay.

#### **Wages properly payable**

51. I am required to interpret clauses 6 and 7 of the contract, which relate to the agreed wages the claimant was entitled to receive and his hours of work.

51.1. Clause 6.1 explains the constituent components used to calculate the claimant's weekly salary (12 hours at the classroom rate of £22 per hour and 3 hours at the administration rate of £18 per hour, a total of £318 per week gross). It does not expressly state that the claimant must work those specific hours each week to receive that specific pay. If the respondent was unable to provide the claimant with classroom time, for example, and instead the claimant performed administration tasks, I find that the contract requires that the claimant's pay still be calculated in the same way. There is no clause, for example, which states "you will be paid £22 for each hour you work in the classroom and £18 for each hour you work on administrative tasks".

51.2. Clause 7 provides in summary that the normal hours per week are 15 as directed by the curriculum manager and in line with the academic timetable and such administration hours as are necessary, with the note that the claimant may be required to work such additional hours as were necessary for the proper performance of his duties.

51.3. I find that neither of these clauses provide that the claimant was entitled to be paid only when specific tasks were carried out or that the rate of pay he would receive overall depended upon what work he actually did, but

rather that he was employed to fulfil a role with normal weekly hours as directed by the curriculum manager and it was anticipated that this would be 12 hours of classroom time and at least 3 hours of administration time. I therefore find that the wages properly payable to the claimant were £318 gross per week.

**Were those wages paid to the claimant?**

52. For much, if not all his working time in September 2023 the claimant's working time consisted of administrative duties, but this should not have affected the wages properly payable to him. He worked 3 full weeks in September 2023, meaning that the wages properly payable to him were £954.00 gross. The claimant received £710.40 from the respondent. Given that there is no corresponding pay slip for this payment or reference to this payment on the claimant's P45, I find that the payment that was made was not £954.00 less deductions, leaving a discrepancy of £243.60 gross.

53. Thereafter, the claimant remained employed by the respondent for a further 7.5 weeks, until 22 November 2023 and I find, in the absence of reliable evidence to demonstrate he was absent without leave during any part of that period, that he worked his normal working hours of fifteen per week. That being the case, the wages properly payable to the claimant for this period were £2,385.00 gross.

54. The claimant received £1204.00 gross from the respondent on 31 October 2023 and £0 on 30 November 2023, meaning that there was discrepancy of £1181.00 gross during this period.

55. This leaves a total underpayment of £1424.60 gross.

**Were the deductions from wages lawful?**

56. As a starting point, in submissions the respondent explained that it took the view that the claimant did not work fifteen hours per week, that he did not spend three hours per week doing administrative tasks and that the September pay was an "advance" and this was why he was paid the sums he was paid in respect of September and October. Given my findings of fact above, I have found this position to be factually incorrect.

57. I also find that the respondent is in some difficulty generally in that save for the October pay slip which is not itemized in terms of what the £1204 was attributable to, there are no pay slips or other documentary evidence to demonstrate why the claimant was paid or not, what he was paid in respect of and if not paid the full amount why not.

58. I acknowledge however, that there is a deduction from wages clause in the claimant's contract at clause 6.3 and it purports to authorise a wide range of

circumstances where deductions can be made from the claimant's wages as well as there being a "catch-all" line which refers to the claimant owing any money due to *default on your part or any other reason whatsoever*. Before dealing with whether the deductions set out above could fall within any of the specific categories, I find that the general catch-all is far too vague to entitle the respondent to make deductions from wages which do not fall within any of the specific categories listed.

59. Turning then to the specific categories listed in the clause I find that only the following categories are remotely relevant:

59.1. *An overpayment of, or advancement on, wages, bonus, commission or expenses, whether made by mistake or otherwise*: the respondent argues that the claimant was overpaid by £737.32 which it calculates as £15 x 12 hours). However, there are two problems with this assertion.

59.1.1. It is unclear where the hourly rate of £15 comes from. There is no reference to an hourly rate of £15 in the contract.

59.1.2. The twelve hours are said to be evidenced by the Jibble software, but I have found that evidence to be unreliable, and I was only provided with examples of what was recorded not records covering the whole period relied upon.

I am not therefore satisfied that the respondent could rely upon this category to sustain an argument that it not paying the claimant at the end of November 2023 was in part because it was recovering an overpayment of wages already paid.

59.2. *Annual leave taken as at the date of the termination of your employment which is in excess of your accrued entitlement*: the respondent states that the claimant took five days annual leave. Again, this is inaccurate and for the reasons set out below in respect of the holiday pay claim, I find that the respondent could not have been relying upon this category.

59.3. *Any fines, charges, penalties or other monies paid or payable by the Company to any third party for any act, omission or offence on your part for which the Company may be held vicariously liable (for example, speeding fines, parking tickets and congestion charges)*. The respondent has not produced any evidence to support any such fines, charges etc. I note reference to various losses in the ET3 form, but no documentary or oral evidence was given in relation to this.

59.4. *The market value of any unreturned Company property on the termination of your employment*. The claimant produced evidence that he posted his laptop and wire back to the respondent on 11 December 2023. The respondent has not provided evidence of any loss.

59.5. *Payment of wages representing the time period for lateness.* The same rationale for this category applies as per 58.1 above insofar that the respondent relies on the Jibble software which I have found to be incomplete and unreliable.

I am not therefore satisfied that the respondent could rely upon this category to sustain an argument that it not paying the claimant the wages properly payable to him reflected his lateness.

60. In the absence, therefore, of a sufficiently clear reason for the deduction and being unable to identify one or more of the specific categories in the contractual deduction from wages clause which may have been applicable I find that the underpayment of £1424.60 gross amounted to an unlawful deduction from wages.

### **Holiday pay**

61. The claimant was employed from 4 September to 22 November 2023, a total of 11.4 weeks. Despite his contract stating that he was only entitled to 20 days holiday per week including bank holidays, this is overridden by the statutory minimum holiday entitlement set out in Regulation 13A(2) of the Working Time Regulations which, as set out above provides an annual holiday entitlement of 5.6 weeks.

62. Given that the claimant left employment part way through a leave year, his holiday entitlement on termination must be pro-rated, applying the statutory formula set out above:

$(5.6 \times 11.4/52)$   
Less  
*1 week's annual leave taken w/c 30 October 2023*  
*= 0.227 weeks accrued but untaken*

*1 week = 15 hours*  
*0.227 weeks = 3.4 hours*

63. This leaves a shortfall of 3.4 hours accrued but untaken annual leave for which the claimant has not been paid.

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Employment Judge **Kight**

8 July 2024



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