



EMPLOYMENT TRIBUNALS

Claimant: Mr J Peacock

Respondent: NMW Estates Ltd

Heard at: Bristol (by video – CVP) **On:** 28 October 2024

Before: Employment Judge Livesey

Representation:

Claimant: In person

Respondent: Did not attend

JUDGMENT

1. The Claimant was unfairly dismissed, suffered unlawful deductions from wages, was dismissed in breach of contract and was entitled to a redundancy payment. He is entitled to the following sums in compensation from the Respondent;

a.	Unfair dismissal;	£700
b.	Redundancy payment;	£7,350
c.	Unlawful deductions from wages;	£1,955.85
d.	Notice pay;	£609.69
	Total;	<u>£10,615.54</u>

2. The Claimant's complaint of unpaid holiday pay is dismissed upon withdrawal.

REASONS

Introduction and the Respondent's non-attendance

1. By a claim dated 12 March 2024, the Claimant brought complaints of unfair dismissal, breach of contract, unpaid holiday pay, failure to pay notice pay, unlawful deductions from wages and for a redundancy payment.

2. A response was received on 25 April 2024 in which the Respondent alleged that the Claimant had not been employed for at least two years. Mr Nathan Wright was specified as the contact at the Respondent. The response did not set out the Respondent's position in respect of the money claims.

3. On 17 July 2024, a Notice of Hearing was sent out with standard directions to both parties at the email addresses that had been provided on the Claim and Response Forms. The Respondent also replied to an email from the Tribunal in relation to a particular query in August using the same email address.
4. On Friday, 25 October, the parties were provided with details of how to join the video hearing today. Approximately an hour later, the Respondent replied as follows, using the same email address;
“Thank you for this, but this is the first time I have heard about this hearing and I and out of the country all next week.”
5. It was not understood how the Respondent had received the hearing details on Friday but had not, apparently, received the Notice of Hearing or any other communications in relation to the case, despite the fact that the same email address was used throughout. Further, it was not understood how Mr Wright’s absence from the country was a bar to him attending the hearing remotely.
6. On the basis of the information before me, it was reasonable to believe that the Respondent had received the Notice of the Hearing and that there had been no other reason for him not to have attended the hearing. In the circumstances, it was appropriate to proceed to hear the Claimant’s case under rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Factual findings

7. The Claimant give evidence in support of his claim and the following factual findings were made on the balance of probabilities.
8. The Claimant was first employed by North Kensington Residential Ltd t/a Winkworth Estate Agents as a Senior Sales Negotiator at its offices in Worthing. The business was a franchise. There were 60 or so ‘Winkworth’ branches nationwide, but Mr Magee and Mr Kerman owned and ran the Worthing office only.
9. The start of the Claimant’s employment was a significant issue in the case. The Claimant alleged that he had started on 7 May 2016, whereas the Respondent believed that he had not begun until 7 March 2022.
10. The Claimant produced a screenshot of a message from a ‘Steve Magee’ which stated that had worked in the Worthing Office “for 7 years now”. Further, he produced a photograph of the first page of his 2016 contract, which was dated 1 May 2016 and which clearly showed North Kensington Residential Ltd and him as employer and employee respectively.
11. The Claimant told me that he had worked part-time in the office initially, for eight hours a week on Saturdays and additional hours during the school holidays. He was paid on an hourly basis and the others in the office were Mr Kerman, Mr Magee’s franchise business partner, and Ms Nightingale, the office manager. In 2022, his hours increased substantially and a new contract was signed in March. At the end of his employment, the Claimant was earning £40,000 pa, being £3,333.33 gross per month and £2,642

net. That was £769.23 gross/wk and £609.69 net/wk.

12. On 23 December 2023, the Claimant's employment transferred to the Respondent. It was transfer to which the provisions of TUPE applied. That was not in dispute. The Respondent is a business in which Mr Wright is the only director.
13. The Claimant spent much of the rest of December and the first two weeks of January showing Mr Wright how the office functioned. He was not paid in December. On 15 January, he received the following letter;
*"It is with regret that I am writing to inform you of the termination of your employment as Sales Negotiator at the Worthing office of Winkworth Estate Agents and in accordance with your Employment Contract hereby give you the required Notice of one month, effective with the date of this letter.
This decision is not a reflection of your performance or dedication to the role, but rather a necessary measure taken due to current financial position of the Business.
The final day of your employment will be 14 February 2024 and you will receive all salary owed to you on or before this date, along with any outstanding Holiday pay you may be entitled to."*
14. The Claimant chased his outstanding money in February. There was an exchange on WhatsApp on 14 February in which Mr Wright apologised for not having made payment and maintained a 'promise' that he would be 'paid in full'.
15. The Claimant produced HMRC documentation which showed that the Respondent had notified the tax authorities that he *had* been paid, which he denied.
16. The Claimant was able to secure new employment in the week after his dismissal. He was employed as a Senior Negotiator by Jacob Steel from 22 January 2024 and is now in receipt of £30,000 per annum gross which, with commission, equates to his previous salary.

Conclusions; liability

17. The Claimant had more than two years' service, having initially been employed in May 2016. He was dismissed unfairly. No adequate or fair process was adopted leading to his dismissal. He was not warned and/or consulted with in respect of a possible redundancy and there was no attempt to examine possible alternatives.
18. The stated reason for the dismissal appeared to have been that of redundancy and, given the subsequent correspondence about non-payment of salary, that appeared to have been the most likely scenario. He did not receive a redundancy payment.
19. The Claimant did not receive appropriate notice pay. Considering his length of service, he was entitled to 7 weeks net pay.
20. The Claimant suffered unlawful deductions from his wages. He was unpaid in the months of December following the transfer, January and February.

21. The Claimant did not wish to pursue a complaint in relation to unpaid holiday pay.

Conclusions; remedy

22. The Claimant was entitled to the following sums in compensation;

a. Unfair dismissal;

Basic award;

7 years x 1.5 x £700 (a week's maximum) = £7,350

Reduced by the value of the redundancy payment (below) Nil

Compensatory award;

Loss of statutory rights = £700

b. Redundancy payment;

7 years x 1.5 x £700 (a week's maximum) = £7,350

c. Unlawful deductions from wages;

December; £634.85

January; £1,321 (to 15 January, remainder as notice) = £1,955.85

d. Notice pay;

1 weeks' net pay

The Claimant mitigated his loss in respect of the balance = £609.69

23. The Claimant's total entitlement is therefore £10,615.54.

Employment Judge Livesey

Date 28 October 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

7 November 2024

Jade Lobb
FOR THE TRIBUNAL OFFICE