



# EMPLOYMENT TRIBUNALS

**Claimants:** Miss K Brass / Mr J Johnson / Mr L Stevenson / Mr T Buckley

**Respondent:** Dutton Divers Limited

**Heard at:** Cardiff; remote, by video

**On:** 4<sup>th</sup> November 2024

**Before:** Employment Judge A Williams

## REPRESENTATION:

**Claimants:** In person

**Respondent:** Clare Dutton, Director

# RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Miss K Brass

## Wages

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

Mr J Johnson

## **Wages**

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

Mr L Stevenson

## **Wages**

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

Mr T Buckley

## **Wages**

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

# REASONS

## Introduction

1. Following a hearing on 4 November 2024 I reserved judgment on these four claims.

Here I explain the reasons for my decision on each claim.

2. The Claimant, Ms Brass, was employed by the Respondent, Dutton Divers Limited, as a dive centre assistant from 3 May 2023 to 16 July 2023. By way of an ET1 Multiple Claim Form received on 12 October 2023 (then rejected and finally accepted on 23 November 2023) Ms Brass claims for the unlawful deduction from wages in respect of her final payslip for July 2023. She says she worked more hours than those for which she was paid in that month.
3. The Claimant, Mr Johnson, was employed from 6 April 2023 to 26 July 2023 as a dive centre assistant. He claims, by the same ET1 claim form, for the unlawful deduction from wages throughout his employment. He states that he worked for more hours than he was paid throughout his employment. Mr Johnson had also brought a claim for the training fee recouped by the Respondent in his final payslip. However in discussions with me at the beginning of the hearing he told me he no longer wished to pursue this element of his claim.
4. The Claimant Mr Buckley, was employed as a scuba diving instructor from 17 April 2023 to 31 August 2023. He claims, by the same ET1 claim form, for the

Respondent's failure to pay the wages he is owed for his final month of employment.

5. The Claimant Mr Stevenson was employed as a scuba diving instructor. The date his employment commenced is disputed. He states he began his employment in January 2023. The Respondent states he began his employment in March 2023. He claims for the unlawful deduction from wages throughout his employment. He states that his P45 states he was paid more than his actual wages throughout his period of employment.
6. The Respondent denies all claims. It maintains that all staff were paid in accordance with the hours worked, which were tracked via an electronic clocking in and system called 'Blip'. They rely upon the Contract of Employment which requires employees to use the clocking in system.

### **The Hearing**

7. I heard the claim on 4<sup>th</sup> November 2024. The Claimants represented themselves. The Respondent was represented by one of its Directors, Ms Dutton.
8. I had received, in advance of the hearing, the witness statement of Ms Dutton and a Respondent's Bundle of 59 pages. The Claimants told me they had not received these documents. Ms Brass's email address had been included in the Respondent's email sending the documents to the Tribunal. However, when I asked Ms Brass to check again, she told me she could not find the email. I ensured the documents were sent to each Claimant again and allowed time prior to starting the hearing for them to read and consider the same.

9. I had received a Schedule of Loss from the Claimants. The Claimants had submitted evidence for each individual claim via a Sharepoint link which I was able to access. They had not filed any witness evidence but I permitted the Claimants to admit the contents of the ET1 into evidence and to give oral evidence.
10. The Respondent's ET3 raised an employer's contract claim. On 21<sup>st</sup> August 2024 Employment Judge Sharp wrote to the parties to explain that as the Claimants had not made a breach of contract claim, the Respondent could not bring an employer's contract claim. I reiterated this at the outset of the hearing. Ms Dutton confirmed that she understood.
11. Ms Dutton emailed the Tribunal on 15 October 2024 raising a number of issues with the Claimants' compliance with directions and making a request to strike out the claims. I noted that the Claimants had provided their evidence by 28 October 2024 as required, albeit by way of a Sharepoint link. Given that the Tribunal had before it the documentation required to consider the claim and make a decision, I considered it was in the interests of justice to proceed with the hearing, allowing time for each party to consider the other's evidence before beginning.
12. The Respondent, in its ET3 response, raised that the claim was out of time. Ms Dutton did not raise this before me but in the interests of completeness I was and remain satisfied that the claim was not out of time.
13. I heard oral evidence from all of the Claimants and from Ms Dutton.

14. Once all parties had received the other's evidence and had an opportunity to consider it, I discussed the issues with the parties and all were agreed that the issues for determination were as follows. I explained to the parties that I need only hear evidence and submissions relevant to the determination of the following issues:

Ms Brass:

- 1.1. Were the wages paid to the Claimant for the month of July 2023 (£191.80 for 22 hours) less than the wages she should have been paid for the hours worked (i.e. what was properly payable for the month of July 2023)?
- 1.2. Was any deduction required or authorised by a written term of the contract?
- 1.3. Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 1.4. How much, if any is the claimant owed?

Mr Johnson:

- 1.1. Were the wages paid to the Claimant between April and July 2023 less than the wages they should have been paid for the hours worked (i.e. what was properly payable for that period)?
- 1.2. How much is the Claimant owed?

- 1.3. Was any deduction required or authorized by a written term of the contract?
- 1.4. Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 1.5. How much, if any, is the Claimant owed?

Mr Buckley:

- 1.1. Was the Claimant owed wages for August 2023?
- 1.2. Was the Claimant actually paid wages for August 2023 on 6<sup>th</sup> September 2023?
- 1.3. If not, how much is the Claimant owed?

Mr Stevenson:

- 1.1. Were the wages paid to the Claimant between January and August 2023 less than the wages they should have been paid (i.e. what was properly payable for that same period)?
- 1.2. Was any deduction required or authorized by a written term of the contract?

1.3. Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

1.4. How much is the Claimant owed?

### **Findings of Fact**

15. The relevant facts are as follows. Where I have had to resolve any conflict in the evidence, I indicate how I have done so at the material point.

#### **Findings relevant to all claims**

16. The Respondent produced a 'Statement of Main Terms of Employment' for each Claimant other than Mr Buckley. Ms Brass and Mr Johnson confirmed that they recognised the contract which bore their name and had signed it.

17. When I took Mr Stevenson to the first page of the document, he denied that he had signed the document. He said he had never had a written contract of employment with the Respondent. However, when I took him to the final page of the document, he confirmed it was his signature and he said he could remember filling it out. He then said the contract was sent to him as two separate documents. He maintained that he hadn't signed the document. He said his signature had been copied from another document that he'd sent to Ms Dutton.

18. Mr Stevenson's evidence on this point was confused, stating initially that he had no contract of employment with the Respondent, then appearing to accept that this



document had been sent to him albeit in two parts and that he had filled in one part (the part that contains a signature), then alleging that the signature on the contract was fraudulent.

19. This was the first time any issue with the validity of the contract had been raised by Mr Stevenson.

20. The contract was identical to the contract which Ms Brass and Mr Johnson accepted having received and signed at the beginning of their employment.

21. For all these reasons I am satisfied, on the balance of probabilities, that Mr Stevenson signed the contract on 8<sup>th</sup> March 2023.

22. I find therefore that Ms Brass, Mr Johnson and Mr Stevenson and the Respondent were all bound by the terms of the contract of employment before me for each Claimant.

23. There was no contract of employment before me for Mr Buckley, perhaps due to the nature of his claim (there being no dispute as to how much wages he was owed for his final month of employment, only as to whether he'd received it). It is not necessary for me to consider whether he was bound by the same terms, although for completeness I am satisfied on the balance of probabilities that he had been given the same contract of employment as all other Claimants.

24. Of note in the employment contract are the following terms:

***"HOURS OF WORK***

*You have no guaranteed hours of work in any given week and any hours of work provided will be variable...Payment will only be made for actual hours*

*worked and therefore no payment will be made for weeks where you are not required to work...*

*Your actual hours to be worked each week will be as necessitated by the needs of the business, usually notified to you by an Owner...*

*The days on which you are required to work are Monday to Sunday and when work is offered on a given day, it will be between the hours of 7.00am and 8.00pm. You will not be required to work more than 5 days per week.*

#### **LATENESS/ABSENTEEISM**

*You must attend for work punctually at the specified time(s) and you are required to comply strictly with any time recording procedures relating to your work”*

25. The crux of the Respondent's case was that all employees were expected to clock in and clock out at the beginning and end of their shifts. The Respondent used a paid programme known as 'Bright HR' operated and ran by 'Peninsula'. The programme offered the ability to assign shifts, clock in and out of a workplace, request leave and download monthly reports to send to the Respondent's accountancy firm 'Woods and Cooper' to arrange pay.

26. Ms Dutton stated that the Respondent had been using the system for 3 years and had not been notified of any errors in the system's function during that time. She explained that the Respondent used an app called 'Blip' for employees to clock in and clock out. She said the Respondent had used that app as part of the Peninsula

package since 2020 and that all of the Claimants had received an induction to show them how to use the system.

27. Ms Dutton referred me to an 'Action Plan' for Ms Brass, Mr Johnson and Mr Buckley, which she says shows that they were reminded of the need to use 'Blip' for clocking in and out for an accurate payroll. She said the meeting with Ms Brass (whose Action Plan is undated) took place around June 2023. Mr Johnson's Action Plan is dated 16 June 2023. Mr Buckley's is dated 1 August 2023. Ms Dutton said she felt the need to remind the Claimants of the need to use Blip because of the number of occasions she had had to manually input their hours worked because they had told her they'd forgotten to clock in and out.

28. Ms Brass said she had not seen the 'Action Plan' document before, however she could recall attending a meeting around that time and she could recall the use of Blip being discussed, although she felt that was in a casual way.

29. Ms Brass told me Blip was a new app that was introduced after she had started working with the Respondent, she believed in June. She described difficulties she'd had clocking in and out on the app because it didn't always accurately recognise her location. She said she had mentioned these difficulties to Ms Dutton, who brushed it off and didn't see it as an issue.

30. Mr Johnson gave similar evidence. He said the Blip system was implemented in June. He said the phone reception at the Anglesey site where he worked made it difficult to use the system to clock in and out, resulting in inconsistencies. He said there had been a staff meeting where Blip was discussed and staff raised the difficulty they were experiencing clocking in and out due to the location settings.

He gave an example of one day where he clocked in but couldn't clock out, so Blip recorded that he had worked 36 hours.

31. I find that 'Blip' was in use before June 2023. The Respondent's bundle includes transcripts of 'Blip' transactions recorded for the months of April and May 2023, which is inconsistent with the evidence of Ms Brass and Mr Johnson. I therefore accept that reference to 'time recording procedures' in the contract of employment is a reference to the use of Blip and that it was a contractual term of the Claimants' employment that they use Blip to record their hours worked.

32. I accept that there were occasions when the Claimants did not clock in and out using Blip. I also accept that there was an established mechanism to rectify those occasions, in informing Ms Dutton who would manually log their hours on the system. I find that this happened frequently enough that Ms Dutton felt the need to remind the Claimants of the need to use Blip for an accurate payroll, as evidenced in the 'Action Plans'.

33. I struggle to reconcile the Claimants' contention that on some days, Blip apparently worked without issue and the Claimants were able to clock in and out accurately, but on other days, they were not. Ms Brass' claim, for example, was limited to particular dates in the month of July which suggests that she encountered no difficulties in June. Mr Johnson suggested that the issue was with the signal at his place of work. If this were so, I would expect the failure in the system to be a more consistent – practically daily - problem rather than a few days per month, as per his claim.

34. On that basis it is more likely than not, I find, that the primary reason for the failure in the system was human error, i.e. a failure to clock in and out, and I find that any failure in the app itself was rare, if at all. This is consistent with Ms Dutton's evidence that the system had been in use since 2020 without issue and the absence of any evidence of a meaningful attempt by any of the Claimants to raise the app's failure as an issue with management.

35. In any event, whatever the reason for a failure to clock in and out, it was possible to rectify the error and I find that the Claimants did on occasion rectify it by informing Ms Dutton, which led to her discussing the issue with them at the 'Action Plan' meetings.

36. Ms Brass and Mr Johnson told me they had set hours of work and relied upon this as evidence of the pay they should have received on a given month. Having found that the parties are bound by the written terms of employment set out above, I find that whilst Ms Brass and Mr Johnson may have worked similar shift patterns throughout their employment with the Respondent, contractually the Respondent was entitled to vary their hours according to business need. I accept, as Ms Dutton explained, that this accords with the very nature of the business which is reliant on certain conditions being suitable for scuba diving. This is consistent with their pay for each month, which varied according to the hours actually worked.

37. I therefore find that the Claimants were contractually obliged to record their hours on the Blip system, that they were reminded that failure to do so would mean their hours were not recorded, and that there was a system of rectification in place should they forget, or should they be unable, to do so, which was used on occasion by the Claimants.

38. I am therefore satisfied that the wages properly payable to the Claimants were those recorded on the Blip system, and that to find otherwise would impose upon the Respondent an unreasonable burden to enquire with its employees as to the accuracy of the hours logged onto the system it paid for and had trained/reminded its employees to use.

### **Relevant Law and Conclusions**

39. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make deductions from the wages of a worker employed by it except in certain circumstances (which do not apply here). Section 13(3) provides that a deduction occurs where the total amount of wages paid to the worker on any occasion is less than the amount properly payable to the worker on that occasion.

40. In determining what is 'properly payable' I must take into account all the circumstances and, where appropriate, consider and make findings on the contractual position (*Agarwal v Cardiff University and others* [2018] EWCA Civ 2084), as I have done above.

41. As set out above, having considered the contracts of employment I have found that what was properly payable to the Claimants was the hours worked as recorded in accordance with the Respondent's time keeping procedures.

Kathryn Brass

42. Ms Brass' payslip for July 2023, her final month of employment with the Respondent, was for a sum of £191.80 reflective of 22 hours work at a rate of £10.90 per hour. According to the Blip transcript for the same month, this is correct.

43. In evidence, she told me she felt she had worked 41.5 hours in July 2023. Her claim was for £212.55, reflective of the 19.5 hours she had worked but not been paid for. She says she worked, but was not paid, for 5<sup>th</sup>, 8<sup>th</sup>, 8<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> July.

44. I have already accepted that it was a contractual term of all Claimants' employment that they adhere to the Respondent's time keeping procedures, and that this included the use of Blip throughout their employment. I have also accepted that on the occasions they could not use Blip, it was possible to rectify that by informing Ms Dutton. There is no evidence before me that Ms Brass attempted to do so on those dates in July.

45. I am unable to find that Ms Brass was paid less than was properly payable in July 2023 and the claim is dismissed.

#### Jack Johnson

46. Mr Johnsons' claim was similar in nature to Ms Brass's. He provided a list of dates on which he says he worked but he was not paid, with reference to the Blip transcripts, throughout April, May, June and July 2023. I repeat those findings above as to what was properly payable.

47. There is no evidence before me that Mr Johnson attempted to rectify the Blip records on those dates he alleges he worked but was not paid in April, May, June and July.

48. I am unable to find that Mr Johnson was paid less than was properly payable throughout his employment and the claim is dismissed.

Thomas Buckley

49. Mr Buckley told me that his final payslip for August 2023 in the sum of £228.34 was correct, but that the money was never received.

50. He accepted, and I find, that the 'Payment Instruction Confirmation' at page 21 of the Respondent's Bundle contained the correct details of his bank account. He had previously received his pay to that account without issue.

51. I permitted him to rely upon his bank statement for September 2023, which had been mistakenly omitted from the Sharepoint of documents from the Claimants. I accept that the payment of £228.34 does not appear in the statement as it should.

52. The Payment Instruction in question is consistent in appearance with other Payment Instructions in the Respondent's bundle showing payments to all Claimants that were received. It contains the correct account details.

53. I cannot say why the payment did not reach Mr Buckley's account. However, I am satisfied on the balance of probabilities that the Respondent did make the payment as shown on the Payment Instruction Confirmation. I am therefore unable to find that he was paid less than was properly payable and the claim is dismissed.



Lukas Stevenson

54. Mr Stevenson claims that he received £1673.37 from the Respondent throughout his employment. His P45 states that he was paid £2,935.54, with a deduction of £587 for tax and national insurance.

55. Mr Stevenson does not provide a breakdown for dates and hours he says he worked but for which he was not paid. His claim is based entirely upon the P45. He referred, during evidence, to correspondence between him, the Respondent and his solicitor on Whatsapp, emails and Facebook, relating to unpaid wages. He did not provide any of that correspondence to the Tribunal for the purposes of this claim.

56. I have seen Mr Stevenson's payslips for the months of April, May, June and July 2023. They appear to accord, broadly with the Blip transcripts for the same months, e.g. he worked very few hours in April and May for which he was paid £36.68 and £36.48 respectively, but worked far more hours in June and July when he was paid £586.18 and £745.30 respectively.

57. Mr Stevenson did not seek to advance before me any positive case that the payslips for these months did not reflect the work actually done. His claim is based entirely upon his P45. The P45 is based upon information provided to HMRC. Whilst there does appear to be an inconsistency in the actual amount paid and the amount reported to HMRC as having been paid, this does not necessarily lead to the automatic conclusion that Mr Stevenson was not paid what was properly payable for the work done pursuant to the employment contract. I find that Mr

Stevenson was paid for the hours worked as recorded on the Blip transcript and as shown in his payslips and the claim is therefore dismissed.

***EJ A Williams***

**Employment Judge Williams**  
**25<sup>th</sup> November 2024**

Judgment sent to the parties on:

31 December 2024  
For the Tribunal:

Adam Holborn

**Note**

**Public access to employment tribunal decisions**

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

