



EMPLOYMENT TRIBUNALS

Claimant: Mr H Norvill

Respondent: North-Ply (Trading) Ltd.

HELD AT/BY: Mold by CVP **on:** 9th January 2025

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Absent

Respondent: Mr G Hawkes, Director

JUDGMENT

JUDGMENT having been sent to the parties on 15 January 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction:

1. The Claims - The Claimant claims:

1.1. Unauthorised Deductions from wages

1.2. Breach of contract in relation to Notice of Termination

1.3. Failure to pay holiday pay due on termination of employment.

2. Witnesses:

2.1. The Claimant was absent.

2.2. Mr Hawkes gave evidence for the Respondent. He made an Affirmation that his evidence was true. He relied on his written witness statement. I asked him questions based on the available documentation.

3. Documents:

- 3.1. Before the hearing I read the ET1, ET3, correspondence and any documents received by the Tribunal from both parties (including attached pictured documents received from the Claimant attached to an email of 08.01.25), and the Respondent's witness statement.
- 3.2. On 2 January 2025 the Respondent provided the Tribunal with a witness statement from Mr Hawkes, and a hearing bundle comprising 13 pages; the bundle included:
 - 3.2.1. GOV.UK Holiday Calculator showing statutory holiday entitlement of 12.8 days.
 - 3.2.2. The Claimant's Weekly Worksheet for the week commencing 01.04.24.
 - 3.2.3. The Claimant's Weekly Worksheet for the week commencing for w/c 15.04.24.
 - 3.2.4. The Claimant's Weekly Worksheet for the week commencing 06.05.24.
 - 3.2.5. The Claimant's Weekly Worksheet for the week commencing 20.05.24.
 - 3.2.6. The Claimant's Weekly Worksheet for the week commencing 27.05.24.
 - 3.2.7. The Claimant's Weekly Worksheet for the week commencing 08.07.24.
 - 3.2.8. The Claimant's Weekly Worksheet for the week commencing 05.08.24.
 - 3.2.9. The Claimant's Weekly Worksheet for the week commencing 12.08.24.
 - 3.2.10. The Claimant's wage slip dated 31.08.24.
 - 3.2.11. Summary of wages paid in the months to 31.03.24 – 30.08.24 (inclusive) – with overpayments of £30.56 (March and April 2024) noted.

4. The Hearing:

4.1. Prior to the Hearing:

- 4.1.1. The Claimant presented his claim on 15 October 2024.
- 4.1.2. Notice of this Hearing was sent to the parties on 18 October 2024. Orders were included in the Notice requiring the Claimant to provide a calculation of his claim, and supporting documents, by no later than 4 weeks after the Notice (12 November 2024) and by two weeks later (26 November 2024) the Respondent was to provide its documents and evidence.

- 4.1.3. The Respondent presented its Response on 6 November 2024. The claims were denied and the point made that the Claimant had not provided any calculation of the sums claimed.
- 4.1.4. On acceptance of the Response, on 12 December 2024, I directed that the parties exchange witness statements by 2 January 2025.
- 4.1.5. The Claimant breached the said Orders of 18 October 2024 and my Directions of 12 December 2024.
- 4.1.6. I have listed above the documents provided by the Respondent.
- 4.1.7. In the absence of a statement or calculation from the Claimant, on 7 January 2025 I directed that the Claimant provide a calculation of the money he claimed was due to him, with his evidence to support the claim.
- 4.1.8. On 8 January 2025 the Claimant's written application for postponement of the hearing (dated 8 January 2025) was referred to me. The Claimant said that he was "unable to get time off work to attend at this time" and that his phone was broken; he referred to it having been broken when he called the Tribunal on 30 December 2024. He said he could not access some documents on his phone.
- 4.1.9. The application was refused, to be considered if repeated at the hearing.
- 4.1.10. Taking into account all circumstances, I considered that it was in the interests of justice to proceed in the Claimant's absence. The balance of hardship in allowing a postponement would have been against the Respondent, in a situation where the Claimant had had every opportunity to prosecute his claim and attend the hearing. I took into account the date of the Notice of Hearing and the dates of respective Orders and directions. I had no evidence before me that the Claimant had attempted to take time off work, whether paid or unpaid, to attend the hearing or that his absence from work had been prohibited or prevented in any way. I had no evidence before me that the Claimant's phone was broken or that he had attempted to mend it. It appeared to me that the Claimant had failed to prepare for the final hearing. I took into account the timing and manner of the application to postpone. On the other hand, Mr Hawkes had prepared the Respondents response, his statement, and a bundle of papers, and he had made himself available for the hearing, absenting himself from his work and other commitments. It is incumbent upon a Claimant to pursue a claim reasonably, and parties to litigation are entitled to certainty and finality. I had enough information available to me from both parties to question Mr Hawkes and to consider his evidence conscientiously.

4.2. At the Hearing:

- 4.2.1. In the Claimant's absence I asked the Clerk to the Tribunal to contact the Claimant. I was then told that the Claimant's phone was not ringing

out but went straight to answer phone and a message was left for him. I did not hear of any further contact made directly by the Claimant to the Tribunal for the rest of the morning of the hearing.

- 4.2.2. I noted that I had alerted the parties to the apparent lack of preparation, directing that a calculation of the claims be provided and that this may have prompted the Claimant's late application for postponement. I noted that the Claimant said he could not get time off work and that his phone had been smashed, but that he did not appear to have made any alternative arrangements since either the notice of hearing in October or known damage to his phone by no later than 30 December.
- 4.2.3. The Respondent commented that this claim had been ongoing since September and although it was "dragging on" the Respondent did still did not know how much the Claimant was claiming; it was submitted that the process was taking time and causing inconvenience in the face of the Claimant's disregard for all concerned. Mr Hawkes for the Respondent submitted that he had complied with all due requirements and had taken time away from work to attend the hearing in accordance with the notice of hearing of 18 October. He submitted that once I "shook the tree he came up", referring to my direction that a calculation be provided which appears chronologically to have prompted the Claimant's application for postponement. The point was made that in an e-mail from the Claimant dated 8 January 2025, the Claimant had attached two pictures and if that was not difficult for him then his failure to attend today just showed a lack of effort.
- 4.2.4. Having introduced myself to Mr Hawkes at 10:00 we did not start the hearing proper until 10:08, by which time there was still no appearance by the Claimant despite the Tribunal's Clerk's efforts.
- 4.2.5. Mr Hawkes took the affirmation. He confirmed his witness statement of 2nd January 2025 was true to the best of his knowledge and belief and did not require amendment.
- 4.2.6. I asked Mr Hawkes questions about his statement and the available documentation including the Claimant's documents and comments.
- 4.2.7. I found the following facts:
 - 4.2.7.1. The Claimant was employed by the Respondent as a driver from 1 March 2024 to 16 August 2024.
 - 4.2.7.2. The Claimant commenced ACAS early conciliation on 5 September 2024 and a certificate was issued on 3 October 2024.
 - 4.2.7.3. The Claimant presented his claim to the Tribunal on 15 October 2024.
 - 4.2.7.4. The Claimant tendered his resignation on Wednesday 14 August 2024 and worked until Friday 16 August 2024 in a situation

where he was due to give, and entitled to receive, one week's notice (not four weeks as claimed). He did not work his full notice.

4.2.7.5. The Respondent has paid to the Claimant all wages due to him for the hours that he worked.

4.2.7.6. The Claimant took 10 days' holidays during his employment and was paid for them. The dates of those holidays are set out in Mr Hawke's witness statement at paragraph 3.

4.2.7.7. By the Respondent's concession, the Respondent failed to pay to the Claimant 3 days' holiday pay due to him on termination of employment, amounting to £300 subject to the usual deductions.

The Issues and law:

5. Breach of contract: did both parties comply with the terms and conditions of employment subject to statutory minima? If the Respondent had breached the Claimants contract, what award should be made in respect of unpaid notice pay?
6. Wages: did the Respondent make unauthorised deductions from the Claimant's wages? If so, how much is the Claimant entitled to receive in respect of those deductions?
7. Holiday pay: did the Respondent pay to the Claimant holiday pay in respect of holidays accrued but not taken and holidays that had been taken? If so, how much is the Claimant entitled to receive in respect of such non-payment?

Application of law to facts:

8. I found that the Claimant failed to comply with his contractual notice provision. The Respondent did not breach the Claimant's contract of employment with regard to termination. This claim fails and is dismissed.
9. The Claimant has been paid all wages properly due to him and the Respondent did not make any unauthorised deduction from wages. This claim fails and is dismissed.
10. The Respondent failed to pay to the Claimant 3 days' holiday pay in the sum of £300, subject to the usual deductions, and in this respect only the Claimant's claim succeeds.

Approved by Employment Judge T V Ryan

Date: 31.01.25

JUDGMENT SENT TO THE PARTIES ON
6 February 2025

FOR THE TRIBUNAL OFFICE
Kacey O'Brien