



EMPLOYMENT TRIBUNALS

Claimant: Mr M Bennett
Respondent: MA Prestige Ltd

Heard at: Watford Employment Tribunal
On: 11 February 2025
Before: Employment Judge S Matthews

Representation

Claimant: Mrs C Bennett (Grandmother)
Respondent: Did not attend nor represented

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The respondent made unauthorised deductions from wages by failing to pay the claimant the full amount of wages due for 1 May 2023 to 29 August 2023 and is ordered to pay to the claimant the sum of **£1401.24** being the total gross sum deducted.
2. The respondent made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken annual leave on termination of employment and is ordered to pay to the claimant the sum of **£557.26** being the gross sum due.
3. The respondent was in breach of contract by dismissing the claimant without notice and the respondent is ordered to pay to the claimant damages of **£359.52** (being the gross sum due) for that breach.
4. The respondent was in breach of contract by failing to reimburse expenses of **£1904.38**.
5. The respondent is ordered to pay the claimant additional compensation of **£1438.08** (4 weeks' wages) pursuant to s.38 Employment Act 2002 for failure to provide the claimant with a written statement of employment particulars.
6. The respondent failed to provide the claimant with itemised pay statements between 1 May 2023 and 29 August 2023.
7. The total amount payable to the claimant is

£1401.24 (gross)

£557.26 (gross)

£359.52 (gross)

£1904.38

£1438.08

Total £5660.48

REASONS

Claims and issues

1. The claimant commenced working for the respondent as a Vehicle Recovery Driver on 1 May 2023. The working arrangement came to an end on 29 August 2023. The claimant contacted Acas on 12 November 2023 and a certificate was issued by Acas on 19 December 2023. The employment tribunal claim was presented to the tribunal on 30 December 2023 after which, following a request for extension of time, grounds of resistance were filed on 11 March 2024.
2. The claim was stated to be for unpaid salary and overtime, holiday pay, bank holidays, one week's pay in lieu of notice, reimbursement of insurance paid, and sundry items not reimbursed in the total sum of £6,995.30.
3. A preliminary hearing was held on 4 December 2024 to decide on the employment status of the claimant. The respondent applied for a postponement of the hearing on the day before the hearing which was not granted by Employment Judge Bloch KC. After hearing evidence from the claimant Employment Judge Bloch KC decided that between 1 May 2023 and 29 August 2023 the claimant was a worker of the respondent under s.230(3)(a) and (b) of the Employment Rights Act 1996 and Regulation 2(1) Working Time Regulations 1998.
4. Employment Judge Bloch KC made case management orders for the hearing today which included a direction that the respondent prepare copies of documents for today's hearing by 8 January 2025. The respondent has not complied with those directions. The respondent did not attend the hearing today. The clerk telephoned the respondent at the start of the hearing and although the phone was answered, there was silence when the clerk indicated she was telephoning from the tribunal. The clerk subsequently sent an email stating that the hearing was about to commence.
5. I was satisfied that the respondent had notice of the hearing and I decided to proceed. I had before me a bundle of 21 pages prepared by the claimant's grandmother who was representing the claimant. It was helpfully indexed and paginated. Numbers in brackets below are references to pages in the bundle. In addition, I referred to the bundle submitted for the hearing before Employment Judge Bloch KC. I also had a signed statement from the claimant dated 22 January 2025 and the claimant gave oral evidence confirming the contents of the statement and answering further questions from which I made findings of fact.
6. I identified the following issues at the beginning of the hearing:

“Unauthorised deductions

Were the wages paid to the claimant from 1 May 2023 to 29 August 2023 less than the wages he should have been paid?

Was any deduction required or authorised by statute?

Was any deduction required or authorised by written term of a contract?

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

Did the claimant agree in writing to the deduction before it was made?

How much is the contract owed?

Breach of contract

Did this claim arise or was it outstanding when the claimant’s employment ended?

Did the respondent do the following?

Fail to reimburse the claimant for expenses.

Fail to return the claimant’s registration plate.

Require the claimant to pay insurance for the vehicle.

Was that a breach of contract?

How much should the claimant be awarded as damages?

Holiday pay

What was the claimant’s leave year? How much of the leave year had passed when the claimant’s employment ended?

How much leave had accrued for the year by that date?

How much paid leave had the claimant taken in the year?

How many days remain unpaid?

What is the relevant daily rate of pay?

Wrongful dismissal/notice pay

What was the claimant’s notice period?

Was the claimant paid for that period?

Schedule 5 Employment Act 2002

When these proceedings were begun was the respondent in breach of its duty to give the claimant a written statement of employment particulars?

If the claim succeeds are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks’ pay under s.38 of the Employment Act 2002? If not, the tribunal must award two weeks’ pay and may award

four weeks' pay.

Would it be just and equitable to award four weeks' pay?

Itemised pay statements

Was the respondent in breach of its duty under s.8 Employment Rights Act 1996 to give the claimant itemised pay statements?"

Findings of Fact

7. Having considered the documentation in the bundle and heard the claimant's oral evidence I make the following findings of fact on the balance of probabilities.
8. I adopt the findings of fact made by Employment Judge Bloch KC with regard to the formation of the contract (paragraphs 3 to 9 of the Judgment dated 4 December 2024). There was a verbal contract between the claimant and the respondent. The respondent did not provide the claimant with a written contract or statement of particulars. It was agreed that the claimant would work six days a week but on some weeks he worked seven days. He would start work at around 8.30am to 9am daily and sometimes worked very late – as late as 2.30am or even later on some occasions.
9. When the claimant commenced employment it was agreed that the pay rate would be £60 a day. From around the beginning of June 2023 it was agreed that he would be paid £300 a week for six days work, eight hours a day (12). It was agreed verbally that the claimant would be paid overtime and he often worked over eight hours a day. He has not kept a record of the hours worked, and the overtime set out in the table (21) is an estimate which he has constructed from looking at photographs taken of vehicles when he was working. The respondent would presumably have this information on the vehicle tracker, but it has not been disclosed. In his statement the claimant refers to a round trip to Scotland which took 20 hours on 9 June 2023. This was overtime of 12 hours over and above his usual eight hours.
10. The claimant was not provided with wage slips. From the beginning of June 2023 he submitted invoices for £300 a week because he was requested to do so by the respondent. There are invoices in the bundle submitted for the hearing before Employment Judge Bloch KC (26 to 35) for the weekly sum of £300. There is one invoice dated 5 to 11 June 2023 stating "extra owed pay" which is for £50 which the claimant recollected was commission for introducing a friend. Mr Christodoulou, Director of the respondent, did not ask him to invoice for overtime but kept saying that he would "sort out" overtime payments later on. Mr Christodoulou also said that he would "sort out tax" and National Insurance.
11. At the beginning of June 2023 the claimant agreed to purchase a car from the respondent. He put down a deposit of £600 and agreed that he would pay the additional £1,600 by having £250 deducted from his pay for 6 weeks and £100 in the final week so that it was paid off by 1 August 2023. That was a verbal agreement. It was not in writing. The car was transferred to the claimant at the beginning of June, and it was paid off by 1 August 2023. The claimant said that he agreed to this arrangement because he felt he had no other option. He needed the car to get to work.

12. The claimant had a personal number plate and Mr Christodoulou suggested that it would “look good” on the recovery vehicle. The claimant agreed to this on the condition that it would remain his plate. Mr Christodoulou has refused to transfer it back into his name unless the claimant pays an invoice for £271 which he says is monies owing for various sundry matters (2 and 3).
13. The claimant purchased some tools during the course of his employment at a total cost of £610. He says it was agreed between him and Mr Christodoulou that they would pay 50% of the cost each. Mr Christodoulou has not paid him back the 50% he thought he was owed. At the time the claimant agreed to pay 50% he was unclear about his employment status. Mr Christodoulou retained the tools. He was also told by Mr Christodoulou that he had to pay 50% of the insurance otherwise he would not be able to drive the vehicle. That made sense to the claimant at the time because he thought he was in a partnership.
14. The claimant’s last day of work was Tuesday 29 August 2023. There was an argument with Mr Christodoulou. Mr Christodoulou took the keys of the recovery truck and left him stranded in Walthamstow. Mr Christodoulou cancelled a meeting which had been arranged with the claimant’s father on 31 August 2023 ((the claimant’s statement, paragraph 9). No further payments were made by the respondent to the claimant.

The law

15. S.13(1) of the Employment Rights Act 1996 provides:-

“ 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) 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.”

16. The question of what is properly payable requires interpretation of the relevant terms of the contract and a factual analysis of the claim.
17. S.27 Employment Rights Act 1996 defines wages as:

27 Meaning of “wages” etc.

(1) In this Part “wages,” in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) ... holiday pay...”

It excludes payments for expenses incurred by the worker in carrying out his employment.

18. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. There will be an unauthorised deduction from wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.
19. The time limit for bringing a claim is three months beginning with the date of payment of wages from which the deduction was made (s. 23(2)(a)), unless there is a series of deductions or payments in which case the time limit runs from the last deduction in the series (s. 23 (3)). The determination of whether there is a series of deductions is a question of fact for the tribunal.
20. Where the tribunal is satisfied that it was not reasonably practicable for a complaint under section 23 to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable (s. 23(4)). The correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them.
21. If there is no expressly agreed period of contractual notice there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in s.86 Employment Rights Act 1996. For someone who has been employed for at least one month but less than two years, this is one weeks' notice. Provided the employee is not in fundamental breach of contract the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.
22. S.38 Employment Act 2002 provides that, where a tribunal finds in favour of an employee in a complaint of unlawful deduction from wages and breach of contract, and the tribunal finds that the employer has failed to provide the employee with a written statement of employment particulars, the tribunal must award the employee an additional two weeks' pay unless there are exceptional circumstances which would make that unjust or inequitable, and may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.
23. The Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994 allows employees to bring claims for breach of contract in the employment tribunal for the recovery of damages (other than a claim for personal injuries) if the claim arises or is outstanding on termination of the employee's employment. It must relate to a claim for damages for breach of contract of employment or other contract connected with employment (Article 3 of the 1994 Order and s.3(2) Employment Tribunals Act 1996).
24. Section 8 Employment Rights Act 1996 provides that a worker has a right to be given a written, itemised, pay statement containing the gross amount of the wages or salary, the amounts of any deductions and the net amount of wages or

salary. Where an employer has failed to give a worker an Itemised pay statement the tribunal may make a declaration to that effect (s.12 Employment Rights Act 1996).

25. The National Minimum Wage Act 1998 provides a right to be paid at an hourly rate not less than the National Minimum Wage for the relevant period. The National Minimum Wage for the relevant period at the time of the claimant's employment was £7.49 for an 18 to 20 year old. The effect of the legislation implementing the National Minimum Wage is to amend worker's contracts of employment to provide a minimum rate per hour below which they should not be paid. The employer is entitled to deduct tax and National Insurance and payments of a loan or advance of wages (Regulation 33(b)). An employer is not entitled to deduct worker's expenditure in connection with his employment such as a worker's tools or uniform.

Conclusions

Basic and overtime pay

26. I am satisfied that the failure to pay the minimum wage and overtime was a series of unauthorised deductions ending on 29 August 2023 and the claim is brought within the statutory time limit.
27. The claimant (date of birth 10.11.03) was entitled to be paid the minimum wage of £7.49 an hour at the relevant time. He worked a total of 108 days for a minimum of 8 hours a day. I therefore find that he should have been paid for 108 days at 8 hours a day (864 hours) at £7.49 an hour which amounts to £6471.36 (gross). He was paid £5160, leaving a shortfall of £1311.36 (gross).
28. The claimant worked overtime but he has not kept records or been able to provide evidence of the overtime he worked other than for a trip to Scotland on 9 June 2023 which was overtime of 12 hours. I find that he should have been paid £89.88 (gross) for overtime on that day. I do not make an award in respect of further overtime because the claimant is unable to itemise it.
29. The respondent made unauthorized deductions from the claimant's wages in respect of the car purchased from the respondent in June 2023. The agreement was not made in writing. However the claimant does not include that in his claim and I find that he has not brought a claim for that deduction within the time limit set out in s.23 Employment Rights Act 1996. Moreover I find that he has not provided evidence that it was not reasonably practicable for him to bring a claim within the time limit because his reason was that he was not aware of his right to do so.
30. In total there was an unauthorized deduction of **£1401.24** from the claimant's wages between 1 May 2023 and 29 August 2023 and I order the respondent to pay this sum to the claimant. The respondent will be entitled to deduct any tax and employee's national insurance contributions due on this amount before payment to the claimant.

Notice pay

31. I find that the claimant was entitled to one week's notice, and I award a gross sum of **£359.52** (8 hours x 6 days x £7.49) in respect of that. The respondent

will be entitled to deduct any tax and employee's national insurance contributions due on this amount before payment to the claimant.

Holiday pay

32. The claimant worked over a period of 121 days (1 May 2023 to 29 August 2023). I calculate that the claimant was entitled to statutory holiday of 9.3 days. Taking into account a working day of 8 hours (the claimant being unable to evidence overtime) I calculate total hours of 74.4. If the claimant had been paid the minimum wage of £7.49 that would amount to **£557.26**. I order the respondent to pay that sum to the claimant. The respondent will be entitled to deduct any tax and employee's national insurance contributions due on this amount before payment to the claimant.

Expenses

33. Insurance: The claimant paid insurance for the recovery vehicle in the sum of £659. He was told that he had to pay 50%. He should not have been required to pay that because he was an employee and not a partner. The requirement to pay that sum and failure to reimburse it was a breach of contract. I find that the claim for breach of contract is connected to his employment and I award the sum of **£659**.
34. Tools: The claimant paid for tools. In his claim he has claimed 50% of the cost (£305) because that was the agreement between him and Mr. Christadoulou. The respondent has retained the tools. The actual cost to the claimant was £610. The requirement to pay that sum and to fail to reimburse it was a breach of contract. I find that the claim for breach of contract is connected to his employment and I award the sum of **£610**.
35. Registration plate: The agreement to use the number plate on the recovery vehicle was a mutual agreement and the respondent told the claimant that he would retain ownership. I find that it was implied in the contract that the number plate would be returned to the claimant if he no longer worked for the business. I find that the agreement was connected to the claimant's employment. The failure to return the number plate at the conclusion of the claimant's employment is a breach of the contract. I award damages of **£635.38**, that being the cost of the numberplate.
36. In total I award damages of **£1904.38** for breach of contract for failing to reimburse expenses.

Failure to provide a contract and itemized pay slips.

37. The respondent did not provide a statement of terms and conditions as required under s.1 of the Employment Rights Act 1996. The respondent has not explained to the tribunal why he did not provide the terms and conditions in writing and has failed to attend the tribunal hearings. I have decided that it is just and equitable to make the maximum award of four weeks' earnings for that in the sum of **£1,438.08**.
38. I make a declaration that the claimant was not provided with itemised payslips.

Summary

39. I therefore order the respondent to pay the total sum of £5660.48 to the claimant (subject to deduction of tax and national insurance in respect of the sums at paragraphs 1,2 and 3 of the Judgment).

Approved by:

Employment Judge S Matthews

24 March 2025

JUDGMENT SENT TO THE PARTIES ON

2 April 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/