



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Newton-Smith

**Respondent:** David Kay

**Heard at:** Leeds by CVP

**ON:** 9 April 2025

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** In person, although as the respondent had not filed a Response the Tribunal ruled that the respondent should not participate in the hearing, but only listen, pursuant to Rule 22(3) Employment Tribunal Rules.

# JUDGMENT

1. The property title of the respondent is David Kay.
2. The claimant shall be entitled to one week's notice pay in the sum of £274.50 gross.
3. The claimant shall be entitled to £500.00 by way of unauthorised deduction of wages.
4. The respondent having failed to give a written statement of initial employment particulars to the claimant and in view of the findings the Tribunal has made in relation to unauthorised deduction of wages the Tribunal makes an award equal to two weeks' pay payable by the respondent to the claimant in the sum of £545.00
5. Grand total payable by the respondent to the claimant £1,323.50.

# REASONS

## 1. Claims

- 1.1. Breach of contract - no notice pay.
- 1.2. Unauthorised deduction of wages.
- 1.3. Consequently, award for failure to give a statement of employment particulars pursuant to section 38 Employment Act 2002.
- 1.4. Holiday pay - The claimant did not make a claim for holiday pay in his claim form but sought to make a claim yesterday. I did not allow this claim to proceed.

## 2. Issues

The issues in this case relate to:

- 2.1. Breach of contract – whether the claimant received notice pay.
- 2.2. Unauthorised deduction of wages – whether the respondent unlawfully deducted a sum or sums from the claimant's wages.
- 2.3. As there was an award of deduction of wages did the respondent give a written statement of initial employment particulars to the claimant and if not should any award equal to two weeks' pay or four weeks' pay?

## 3. Matters occurring during the hearing

At the outset I informed the respondent that I had exercised my discretion not to allow the respondent to participate in the hearing. As I have said above, the respondent could listen to the hearing. Because of repeated interruptions by the respondent I explained to the respondent my authority for my decision not to allow him to participate in the hearing, which I told him could be found at Rule 22(3) of the Employment Tribunal Rules. The respondent told me that he had filed a response. This was not true but I was aware that he had filed a statement received by the Tribunal on 4 April 2025, which I had read and I told the respondent so. Amongst the interventions the respondent made were that he said that he was going to appeal this decision, saying that he was to contact his solicitor and asking about a transcript of this hearing. The fact that the respondent chose not to enter a response, which the respondent was invited to do by the Employment Tribunal on 2 December 2024, and which the respondent chose not to do put him in a thoroughly disadvantageous position in this case.

## 4. Facts

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed by the respondent as a delivery driver/kitchen assistant from 22 November 2023 until 1 May 2024.
- 4.2. When the claimant was dismissed by the respondent he did not receive notice pay amounting to £247.50 gross.

- 4.3. The claimant was involved in a motor accident whilst on his employment duties. The respondent was in control of the claimant's motor insurance policy, although the claimant was not aware that the insurance policy was other than that of the respondent's. The motor insurance policy had an excess of £500.00 and the respondent unilaterally deducted the £500.00 from the claimant's final pay check, which should have been £1,098.00 but was only £598.00.
- 4.4. The respondent failed in his duty to give a written statement of initial employment particulars to the claimant.

**5. Determination of the Issues**

(After listening to the factual submissions made by the claimant and having read the statement of the respondent):

- 5.1. The claimant was entitled but did not receive notice pay and he was entitled to one week which amounts to £274.50 gross.
- 5.2. The respondent was not entitled to deduct £500.00 from the claimant's wages and the claimant is therefore entitled to the unauthorised deduction of wages in the sum of £500.00.
- 5.3. Because of the award I have made relating to unauthorised deduction of wages and because the claimant did not receive a written statement of initial employment particulars the Tribunal must make an award of the minimum amount to be paid by the respondent to the claimant. The minimum amount is two weeks' pay. I do not consider it just and equitable in all the circumstances to award the higher amount of four weeks' pay. In awarding two weeks' pay the respondent shall pay the claimant the sum of £545.00.
- 5.4. The grand total of the sum payable by the respondent to the claimant is £1,323.50.

**Approved by Employment Judge Shulman**

Date: 14 April 2025