



EMPLOYMENT TRIBUNALS

Claimant: K Mawdsley

Respondent: TRM Electronics Limited

HEARD AT: Manchester

On: 17 February 2025

BEFORE: Employment Judge Batten

REPRESENTATION:

For the Claimant: in person

For the Respondent: P Clarke, consultant

JUDGMENT having been sent to the parties on 24 February 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

1. By a claim form presented on 8 September 2024, the claimant pursued a complaint of unpaid wages.
2. On 7 October 2024, the respondent presented its response to the claim which included an employer's contract claim. However, on 12 November 2024 the respondent's contract claim was rejected by Employment Judge Allen pursuant to Article 4(d) of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994, for want of jurisdiction because the claimant had not presented a contract claim.
3. This final hearing was listed for 90 minutes but took longer, largely due to the evidence tendered by the parties.

Evidence

4. Each party provided the Tribunal with a bundle of relevant documents. The claimant's bundle comprised 46 pages and the respondent's bundle comprised 69 pages. In addition, the respondent tendered 2 further

documents on the morning of the hearing, being the ACAS early conciliation certificate and an email from ACAS to the claimant dated 19 August 2024 which were added to the respondent's bundle.

5. The Tribunal was provided with a 16-page witness statement from Tony McDonald, the respondent's managing director. The Tribunal read this statement. The claimant relied on the contents of his claim form. Both the claimant and Mr. McDonald were subject to cross-examination.

The issues to be determined

6. At the outset, the Tribunal discussed the issues with the parties. It was confirmed that the issues to be determined by the Tribunal were:

Unpaid wages

1. **Were the wages paid to the claimant at the end of his employment less than the wages that should have been paid?**
2. **Was any deduction required or authorised by statute?**
3. **Was any deduction required or authorised by a written term of the contract?**
4. **Did the claimant agree in writing to the deduction before it was made?**
5. **Did the respondent make unauthorised deductions from the claimant's wages and, if so, how much was deducted?**
6. **How much is the claimant owed?**

Findings of fact

7. The Tribunal made its findings of fact on the basis of the material before it, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. Where there has been a conflict of evidence, the Tribunal resolved this on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.
8. The findings of fact relevant to the issues which have been determined are as follows.
9. The claimant was employed by the respondent from 17 June 1994, ultimately as Production Director. The relationship between the parties is complicated by the fact that the claimant had a small shareholding in the respondent and also had an interest in the premises from which the respondent traded. Those matters do not concern the Employment Tribunal and form no part of this claim.
10. By 2024, the claimant was paid on average the gross sum of £1,848.00 per month, comprising 168 hours at £11.00 per hour.

11. At the beginning of June 2024, the claimant gave a month's notice to terminate his employment at the end of June. The letter appears at page 26 of the claimant's bundle. On 26 June 2024, the respondent's managing director, Mr. McDonald, acknowledged and accepted the claimant's resignation, effective 30 June 2024.
12. In July 2024, the claimant sent the respondent a letter which he had written on 17 June 2024 although it is accepted by the parties that the claimant did not send it until he had left the respondent. The letter appears in the claimant's bundle at pages 44-46 and also in the respondent's bundle at pages 67-69. The letter is important because it set out what the claimant considered he was owed by the respondent at the termination of his employment. The second page has a section entitled "Wages". The claimant writes that, with his accountant's help, he has identified a missing month's wages, which he said was either in March or April 2024, when he received no pay and he commented that that he has had no pay slips from the respondent for some time. The claimant's letter goes on to identify a number of months, between August 2022 and January 2024, which the claimant lists in his letter, where his pay has been short. The claimant calculated that this amounted to 104 hours of pay owing to him for these short months. As a result, the claimant requested payment of all the monies owing to him, being 104hours' pay plus a month's pay.
13. The respondent paid the claimant a month's pay in June, as usual, and thereafter it paid the claimant for the 104 hours which he had identified as owing. The respondent believed this to be all the wages owed to the claimant. However, in evidence, the respondent's managing director accepted that by the end of the claimant's employment it had become the respondent's practice to pay the claimant a month in arrears.
14. The Tribunal found that the claimant did not receive a pay slip for March 2024 nor was he paid for that month. No such pay slip appears in either party's bundle. However, upon examination of the claimant's pay slip for February 2024, which appears in the respondent's bundle at page 50, the Tribunal found that the "to date" figures, for the claimant's total pay in the year to February 2024, are the same as the year-end figures on the claimant's P60, dated 5 April 2024. This demonstrates that the claimant was not paid any more money by the respondent after February 2024 and/or up to the financial year end. In addition, the claimant produced printed excerpts from his bank statements showing what monies he had received from the respondent and when. These also show that the claimant was not paid any wages by the respondent in March 2024.
15. In addition, the claimant's April 2024 pay slip shows an amount of a month's pay, such that the claimant cannot have been paid in April 2024 for March 2024 either. The respondent's evidence concurred, in that the managing director confirmed that he had to put a zero figure in for March because he was in a hurry to close the payroll.
16. In effect, therefore, the claimant was paid in April 2024 for March 2024, and the claimant was paid a month in arrears from then onwards. This means

that at the termination of his employment on 30 June 2024, the claimant was, as he rightly said in his letter sent in July 2024, owed a month's wages in addition to the 104 hours short.

17. On 12 July 2024, the claimant started early conciliation via ACAS and, on 23 August 2024, an early conciliation certificate was issued. On 8 September 2024, the claimant presented his claim to the Tribunal.

The applicable law

18. A concise statement of the applicable law is as follows.

Unauthorised deductions from wages

19. A worker is entitled to be paid for work done under his or her contract of employment. Part II of the Employment Rights Act 1996 ("ERA") provides that a failure to pay wages owing constitutes an unauthorised deduction from wages.

20. Wages are defined in section 27 ERA. Section 27(1) (a) provides that:

"wages includes any fee, bonus, commission, holiday pay or other emolument referable to his employment whether payable under his contract or otherwise".

21. ERA section 13 governs circumstances in which an employer can make deductions from an employee's wages. Section 13 provides that an employer:

"shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction."

Conclusions (including where appropriate any additional findings of fact)

22. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.
23. The Tribunal has found that the claimant was not paid wages by the respondent at any point in March 2024, for that month – see paragraphs 14 and 15 above. The claimant did not consent to this deduction from his wages either in writing or at all.
24. The respondent's evidence on the matter has been at best confused and at worst consisted of a variety of excuses for its non-payment together with a number of unsubstantiated and irrelevant allegations about the claimant's conduct and performance. In the circumstances, the Tribunal rejected the respondent's suggestions, preferring to rely on the clear and cogent evidence of the claimant, together with the pay slips, bank statements and letters written at the time.

25. The respondent also tried to suggest that the 104 hours which it did pay, was in fact the missing month. The Tribunal rejected this suggestion. It is abundantly clear, from the claimant's letter, to what the 104 hours relate and the respondent at no point, until this hearing, disputed the claimant's list of dates or figures for those hours. In any event, 104 hours does not equate to a month's working hours. It appeared to the Tribunal that the respondent mistakenly thought that if it paid the 104 hours owing, that would be the end of the matter. However, the Tribunal considered that the claimant had, right from the beginning, asked the respondent for the missing month's pay which remains outstanding and owing to the claimant.

Amount owing

26. In light of the above, the Tribunal has concluded that the respondent made unauthorised deductions from the claimant's pay in the gross sum of £1,848.00, being a month's pay as claimed in the ET1, section 9.2. The respondent is ordered to pay to the claimant that amount, less any tax and/or National Insurance due.

Employment Judge Batten
12 May 2025

REASONS SENT TO THE PARTIES ON:

19 May 2025

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