EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr W Butler	**v**	Multimodal Logistics Ltd

Heard at: Bury St Edmunds **On:** 9 and 10 June 2025

Before: Employment Judge K J Palmer (sitting alone)

Appearances
For the Claimants: In person
For the Respondent: Miss J Phillips (Company Secretary)

REASONS

Extemporary Judgment having been given and reasons having been requested by the Respondents the reasons are hereby attached.

1. This matter came before me listed for a two day Full Merits Hearing that had previously been before me in a Preliminary Hearing in February 2025. At that Preliminary Hearing we were able to identify and isolate the nature of the Claimant's claims. The Claimant, was employed as an HGV Tramper by the Respondents and was employed between 27 November 2023 and 28 March 2024 when he resigned.

2. He presented this claim to this Tribunal on 12 April 2024, following a brief period of ACAS early conciliation. In it he pursues two claims. One is for a sum of Statutory Sick Pay which is in the sum of £43.76 and that is pursued on the basis of an unlawful deduction of wages claim under Section 13 of the Employment Rights Act 1996. The second claim is a claim for accrued unpaid holiday in lieu of untaken holiday under Reg 14(4) of the Working Time Regulations 1998 as amended. That second claim is in the sum of £438.00.

3. There is no dispute between the parties as to the sums claimed. The Respondents accept that at the time of termination, those two sums for SSP and for holiday pay were owed to the Claimant at termination. The Respondent's case is based upon the fact that they say they were able to lawfully set off those two sums against monies owing to the Respondent by the Claimant in the sum of £608.25. During the course of this hearing they accepted that in fact the sum that they say they were entitled set off was somewhat less than that and amounted to £583.25. Nevertheless, irrespective of the difference between those two sums, the fact remains that the set off would wipe out the sums which the Claimant is claiming and therefore he didn't receive either of them on termination.

4. I had before me a helpful bundle running to some 77 pages and I had a witness statement from Miss Phillips and from the Claimant and I was able also to question them on their evidence by putting questions to them during the course of the hearing.

5. Further, during the course of this hearing, both parties produced further documentation subject and pursuant to issues that arose during the course of the hearing and I created an extra bundle of those documents which I have marked as C2.

6. The Respondents say that the Claimant entered into a written agreement in respect of a microwave which was for his use in the lorry that he drove whilst he was working for them. I was referred to that agreement which is at page 66 of the bundle and it is a short two paragraph agreement but the Claimant accepts that he signed and accepted the terms of this agreement. In essence, the agreement says that the Respondents had purchased a microwave to be installed in the vehicle that the Claimant would be driving to enable him to fulfil his role as a HGV Tramper. HGV Trampers have to drive long distances and it is common for them to have to spend time sleeping in their cab and for them also to have facilities for producing hot food, hence the microwave. The arrangement which was entered into on 27 December 2023 was that the Respondents would purchase a microwave for the value of £803.25, they would install it in the Claimant's lorry that the Claimant would be driving and that the Claimant would then pay off the cost of that microwave over a period of time in chunks of £25.00 per week. The arrangement as to those £25 a week payments was a little complicated in that it related to a meal allowance that the Claimant was able to claim but that meal allowance was only claimable once the Claimant had produced receipts and then once he had, the meal allowance was triggered and it would be withheld and set off against the cost of the microwave.

7. Essentially, at the time that the Claimant resigned and left he had not been working there sufficiently long for there to have been sufficient deductions for the cost of the microwave to be paid off and, as we have ascertained during the course of this hearing, it is the Respondent's position is that there remained £583.25 of the original cost of the microwave that had not been paid off. According to the agreement once the cost was fully paid off the microwave would be the property of the Claimant. They say they were entitled to deduct

the outstanding £583.25 from the Claimant's final payment. In reliance on that they produced the Claimant's contract of employment, in which there is a standard deductions clause.

8. Paragraph 8.1 says that the company reserves the right to deduct any outstanding monies due to them from the employee's pay or on termination of employment from final pay. This includes, but is not limited to outstanding loans, overpayments, holidays taken in excess of accrued entitlement and payment for shadow shifts. It then goes on to specify, in a bit more detail, the nature of some of those sums that can be recovered.

9. It is the Respondent's case that the sum of £583.25 was due and payable to the Respondent by the Claimant at termination of employment and it is on the basis of the agreement relating to the microwave that they reached this conclusion.

10. At termination, Miss Phillips, on behalf of the Respondents, wrote to the Claimant, specifying that they accepted that he was owed £43.76 SSP and £438.00 holiday pay but that this was going to be offset against the sum outstanding in respect of the microwave agreement. The microwave agreement specifies that in circumstances where an employee leaves, they are due to pay off any balance of the unpaid sum and the microwave would then be theirs.

11. In the email from Miss Phillips to the Claimant she sets out the figures in question and specifies that the balance which would then be owed, after setting off the unpaid sums under the microwave agreement against the sums owed to the Claimant would be £126.49. We now know, having examined this during the course of this hearing, that that sum is £25.00 less than that. She goes on to say that, "the microwave is yours to collect at your convenience. Please arrange a time with Jamie, a time and date to suit. The cost of the deinstallation and arrangement of it is to be left with you to arrange". She goes on to say, "We are prepared to write off the balance owed to us as a gesture of goodwill. However, if you wish for us to process this via payroll, we can send you your final payslip with any balances due. Your P45 is to be prepared and issued to you".

12. I heard evidence from both Miss Phillips and from the Claimant. The Claimant tells me that that paragraph was a clear indication of the fact that the Respondents were only prepared to write off the balance in respect of the sum due on the microwave agreement if the Claimant did not wish to have a final payslip and this apparently was for some nefarious tax evasion reason. Miss Phillips says that is not the case, that this was a clear indication that they would be prepared to write it off as a gesture of goodwill and that there was nothing conditional associated with that. My interpretation of that paragraph is that it is very confusing and, on balance, I am inclined to accept the Claimant's evidence that there was some condition attached to the agreement to write off the balance. What persuades me is that was it talks about a final payslip with balances due. The use of the words "balances due" suggests to me that in those circumstances, where a final payslip was requested, they would still be

looking to recover the remaining balance from the Claimant in respect of the microwave. On the balance of probabilities, I am prepared to accept the Claimant's assertion as to the meaning and construction of the wording in the e mail to him from Miss Phillips despite her assertions to the contrary.

13. My conclusion is supported by some of the documentation which has been produced during the course of this hearing, more particularly copies of emails where the Claimant had contacted the Respondents in an attempt to recover the microwave on the basis that it is specified to have been his which of course would have been the case had the Respondent's written off the balance as they now assert. The difficulty appears that when the Claimant attempted to contact Jamie and Ben, who was also working for the Respondents, he got no response and ultimately was unable to recover the microwave. In fact it has been the Claimant's position throughout these proceedings and in his witness statement, that the microwave remains in the lorry that he was using and has then subsequently been used by another driver.

14. During the course of this hearing it was necessary to adjourn on a number of occasions to ask Miss Phillips to seek further information from those who employ her and I am grateful to her for doing that. It is clear from her evidence that the microwave was not immediately removed from the lorry that the Claimant drove and, in fact, remained in the lorry between 28 March and 12 April. It was therefore in the lorry that was driven by a subsequent driver who took over from the Claimant and that was the microwave that was supposedly, under the terms of the arrangement with the Claimant, a microwave which belonged to the Claimant at termination of employment, particularly if, as I was told by the Respondents, they had written off the balance as a gesture of goodwill. These actions are inconsistent with what the Respondents are asserting is the meaning of the final e mail.

15. Further, there were clearly efforts made by the Claimant to recover the microwave and a number of emails have gone unanswered and I accept the Claimant's evidence that he telephoned the Respondents and attempted to speak to Ben and on no occasion did anyone call him back. Miss Phillips' response to that was that by that time the Claimant had initiated these proceedings by triggering ACAS early conciliation and that accordingly the microwave was then withheld. I understand from the Respondents that the microwave is now apparently in a container behind other equipment. I did ask if photographs could be taken of it but I was told that that could not happen and that there was also attempts to find out whether the serial number of the microwave accorded with the serial number of the purchase documents as against the microwave currently in the container but the Respondents were unable to do that due they say to technological breakdowns and difficulties in contacting the supplier of the microwave.

16. Nevertheless, they have admitted that it was in the lorry between 28 March and 12 April and wasn't removed until then. It seems very clear to me that there have been considerable efforts to frustrate the terms of the agreement entered into at page 66 of the bundle by the Respondents and that the Claimant, quite properly, sought to recover the property that he was told was

his and was invited to do so by Miss Phillips in the email she sent him after termination and he simply tried his best to do so but was frustrated in those efforts. The Respondents have refused to return that microwave for reasons best known to themselves. It seems to me that having deducted the monies from the Claimant, if their story is correct that they then had, as a gesture of goodwill, written off the balance, they would have been very keen to see the back of the microwave and should have accommodated the Claimant in his efforts to recover it.

17. For those reasons I therefore consider that the Claimant's have not complied with their end of the agreement that was entered into on 27 December 2023 and were in breach of that agreement for the reasons that I have outlined.

18. It is not within the jurisdiction of this Court to give any orders with respect to the recovery of the microwave or what happens to the microwave next. The Respondents have said that the microwave is there and is collectable but it appears that it has clearly been used in the interim and it may be that the Claimant is no longer interested in it. It seems to me that having not complied with their end of the agreement, the agreement falls away and the microwave remains the microwave of the Respondents and there is no obligation upon the Claimant to pay the outstanding sums at termination. But that is not something that I am here to determine. All I have to determine is whether the sums deducted were due to the Respondents and I conclude for the reasons that I have set out namely that the Respondents are in breach of the microwave agreement that those sums were not due. Therefore, despite the fact that the Respondents had a lawful deductions clause in their contract of employment, there were no sums due and owing to them to deduct and that therefore the deduction of £43.76 is an unlawful deduction of wages under section 13 of the Employment Rights Act and the Claimant is also entitled to his holiday pay on termination under Regulation 14(4) of the Working Time Regulations in the sum of £438.00. I therefore give judgment to the Claimant in respect of both of those sums that is £43.76 and £438.00 and those sums are payable immediately by the Respondent to the Claimant. The total payable is

Approved by:

Employment Judge K J Palmer
Date: 31 July 2025

Sent to the parties on: 1 August 2025

For the Tribunal Office.