

Neutral Citation Number: [2025] EAT 119

Case No: EA-2023-001292-NK

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 1 July 2025

Before :

**BRUCE CARR KC**  
**(DEPUTY JUDGE OF THE HIGH COURT)**

Between :

**PHILIP RUSH**

**Appellant**

- and -

**WILTS AND DORSET BUS COMPANY LTD**

**Respondent**

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**THE APPELLANT** appeared in **Person**  
**MISS REBECCA JONES** (instructed by **Blackhouse Jones Solicitors**) for the **Respondent**

Hearing date: 01 July 2025

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**JUDGMENT**  
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## **SUMMARY**

### **UNLAWFUL DEDUCTION FROM WAGES**

The Appellant was awarded the sum of £202.50 by the Employment Tribunal based on unlawful deduction claims. His appeal raised a number of grounds relating to other deductions that he said should have been found by the ET as well as a failure to make any uplift in his award based on the assertion that the Respondent had not complied with the ACAS Code of Practice on grievance procedures. He also suggested that the ET's reasons were deficient. He also claimed that he should have been awarded 204 weeks' pay as the Respondent had not issued him with a section 1 statement of particulars of employment.

As to the ACAS uplift, the ET's reasoning, whilst brief, was nevertheless sufficient in that it had concluded that there was no non-compliance by the Respondent – and the Appellant had failed to identify any.

As to the section 1 statement, this had in fact been given to the Appellant at the time that his employment had transferred to the Respondent in 2014 and so the latter was not in breach of its duty at the time that the claim was issued.

The ET had also properly addressed the elements of the various unlawful deduction claims that the Appellant had brought and had accepted the Respondent's analysis of the sums that were due to him.

**BRUCE CARR KC, DEPUTY JUDGE OF THE HIGH COURT:**

1. I will now deliver judgment in this case. In this judgment, I will refer to the parties using the titles they had in the Employment Tribunal, so that the appellant in this tribunal will be referred to as “the Claimant” and the respondent, who was the respondent in the tribunal as well as in this appeal will be referred to as “the Respondent”.

2. This is an appeal from a decision of the Southampton Employment Tribunal (“ET”), which sat on 2-4 August 2023 and sent their decision to the parties on 26 September 2023. The written decision records that the Claimant’s claims of discrimination and harassment on the grounds of race were dismissed but that he had succeeded in a limited respect as far as his claims of unlawful deduction from wages were concerned. As to that, the ET awarded a total of £202.52 (sic) said to be made up of sick pay in the sum of £97.50, unpaid holiday pay in the sum of £104.00 and unpaid overtime in the sum of £4.02.

3. The Claimant submitted a notice of appeal on 10 November 2023, in which he made multiple challenges to the ET’s reasoning. That notice was considered at the sift stage by Deputy High Court Judge John Bowers KC, who concluded that only one of the grounds advanced was reasonably arguable. That ground raised a question as to whether or not the Employment Tribunal had erred in not making an uplift in the award made to the Claimant on the basis of any failure by the Respondent to follow the ACAS Code relating to the conduct of grievance proceedings.

4. The Claimant then exercised his right to have the appeal considered at a hearing under rule 3(10) of the EAT Rules and the matter came before Sarah Crowther KC, sitting as a Deputy Judge of the High Court, who, in an order dated 6 March 2025 allowed the Claimant to proceed with five grounds of appeal with a potential sixth ground based on an assertion by the Claimant that the ET had announced on day 3 of the hearing (4 August 2023) that he had in fact succeeded in his racial

harassment claim, only to change its mind by the time that the written reasons were prepared and sent to the parties. This was identified in the amended notice of appeal prepared and submitted by the Claimant's representative under the ELAAS scheme as potential Ground 6. As to that ground, DHCJ Crowther ordered that the ET provide its comments as to what had happened at the end of the hearing, in particular on the question of remedy.

5. The ET, in the form of Employment Judge Lumby, wrote on 13 March 2025 setting out his account of the closing exchanges and indicating that from his perspective at least he did not at any point indicate that the Claimant had succeeded in relation to any of his claims, not least because he had only just heard submissions from the parties and had not even had the opportunity of considering these with the lay members who had also sat on the tribunal.

6. Given that account, and at the outset of this appeal, the Claimant confirmed that he understood that in the light of the letter from Employment Judge Lumby the appeal would only be on the basis of the five grounds that had been unconditionally approved by DHCJ Crowther in March of this year.

#### The grounds of appeal

7. Ground 1: Under this ground of appeal, the Claimant argues that the Employment Tribunal erred in failing to make any uplift in the awards that it had made to him on the basis that it had not considered and applied the provisions of section 207A, Trade Union and Labour Relations Consolidation Act 1992. The provision allows an Employment Tribunal to make an uplift in relation to any relevant award that it makes to a claimant where there has been an unreasonable failure on part of a respondent to comply with the relevant provisions of the ACAS Code of Practice - in this instance the Code of Practice relating to the conduct of grievance proceedings.

8. As to that, it is apparent from the Employment Tribunal's reasoning that it did in fact consider

whether there should be an uplift based on potential non-compliance with the ACAS Code. In its reasons at paragraph 53 in relation to the claim for holiday pay, the Employment Tribunal said this:

“The Claimant has also claimed an uplift for non-compliance with the ACAS Code. The Tribunal finds no non-compliance and does not consider any uplift appropriate.”

9. As far as sick pay was concerned, the Tribunal concluded at paragraph 57 of its reasons as follows:

“The Claimant has also claimed an uplift by reference to the ACAS Code on the sums due, but the Tribunal finds that no uplift is appropriate, this is simply an oversight.”

10. As far as overtime is concerned, the Tribunal dealt with this a paragraph 62 of their reasons and said this:

“The Claimant succeeds in his claim for unpaid overtime in respect of twenty minutes on 14 February 2022. Based on his then hourly rate of £12.05 this amounts to £4.02 which is payable by the Respondent to the Claimant. The other claims for overtime are dismissed, together with a request for an uplift pursuant to the ACAS Code on the basis that no such uplift is justified.”

11. Whilst the ET did not expressly consider, for example, the guidelines set out in *Rentplus UK Ltd v Coulson* [2022] ICR 1313, it cannot be said that it failed altogether to consider the consequences of section 207A of TULRCA. The Tribunal was clearly alive to its provisions and plainly considered whether any uplift should be made. It is not an error of law for the Tribunal not to follow the guidelines suggested by the EAT in *Rentplus*, but if they had, and on the basis of the contents of paragraph 53 of the Tribunal’s reasoning, the Tribunal would inevitably have come to a halt at the point of considering whether or not there had in fact been a breach of the relevant ACAS Code. In addition, it does not appear either that the Claimant had raised any particular breach of the Code on which he sought to rely, or that on analysis there was in any event any basis on which he could do so. In particular, it is readily apparent that the Claimant having raised a grievance the Respondent then convened a meeting at which the Claimant was allowed to be accompanied. The Claimant was then informed of the outcome of the process and also informed of right of appeal.

12. The only question, therefore, is whether the reasoning that the ET has provided is deficient such that the parties could not know why they had won or lost. As to that, it is a matter of some concern that the Tribunal's reasoning appears to be slightly different as is set out in paragraphs 53, 57 and 62 respectively in relation to holiday pay, sick pay and unpaid overtime. However, given that no particular breach was alleged and no breach is apparent on the documents or information before me, whilst the reasoning is certainly brief, the conclusion at paragraph 53 that there was in fact no non-compliance with the provisions of the Code is, in my view, sufficient to discharge the Tribunal's obligation to give reasons for its decision. I therefore dismiss Ground 1 of the appeal.

13. Ground 2: Ground 2, as drafted and allowed to proceed, suggests that the ET was at fault in not considering the provisions of section 38(3) the Employment Act 2002 and failed to make an additional award of 2-4 weeks' pay in circumstances in which the Claimant had succeeded in a claim which fell within the provisions of schedule 5 of the same Act.

14. Section 38(3) provides that where a relevant award is made by a tribunal, and at the point at which the claim was begun, the employer was in breach of its duty to provide a written statement of particulars pursuant to section 1 of the Employment Rights Act 1996, the ET must make an award of two weeks' pay and may award a further two weeks' pay to a maximum potential award of four weeks' pay. The difficulty with this point, however, is that not only does it not appear that the Claimant raised this point at the time before the Employment Tribunal, but in any event, as he has accepted and indeed asserted in his skeleton argument prepared for the purposes of this appeal, he was issued with a statement in 2014 when his employment transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Respondent. His real complaint is not that the statement was not issued but that the terms in it are not as he says they should have been.

15. In those circumstances, the Respondent cannot be said to have been in breach of its section 1

duty at the point at which the Claimant began his claims in 2021 and 2022. For those reasons, I am forced to dismiss Ground 2 of the appeal.

16. Ground 3: Under this ground, the Claimant suggests that the Employment Tribunal was at fault in not considering his claims for overtime in so far as they related to times at which he had worked beyond his contracted hours of 5.00 a.m. to 1.00 p.m., as opposed to overtime referable to him having worked during rest breaks. As to that, the Employment Tribunal received evidence from Mr Richard Wade, the Respondent's general manager, who was responsible for covering the depot from which the Claimant worked.

17. From paragraphs 26-64 of his witness statement, Mr Wade set out his analysis of Claimant's claims relating to sickness, underpayment of hours worked and overtime payments. He had accepted that there had been an underpayment in the sum of £97.50, and a further underpayment representing twenty minutes of pay for the Claimant on 14 February 2022. He then analysed the Claimant's claims for overtime and concluded at paragraph 63 of his witness statement that as far as he could see the Claimant had been properly paid for all the hours that he had worked. Mr Wade's evidence was considered by the ET, which found as follows:

“61. Mr Wade has analysed all the claimed underpayments in his witness statement and cross referred to supporting evidence in the bundle. He identifies one underpayment on 14 February 2022 in respect of an allocation of twenty minutes signing off at the end of his duty. The Tribunal has considered this analysis and finds that it is accurate.

62. The Claimant therefore succeeds in his claim for unpaid overtime in respect of the twenty minutes from 14 February 2022. Based on his then hourly rate of £12.05 this amounts to £4.02 which is payable by the Respondent to the Claimant. The other claims for overtime are dismissed, together with the request for an uplift pursuant to the ACAS Code on the basis that no such uplift is justified.”

18. Given those findings of fact pursuant to which the ET has considered and accepted the evidence of Mr Wade, it seems to me there is no room for argument on the basis that it has erred in law in its analysis relating to the Claimant's claims for overtime. I therefore dismiss Ground 3 of the

appeal.

19. Ground 4: Under Ground 4, the Claimant suggests that the ET failed to address his claims for enhanced pay based on having worked on Saturdays. As to that, the Respondent makes the point that the claims made by the Claimant are not set out in the list of issues, not referenced in his schedule of loss and not covered in his witness statement. In addition, Mr Wade's witness statement at paragraph 44 addresses the payment which were claimed by the Claimant in his schedule of loss and, as already stated, the ET accepted the analysis made by him and, having done so, there is again no room for argument that the ET should have considered matters outside those claimed by the Claimant in his schedule of loss. I therefore dismiss Ground 4 of the appeal.

20. Ground 5: The claim made by the Claimant in relation to this ground of appeal is that the Employment Tribunal erred in its calculation of its holiday pay. The matter was dealt with at paragraphs 51-52 of the Tribunal's decision as follows:

“51. Holiday pay is calculated on a fifty-two week average. The Claimant has stated on page 58 of the bundle that the correct holiday pay is calculated on the basis of 9.54 hours (that being the daily number of hours pursuant to which he claimed his holiday pay) and this has not been denied. We therefore find that the holiday pay payable for these four days should have been calculated on the basis of his rate of pay (£13.00 per hour) multiplied by 9.54 hours a day.

62. He was actually paid on the basis of 7.54 hours a day and therefore has been underpaid by two hours per day. Four hours at two hours per day gives a shortfall of eight hours. Applying the £13.00 per hour rate to this, the Tribunal determines that he has been underpaid by £104.00 and that this amount is due from the Respondent to him.”

21. Whilst it appears to be the case that elsewhere in the material provided to the ET, the Claimant had referred to a figure of 9.94 (sic) as being the correct number of hours to be used for the purposes of the holiday pay calculation, I cannot see that it can properly be criticised for adopting a figure which the Claimant himself had put forward as being the correct one and had set out in his schedule of loss that that was the case. That figure was 9.54 hours pay for each day of his holiday.

On that basis, I am therefore obliged to dismiss Ground 5.

22. I should say, in relation to the Claimant himself, the following. First of all that he has presented his appeal with considerable care, skill and courtesy, but secondly, the ability of this Tribunal to overturn a decision made by the ET is limited. I can only do so in the event that I am able to identify an error of law as opposed to the ET should have found the facts in a different way that they did. Therefore, my room for manoeuvre and my ability to assist him at this stage is strictly limited as I am confined to the particular errors of law which are said to have been covered by Grounds 1-5, as to which I have been unable to conclude that the Tribunal has fallen into error.