



EMPLOYMENT TRIBUNALS

Claimant: Mr P Bernard

Respondent: B&M Retail Limited

Heard at: Wales (by CVP in public)

On: 21 August 2025

Before: Employment Judge Shotter (sitting alone)

REPRESENTATION:

Claimant: Not in attendance

Respondent: Stefan Brochwicz-lewinski

JUDGMENT

The Judgment of the Tribunal is:

1. The claimant was not an employee or worker of the respondent at the relevant time. The claim of **unlawful deduction of wages** is therefore dismissed because the Tribunal does not have jurisdiction to determine it.
2. In the alternative, had the claimant been a worker of the respondent at the relevant time, he was not entitled to be paid a national minimum wage under Regulation 51 of the National Minimum Wage Regulations 2015, his claim for unlawful deduction of wages if not well-founded and is dismissed.
3. The respondent is not seeking a costs order against the claimant for bringing a frivolous and vexatious claim that had no reasonable prospects of success.

REASONS

1. This is a public preliminary hearing to determine whether the claimant was a worker or employee of the respondent. The claimant did not appear despite being sent Notice of the Preliminary Hearing on 25 July 2025. This date was originally set down for a liability hearing converted to a preliminary

hearing to consider the issue of worker status. Having decided the claimant was not a worker, I had sufficient information in the alternative to conclude that he was not entitled to be paid a minimum wage in any event. The claim therefore fails on both grounds.

2. The start of this hearing was delayed giving the claimant time to appear, and respond to an urgent email sent to him by the clerk. The claimant has failed to respond and has given no reason for his non-attendance.
3. I have before me a bundle consisting of 94-pages, the witness statements confirmed as true under affirmation from Abi O'Toole, onboarding lead, on behalf of the respondent, and Shaun MacDonald, senior national account manager, employed by the Department for Work and Pensions ("DWP"). The witnesses were found to give credible evidence supported by relevant documentation, including contemporaneous documents referred to below. The claimant did not provide a witness statement.
4. I also had before me a detailed Skeleton Argument for which I am grateful. Mr Lewinsky made oral submissions after I had heard the evidence, and at the end of the hearing confirmed the respondent took the view that this unusual claim was frivolous, vexatious and had no reasonable prospect of success. Having considered this matter in some detail I agree. The respondent believes the claim is misconceived, but has taken the view, that costs should not be sought from the claimant who was unemployed when he took part in the work placement, and people should be assisted.
5. Oral judgment and reasons were given at the hearing. The respondent has requested written reasons. These are the written reasons.
6. Having considered all of the written evidence (including the claimant's pleading), the oral evidence and oral closing submissions, I have reached the following findings of facts.

Findings of Facts

7. The respondent is in the retailer business with over 700 stores in the UK.
8. The Respondent and the DWP acting through Jobcentre plus ("JCP") on 1 April 2023 entered into a Work Experience Programme Agreement (**WEP Agreement**). A copy of the WEP agreement is in the bundle. It records that
 - a. *"The purpose of this Agreement is to detail the terms and conditions under which work experience opportunities and Sector-based Work Academy Programme (SWAP) work experience placement(s) (together JCP Placements") arranged between JCP and You as the Employer, for Participants, operate"; and*

- b. *“Participants are not JCP employees or agents and that the Secretary of State for the Department for Work and Pensions (including for the avoidance of doubt Jobcentre Plus) shall not be liable for any loss or damage you may suffer as a result of Participants’ actions”*; and
 - c. ***“You will not make any payments to any Participant as these may affect their entitlement to benefit”***; and
 - d. ***“JCP will reimburse Participants for travel, childcare and replacement care costs as appropriate”*** [my emphasis].
9. Participants volunteer to take part in the Work Experience Programme on the understanding that it is unpaid work experience with the objective for people who are on benefits to gain experience and encouragement to enter the labour market. The participants volunteer for DWP arranged work experience placements, they are unpaid and do not qualify for national minimum wage under Regulation 51 of the National Minimum Wage Regulations 2015. The participants continue to receive benefits throughout the placements that can last up to eight weeks, and if linked to apprenticeship opportunities, up to twelve weeks. Participants can leave at any time without any adverse effect on them or the benefits they receive.
10. The DWP’s Jobcentre Plus Work Experience Programme has been in place since 2011 and thousands of people have benefited under the scheme. The respondent has taken part in the scheme since 2023.
11. To be exempt under Regulation 51 NMW, the scheme must:
- a. Be designed to provide training, work experience, or temporary work, or assist in obtaining work.
 - b. Be made or funded (in whole or part) by the Secretary of State under legislation such as:
 - i. Section 2 of the Employment and Training Act 1973
 - ii. Section 17B of the Jobseekers Act 1995
 - iii. Section 100 of the Apprenticeships, Skills, Children and Learning Act 2009

Jobcentre Plus Work Experience Programmes, which are government-backed falls within these exemptions.

12. On 12 September 2024, the claimant, who was in receipt of benefits, was referred for a Work Experience placement with the respondent by the DWP.

The advertisement to which the claimant was referred is dated 12 September 2024. The start date of the work experience placement was 19 September 2024 and end date 11 November 2024. The opportunity was described as “work experience (external employer)” with a description of the respondent. There is a reference to “work experience programme” the aim of which was “to offer individuals who are interested in Retail careers an opportunity to either get back into the workplace or to gain firsthand experience in a retail environment. All colleagues will be buddied up throughout their placement with an experienced member of staff to ensure they get the best quality work experience. “

13. The potential outcome of the work experience was “a guaranteed interview” and offer of employment if there were vacancies and being placed in the talent bank if there were not. The offer of employment was not a foregone conclusion, and a number of participants either left the work experience programme early or were unsuccessful at interview.
14. It was made clear in the advertisement that “this is an unpaid work experience and there are no guarantees of a paid vacancy. The job centre can support with any travel to work or clothing barriers. “
15. The claimant volunteered to take part in the work experience programme, and it is clear from message he sent to his work coach and entry in his universal credit that he enjoyed the experience. The claimant wrote on the 18 Oct 2024 at 9:52am: *“Hi do you know when the last day for my work experience is at B&M. It’s a good place to work.”*
16. On his start date the claimant took part in an induction into the Work Experience Programme and signed the induction sheet on 15 September 2025. The claimant had not entered into a contract of employment with the respondent, and not been interviewed by the respondent for an employment role. The form signed by the claimant was titled “Work Experience Colleague Details Form.”
17. The voluntarily claimant took part in the work experience programme in the knowledge that it was unpaid and he was to continue receiving benefits for the duration of the actual dates; 25 September 2024 to 25 October 2024. During this period, the claimant raised no issues with the respondent or DWP about the fact the respondent was not paying him.
18. The claimant was interviewed and was unsuccessful in all respects, including being placed in the talent pool. It is clear from the information in the bundle that other participants in the programme were successful and either obtained employment with the respondent or were placed in the talent pool pending a vacancy. The fact the claimant was interviewed at the end of

the 4-week programme and, if successful an employment contract could have been offered, is strong evidence that the claimant was taking part in a Work Experience Programme. I find, as recorded in the claimant in his 18 October 2024 communication, the claimant fully understood his work experience was to finish. The claimant's pleaded case that he was interviewed and given a start date with trial shifts, has no basis. It is notable the claimant claims at para.9.2 of the ET1 the respondent failed to issue him with a "statement of employment-contract." When the claimant wrote on the 18 Oct 2024 at 9:52am: *"Hi do you know when the last day for my work experience is at B&M. It's a good place to work."* there is no mention of the respondent failing to provide a statement of terms and conditions of employment when he was allegedly working for in the capacity of an employee as opposed to a volunteer for work experience. I concluded the claimant did not chase up the respondent for an employment contract because he was fully aware he was voluntarily taking part in a work experience programme arranged for him by the job centre, he continued to receive benefits unaffected by the work experience programme and was required to continue making entries in respect of the universal credit he was receiving.

19. I am further persuaded that there was no mutuality of obligation between the claimant and respondent. In addition, the claimant first submitted a grievance (prior to entering into ACAS Early Conciliation on 21 December 2024) on 15 November 2024 claiming the respondent had acted illegally by not paying him wages and holiday pay, and he raised no complaint or grievance throughout the period when he allegedly believed he was an employee.

The law

20. I am grateful to Mr Lewinski for setting out the relevant law in his Skeleton Argument as follows:

"From the National Minimum Wage Act 1998:

3 Exclusion of, and modifications for, certain classes of person

(1) This section applies to persons who have not attained the age of 26.

(1A) This section also applies to persons who have attained the age of 26 who are—

....

(c) participating in a scheme designed to provide training, work experience or temporary work;

(2) The Secretary of State may by regulations make provision in relation to any of the persons to whom this section applies—

(a) preventing them being persons who qualify for the national minimum wage;
....

54 Meaning of “worker”, “employee” etc

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act “worker” (except in the phrases “agency worker” and “home worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment; or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

1. The relevant sections of **Reg. 51 NMWR** provide as follows:

Part 6 Exclusions

51 Schemes for training, work experience, temporary work or for seeking or obtaining work

(1) A person who is participating in a scheme which meets the requirements in paragraph (2) does not qualify for the national minimum wage for work done as part of that scheme.

(2) The requirements are that the scheme—

(a) is designed to provide training, work experience or temporary work, or to assist in the seeking or obtaining of work, and

(b) is, in whole or in part, made or funded by—

(i) the Secretary of State under section 2 of the Employment and Training Act 1973 or section 17B of the Jobseekers Act 1995 or section 100 of the Apprenticeships, Skills, Children and Learning Act 2009; ...

2. While not directly relied upon by the R, for completeness, it may be noted that Reg 52 NMWR provides as follows:

52 Schemes for trial periods of work

(1) A person who is participating in a trial period of work with an employer for a period of six weeks or less, as part of a scheme which meets the requirements in paragraph (2), does not qualify for the national minimum wage for the work done for that employer in that period.

(2) The requirements are that the scheme—

(a) is designed to provide training, work experience or temporary work, or to assist in the seeking or obtaining of work, and

(b) is, in whole or in part, made or funded by—

(i) the Secretary of State under section 2 of the Employment and Training Act 1973 or section 17B of the Jobseekers Act 1995 or section 100 of the Apprenticeships, Skills, Children and Learning Act 2009;

3. Further relevant legislative provisions:

Employment and Training Act 1973

2 Functions of the Secretary of State

(1) The Secretary of State shall make such arrangements as he considers appropriate for the purpose of assisting persons to select, train for, obtain and retain employment suitable for their ages and capacities or of assisting persons to obtain suitable employees (including partners and other business associates).

(2) Arrangements under this section may—

(a) include arrangements for providing temporary employment for persons in Great Britain who are without employment;

(b) include arrangements for encouraging increases in the opportunities for employment and training that are available to women and girls or to disabled persons;

(c) subject to the restriction of paragraph (a) of this subsection to persons in Great Britain, be made in respect of employment and training anywhere in the United Kingdom or elsewhere;

(d) include provision for the making of payments by the Secretary of State, by way of grant or loan or otherwise, to persons who provide facilities in pursuance of the arrangements, to persons who use those facilities and to other persons specified in or determined under the arrangements;

(e) include provision for the making of payments to the Secretary of State by other parties to the arrangements and by persons who use those facilities;

(f) include arrangements for securing that assistance in relation to the matters mentioned in subsection (1) of this section is provided by persons other than the Secretary of State."

Conclusion

21. The claimant took part in the DWP's Jobcentre Plus Work Experience Program between the 25 September 2024 to 25 October 2024. Mr Lewinski is correct in his submission that the Scheme is formalised, with guidance on the government website, and written terms for employers to agree to. It is regarded as a scheme which falls within the exemption of Reg 51. The standard agreement between the DWP and respondent for putting in place a work experience arrangement provided the respondent would make no payments to the claimant.
22. The claimant's participation was voluntary and he continued to receive benefits that were unaffected throughout the period of participation. He could claim expenses from the DWP and could leave the scheme whenever he chose to do so, without any consequences to him. The claimant was informed how the scheme worked and that it would be unpaid, and he was aware that the respondent had arranged work experience and he was not being offered employment. There was no offer, acceptance and consideration or mutuality of obligation. The claimant had not agreed to undertake any work or services for the respondent, and the only agreement was between the respondent and DWP for work experience to be made available to those on benefits. There was no obligation on the claimant to turn up to work or provide services, he was a volunteer and could decide not to participate without any breach of obligation.
23. In conclusion, the claimant does not fall under the definition of worker or employee set out in section 54 of the National Minimum Wage Act 1998. The claimant was not an employee or worker of the respondent at the relevant time. The claim of **unlawful deduction of wages** is therefore dismissed because the Tribunal does not have jurisdiction to determine it.
24. In the alternative, had the claimant fallen under the definition of worker or employee (which for the avoidance of doubt he has not) he was not entitled to claim any payment from the respondent being a participant on a work experience scheme covered by Reg 51 National Minimum Wage Regulations 2015, his claim for unlawful deduction of wages if not well-founded and is dismissed.

Approved by:

Employment Judge Shotter
21 August 2025

JUDGMENT SENT TO THE PARTIES ON:

28 August 2025

Kacey O'Brien
FOR THE TRIBUNAL OFFICE:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>