



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Waite

Respondent: Regency Oak Landscapes Limited

Heard at: Nottingham by CVP

On: 16 May 2025

Before: Employment Judge Siddique

Representation

Claimant: In person

Respondent: Mr Ushieagu- Litigation consultant

RESERVED JUDGMENT

1. The complaint of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 is well-founded. The respondent made an unauthorised deduction from the claimant's pay in respect of the period 1 May–11 July 2024. The respondent is ordered to pay to the claimant the gross sum of £227.43 deducted from pay.
2. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2)/16(1) of the Working Time Regulations 1998. The respondent is ordered to pay to the claimant the gross sum of £1015.34
3. The respondent failed in its duty to provide the claimant with a written statement of the main terms of employment complying with section 1 Employment Rights Act 1996. Pursuant to section 38 of the Employment Act 2002 the above award is increased by the sum of £1153.80, being two weeks' gross pay.

REASONS

Introduction

1. The Claimant is Mrs Leanne Waite and the Respondent is her former employer Regency Oak Landscapes Limited. The Claimant brings a claim for unpaid wages and unpaid holiday pay.
2. The claim was originally due to be heard and decided on 03/02/2025 but it was converted to a preliminary hearing for case management, by Judge

Heap, as the statements and evidence did not adequately address the issues to be decided. Case management orders were made on the 6th February 2025 to allow a full merits hearing on the next listed date.

Claims and Issues

3. The issues were discussed at the start of the hearing and were confirmed to be the unauthorised deduction of wages and unpaid holiday leave as confirmed at the preliminary hearing.
4. As noted at the preliminary hearing the claimant was initially seeking £977 in unpaid wages, which the Respondent agreed to pay in their ET3 Response, and by the date of the preliminary hearing, had in fact been paid to the Claimant. The Claimant did indicate that, having seen the documentary evidence disclosed by the Respondent, she believed additional sums were owed in unpaid wages. Subsequent to the preliminary hearing, the Claimant sought to amend the figures in her claim form. It was confirmed that the Claimant's application to amend the figures claimed for unpaid wages was permitted by Judge Brown in correspondence sent to the parties dated 7 May 2025.
5. There was a dispute about whether a £200 paid to the Claimant in February 2024 was in respect of wages or for the Claimant's travel expenses.
6. Additionally, in respect of remedy an ACAS uplift was sought by the Claimant as well as reimbursement of bank charges said to have been incurred by the failure to pay wages.
7. A separate award was sought by the Claimant for the failure to provide a written statement of particulars.
8. If liability was established it was agreed that the Tribunal would also go on to determine the appropriate remedy.
9. It was agreed at the preliminary hearing that a written statement of particulars had not been provided by the Respondent. It was also agreed that the Claimant had accrued 14.8 days of holiday by the date of termination of employment. The issue in dispute was how many days had already been paid for.
10. Despite the case management orders for the witness statements to address the issues to be determined, and whilst the witness statements did add additional detail it was still unclear which days it was claimed were unpaid and why. I therefore asked the parties to deal with each month in turn and explain which days were said to have been unpaid and why so that the Tribunal could determine if there was an unauthorised deduction of pay.

Procedure, documents and evidence heard

11. In the course of the hearing I heard evidence from the Claimant and Mr Philip Decosimo who is a Director for the Respondent. They both adopted their statements and were cross-examined.
12. There was some confusion at the start of the hearing as the Claimant appeared to have been sent a draft bundle but this was resolved with the Claimant being sent the correct bundle running to pages 194.
13. In submissions it was argued, by Mr Ushieagu, on behalf of the Respondent that the Claimant's evidence could not be trusted, due to inconsistent evidence on days she claimed to have worked, and that the Tribunal should err on the side of caution and accept the employer's evidence as reliable. It was submitted that given the Claimant's credibility no further wages were due and that the Tribunal should trust the Respondent who would have kept records.
14. The Respondent agreed that 14.8 days holiday pay had accrued prior to the end of employment. However, the evidence in the payslips demonstrated that 6 days holiday pay was given leaving a balance of 8.8 days. When I sought clarification on whether it was accepted that 8.8 days was due Mr Ushieagu confirmed that it did appear that 8.8 days were due although he did not have instructions to accept this, he could not mislead the court.
15. In respect of the ACAS uplift the Respondent argued that no grievance was raised and as such the ACAS uplift would not apply.
16. In respect of the additional financial losses claimed, such as the bank charges, the Respondent submitted that the bank statements were heavily redacted it was not possible to determine why the Claimant was in overdraft and if any of the losses flowed from the Respondent's actions.
17. The Claimant agreed that the unpaid wages she was claiming were the days raised in evidence as well as the £81.29 discrepancy between what the payslips indicated would be paid and what was paid into her account. The Claimant argued that the Respondent's evidence was unreliable as he did not keep records only texts. In respect of days she worked she maintained that she would not have been sending emails/texts if not working on those days. In respect of the disputed £200 she maintained that this was an expense for fuel and not a payment in advance of wages. She could not identify any documents in the evidence that related to an expenses claim.
18. With respect to outstanding holidays she now agreed, having seen the payslips, that it was only 8.8 days out of the original 14.8 that were now unpaid.
19. In respect of an ACAS uplift she maintained that she was entitled to one as she had done all that she could do to raise a grievance and was entitled to an uplift.

20. In respect of the failure to provide a statement of particulars. The Claimant maintained that she should be awarded 4 weeks award as it had led to many difficulties, including with her Universal Credit payments.
21. In respect of additional financial losses she had redacted her bank statement as she understood from the previous hearing that she should redact that which was not relevant, so she only included all charges from when she left until now.
22. In reaching my decision, I had regard to the written evidence provided in the final hearing bundle, the witness statements and the evidence I heard during the hearing.

The Relevant law

23. The claim for unauthorised deductions is governed by the provisions of the Employment Rights Act 1996. Section 13 sets out the right not to suffer unauthorised deductions from wages. I have to consider whether the amount of wages paid on the relevant occasion(s) was less than what was 'properly payable' to the claimant. I have to consider whether such a deduction was properly authorised pursuant to statute or contract. Alternatively, had the employee previously signified their consent to the deduction (section 13(1) ERA 1996). Section 13(5) indicates that a variation to the contract cannot have effect to authorise a deduction which was made before the date of the variation in question. Likewise, the worker's consent/agreement must be signified before the relevant deduction is made (s13(6)). A worker may bring a complaint for unauthorised deductions from wages to the tribunal pursuant to section 27 Employment Rights Act 1996. Pursuant to section 24(2) Employment Rights Act 1996, where the Tribunal finds a complaint to be well founded it may, if it considers it appropriate in all the circumstances, order the employer to compensate the claimant for financial loss attributable to the matter complained of.
24. In the absence of a contractual agreement to the contrary, holiday entitlement is governed by the Working Time Regulations 1998. Regulation 13 and 13A set out the amount of annual leave a worker is entitled to. Regulation 14 provides for payment, on termination of the employment, for accrued but untaken annual leave as at the date of termination. A claim for failure to pay the accrued but untaken annual leave on termination can be pursued via regulation 30 or as a claim for unauthorised deductions from wages pursuant to the statutory provisions set out above.
25. An uplift on compensation of up to 25% can be made where the respondent was unreasonably in breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures.
26. Pursuant to section 1 of the Employment Rights Act 1996, a worker is entitled to a statement of initial employment particulars. Section 38 of the Employment Act 2002 provides that an award of compensation may be made in relation to the breach of section 1 (ERA 1996) where the claimant

has pursued a claim or claims within one of the relevant jurisdictions listed in schedule 5 to the Act. The s38 award is essentially parasitic on a successful claim in one of the listed jurisdictions. A minimum award, equal to two weeks pay, must be paid unless there are exceptional circumstances which would make an award unjust or inequitable. The Tribunal may, if it considers it just and equitable in all the circumstances, pay the higher amount, equal to four weeks' pay.

Findings of fact

27. I find the Claimant was employed by the Respondent from 21st August 2023 until she resigned on 11 July 2024. The Respondent, Regency Oak landscaping, is a building company that specialises in providing Fencing & Landscaping installation services to New House builders and the public. It has one head office which is in Essex. The Claimant's job entailed her working as an office administrator, which she did from Nottingham.
28. I accept the Respondent's evidence that he hired the Claimant in August 2023, as at the time she was his wife's best friend and the job at that time would help her. I accept the Respondent's evidence that he thought that the job would be for a temporary period, given how far the Claimant worked from the Respondent's site, however there is no evidence to satisfy me that this was communicated to the Claimant. Indeed, the Respondent accepts that no statement of particulars of employment was provided to the Claimant.
29. It was agreed that the Claimant was required to work 40 hours a week, Monday to Friday between 8am and 4pm. The Claimant worked remotely as she lived a long way from the Respondent's work site in Essex.
30. In evidence it was confirmed by Mr Decosimo that, unless informed to the contrary, he would expect that the claimant would be working on Mondays to Friday and would be aware of the work done from a catch-up chat at the end of the day. He expected a text or WhatsApp message for any days she was not working, such as those days she was sick, and those days taken as a holiday. This was broadly consistent with the Claimant's evidence and I find it to be the procedure used to establish days worked and not worked. Mr Decosimo confirmed that those texts/WhatsApp messages would then inform what information he gave to the accountant who would then be responsible for issuing payslips.
31. The Claimant said that as well as messaging she also used a calendar on her phone, which could be accessed by Mr Decosimo so he could see what days she worked. I find that this calendar, some screenshots of which were provided in evidence, was not a reliable means of determining if the Claimant worked. Firstly, it may just indicate an intention to work and is not evidence of work actually being undertaken. Furthermore, this was not mentioned by the Respondent in evidence as a means of determining if the claimant was working and the claimant when cross-examining him did not suggest that he should have been checking any calendar to determine her work days.

32. In evidence the Claimant and Respondent raised the following days as being in dispute as to whether there were unauthorised deduction from wages:

January

33. For January the claimant says she worked for 18 days whereas the Respondent says she only worked on 17 days with one day taken as sick. According to the accountant's calculation she was off sick/unpaid on 24th January. There is a WhatsApp message from the Claimant sent on 22nd January 2024 confirming she would be off work on Wednesday 24th January in order to attend a funeral (page 151). Whilst the claimant said in evidence she believed she did work on the 24th January 2024 I find that she did not work on this day as there is a clear intention indicated that she would not do so and no satisfactory evidence has been provided to indicate that her intention changed or that she did in fact work on that date.

34. In respect of the four non- trading days in January the Claimant accepts she did not work on those days but she states that she should have been paid as she was available for work on those days. I accept the Respondent's evidence that it was customary in his workplace that these were taken as unpaid days as the trade they worked in did not work on those days. The Respondent explained that some of the employees chose to take those days as annual leave in order that they could be paid on those days. It is apparent that the Claimant did not take those days as annual leave so she received no payment on those days. There is no evidence that in the run up to those non-trading days or after receiving payment for January that she sought to clarify if she would be paid on a non-trading day, days in which she accepts she did not work. Nor is there any evidence that she notified the employer that she was willing and available to work on those days. I take into account that in her ET1 form she indicated that her problems with her pay and payslips began in May to July 2024 when her payslips were either not provided or incomplete. Consequently, this means she did have her payslip from January, and would have been aware, from the details on the payslip, that she was only paid for 18 days in that month. I find it likely that the Claimant was aware and agreed that she was not required to work on the four non-trading days and that they would be unpaid. Consequently, there was no unlawful deduction of wages for those dates as she did not work on those dates and there was agreement that she would not be paid on those dates.

February

35. For February the Claimant says she worked 22 days however the Respondent says she only worked and was paid for 21 days. The difference is accounted for by the Claimant, on the basis that she worked on Saturday 3rd February 2024. I would pause there to note that the Claimant's evidence is that her normal working days are Monday to Friday. The only documentary evidence that the Claimant can point to is a calendar entry on

her phone provided as a screenshot stating that “Leanne worked” (page 55). As noted above I am not satisfied that such evidence is a reliable indicator of work. The Claimant is not able to point to any other evidence such as emails or WhatsApp messages to indicate any work was conducted on that day and no prior approval was sought or given for her to work and be paid for that day, which was outside her normal work days. I find that the Claimant has not established that she worked on this date.

March

36. The parties accepted that the correct number of days (21) were paid for in this month. The Claimant accepted that she had incorrectly added up 22 days in her paperwork and calculations.

April

37. For April, in evidence it was clarified that the days the Claimant was indicating that she was not paid was for the weekend of 20th and 21st April, which she claimed she worked on. In evidence she indicated that she had evidence for her work at page 56 and 59 however page 56 were WhatsApp messages for the 16 and 23 April and page 59 was just a screenshot for a calendar entry for the 20 and 21st. I find that the Claimant has not proven that she worked on these days or was entitled to payment. These were not her normal work days. If she was required to work on these days I would expect to see some evidence of the request and that she completed work on that day. The Respondent has disputed that she was required to work. I find that the Claimant has not established that she worked on a weekend, which was outside her usual working days.

May

38. In respect of May the Claimant says that she worked on the 2nd and 3rd May and the Respondent asserts that she was off sick and therefore not paid on those days. I find that the Claimant was working on the 2nd May as this is evidenced by work related WhatsApp messages, phone logs and emails, spaced throughout the day consistent with her working on that day (pages 62-65).
39. However, I am not satisfied the Claimant worked on the 3rd May. Firstly, the Claimant, sent a WhatsApp message to the Respondent on 2nd May that she would not be working the next day as “nick’s dad just passed”(page 158) that date is also consistent with WhatsApp messages to Mr Decosimo’s wife on 2nd May (page 169). The Claimant’s only supporting evidence of work on that day, 3rd May, is one email. The fact that the Claimant apparently logged on to send one email does not mean she worked a full day, in light of her previous indication that she would not be working (page 65).

June

40. For the month of June the Claimant says she worked on the 6th June and 17th June but was unpaid. The Respondent position was that she did not work on 6th June and only worked a half day on 17th June so was not paid

for those 1 ½ days. The 6th June was a usual working day so I find the Claimant would have worked on that day unless she had messaged the Respondent to say she would not be working. The Claimant did message the Respondent on 5th June to say that the “phone is staying at home tomorrow as I’m at the funeral” (page 161). I find this to be a clear indication that she would be unavailable for work the whole day, the message did not qualify her unavailability to the morning, afternoon or only to the duration of the funeral. In evidence the Claimant said she did attend the funeral but she did take the phone with her in the end. In evidence, she was unable to identify any documentary evidence in support of her working on that day. I find there is no satisfactory evidence that she worked on that day, consequently she was not entitled to pay on that day.

41. In respect of the 17th June the Claimant confirmed she had an appointment for a blood test but made up her hours by starting a little earlier and finishing later. This intention to start earlier and thereby make up for the time taken for the appointment was indicated in her message of the 8th June (page 68) and the documentary evidence was that she was back to work by 10:27 taking calls and sending messages later that afternoon. I find she was entitled to the full day’s pay on the 17th June. There was therefore an unauthorised deduction of half a day’s pay on 17th June.

July

42. In July, the final month of employment the Respondent’s position is that the Claimant did not work on the 5th July 2024 and half of the 11th July 2024. The Respondent paid her for 7.5 days work whereas the Claimant believes she was entitled to payment for 9 days. In respect of the 5th July I take into account the evidence of the WhatsApp messages provided by Mr Decosimo which indicate that on the 5th July the Claimant would, for at least part of the day, be travelling (page 168). However, these relate to messages from the Claimant to his wife’s phone and there was no message to the Respondent to suggest she would not be working on the 5th July. The Claimant was a remote worker and as such was not required to work from a specific location on that date. The Claimant confirms that she worked from her nan’s house and also from Mr Decosimo’s home when she visited his wife. There is also documentary evidence including WhatsApp messages and calls consistent with her working that day (page 70-72). I find she did work on that day and was entitled to be paid.
43. In respect of the 11th July the Claimant was clear that she did work, on what was her full last day of employment, and referred to the documentary evidence in her bundle of WhatsApp messages and calls (pages 73-75). Her evidence was not seriously challenged and I note that the Respondent, in their ET3, initially indicated that they had asked the Claimant to work until the 26th July (page 20). On balance I find the Claimant did work the full day on 11th July and was entitled to full payment for that date and not the half day’s pay indicated by the Respondent. I find there was an unauthorised deduction of 1.5 days pays in July.

Wage payment discrepancy

44. There was an issue around whether a payment of £200 to the Claimant in February was an advance on wages for that month or fuel expenses. The Claimant argues that it was a payment for fuel to travel and Mr Decosimo stated that it was a “sub”, which he clarified to mean an advance on wages. Mr Decosimo has provided screenshots of a WhatsApp message from the Claimant requesting a “sub” (page 165). I find that this £200 payment was an advance of wages and not for an expenses claim. In this respect I note that the Claimant has not provided evidence of any expenses claim being made or a receipt for the expenses incurred.
45. The Claimant also states that the net amount on the payslips does not match the amounts paid into her bank account. Comparing the net figures on the payslips with the bank statements it is apparent that cumulatively in the February and March payslips there was a shortfall of £81.29 between the net pay on the payslips and the bank statements. However, I found above that the £200 paid to the Claimant on 02/02/2024 were wages and not expenses, so when these are offset it indicates an overpayment of £118.71 to the Claimant in respect of wages.

Bank Charges

46. The Claimant also sought reimbursement for bank charges, which she claimed were due to non-payment of wages. At the preliminary hearing, Judge Heap indicated that the Claimant would have to provide documentary evidence to evidence what sums were incurred, when and why (paragraph 15). The Claimant’s evidence, including bank statements confirmed that she incurred various bank charges however her bank statements were heavily redacted and no further evidence was given to explain why they were incurred or that there was a causal connection between the non-payment of wages and the overdraft and other charges. I find that the Claimant has not proven that these various bank charges were in connection to the non-payment of wages as there could have been pre-existing or alternative causes for bank charges being incurred.

Unpaid Holidays

47. Turning to holiday entitlement both parties agreed that the Claimant had accrued 14.8 days of holiday prior to leaving her employment with the Respondent. The issue was how many holidays had already been taken and paid for. The Claimant in her ET1 claimed that she was due payment for 14.8 days of holidays. However, after being taken to her payslips, which identified days paid as holidays, she accepted that she has been paid for 6 days and that the balance of 8.8 days was now due. This was also the position taken by the Respondent in submissions. I find, looking at the evidence of the payslips that payment of 6 days holidays was made leaving a balance of 8.8 days due, but not yet paid at the end of the employment.

ACAS uplift

48. The Claimant sought an adjustment to the compensation under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992. The Claimant says she raised a grievance about her wages by telephone and WhatsApp messages. In evidence when asked to identify which WhatsApp message in particular she sought to identify as a grievance of the unauthorised deduction of wages she was unable to identify anything in particular. I have looked through the WhatsApp messages but like Judge Heap I am not satisfied that they amount to a grievance having been made.

Statement of particulars

49. As noted at the preliminary hearing the Respondent accepts that he failed to provide a statement of particulars to the Claimant and that a claim for unpaid wages was well-founded. The Respondent did not suggest there were any exceptional circumstances and the Tribunal did not find there to be any. The Tribunal must therefore make an award of two weeks pay to the Claimant. I have considered whether it is just and equitable to make an award of four weeks pay. I have taken into account that the Respondent is a small employer, with approximately 3 employees and no separate HR department. I accept that Mr Decosimo offered the job initially because the Claimant was his wife's friend and he did not expect the job to be permanent. This does not excuse his responsibility under the law to provide a statement of particulars and if he had provided a statement it may have meant that some of the disputes as to pay and holiday entitlement would not have arisen, although that is not certain as many of the disagreements are due to generally poor record keeping. I take into account what the Claimant says about the difficulties she had with her Universal Credit, however these difficulties primarily arose from the way her income was reported by the employer to HMRC and was not directly connected to the failure to provide a statement of particulars. Looking at all the circumstances an award of 2 weeks is appropriate and in all the circumstances it would not be just and equitable to increase the award to four weeks' pay.

Conclusions

50. As found above the Claimant has established that there were unauthorised deductions of wages on 2nd May 2024 (full day's pay), 17th June (half day's pay), 5th July (full day's pay) and 11th July (half day's pay).

51. In total the Claimant has established that she suffered from unauthorised deductions of wages amounting to a total of 3 days, which based on the agreed daily rate of £115.38 amounts to £346.14. However, this has to be offset by the overpayment of £118.71, as found above at paragraphs 44-45, meaning an award of £227.43 gross is still owed in respect of unpaid wages.

52. As noted above I did not find that the Claimant had established that she was entitled to a reimbursement of bank charges as she had not established these had been attributable to the non-payment of wages or holiday pay.

53. In respect of payment due for holidays accrued but not taken or paid for at the end of employment this amounted to 8.8 days which at a daily rate of £115.38 amounts to £1015.34 gross.

54. As found above I did not find a breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures had been proven by the Claimant so no uplift is due on this amount.

55. Finally, as found above, due to the Respondent's failure to provide a statement of initial particulars an award of 2 weeks' pay, £1153.80 (10 x 115.38), pursuant to section 38 Employment Act 2002 is awarded.

56. In total the gross amount awarded to the Claimant is £227.43+ £1015.34+ £1153.80= **£2396.57**

57. For the reasons given above the claim for unauthorised deduction from wages is well-founded and succeeds as does the claim for unpaid holiday pay. An award is also made for the failure to provide a statement of particulars.

Approved by:

Employment Judge Siddique

12 June 2025

JUDGMENT SENT TO THE PARTIES ON

.....20 June 2025.....

.....
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. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/