



EMPLOYMENT TRIBUNALS

Claimant: Mr MD Thomas

Respondent: Gileston Manor Properties Ltd

Heard at: Cardiff (in public)

On: 8 April 2025

Before: Employment Judge R Brace

Appearances

For the Claimant: In person (accompanied by his father)

For the Respondent: Mr A Gloag (not permitted to participate)

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages in respect of pay from the period 1-12 July 2024 is well-founded. The Respondent made an unauthorised deduction from the claimant's wages in the period 1-12 July 2025.
2. The Respondent shall pay the Claimant **£159.25**, which is the gross sum deducted. The Claimant is responsible for the payment of any tax or National Insurance.

Notice Pay

3. The complaint of breach of contract in relation to notice pay is dismissed on withdrawal by the Claimant.

Holiday Pay

4. The complaint that between April – 12 July 2024 the Respondent refused to permit the Claimant to exercise the right to paid annual leave under the Working Time Regulations 1998 is well-founded. The claim for compensation for injury to feelings is not well-founded and is dismissed.

Written Itemised Pay Statements

5. The Respondent failed to give the Claimant written itemised pay statements as required by section 8 Employment Rights Act 1996 in the period of employment to July 2024.

Failure to provide a written statement of employment particulars

6. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars.

The Claimant's remaining Amended Claims, and whether any further awards in respect of the failure to give itemised pay statements and/or failure to provide a written statement of employment particulars in the Current Claims, including the amount of week's pay, will be determined at the adjourned final hearing when listed (to be confirmed by Notice of Hearing).

Written Reasons

Claims

1. The Respondent did not present a response to this claim and on 28 January 2024, was informed that under rule 22 Employment Tribunal Procedure Rules 2024 a judgment may be issued and that whilst they were entitled to receive notice of any hearing, they may only participate in any hearing to the extent permitted by the Employment Judge who hears the case.
2. The final hearing in this case was heard in person on 8 April 2025.
3. The Respondent attended but requested only to make submissions. I do not permit that currently.
4. In the ET1 claim, the Claimant indicated that he was bringing claims of unfair dismissal together with claims for notice pay, holiday pay and arrears of pay (ET1 Box 8.1) in the sum of £1,767.00 (ET1 Box 9.2) as follows:
 - a. £159.25 in respect of 12.25 hours worked unpaid;
 - b. £858.00 for 'statutory holiday'; and
 - c. £750.00 for pain and suffering for being ignored and lied to and receiving no documentation from the Company.
5. The content of ET1 Box 6.5 and 8.2 indicated that the Claimant was also bringing a claim for failure to provide a written statement of main terms and conditions, failure to provide pay statements (i.e. payslips) and a failure to provide him with a P45 if his employment had ended.

6. I refer to these as the 'Current Claims'.

The Claimant

7. The Claimant has a brain injury which he tells me he has lived with since he was 3 years' old. I did not require evidence from the Claimant at this stage regarding whether he falls within the definition of a disabled person under s.6 Equality Act 2010 as this is unnecessary at this stage, but had discussion with him regarding what reasonable adjustments might be required for him to participate in this hearing. He clarified that routinely interrupting people, but not necessarily being aware that he is doing it and getting emotional are matters that he now lives with. Both behaviours had been exhibited during the hearing and I indicated that as an adjustment I would note that and not take issue with any interruption and confirmed to him that I would record that in this record of hearing. He and I agreed that he might require additional processing time and as the hearing progressed.

Clarification of Claims

8. In clarifying the claims within the ET1, the Claimant maintained that his employment had not been terminated by either party and that his employment was continuing, effectively on unpaid suspension.
9. We discussed that claims for accrued untaken holiday pay could not be brought until after the employment ended. The Claimant confirmed that he was bringing a complaint under regulation 30 Working Time Regulations 1998 ("WTR 1998") that the Respondent had refused to permit the Claimant to exercise the right to paid annual leave.
10. After discussion regarding his claim for notice pay, the Claimant also confirmed that he wished to withdraw his claim for breach of contract/notice pay. I confirmed that I would be issuing judgment dismissing that complaint on that withdrawal. The Claimant confirmed that he understood this.
11. The Claimant was also informed that the Tribunal has no jurisdiction to consider a complaint regarding P45s and was not a legal claim that he could bring. He understood that.

Hearing

12. Evidence was then taken from the Claimant on his Current Claims with me accepting his written statement as his evidence but asking some additional questions.
13. In those course of that live evidence, on what I have referred to as the Current Claims, the final hearing was adjourned part heard to a date to be determined as an application was made by the Claimant made during that evidence to amend his ET1 to bring:

- a. an unlawful deduction from wages claim in respect of continuing deductions from July 2024, the Claimant maintaining that his employment was continuing, and
 - b. discrimination complaints related to comments he asserts was made by Archie Hoyi of the Respondent.
14. The Claimant was aware that in doing so, the Respondent would be permitted to defend any claims that I would allow by way of an amendment.
15. The Claimant did make a written application to amend following the adjournment of the final hearing on 22 April 2025 and that application was considered by me at private case management on 19 August 2025.
16. The Claimant has been permitted to rely on additional claims ("Amended Claims") which will be considered at the adjourned final hearing and after the Respondent has been given the opportunity to respond to such Amended Claims.
17. I confirmed to the parties at that case management that I would therefore now provide a Reserved Judgment on the Current Claims that had been considered in April pending any determination on the Amended Claims rather than reserve all my decisions to that later hearing.
18. These are therefore the written reasons for the Current Claims only.

The applicable law

19. The relevant provisions are as follows

Unauthorised deductions – Employment Rights Act 1996 ("ERA 1996")

Section 13 ERA 1996 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction

Section 14 ERA 1996 Excepted deductions.

(1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

(a) an overpayment of wages, or

(b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

15. Section 23(2) ERA 1996 provides that an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made. Section 23(3)(a) ERA 1996 provides that where a complaint is brought in respect of a series of deductions or payments, references to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

Working Time Regulations 1998 ("WTR 1998")

16. Pursuant to Regulation 13 WTR 1998, a worker is entitled to four weeks' annual leave in each leave year beginning on such date during the calendar year as may be provided for in a relevant agreement or, where there are no provisions of a relevant agreement which apply where the worker's employment began after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date. Pursuant to Regulation 13A WTR 1998, a worker is entitled to a period of additional leave in any leave year beginning on or after 1st April 2009, of 1.6 weeks, with the aggregate entitlement subject to a maximum of 28 days. A worker is only entitled to payment in lieu of annual leave where a worker's employment is terminated (Regulation 14 WTR 1998).
17. Regulation 30 WTR 1998 provides that a worker may present a complaint to an employment Tribunal that his employer has refused to permit him to exercise any right he has under regulation 13 and/or regulation 13A WTR 1998.
18. Such a complaint should be brought before the end of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted or within such further period that the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months (Regulation 30(2) WTR 1998).
19. If the complaint is well-founded, the Tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the worker which shall be such as the Tribunal considers just and equitable in all the circumstances having regard to:
- a. The employer's default in refusing to permit the worker to exercise his right, and

- b. Any loss sustained by the worker which is attributable to the matters complained of¹.

Failure to give itemised pay statements / Failure to give a statement of employment particulars

20. Section 8 ERA 1996 provides that a worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him a written itemised pay statement and section 11 ERA 1996 provide that where an employer does not, or the statement given does not comply with what is required, the worker may make a reference to an employment tribunal to determine what particulars ought to have been included or referred to.
21. Section 12(3) ERA 1996 provides that if an employment tribunal finds that the employer has failed to give a worker any pay statement a declaration shall be made to that effect and if the tribunal finds that unnotified deductions have been made during the period of thirteen weeks immediately preceding the filing of the claim making the application for a reference, the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.
22. Section 38 Employment Act 2002 provides that in any proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Sch 5 to that Act, if the Tribunal finds in his / her favour and when proceedings began the employer was in breach of its duty to the worker under s.11 ERA 1996 to give the worker a written statement of initial employment particulars or of particulars of change, the Tribunal must make an award of the minimum amount of two weeks' pay and may, if it considers it just and equitable to make and award of an amount equal to four weeks' pay.

Facts

20. The Claimant was employed by the Respondent, a company that operates a hotel, from 22 December 2023 and was undertaking Bar Manager responsibilities at Gileston Manor.
21. He agreed with the managers that he would be paid £13.00 per hour. The Claimant did not have normal hours. Hours varied according to the work and if the Respondent was not hosting a wedding for a particular week, he assumed that he would work from 9am to 4.00pm.
22. The Claimant gave evidence, which I accepted, that he asked for a contract of employment from the Respondent and was reassured that it was '*in hand*', but a contract '*never materialised*', as he put it. This evidence was supported by documentary evidence in the form of screenshots of Whatsapp exchanges with the Claimant in which he requested such a document.

¹ Regulation 30(3) and (4) WTR 1998

23. The Claimant also had to ask for salary on a number of occasions as payment was late. He only assumed tax and national insurance ("NI") had been deducted as he did not payslips from the Respondent.
24. The Claimant gave evidence that he asked Lorraine and Archie Hoyi if he could take holidays and he was told 'no'. He cannot recall when exactly he had asked and was unable to think of the exact dates. When I asked him if he recalled what he had been told, he gave evidence that he had asked if he was able to book holidays and he was told that he could not as he was on a zero hour contract and he did not get them.
25. Despite the Claimant being unable to recall the exact dates I accepted that evidence and found that the Claimant had asked for annual leave and was informed that he was not entitled to take annual leave. The Claimant explained that not permitting him to take leave resulted in some anxiety and emotional turmoil. Again, I accepted that evidence.
26. The Claimant also gave evidence that his hours started to decrease and by the beginning of July 2024, he was in communication with Archie Hoyi regarding role change and his concern that his hours were decreasing, culminating in an exchange between the two on 11 July 2024.
27. The Claimant gave evidence that he had not been paid for 12.25 hours of work at the rate of £13.00 amounting to £159.25 in the period 1-12 July 2024. Again, I accepted that evidence.

Conclusions

Unauthorised deductions 1-12 July 2024

28. I was satisfied that the complaint of unauthorised deductions from wages in respect of pay from the period 1-12 July 2024 was well-founded and that the Respondent should pay the Claimant £159.25, which is the gross sum deducted.

Statement of terms and conditions/Itemised pay statements

29. I had further found that the Claimant had neither been provided with a statement of terms and conditions or itemised pay statements i.e. payslips, since the commencement of his employment and that such that the Claimant was entitled to declarations that:
 - a. the Respondent had failed to give the Claimant written itemised pay statements as required by section 8 Employment Rights Act 1996 in the period of employment to July 2024; and
 - b. that when the proceedings were begun the Respondent had also been in breach of its duty to provide the claimant with a written statement of employment particulars.

30. What financial award the Claimant is entitled to in respect of such failures will be determined at the adjourned final hearing.

Working Time Regulations 1998 – Holiday pay claim

31. I was further satisfied that, at some point between April – 12 July 2024, the Respondent refused to permit the Claimant to exercise the right to paid annual leave under the Working Time Regulations 1998 on the basis that I had found that the Claimant had requested leave on the basis of my findings at §24 above. That claim too is well-founded.
32. Whilst I accepted that the Claimant had suffered some injury to his feelings, I was not persuaded that there was any evidence of personal injury. Furthermore, I am not satisfied that it would be appropriate to order compensation for injury to feelings for breach of Regulation 30 WTR 1998 as in **Santos Gomes v Higher Level Care Ltd 2018** ICR 1571 CA, the Court of Appeal, when considering whether compensation under Regulation 30(4) WTR 1998 extended to injury to feelings, did not consider that the Directive did not require the WTR 1998 to be interpreted to permit an award for injury to feelings.

Approved by:
Employment Judge Brace
29 August 2025

Judgment sent to the parties on:
01 September 2025

Katie Dickson
For the Tribunal: