



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant  
MR K GUNTHER**

**AND**

**Respondent  
NISBETS LTD**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT: BRISTOL      ON:    30TH SEPTEMBER 2025**

**EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)**

### **APPEARANCES:-**

**FOR THE CLAIMANT:-      IN PERSON**

**FOR THE RESPONDENT:-    MS S COOPER GADD (IN HOUSE  
LEGAL COUNSEL)**

**INTERPRETER (POLISH)    MS J GALKA**

### **JUDGMENT**

The judgment of the tribunal is that:-

- i) The claimant's claims for unlawful deduction from wages is well founded and upheld;
- ii) The respondent is ordered to pay the claimant the sum of £970.59;
- iii) The claimant's claim of breach of contract is not well founded and is dismissed.

## **Reasons**

1. This case came before EJ Dawson for a case management hearing on 27<sup>th</sup> June 2025. A number of the claims were withdrawn, and he listed the case for final hearing today to determine the remaining claims as identified in his CMO:-
  53. *The claimant says that he was searched in a way which did not comply with the respondent's own search procedures and then subjected to disciplinary procedures. He says that as a consequence he suffered significant distress and that the failure to comply with the respondent's own search policy was a breach of contract. In terms of losses as a result of the alleged breach of contract, the claimant points to defamation of character and also the fact that he incurred some legal costs clarifying his position.*
  54. *At this hearing the claimant accepted that the tribunal did not have jurisdiction to decide stand-alone claims under the European Convention on Human Rights or freestanding personal injury claims or claims of defamation. He confirmed that he was not bringing any claim of discrimination and agreed to withdraw those claims which the tribunal had no jurisdiction to determine.*
  55. *That left his claim for non-payment of wages and his claim for breach of contract. In terms of his claim for wages, he asserts that he is owed £1174.82. The respondent accepted he is owed £970.59 but states that it cannot pay the claimant because he has not provided his bank details. The claimant accurately asserts that it was only after he had commenced these proceedings that the respondent accepted that it owed him those sums.*
  56. *In respect of the claim of breach of contract.*
    - 56.1 *I discussed with the claimant the jurisdictional issues, namely that a claim can only be brought if it is outstanding on the termination of the employee and noted that the claimant's employment had not been terminated at the date when he presented his claim. The effect of that (if any) will have to be decided at the final hearing.*
    - 56.2 *It will be necessary for the claimant prove that the security search policy was part of his contract of employment.*
    - 56.3 *It will be necessary for the to show that the losses for which he seeks compensation are recoverable as damages.*
  57. *The respondent denies that the search policy was contractual or the claimant is entitled to recover damages as alleged. It was not suggested that the claimant would require permission to amend his claim form to pursue the claims as articulated.*

58. *I explained that my provisional view was that the claimant may struggle to succeed on some of those matters and I suggested he may wish to take advice. Having said that I have not heard argument on those matters and my view is, as stated, provisional.*
59. *The matters between the parties which will fall to be determined by the Tribunal are as follows;*

## **List of Issues**

### **1. Unauthorised deductions (Part II of the Employment Rights Act 1996)**

- 1.1 *Were the wages paid to the claimant on 28 June 2024 less than the wages the claimant should have been paid?*
- 1.2 *Was any deduction required or authorised by statute?*
- 1.3 *Was any deduction required or authorised by a written term of the contract?*
- 1.4 *Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?*
- 1.5 *Did the claimant agree in writing to the deduction before it was made?*
- 1.6 *How much is the claimant owed?*

### **2. Breach of Contract (Extension of Jurisdiction Order 1994)**

- 2.1 *Did this claim arise or was it outstanding when the claimant's employment ended?*
- 2.2 *Does the fact that the claim was presented when the claimant was still in employment affect whether the tribunal has jurisdiction to hear the claim?*
- 2.3 *Were the terms of the security search policy part of his contract of employment or other contract connected with employment?*
- 2.4 *Did the respondent do the following:*
- 2.4.1 *fail to follow its own search policy by:*

*2.4.1.1 not giving the claimant a reason for the search,*

*2.4.1.2 not conducting the search in a private place,*

*2.4.1.3 not questioning the claimant about his wallet in a private place,*

*2.4.1.4 not performing the search in an area covered by CCTV?*

*2.5 Was that a breach of contract?*

*2.6 How much should the claimant be awarded as damages?*

### **3. Remedy**

*3.1 In respect of the claim of deduction from wages, the primary issue on remedy will be what amount is appropriate to compensate the claimant for any financial loss suffered by them which is attributable to the deduction.*

*3.2 In respect of the claim of breach of contract, the question will be what loss has flowed from the breach of contract.*

#### Hearing

2. The hearing has been slightly unusual in that the respondent has provided witness statements from a number of witnesses, but has only called Ms Kirsty Savage to give oral evidence (although the claimant had no questions for her or challenge to her evidence). Whilst this might ordinarily give rise to questions of what weight I can place on the evidence of witnesses who have not been called and not given evidence, for the reasons set out below there is almost no dispute of fact between the parties, and so it has not caused any difficulty in this case.
3. In addition I have received a bundle of documents from the respondent, and separately a number of documents from the claimant, all of which I have read.

#### Unlawful Deduction From Wages

4. As set out by EJ Dawson the dispute is that, *"In terms of his claim for wages, he asserts that he is owed £1174.82. The respondent accepted he is owed £970.59 but states that it cannot pay the claimant because he has not provided his bank details.*

5. The basis of the claimant's claim is that in June 2024 he was paid £1049.38, his normal salary being £2,224.20. There was, therefore an unlawful deduction of £1174.82.
6. The respondent's evidence is that deductions relating to eleven days sickness absence were made from the claimant's June salary, although incorrect figures for the daily rate were used resulting in fact in an overpayment of £10.86 as they understood it. In July 2024 Kirsty Savage gave instructions that the claimant should in fact have been paid full pay for his period of absence from 3<sup>rd</sup> June 2024 to 17<sup>th</sup> July 2024, together with any OES payment (a 5% bonus scheme) he had not received. This was because the claimant had been suspended on full pay following the events set out below in relation to the search on 21st May 2024. However, whilst the relevant OES payment was paid in July, in error no other corrections were made in the July payroll and the earlier deductions were not rectified. Following the claimant's resignation in August 2024 the respondent understood that he had correctly been paid in full.
7. However on receipt of the ET1 in March 2025 it checked its records and discovered, and accepts, that the instruction to pay the claimant full pay for his sickness absence during his suspension had only been actioned in respect of the OES payment and not the basic pay. As a result it accepts that there has been an underpayment of £970.59 (gross). The difference between the overall deduction in June 2024 of £1174.82 and the sum currently owed of £970.59, is that the OES payments have already been made and the £970.59 represents the unpaid underlying basic pay.
8. The claimant accepts that the amount owed is correct and both parties are content that I enter Judgment for that sum.

#### Breach of Contract

9. Factually there is little or no dispute between the parties in respect of this matter. The respondent's evidence is that on the night shift on 21<sup>st</sup> May 2024 the security team were conducting unannounced searches of staff in the Access 18 warehouse due to a high number of thefts, and suspected drug use. The searches were carried out without pre-warning to prevent staff from hiding anything. The searches were not carried out in areas covered by CCTV. The claimant in general co-operated with the search, except that he refused to allow the security team to look inside his wallet, as he said it was private.
10. As a result of that refusal the claimant was suspended, and an investigation carried out. The claimant accepted that he had refused to allow his wallet to be searched. This resulted in disciplinary action being taken. The hearing took place on 30<sup>th</sup> May, but the outcome was delayed by six weeks due to illness. The outcome was that he was issued with a "record of conversation" detailing the need to comply, but that given the explanation that a disciplinary sanction was not required.
11. The claimant resigned on 30<sup>th</sup> July 2024.

12. The claimant's overall position is that he was entitled to refuse a search of his wallet, as no lawful authority for the search was shown to him, and that this was in breach of his human rights (although the specific claim in respect of his has been withdrawn).
13. For the avoidance of doubt had this been an unfair dismissal claim those may have been matters the tribunal would have needed to consider. However the only claim before me is whether the respondents actions were or were not in breach of the claimant's contract of employment.
14. The first issue is whether the terms of the Search Policy were contractual. If they were not, of necessity a breach of them cannot be a breach of contract. Secondly were any of the matters relied on in breach of the policy.
15. There are four claims of breach of contract being brought:
  - i) Not giving the claimant a reason for the search;
  - ii) Not conducting the search in a private place;
  - iii) Not questioning the claimant about his wallet in a private place;
  - iv) Not performing the search in an area covered by CCTV..
16. Contractual Force - Within section 2.0 of the policy it provides that: " This document does not form part of a contract of employment and we reserve the right to change it from time to time and without warning."
17. In my judgement this is necessarily an express statement that the policy itself does not form part of the contract of employment. The claimant has accepted that the policy is non-contractual and he is not relying on it as an express breach. However he contends that the failure to comply with the terms of the policy is a breach of the implied term of mutual trust and confidence, which is the breach outstanding on termination and on which he relies. In effect he contends that whilst the policy is non-contractual, if it is applied the respondent is required to comply with it.
18. The implied term of mutual trust and confidence is set out in Malik v. Bank of Credit; Mahmud v. Bank of Credit (19987 AC 20; 1199713 All ER 1; 119971 IRLR 462; 1199713 WLR 95; 119977 ICR 606 . An employer shall not:  
  
*"...without reasonable and proper cause, conduct itself in a manner calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*
19. Breach - In relation to the searches themselves at 1.0 of the policy statement it is provided that, "Therefore we will ensure that any search is conducted fairly and in an appropriate place and manner..."; and that searches "...may also be carried out

- randomly.” Section 3.0 provides that searches include, “A physical search where you will be asked to remove your footwear jackets and outer clothing; emptying pockets and or a physical pat down on the outer surface of your clothing” and “A search of all personal and company belongings including bags and other items.” In relation to physical searches it provides at that you have the right to request that a physical search is carried out only by someone of the same sex and in a private room. It may not be possible for physical searches to take place in private, but in these cases we will endeavour to deal with the matter as discreetly as circumstances permit.”” . Section 4.0 provides that ,” In the majority a physical search will take place at security desks where there is adequate CCTV coverage..”
20. Section 6.0 deals with the refusal to comply with a stop and search; And that an unreasonable refusal up to and including dismissal and disciplinary sanction.
  21. In respect of the first alleged breach, it is not in dispute that the claimant was not informed of the reason for the search until after his refusal to permit a search of his wallet. However the respondent asserts that the policy does not require, or contain any provision for any such explanation to be given. It follows that the failure to do so cannot be a breach of the policy; and therefore cannot be individually or cumulatively a breach of the implied term.
  22. .The second and third both relate to not conducting the search in a private place. However, the policy itself specifically provides that it may be not be possible for the search to be conducted in private; and the part of section 4.0 set out above specifically relates to physical searches, as defined in section 2.0, whereas the search to which the claimant objected was a search of his property. Again it follows , that the failure to conduct a search of his property in private is not a breach of the terms of the policy itself . It follows that the failure do so is again neither individually or cumulatively a breach of the implied term.
  23. The fourth is linked to the second and third. Firstly there is no absolute right to the search being conducted with CCTV. Secondly that in any event applies to physical searches, which this was not. Again it follows, that the failure to conduct a search of his property with CCTV recording is not a breach of the terms of the policy itself . It follows that the failure do so is again neither individually or cumulatively a breach of the implied term.
  24. It follows that I cannot identify any breach of the policy, and equally that there is necessarily no breach of the implied term. As there is no identifiable breach of contract the claim is bound to fail.
  25. As a result it is not necessary to determine the jurisdictional issues identified by EJ Dawson.

**Employment Judge Cadney  
Dated: 1 October 2025**

**Sent to the Parties on  
4 November 2025**

**Jade Lobb**

**For the Tribunal office**