



EMPLOYMENT TRIBUNALS

Claimant: Nina Ellis

Respondent: Barkers (Cambridge) Limited

Heard at: Bury St Edmunds Employment Tribunal (by video)

On: 25 November 2025

Before: Employment Judge Annand

Appearances

For the claimant: In person
For the respondent: No attendance

JUDGMENT

Employment Tribunal Rules of Procedure 2024 – Rule 22

1. The claim was presented to the Employment Tribunal on 18 January 2025. The Respondent has failed to present a valid response on time. Following a hearing, an Employment Judge has decided that a determination can properly be made of the claim, or part of it, in accordance with rule 22 of the Rules of Procedure.
2. The Respondent has breached the Claimant's contract in respect of a failure to make employer pension contributions and must pay the Claimant £434.99 gross.
3. The Respondent failed to provide the Claimant with itemised pay statements between July 2024 and December 2024, and the Respondent must pay the Claimant £604.17 gross.

REASONS

1. The Claimant worked as an administrator for the Respondent from 15 July 2024 to 31 December 2024. The Claimant contacted Acas for early conciliation purposes on 6 January 2025, and an EC Certificate was issued on 13 January 2025. The Respondent was named on the Acas certificate as being Barkers Cambridge. The Claimant submitted a Claim Form to the Employment Tribunal on 18 January 2025. On her Claim Form the Claimant named the Respondents as Steve Hussey and Pauleen Hume. The address was titled "Barkers" and in response to the question "Please say what job you do or did", the Claimant wrote Barkers Cambridge.
2. In the Claimant's Claim Form, at box 8.1, she set out that she had been unfairly dismissed and was claiming holiday pay, arrears of pay and other payments. She set out in the document she submitted with her Claim Form, that while she worked for the Respondent she had not been provided with the opportunity to be enrolled in the company pension scheme, and she had not received payslips, save for one that she was given in July 2024, but it did not give the details of any tax or National Insurance deductions. The Claimant set out that on 7 occasions she asked the Respondent for payslips and to be advised of what deductions were being made. The Claimant did not believe that her tax and National Insurance had been paid to HMRC because when she filled in an online form, they had been unable to locate her employment with Barkers or with Deltaforce Management.
3. On 20 February 2025, Mr Hussey and Ms Hume submitted separate Responses to the Claimant's Claim Form, in which they made it clear they considered the claims should not have been brought against them individually as the Claimant had not been employed by them personally.
4. On 16 June 2025, the Claimant's claim for unfair dismissal was struck out. The Claimant had been sent a letter by the Tribunal on 28 April 2025, which gave the Claimant an opportunity to make representations about why her claim should not be struck out despite the fact she had less than two years of service. The Claimant did not make any such representations and therefore the claim was struck out.
5. On 18 August 2025, a Case Management preliminary hearing was held by Employment Judge Baran. The Claimant emailed the Tribunal an application to have the hearing postponed shortly after it had started, but that application was refused. The Claimant was not in attendance. At the hearing, Mr Hussey and Ms Hume indicated they thought the Claimant was in fact employed by Barkers (Cambridge) Limited. EJ Baran added Barkers (Cambridge) Limited as a Respondent. EJ Baran also made an unless order which set out that unless by 4pm on 3 November 2025, the Claimant wrote to confirm that she was pursuing her claim against Mr Hussey and Ms Hume, and if so, the basis on which she considered she was directly employed by either or both of them, then the claims against them would be dismissed. EJ Baran listed the case for a further hearing on 25 November 2025.
6. The Claim Form was sent to Barkers (Cambridge) Limited, and no response was received within the time limit.
7. On 19 November 2025, the Claimant sent to the Tribunal copies of her bank statements, and a copy of her employment contract. The Claimant's contract was with Deltaforce

Management Ltd. The contract stated she would be paid £2,416.66 for working a minimum of 40 hours per week. The contract stated the company would comply with its statutory obligations on auto enrolment for pensions. Her bank statements showed she was paid by "Deltakey Ltd" in July 2024, KC Bakeries Ltd in August 2024, and then from September 2024 onwards she was paid by Barkers Cambridge.

8. On 21 November 2025, the Claimant sent the Tribunal a copy of a spreadsheet which showed what hours she had worked and how much she had been paid each month. The Claimant also indicated the number of hours she had taken as holiday.
9. At the hearing, on 25 November 2025, the Claimant attended, as did Mr Hussey and Ms Hume. No one attended for the Respondent. It was clarified that the Claimant had not emailed the Tribunal by 4pm on 3 November 2025 and therefore under the terms of Employment Judge Baran's unless order, Mr Hussey and Ms Hume were no longer respondents in the case. The Claimant indicated at the hearing she had been unable to email the Tribunal by the deadline because she had been unwell and recovering from surgery. When asked to explain why she was employed by them personally, she was unable to do so. As a result, Mr Hussey and Ms Hume were informed that they were no longer respondents in the case, and they left the preliminary hearing.
10. Shortly before the hearing on 25 November 2025, Deltaforce Management Ltd was dissolved. Before leaving the preliminary hearing, Mr Hussey said that as far as he was aware Barkers (Cambridge) Limited had not been dissolved and was still a functioning company, although the Claimant said it was no longer operating a bakery.
11. At the hearing, the Claimant asked to be awarded the amount of tax and National Insurance that had been deducted from her pay each month but which she did not believe had been paid to HMRC. She explained she could not be sure she had been paid properly as she had not received payslips but accepted that the amounts she received each month did not indicate that she had been underpaid. If anything, her payments appeared to be higher than would be expected if deductions for tax and National Insurance had been made. The Claimant thought she might have been paid for the overtime she worked, despite not having a contractual right to paid overtime. The Claimant also asked for compensation for not having been enrolled in a pension and for the fact the Respondent had not provided her with payslips.

The relevant law

Rule 22 of the Employment Tribunal Procedure Rules 2024

12. Rule 22(2) of the Employment Tribunal Procedure Rules 2024 states that when a respondent has failed to present a response, an employment judge must decide whether, on the available material, a determination can properly be made of the claim. If a determination can be made, then a judgment will be issued accordingly. The EAT in *Limoine v Sharma* [2020] ICR 389, EAT, emphasised that an employment judge acting under what is now rule 22 must actively consider whether a determination of the claim can be made. It is an error of law for the judge to enter judgment simply because the claim is undefended without giving any further consideration to the matter.

Unauthorised deduction from wages

13. Section 13(1) of the Employment Rights Act 1996 (ERA) states, “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.” As a result, there are three types of authorised deduction: (i) Deductions made by virtue of a statutory provision: section 13(1)(a), (ii) Deductions made under a “relevant provision” of the worker’s contract: section 13(1)(a), and (iii) Deductions to which the worker has previously signified his or her agreement in writing: section 13(1)(b).
14. The question of what wages are ‘properly payable’ to the worker under section 13(3) ERA 1996 is critical to determining whether an unlawful deduction has been made. In *New Century Cleaning Co Ltd v Church* [2000] IRLR 27, CA, the Court of Appeal’s concluded that, in order for a payment to fall within the definition of wages properly payable, there must be some legal entitlement to the sum in question.
15. Section 14 ERA 1996 sets out a number of “excepted deductions”. Section 14(3) states, “Section 13 does not apply to a deduction from a worker’s wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.”
16. An employee cannot bring a claim for unauthorised deductions from wages in respect of employer pension contributions. This is because employer pension contributions do not fall within the definition of “wages”. Under section 27(1)(a) ERA 1996, “wages” means any sums ‘payable to the worker’ in connection with their employment and does not mean contributions paid to a pension provider on the worker’s behalf (*University of Sunderland v Drossou* [2017] IRLR 1087).
17. The time limit for bringing a claim for unauthorised deductions from wages is three months beginning with the date of payment of the wages from which the deduction was made (section 23(2)(a) ERA) with an extension for early conciliation, unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the Employment Tribunal considers reasonable. If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series (section 23(3) ERA).

Itemised pay statements

18. Section 8(1) ERA states 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”. An itemised pay statement must set out, among other things, the amounts of any variable or fixed deductions from the gross figure and the purposes for which such deductions are made (section 8(2)(b) ERA).

19. Under section 11(1) ERA, a worker who has not been provided with an itemised pay statement has the right to refer the matter to an employment tribunal. Where the employment relationship has ended, a reference must be made within three months of the termination of the employment, or, if it was not reasonably practicable to present the claim within that time, within such further time as the tribunal considers reasonable (section 11(4)). If a tribunal finds that a worker has not received a pay statement, it must make a declaration to that effect (section 12(3)). Where the tribunal finds that any unnotified deductions have been made during the 13 weeks immediately preceding the tribunal application, it may also make a monetary award to the worker, but the sum must not exceed the aggregate of the unnotified deductions so made (section 12(4)). No statutory guidance is given as to the criteria for making an award.
20. If the employer's infringement is purely a technical slip, tribunals may make no award. In *Paterson and Paterson t/a Buchanan of Broxburn v Dewar* EAT 294/85 the claimant had been paid straight from the till without payslips for some months. When a pay statement was eventually produced, it was found that she had been overpaid by £4.43 a week. A tribunal nevertheless awarded her £110 to cover all unnotified deductions of tax and national insurance. The EAT reversed the decision on the ground that the fact that the claimant had actually gained from the absence of payslips was a very relevant factor. In the EAT's view, the tribunal should have given reasons for making what amounted to a further award on top of the overpayment.

The Tribunal's decisions

21. The Tribunal concluded that under Rule 22 a decision could be made based on the documentation presented by the Claimant regarding her claims.
22. The Tribunal also found the Claimant had presented her claims in time.

(1) Unauthorised deduction from wages

23. The Claimant sought an award of the amounts that had been deducted for tax and National Insurance on the basis that they had not been paid to HMRC, and they should have been. These were however not sums that were properly payable to the Claimant. These were sums that should have been paid by the Respondent to HMRC. The Tribunal was therefore not able to find there had been an unauthorised deduction from the Claimant's wages when they made deductions for tax and National Insurance but which they then failed to pay to HMRC.
24. There was some discussion about whether the Claimant had been paid correctly for the hours she worked. While it was clearly difficult to check this without itemised pay slips, the Claimant was entitled to be paid £2,416.66 gross for working a minimum of 40 hours per week. She did not have a contractual entitlement to paid overtime. Each month that the Claimant worked a full month, (August – November) the Claimant was paid a net amount of approximately £2,200. This is more than would be expected if tax and National Insurance had been deducted each month from a gross figure of £2,416.66. However, it may have been that the Claimant was paid for the overtime hours that she worked and also was paid holiday pay some months. Overall, the Tribunal was not able to conclude

from the evidence presented that the Claimant had been underpaid, and as a result, was not able to make an award for unauthorised deduction from the Claimant's wages.

(2) Breach of contract

25. Under the terms of the Claimant's contract, she was entitled to be enrolled in a pension. The Claimant said she was not asked about this and there was no discussion about whether she wished to opt out. Under auto-enrolment, the minimum employer contribution is 3%. The Claimant's gross annual salary was £28,999.92, and 3% of this is £869.99. Therefore, the employer's monthly contribution should have been £72.49. The Claimant was employed for 6 months and therefore her employer should have paid a total of £434.99 in employer pension contributions.
26. The Claimant's claim for breach of contract succeeds and she is awarded £434.99 in damages.

(3) Failure to provide itemised pay statements

27. The Respondent provided the Claimant with one payslip but failed to provide the remainder. The Claimant repeatedly asked for payslips, but they were not provided. The Claimant has never been provided with an explanation as to why not. The Claimant explained during the hearing that the bakery factory was closed and stripped of equipment, which suggests the Respondent may have been in financial difficulties. In any event, the Tribunal makes a declaration the Claimant was entitled to itemised pay statements and they were not provided.
28. Further the Tribunal considered it was appropriate to make a monetary award to the Claimant. This was not a technical breach or a case where the itemised pay statements were simply delayed. The Claimant never received five out of the six pay statements that should have been provided to her. The one she was provided with did not itemise the deductions for tax and National Insurance. It was also apparent to the Tribunal that the Claimant had found the whole process to be very stressful.
29. The Tribunal considered it was appropriate to make an award of one week of gross wages as a monetary award to compensate the Claimant for the Respondent's failure to provide her with itemised pay statements. The Respondent shall pay the Claimant damages in the amount of £604.17 gross, which is a sum which does not exceed the aggregate of the deductions made by the Respondent.

Approved by:

Employment Judge Annand

12 December 2025

JUDGMENT SENT TO THE PARTIES ON

16 December 2025

FOR THE TRIBUNAL OFFICE

