



EMPLOYMENT TRIBUNALS

Claimant: Mr A Rotariu

Respondent: Isoclean (UK) Limited

Heard at: Manchester

On: 27 November 2025

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: In person

Respondent: Mr Rogerson, solicitor's agent

JUDGMENT having been made on 27 November 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The claimant worked for the respondent from 2021, initially as a warehouse operative and later as a warehouse manager. There was a dispute about when his employment terminated. The claimant claimed unauthorised deductions from wages and for accrued but untaken holiday pay. The respondent disputed the claims.

Claims and Issues

2. A preliminary hearing (case management) took place on 20 February 2025. Appended to that case management order was a list of issues. Those issues remained the issues to be determined at this hearing. We discussed the issues at the start of the hearing.

Procedure

3. The claimant represented himself at the hearing. Mr Rogerson represented the respondent.

4. The hearing was conducted in-person with both parties and all witnesses attending in-person at Manchester Employment Tribunal.

5. The claimant provided some documents at the start of the hearing. The respondent said that it had provided documents at a hearing which had been postponed on 19 September 2025 but attended this hearing without any copies of those documents. I confirmed that no copy documents were visible on the Tribunal's electronic file. The hearing was adjourned so that the respondent could provide its copy documents to the Tribunal and so copies of those documents could be considered by the claimant. No joint agreed bundle was provided for the hearing. I considered the documents which were provided by the parties.

6. The claimant provided a witness statement. In the documents provided by the respondent's representative during the adjournment was an email of 19 September 2025 sent to the Tribunal which contained a witness statement for Mr Benjamin Moffatt for the respondent. The claimant did not believe he had previously seen the statement (albeit on the face of the email it appeared to have been copied to him). When the hearing reconvened, the claimant stated that he had no objection to me hearing evidence from Mr Moffatt using that witness statement.

7. I heard evidence from the claimant. As additional documents had been provided which he had seen for the first time on the morning of the hearing, he was given the opportunity to say anything which he wished in addition to what was said in his statement at the start of his evidence as a result of the additional documents provided. He was cross examined by the respondent's representative. I asked him questions.

8. I heard evidence from Mr Moffatt for the respondent. He was briefly cross-examined by the claimant, and I asked him some questions.

9. After the evidence was heard, I adjourned the hearing to provide time for the parties to consider their submissions. Each of the parties made their submissions orally. In their submissions the parties focussed upon the facts, and I was not taken to, or referred to, any law at all.

10. I adjourned the hearing to consider my decision. Following the adjournment, I informed the parties orally of my judgment and the reasons for it. At the hearing no request for written reasons was made, but the respondent has subsequently requested written reasons. The document recording my judgment had been prepared separately (albeit it may not have been sent to the parties prior to these written reasons being prepared). The reasons for my decision are contained in this document.

Facts

11. The claimant worked for the respondent from 2021, initially as a warehouse operative and later as a warehouse manager. Prior to 19 February 2024 the claimant's role included managing warehouse staff, stock control and coordinating deliveries, as well as undertaking physical duties in the warehouse.

12. There was a dispute between the parties about whether or not the claimant gave the respondent notice on 5 February 2024, with his employment being due to end on 5 March 2024. The claimant said he did not. Mr Moffatt said he did. I found on balance that the claimant did. My reason for doing so was based upon what was

said in the WhatsApp messages which I was provided. In a message on the 17 April, Mr Moffatt said that the claimant had handed in his notice. In response in the messages exchanged, the claimant did not deny that he had done so. I would have expected him to have denied that he had handed in his notice, if it had been untrue. A message from the claimant on 19 April, in which he referred to having previously told Mr Moffatt about needing to go home to sort some things out, was also consistent with the claimant having previously given notice to end his employment.

13. The contract required notice to be given in writing. It was not. I accepted that the claimant and the respondent had operated on the basis that oral notice was sufficient.

14. On 19 February 2024 the claimant had a serious accident at work and suffered a significant injury. There is a dispute between the parties about the extent to which the claimant worked during February after the accident. The claimant said that he worked from home throughout February and the respondent contended that he was absent on ill health grounds for the remainder of February. I did not need to resolve that dispute.

15. The claimant was paid his full monthly salary for February, March and April 2024. The payslips recorded that the claimant was paid each month for his regular hours. The payslips neither recorded that any payment was sick pay, nor did they record that any payment was an ex-gratia amount.

16. There was no dispute that the claimant did some work for the respondent during March and April. He did not attend work at the warehouse, he worked from home. There was a dispute about the extent to which the claimant worked. The claimant said he worked forty hours per week and was available to answer the phone 9-5 five days a week. The respondent said he did limited duties.

17. On 17 April, Mr Moffatt sent the claimant a WhatsApp message in which he said "*im paying you and keeping you on cos I like you*". It was Mr Moffatt's evidence that he did not wish to leave the claimant unable to pay his rent after his accident. I understood the words "*keeping you on*" to mean that the claimant had remained employed.

18. On 30 April, the claimant and Mr Moffatt exchanged messages. Mr Moffatt said that the claimant needed to be in work three days a week that month and said that he could not keep paying the claimant a full wage when he was not in work. He said that it had been eight weeks and that he thought he had been fair. I interpreted the references in the messages to being in work, to being references to undertaking work at the warehouse, rather than in some way to being references that the claimant had not been in employment at all. I would observe that the way the messages were written was inconsistent with an assertion that the employment relationship had ended nearly two months previously.

19. On 2 May, the claimant informed Mr Moffatt that he could not come into the warehouse, following advice from his physiotherapist. Mr Moffatt replied by asking the claimant what he wanted paying for the work he was doing? On 3 May Mr Moffatt referred to the work as part time. On 5 May the claimant asked whether he would be paid part time?

20. The claimant's evidence was that he continued to work from home during May, as he had done during March and April. He provided evidence of WhatsApp messages sent during the first fifteen days of May. It was his evidence that he continued to discharge his duties during that period. It was also the claimant's evidence that whilst employed he had sent emails to others and those emails would have provided a more detailed record of work being undertaken than the WhatsApp messages I was provided. He had been unable to provide me with the emails, as he had been removed from the respondent's emails when he ceased to be employed. The respondent appeared not to have disclosed (and did not provide me with) any emails which the claimant had exchanged whilst working for the respondent. Mr Moffat did give evidence that there were runs of weekdays with no WhatsApp messages between the parties, which he said were consistent with there being no operational contact. I accepted the claimant's evidence about working from home during March, April and May.

21. On 15 May, the relationship came to an end. The claimant contended that was the date that his employment ended.

22. The P45 issued to the claimant said that his employment ended on 30 April 2024. In practice that reflected the last day for which the claimant was paid. Save for the P45, I was not provided with any document which recorded the claimant's employment as ending on, or having ended on, 30 April.

23. The claimant was not paid at all for May 2024. No payslip was produced. No payment was made to the claimant.

24. There was no evidence that the claimant had taken any paid annual leave during the 2024 holiday year. The claimant was not paid in lieu of accrued but untaken annual leave at the end of his employment. A payslip was not produced which showed such a payment or which showed any deductions being made from the claimant's pay equivalent to any holiday payment. The claimant's evidence was that he usually had to work bank holidays as well. Mr Moffatt was unable to say whether he had done and he acknowledged that employees did sometimes work on bank holidays when required.

25. It was agreed that a day's pay for the claimant was £107.14. The claimant was in practice paid an annual wage which was paid in equal monthly instalments. That was what was provided for in his contract of employment.

26. I was provided with the claimant's contract of employment which had been signed in July 2022. I will not reproduce all the relevant parts of that contract in this Judgment. It included a provision on deductions from wages which said that the respondent was authorised to deduct any overpayment of wages, salary, remuneration or other payment. It provided for twenty days annual leave per annum plus bank holidays. Any entitlement had to be taken in the holiday year in which it accrued, and the holiday year ran from January to December. Holiday was paid at basic rate. On termination of employment, the employee was entitled to pay in lieu of any unused holiday entitlement. During sickness absence, the contract provided for payment in accordance with the statutory sick pay scheme only.

27. This Judgment does not seek to address every point about which I heard or about which the parties disagreed. It only includes the points which I considered relevant to the issues which I needed to consider in order to decide if the claims succeeded or failed. If I have not mentioned a particular point, it does not mean that I have overlooked it, but rather I have not considered it relevant to the issues I needed to determine or necessary to refer to it.

The Law

28. The rights being considered were rights which applied to a worker (not just an employee). A worker is an individual who has entered into or works under (or, where the employment has ceased, worked under): a contract of employment; or any other contract whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or preform personally any work or services for another party whose status was not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

29. There was no dispute that the claimant had worked for the respondent under a contract of employment and therefore he had been a worker, until 5 March. The dispute was only whether he continued to be an employee or worker after that date.

30. Neither party made any submissions which highlighted any law or case law which I should consider for the position where an employee had given notice to terminate their employment, and what should be found for a subsequent period where they had in fact continued to personally undertake work and/or to be paid after that notice should have expired. The respondent's representative did not highlight any case law which might support a contention that the employment/worker status could have concluded, when in fact the claimant had continued to undertake work, and the respondent had continued to pay him.

31. It is not necessary for me to set out in this Judgment at any length the trite law on what constitutes employment and/or being a worker, neither party having made any submissions which highlighted any aspect of the law (but rather having made submissions based upon the facts). The key tests for the existence of a contract of service are that: the individual agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of service for another party; in the performance of that personal service, he is subject to the other's control in a sufficient degree; and the other provisions of the contract are consistent with a contract of service. I must consider the whole picture to see whether an employment contract exists or continues, or whether worker status exists or continues.

32. Whilst in many cases it will be very important (and potentially determinative) if the parties to an employment contract have agreed that it will terminate on a given date, it does not follow that the employment contract will have terminated where in fact the parties have continued to act on the basis that an employment or worker relationship continues even after that date has passed. The key is the reality of the relationship between the parties and whether the individual is an employee or worker.

33. The claim was brought as one for unauthorised deductions from wages. Section 23 of the Employment Rights Act 1996, relying upon the right under section 13 of the Employment Rights Act 1996, provides that:

“An employer shall not make a deduction from the wages of a worker employed by him unless:

- (a) The action 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.”*

34. Section 14 of the Employment Rights Act 1996 provides that section 13 does not apply to a deduction from a worker’s wage made by his employer where the purpose of any deduction is the reimbursement of the employer in respect of an overpayment of wages.

35. In practice, I therefore needed to determine: whether the claimant was a worker at the time that wages accrued; whether the claimant was contractually due amounts which were not paid to him (whether wages were properly payable); whether the claimant was paid the same (or more than) he was entitled to in each payment of wages; and, if not, whether any deduction made from the payment of any wages, was otherwise authorised in one of the ways described and/or was reimbursement of an overpayment of wages.

36. The claimant also claimed that he was due pay for accrued but untaken annual leave. That right was governed by the terms of the employment contract and therefore involved the usual principles of contractual interpretation. In addition, the right to accrued but untaken annual leave is governed by the Working Time Regulations 1998. In submissions, neither party referred me to any part or provision within those regulations. Regulations 13 and 13A govern the entitlement to leave. Regulation 14 sets out what should be paid where a worker’s employment is terminated during the course of the leave year. I do not need to reproduce those Regulations in this Judgment.

37. At the end of his submissions, I asked the respondent’s representative whether it had been the case that technically the respondent had accepted partial performance of the contract by the claimant during the period when he worked from home and undertook some (but not all) duties. I had in mind the cases which explain that an employer is entitled to demand full performance of an employment contract and do not need accept partial performance. The respondent’s representative told me that the respondent’s argument was that if any arrangement was still in place, it did not constitute acceptance of partial performance or otherwise. I ultimately decided that the issues of partial performance did not genuinely assist me in reaching the decisions which I needed to reach on the facts of this case.

Conclusions – applying the Law to the Facts

38. The first issue was whether the claimant’s employment terminated on 5 March 2024 as a result of the claimant giving notice on 5 February. I have already recorded

what I found about notice, but irrespective of what I found, the claimant's employment did not in fact terminate on 5 March as the respondent submitted.

39. In deciding that the claimant's employment continued after 5 March I particularly noted that:

- a. The claimant continued to be paid salary during March and April, which was described on the payslips as regular hours;
- b. Mr Moffat described that he was keeping the claimant on, on 17 April, something which was inconsistent with the employment having ended;
- c. Mr Moffatt's messages about the need for the claimant to attend at the warehouse three days per week on 30 April, were also inconsistent with the employment having terminated; and
- d. The claimant continued to undertake some duties for the respondent from home. I considered it not to be necessary to determine the extent to which in doing so he filled forty hours per week, as continuing to undertake some work was inconsistent with the employment having already terminated.

40. I then needed to decide whether the claimant's employment had ended on 30 April 2024. The only document which supported that position was the P45. That reflected the last date for which the claimant had been paid. I did not accept in this case and based on the evidence that I heard, that the P45 otherwise had the effect of having ended the claimant's employment on that date. I carefully considered the WhatsApp messages on and after that date. I did not find that those messages resulted in the termination of the claimant's employment on 30 April. There was certainly a discussion about what he was required to do and what he should be paid, but the messages did not have the effect of ending the employment (and notably continued to be exchanged on 2 and 5 May in a way which was inconsistent with the employment having already ended). Perhaps most importantly, I accepted the claimant's evidence that he continued to carry out work during the first fifteen days of May as he evidenced with the WhatsApp messages he provided. As a result, I did not find that the employment ended on 30 April.

41. I found that employment ended on 15 May as the claimant asserted.

42. I found the most difficult issue to be determining the pay to which the claimant was entitled for the period of 1-15 May 2024. The claimant continued to undertake work in the same way as he had during March and April, working from home and undertaking some of his duties. As the claimant had continued to be paid full pay for the work he undertook for those two months, I found that he was entitled to continue to receive that full pay for the period of May for which he was employed.

43. The claimant was a salaried employee, entitled to be paid the same amount each month based upon his annual salary entitlement. He was not paid for the time he worked or based upon the amount of work undertaken. I noted that there was a WhatsApp discussion on 30 April and 2 and 5 May about what the claimant should do during May and what he should be paid for the work which he was doing.

However, that discussion was inconclusive. I could not see anything in the messages exchanged, which would result in a finding that the claimant ceased to be entitled to his salary during May, where he was undertaking equivalent work to that undertaken during March and April (when he had also been continued to be paid his full salary).

44. As a result, I accepted the claimant's contention that he was entitled to eleven days pay for May 2024 at £107.14 per day. He was entitled to £1,178.54. There had been no overpayment of salary and there was no basis upon which the respondent was entitled to make any deduction from the pay due. I therefore ordered the respondent to pay the claimant the gross sum of £1,178.54.

45. Turning to the holiday pay, the claimant was entitled to twenty-eight days annual leave for the holiday year 2024 (including bank holidays). As at the date of termination, the claimant had worked 4.5 months and so he had accrued 10.5 days based upon the proportion of the year worked. There was no evidence that the claimant had taken any leave during 2024. I would have expected the respondent to have been able to have evidenced had he done so. Based upon the claimant's evidence, I included bank holidays in the calculation as his evidence was that he usually worked them. As a result, as at the termination of his employment on 15 May 2024, he was entitled to be paid in lieu of 10.5 days accrued but untaken annual leave, which, applying the agreed daily rate, resulted in a gross payment due of £1,124.97.

46. During the hearing, the respondent put forward the argument that as the claimant had in fact been paid for a period of ill health absence at full pay when he was not so entitled, the respondent was entitled to offset that overpayment from the holiday pay claimed. That related to the salary paid for eighteen days in February 2024. That argument was based upon what was said in the contract.

47. I carefully considered that argument. I noted that in his WhatsApp messages on 30 April 2024, Mr Moffatt said that he could not keep paying a full wage when someone was not in work. I also noted that none of the relevant payslips recorded payment of sick pay or deductions made for overpayments due to sickness. Statutory sick pay had not been paid or recorded as having been paid. As a result, I did not consider that any of the payments made to the claimant for February, March or April did in fact constitute an overpayment. This was not a case where the respondent had overpaid salary one month and then had endeavoured to recover the difference between SSP and salary the following month. It was a case where the respondent had chosen to pay the claimant full pay in February (and I found it to be immaterial whether that was a decision to pay full salary as sick pay or full salary for partial performance of contractual duties). On that basis, I did not find that the respondent could retrospectively determine that a previous payment was now an overpayment, in order to offset or remove their obligation to pay accrued but untaken annual leave (as they were required to do both under the Working Time Regulations and under the terms of the contract).

48. After I had delivered my judgment and reasons orally, the respondent's representative asked whether it made any difference to my decision that he said Mr Moffatt's evidence had been that, when employees worked a bank holiday, they were paid overtime for it. I informed him that it did not. That had not been something which I had considered it necessary to have included in the facts I had highlighted

when explaining the conclusions I had reached. In fact, the evidence of Mr Moffatt had been that he paid cash in hand for such work. That did not impact upon the decision which I reached about the 2024 bank holidays, as that was based upon the claimant's evidence that he had worked the bank holidays and Mr Moffatt's evidence that he was unable to say whether someone had worked a bank holiday (which was consistent with there apparently being no records and the payments not being processed through pay-roll).

Summary

49. For the reasons explained above, I found for the claimant in his claims and awarded him the sum recorded in the Judgment.

50. I ordered that the respondent pay the claimant gross sums. I observed that it was likely to be the case that national insurance and income tax would need to be deducted from those sums prior to payment to the claimant (and if it was not deducted, the claimant would need to account to HMRC for any such sums due).

Employment Judge Phil Allen

12 December 2025

REASONS SENT TO THE PARTIES ON

9 February 2026

FOR THE TRIBUNAL OFFICE

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