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# THE EMPLOYMENT TRIBUNAL

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**BETWEEN**

**Claimant**

**and**

**Respondent**

**Mr Thomas Holland**

**Canterbury Taxis Limited**

**Held at London South (By CVP Video)**

**On 14 October 2025**

**BEFORE: Employment Judge Siddall**

**Representation**

**For the Claimant: Mr K Russell**

**For the Respondents: Mr I Brenchley**

**REASONS IN WRITING PROVIDED FOLLOWING A REQUEST BY  
THE RESPONDENT**

1. Mr. Holland, the claimant, bought claims for a statutory redundancy payment, for underpayment of wages and holiday pay and for notice pay. He also makes a claim that the respondent failed to comply with Section 1 of the Employment Rights Act 1996 by giving him proper written particulars of employment and seeks an award under section 38 of the Employment Relations Act 2002.
2. Mr. Holland hasn't attended today. I am told that he is unable to attend because of his health and because of the effect that stress can have on his health conditions. I also understand that he has dyslexia so that reading documents is an issue for him.

3. It is open to a party under the rules to state that they are bringing a claim, but that they wish to rely upon written representations only and that they will not attend a hearing. Mr. Holland has provided a witness statement to the tribunal, and I've taken that into account. I should note that where a person who has provided a witness statement does not attend to answer questions about it the statement may have less weight, as opposed to the witness statement of someone such as Mr. Brenchley, who did attend and made himself available to answer questions. To the extent that there are differences of fact in the evidence, that is a matter that I have taken into account (although in this case that is not a major issue as there are not many significant disputes of fact).
4. Mr. Holland is also, of course, being represented today by Mr. Russell.
5. The essential facts about this case are these. Mr. Holland had previously been employed as a bus driver for some years, but he decided to have a change of role. He applied to Mr Brenchley (who is the owner of the respondent) for a job as a taxi driver through a personal contact.
6. Mr. Brenchley was advertising for drivers on the Indeed website and on a government website called 'Find a Job'. I am told and I accept that the claimant made an application through the Find a Job website.
7. Mr. Brentley has shown us today the advertisements put out on both websites, which state that drivers were being sought on a full or part-time basis to work between 30 and 50 hours per week.
8. The claimant started work for Canterbury Taxis Limited, the respondent, on the 21st of February 2022 and his relationship with the company ended on the 20th of October 2024. He was issued with what is described as a draft 'contract of employment' on two occasions: the first one at the start of his engagement and a later updated version being sent in 2023.
9. I have not been shown and have not been told that there is a signed contract of employment in existence. But I have had a look at the 'draft' contract of employment that has been shown to me. I see that contract refers to 40 hours per week as a basic working week but that drivers would be paid at £10 per hour (£11ph for overtime above 40 hours and £12 for unsocial hours).
10. The contract continues: 'The Employer may require the Employee to vary the pattern of his working hours to meet the needs of the service of Canterbury Taxis Ltd giving at least the same period of notice as the period adjusted'.

11. In other provisions of the contract there are restrictions on any employee taking up other employment. There is reference to notification in the case of sickness absence. There is reference to annual leave arrangements. There is a disciplinary and grievance procedure and a code of conduct.
12. So Mr. Holland started working for Canterbury Taxis, although there wasn't a signed contract of employment. It's important to note that it was the respondent who provided the vehicles that he drove. They also provided him with a radio and cash machine.
13. I have been shown a T-shirt issued by the company, although Mr. Brenchley tells me that it was not mandatory for drivers to wear the T-shirt.
14. Although the draft contract refers to a basic working week of 40 hours per week, I've looked at the pattern of employment across the two years or so that Mr. Holland worked for Canterbury Taxis. There is a very helpful spreadsheet prepared by the claimant. And I can see that in particular, although the actual hours a week varied for the first year these usually amounted to 40 hours or more. From April 2023, the hours of work start to vary quite considerably. Some of that may be explained by some sickness absence that the claimant had, when he was off work for a while and returned to work on an agreed phased basis and on reduced hours.
15. Mr. Russell that he has taken those weeks out of account on the spreadsheet. But from the records he has supplied it is clear that from April 2023 there was considerable variation in the working hours. On quite a significant number of occasions from April 2023 onwards, the working hours in total were below 40 hours per week.
16. Mr Brenchley's evidence is that the basis of the contract was that all drivers worked variable hours and were paid for the hours worked only. He also stated that he agreed to frequent variation in working hours at Mr Holland's request to accommodate appointments or family situations.
17. Mr Holland's case is that he was employed to work 40 hours a week and should have been paid for that amount as a minimum. I note however that in paragraph 2 of his witness statement he states that he noticed a dip in his working hours in 2023 but he did not challenge it as he was exhausted and was worried that he would be victimised if he raised a complaint.

18. It is not in dispute that the claimant had some periods of sickness during his employment and some periods when he was working fewer hours whilst undertaking a phased return to work. I have also been shown evidence suggesting that he was looking to either reduce his hours or to leave his job as we approach the date of termination of the relationship. Despite this, the claimant did not at any point take steps to bring his employment to an end.
19. His engagement with Canterbury Taxis did end in October 2024. Mr. Brenchley described how the company was in crisis. He decided to carry out a restructuring exercise. The claimant and other drivers were offered the opportunity to switch to working on a self-employed basis. They were offered a written contract for services to consider.
20. Over the weekend of the 5/6th of October 2024, Mr. Holland too was offered a self-employed contract. He sought advice from Mr. Russell, his father-in-law. There were some discussions between himself and Mr. Brenchley. In the end he decided that he didn't want to work on a self-employed basis.
21. Mr. Brenchley's immediate reaction to that was to send him an e-mail dated 6 October 2024 stating that he was being given 2 weeks' notice of termination of his relationship with the respondent. The email states that there is an 'urgent redundancy process' that is ongoing and that the claimant would be paid any pay and redundancy pay to which he was entitled.
22. In answer to my questions, Mr. Brenchley very fairly agreed that it was the company who had brought the working relationship to an end.
23. At the preliminary hearing, which took place before Judge Tsamados on the 3rd of September 2025, a question about the claimant's status was identified as one of the issues in the case. The claimant brings claims on the basis that he is an employee. At the preliminary hearing in September and at the hearing today Mr. Brenchley argued that he was not in reality an employee, but a worker. And of course, if that is the case, then some of the claims would fall away, such as the claim for a redundancy payment.

### **The law**

24. As the case of **Autoclenz v Belcher** [2011] UKSC 41 made clear, the written agreement between the parties is the starting point but the tribunal may go behind it if it appears that the terms do not reflect the reality of the relationship. That case also cautioned that the relative bargaining relationship between an

- employer and those supplying their labour must be born in mind. **Uber BV v Aslam** [2021] UKSC 5, a case where drivers were held to be workers, confirmed the guidance in **Autoclenz** and stressed that the question of whether someone is a worker or an employee is also a matter of statutory interpretation. The written agreement is not definitive and all the circumstances must be taken into account.
25. Under section 230(3) of the Employment Rights Act 1996, a worker is defined as an individual who has entered into or works under either a) a contract of employment or b) any other contract *'whereby the individual undertakes to do or perform personally any work or services for another party to the contract'* who is not a client or customer.
  26. Under section 230(2) a contract of employment is defined as *'a contract of service or apprenticeship'* and an employee means *'an individual who has entered into or works under a contract of employment'* (230(1)).
  27. I have considered all the circumstances of this case very carefully. I have taken into account what Mr. Brenchley and what Mr. Russell have said to me.
  28. I have no hesitation in finding that in this case, the claimant was an employee of Canterbury Taxis Limited. My reasons are as follows.
  29. First, the claimant was issued with a contract of employment, even if that contract was not signed by both parties. The evidence that I have heard demonstrates that for the most part, the parties were working in accordance with that contract. For all intents and purposes, the respondent treated the claimant as if he was an employee for example in relation to his request for paternity leave.
  30. **Autoclenz** applies to the situation where the written terms do not reflect the reality of the working relationship with the parties. **Uber** applied similar principles when deciding that the drivers in question were not self-employed but met the statutory definition of workers.
  31. This situation is rather different. The claimant was issued with written terms albeit that they were never signed. The evidence I have heard suggests that the working relationship was consistent with those terms. The only area where the practice may have differed from the written terms relates to the working hours, an issue I will return to below.
  32. Bearing in mind the guidance in **Uber** about not focusing solely on the written terms, these are the other matters I have

- taken into account in reaching my conclusion that the claimant was an employee.
33. I note that the written contract of employment contains a restriction on taking other work during the period of employment.
34. Secondly, drivers were issued all their shifts for the following week on a Sunday. And based on the evidence I've heard, I find that they were expected to make themselves available to complete the shifts they were given. They could ask Mr. Brenchley to change their shifts if they had appointments that they wanted to work around. Mr. Brenchley told me, and I accept, that he always tried to accommodate the wishes or needs of his drivers. But it is also clear from emails in the bundle that Mr. Brenchley reserved the right to refuse a driver permission to change his shift if he didn't think he could cover it by other means. That is absolutely crucial. I refer to a specific example where the claimant was asking if he could change his shift because he wanted to go to a friend's birthday party. Mr. Brenchley said, I'm very sorry on this occasion, no, you can't. Even if this power wasn't operated frequently, the fact that it was operated on some occasions is very indicative of an employment relationship. I find that when shifts were issued on a Sunday, drivers had no unilateral right to refuse to work any of those shifts. Shifts could be only be changed with the agreement of Mr. Brenchley. That suggests a strong degree of mutuality of obligation between the claimant and the respondent. I find that the claimant was obliged to make himself available for work and that there was a high expectation that he would always be offered shifts on a Sunday for the following week. Once the rota was issued, the claimant was obliged to accept the shifts he was offered unless he had specifically agreed to a variation with Mr. Brenchley.
35. There are other factors that I have taken into account.
36. There was a high degree of control by the respondent over what the claimant did. He was provided with a fuel card and expected to purchase his fuel from a particular supplier. The respondent controlled the jobs he was given and even on occasion what routes he took. This happened if the respondent was aware that traffic was building up and he wished to point drivers down a different route to avoid a traffic jam and make sure that customers were met and reached their destinations in time.
37. It is also relevant to note that during the course of his employment, the claimant wanted to take a period of paternity leave. He started to fill out the relevant form, at which point it was

- realised that he'd left it too late to make his application. (The application had not been made 15 weeks before his wife's expected due date). Mr. Brenchley therefore permitted him to take unpaid leave. He agreed in his evidence however that if Mr. Holland had made his application for statutory paternity leave in time and had complied with all the legal requirements, he would have been granted paid paternity leave. The right to paternity leave is something that only applies to employees. I find that this is a further clear example of the parties conducting themselves as if this was an employment relationship.
38. I've also noted from the draft contract that was issued that it contains a disciplinary procedure and a code of conduct. Again, not matters that one would expect to see if the claimant was simply a worker.
39. What was the arrangement in terms of working hours? I've noted that when the role was advertised, it was suggested that working hours would be between 30 and 50 hours per week (ie may be variable).
40. I have also noted that the draft contract refers to a basic week of 40 hours plus overtime if that benchmark is exceeded. However the contract does not for example operate on the basis of a fixed salary calculated on 40 hours week. An hourly rate is stated and the claimant was always paid solely on the basis of hours worked.
41. Mr Brenchley argues that the written agreement was marked 'draft' and does not reflect the reality of the relationship. He states that the hours were always variable and that this demonstrates that the claimant was not an employee but a 'worker'. I accept that it is clear from the payslips that the claimant was paid strictly for the number of hours that he worked.
42. Although I accept that there is an argument that the reality of the pay and hours arrangements does not appear to entirely match the contract, I find that this fact alone does not point to the claimant being a 'worker' only. Many people are employed under a contract of employment where the hours vary and they are paid at an hourly rate for all hours worked rather than a fixed salary.
43. I accept that the claimant meets the definition of 'worker' set out in the Employment Rights Act. He was obliged to provide the services of a driver personally and there was no right of substitution. He was not in business on his own account.
44. There are however additional factors here which clearly point to a contract of employment.

45. First, there was mutuality of obligation. The respondent was obliged to offer the claimant shifts each week and he was under a duty to accept them unless he had the agreement of the respondent. There is no evidence whatsoever that he could choose when and where to work.
46. Second, the respondent had a high degree of control over what the claimant did. This included the shifts he would be offered, the supplier where he would buy his fuel, and even on occasion the routes he should take when carrying customers.
47. The claimant was subject to the respondent's policies and procedures, including disciplinary procedure and code of conduct. He was treated as an employee for the purposes of statutory rights such as paternity leave.
48. The respondent provided the claimant with a vehicle, radio and card machine. He was provided with a 'company' t-shirt which he could choose to wear. The claimant was therefore provided with all relevant equipment. He took very little financial risk.
49. Taking into account both the terms of the only written agreements ever offered to him and all the circumstances of the case, I find that the claimant was not a mere worker. All the evidence is consistent with a finding that he was in reality an employee of the respondent.
50. I come to the claims made by the claimant, and I'll take each of those in turn.

### **Failure to provide written particulars**

51. First of all, Mr. Russell seeks a reference to the Employment Tribunal on the basis that the respondent failed to provide him with written particulars of employment that met the requirements of Section 1 of the Employment Rights Act 1996. I do agree with that. It is not in dispute that although I have found he was an employee, he was never personally issued with written terms of employment in his name. When I look at the document, I find that it is largely compliant with Section 1. It deals with essential matters such as hours, sickness, absence, annual leave, disciplinary and grievance, and notice. The lack of personalized information however means that it was not Section 1 compliant. There's no remedy as such under a referral under Section 8, but the claimant can ask the tribunal to make a determination of what the terms should be.
52. To comply with section 1 the terms would need to include the personal details of the claimant. Most other terms are included.

The only area where it seems to me that the draft contract doesn't reflect the working arrangements from April 2023 onwards is over working hours, a matter I've already dealt with. And I've noted how the draft contract does refer to a basic working week of 40 hours. But in practice, I find that the appropriate term of that agreement from that date was that the claimant would be paid for all hours he actually worked. You could describe that as a zero hours contract in some ways, although it seems to me that the aspiration was that the claimant would work between 30 and 50 hours a week, and to a very large extent, that is exactly what he did, but he was always paid exactly for the hours that he worked.

53. I now turn to the other claims that Mr. Holland has brought.

**The claim for unlawful deductions from wages.**

54. I find that when the claimant started work for the respondent there was an expectation that he would have a working week of around 40 hours, and the claimant worked at least 40 hours for almost a year.

55. When I look at the claimant's payslips however I note that he was never paid on the basis of a fixed 40 hour week plus any additional overtime and unsocial hours payments. All the payslips refer specifically to the number of hours worked each week and the amount is not shown as fixed. Throughout the period of employment, it's clear that the hours were variable but always exceeded 40 hours up to April 2023.

56. The claimant argues that the reduction in hours around this time amounts to a breach of contract and that he is therefore entitled to claim arrears of wages being the difference between what he was paid and a 40-hour per week minimum salary.

57. Having read the claimant's witness statement and that of Mr Brenchley, and heard Mr Brenchley's oral evidence however, I prefer the evidence of Mr Brenchley. I find that both parties understood that the claimant would only be paid for actual hours worked. I also find it more likely than not that to the extent that the hours reduced from April 2023 onwards, such variation was done with the claimant's consent. It is clear that the claimant was suffering from some health problems. He also described himself as being 'exhausted' by the job. During 2024 he suggested a reduction in hours. I also accept Mr Brenchley's evidence that he allowed frequent changes to shift arrangements to the accommodate the claimant's personal needs.

58. It is also important to note that the claimant never raised the reduced hours as an issue. In his witness statement he accepts this and said he was exhausted and decided that he would not challenge the reduced hours. One might have expected that if someone expected a guaranteed 40 hour working week they would be straight on to their employer to query why they hadn't received the full amount.
59. I am told and I accept that the claimant has a number of health issues. I note also that he has dyslexia and might have found reading and understanding his payslips difficult or confusing. But Mrs. Holland, from whom we heard evidence today, stated that although she didn't look at all his payslips, she did look at some of them to check that he'd been paid for the hours worked. Likewise she checked that payment had been received in their bank account. Again, one might have assumed that even if Mr Holland did not feel able to raise the matter himself, if he and Mrs. Holland were working on the assumption that he should be paid a minimum salary for 40 hours a week, this would have been raised by one of them. It was not however queried until the beginning of October 2024, around the time that Mr. Holland's employment actually came to an end.
60. Taking all the factors into account I conclude that there was no unilateral reduction in hours by the respondent and that the reduced hours were in accordance with the claimant's wishes.
61. I therefore find on the balance of probabilities that notwithstanding the contents of the unsigned contract, from April 2023 onwards the actual arrangement between the respondent and claimant was that he would be paid for hours worked, with an additional allowance for overtime hours if he had worked over 40 hours a week, or for unsocial hours.
62. If I am wrong on that and if in fact the correct interpretation of the contract is that the claimant should have been paid for at least 40 hours a week I find that by failing to challenge this (either himself or through his wife) and by working the reduced hours from April 2023 to October 2024 the claimant had effectively accepted the breach and affirmed the contract.
63. I understand that the claim for arrears of pay is based entirely on the notion that the claimant was entitled to be paid for a basic working week of 40 hours. I have not accepted that for the reasons set out above and therefore that claim fails.

### **Holiday Pay**

64. The claim for holiday pay, as I understand it, is also based on a calculation of outstanding accrued holiday pay entitlement based on a 40-hour week. Again, the claim fails for the reasons I've set out already.

**Notice Pay**

65. I turn to the claim for notice pay. I have examined the payslips. I find that on the 6th of October, the claimant was given two weeks' notice, which he worked and was paid for. Mr. Russell's argument in relation to that payment is that the claimant was paid less notice pay than was due as he should have been paid on the basis of a 40-hour working week. As far as I can see, the claimant was paid for the hours he worked over that two-week notice period. I find that was in accordance with his contract and therefore any claim for breach of contract in relation to notice pay does not succeed.
66. I should also note that the payslips clearly show that a sum was paid for accrued holiday pay. Mr. Russell has disagreed with the amount paid, but for the reasons I've given, that claim does not succeed.

**Redundancy payment**

67. That brings us to the claim for a statutory redundancy payment. I have already decided that the claimant was an employee of the company. He had been employed for more than two years. Was he entitled to a redundancy payment?
68. Mr. Brenchley has agreed that it was the company which bought the contract to an end by giving 2 weeks notice. That amounts to a dismissal under the Employment Rights Act 1996.
69. What was the reason for that dismissal? And was it redundancy? If so there is a right to a statutory redundancy payment.
70. It is of note that the email from Mr Brenchley to the claimant giving him two week's notice of the termination of his employment refers to an 'urgent redundancy process' and also states that the claimant will be paid any redundancy pay that is due to him.
71. I turn to section 135 of the Employment Rights Act 1996, which says: *'an employer shall pay a redundancy payment to any employee of his if the employee is dismissed by the employer by reason of redundancy'*. And then at section 139 of the Employment Rights Act 1996, 139(1) says, for the purposes of this Act, *An employee who is dismissed shall be taken to be dismissed by reason of redundancy. If the dismissal is wholly or mainly*

- attributable to... 139(1)(b)..the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed, have ceased or diminished or are expected to cease or diminish'.*
72. In this case, Mr. Branchley argues that he gave notice and that the reason for dismissal was some other substantial reason, i.e. the claimant's refusal to accept the self-employed contract.
73. I refer to the case of **Hollister v National Farmer's Union** [1979] ICR 542. That is an example of a case where the termination of the existing terms of employment and offer of new terms was found to be a fair dismissal for a substantial reason, namely a 'sound good business reason for the reorganisation' (Lord Denning). As I understand it, that is what Mr Branchley is arguing here.
74. It is clear that what Mr. Branchley was trying to do was to move away from a model where the drivers were employed to a model where all the drivers are treated as self-employed. This model is fairly common in the cab driving sector. But It is implicit within that, therefore, that Mr. Branchley's requirement for *employees* had ceased or diminished. He no longer wished to employ people as employees because he wanted to move to a different way of operating. His intention was to dispense with the entirety of his employed workforce. This is a crucial difference between this case and cases like **Hollister** where the employee is being offered new terms of *employment*. Here the claimant was being asked to give up all his rights as an employee and move to a model where he would be contracting with the respondent as an independent contractor, something he did not wish to do. And I find that in all those circumstances, the definition of redundancy in section 139 is met. That was the reason why Mr. Holland's employment was brought to an end. I find that he was dismissed because of redundancy and he is therefore entitled to a statutory redundancy payment. Based on his age and length of service the figure for that is a statutory redundancy payment of £962.60.
75. I will also make an award under Section 38 of the Employment Relations Act 2002. I accept that Mr. Branchley issued two standard form contracts of employment to Mr. Holland, one at the beginning of the employment relationship and another during 2023 when there were some terms he wanted to update. Now, those contracts contain a large number of the matters that are required to be included under Section 1 of

the Employment Rights Act 1996. They don't however comply in two crucial respects. Under section 1.3, the statement shall contain particulars of the names of the employer and employee. Mr. Holland's name was not included in the contract issued either at the outset of employment or during the course of the employment. The situation in relation to the second contract is particularly hard to understand. I find also that the contracts were not signed and Mr. Holland was never asked to sign them. Although he may have understood in broad terms the basis on which he was working, it seems he never had written particulars of employment that were issued specifically to him. That is the first breach. The other area where there is a breach is in relation to working hours. The working hours as set out in this standard form contract of employment do not reflect the actual arrangement between the respondent and the claimant, because they refer to a basic working week of 40 hours, I have found that in practice, that is not the way the contract was operating, certainly from April 2023 onwards. (This may be a reason why this case has come to the tribunal today, because there was a lack of clarity about what the arrangements for working hours between the claimant and the respondent actually were. If the arrangement whereby Mr. Holland was simply paid for hours worked had been set out clearly on the contract, it seems very unlikely that Mr. Russell, on behalf of the claimant, would have brought the claims for holiday pay, arrears of pay and notice pay, but it's taken a tribunal hearing to determine what the actual situation was. That could all have been made crystal clear in the contract).

76. I conclude that the contract of employment did not meet the requirements of section 1 of the Employment Rights Act 1996 in relation to written particulars. As I have made an award of a statutory redundancy payment under the Employment Rights Act, in those circumstances, I should award at least a minimum award of two weeks' pay, and I do that. And so I award Mr. Holland an additional amount of £962.60 based on two weeks' wages. Given that a contract of employment was issued to the claimant I do not award the higher amount of four week's wages.

77. The total award is £1,925.20.

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Employment Judge Siddall

Date: 27 January 2026.

Judgment and reserved reasons sent to the parties and entered in the Register on: 2 March 2025

For the Tribunal Office

P Wing