



EMPLOYMENT TRIBUNALS

Claimant: Jake Pick

Respondent: RJD Air Conditioning Services Ltd

Heard at: Leicester

On: 7 January 2026

Before: Employment Judge L Brown

REPRESENTATION:

Claimant: Mr Ross, Counsel

Respondent: In person

RESERVED JUDGMENT

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
2. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the period from 5 May to 7 May 2025 in respect of two days' work not paid for the 5 and 7 May 2025. The Respondent shall pay the Claimant the gross sum of **£309.10**. The claimant is responsible for paying any tax or National Insurance. This sum is based on a gross weekly pay figure of £772.75.
3. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2) and/or 16(1) of the Working Time Regulations 1998.

The Respondent shall pay the Claimant the gross sum of **£514.65** for 3.33 days of annual leave owed. The claimant is responsible for paying any tax or National Insurance. This sum is based on a gross weekly pay figure of £772.75.

4. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is not just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant a sum equating to two weeks gross pay which is the sum of **£1545.50**.

REASONS

Findings of Fact

1. I had before me a bundle of 152 pages.
2. I heard evidence from Mr Downing the Director of the Respondent, and also from Ms Downing.
3. I also heard evidence from the Claimant.
4. I make findings of fact based on all the evidence before me and whilst all is not referred to this does not mean it has not been taken into account. I make findings of fact both in this section and in the conclusions where appropriate.
5. This was not a case where it was easy for me to decide which was the most credible witness as at times both the Claimant and Mr Downing were prone to becoming defensive, vague and also, I found, both tended to exaggerate their version of events. However overall, I found that Mr Downing did this more than the Claimant, and overall the Claimant was a better witness than Mr Downing, and on the key issues I preferred the Claimants evidence.
6. Given the somewhat unsatisfactory demeanour of Mr Downing of the Respondent, and on occasion also the Claimant while giving evidence, I therefore had regard to the principles enunciated in **Gestmin SGPS S.A. v**

Credit Suisse [2013] EWCA 3560 at paragraphs 15 to 22. Leggatt J, as he then was, stated:

“...the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

7. The Claimant was employed by the Respondent from the 12 June 2022 as an Engineer. The Respondent carried out a business that provided and installed air conditioning units.
8. The Claimant was not provided with a Contract of Employment nor with a statement of particulars of employment. He was offered a job by WhatsApp [P.43] which simply set out an hourly rate of £14.00 per hour. This was dated the 6 June 2022. No other particulars were provided other than this. It did not set out the name and address of the employer, nor of his annual leave entitlement, his notice pay or entitlement to sick pay. It said that *‘the van can be used for private too but fuel paid for’* but apart from that no other particulars of employment were provided.
9. In the bundle was a completed annual leave form that set out holiday entitlement was 20 days plus 8 days bank holiday pro-rata and so I found the annual leave entitlement was 28 days pro-rata.
10. I was taken to an exchange of WhatsApp messages [P.81 -85]. Initially the Claimant was asked by Mr Fenton of the Respondent, its owner, as follows which were dated the 6 and 7 May 2025:-

6 May 2025

Claimant: Do you know what’s happening tomorrow yet?

Respondent: Hi yes back at lgh.

Claimant: Okay.

Respondent: Actually change of plan, can you meet at mine at 7.30 please.

Claimant: Seeyou then.

Respondent: Actually change of plan, can you meet at mine at 7.30 am please

7 May 2025

Claimant: Seeyou then.

Respondent: Morning if you can reverse up to the garage we can load up.

Claimant: Yep no worries.

11. The next exchange of texts was on the same day of the 7 May 2025 between the Claimant and Dan Adams which said as follows:

Mr Adams: Where did you end up instead

Claimant: Sacked

Mr Adams: Sacked?

Claimant: Yeah

Mr Adams: Being serious or

Claimant: Serious mate. He's dropping me off home now.

Mr Adams: No way

Claimant: Yep

12. Two days later on the 9 May 2025 [P.83] the Claimant sent the following email to the Respondent:

Hi Russ,

I'd like to follow on from your chat which ended in my instant dismissal following no disciplinary or misconduct process.

I would like to appeal this decision.

*I hope this matter can be resolved promptly and look forward to having a opportunity at discussing this further, for a fair process.
I can be reached on this email or by my mobile number.*

13. In response Mr Downing wrote an e-mail on the 13 May 2025 [P.87] as follows:-

'Hi Jake,

I am surprised to get this e-mail there was no dismissal? You came into the office on Tuesday morning and handed in your notice. You are a little off with mentioning hourly rates, ETC. Hopefully this is not some sort of plan of trying to cause trouble for us.

As agreed, on dropping you off back at home, we will pay you the two weeks' notice but you are not required to come into work, as you are now working for your own company, this would not be in our interest.

Thanks for your service over the last couple of years and we wish you well in the future.'

14. In reply on the same day the Claimant said as follows [P.84]:-

Hi Russ,

Thanks for the response, although I am completely baffled by it.

I did not resign; I was given summary dismissal by yourself so I am unaware of how you would believe that you have been given a notice from me.

I have had a company set up for well over a year whilst in your employment of just over three years, only due to you consenting to me installing units which you had supplied.

I had no intention of leaving; I was told to come to your house to load the van up and was instantly dismissed without fair process.

I have multiple holidays booked with you for this year coming up, confirmed by you. I had no intention of leaving.

This is purely due to your hand for summary dismissal.

15. On the 15 May 2025 [P.85] the Respondent replied further which set as follows:

Hi Jake,

On Tuesday you verbally gave your resignation as you said you were unhappy with the pay and you were going self-employed. We accepted this resignation.

We offered to pay you your two weeks' notice but without you working this, as it would not be in the company's interest. As you are aware, this Friday is a payday, we will pay you any days works in any annual leave remaining. We will not be able to pay the two weeks' notice if this is in dispute, we need clarity from you on how to proceed with this payment before it is made.

We do not know what has changed from Tuesday last week, till now, with regard to your notice being given.

To confirm, your first date of employment with us was the 13th of June 2022.

16. As the Claimant didn't reply a further email was sent by the Respondent as follows on the 19 May 2025: -

'Hi Jake,

We have not heard from you since our last e-mail, regarding payment of your notice.

We feel that this should be cleared up, as technically tomorrow is your last working day with the company. As you are aware, the next pay run is a week on Friday, the 30th of May but we will pay the entire notice amount tomorrow, so we are all settled.'

17. I was not taken to any further reply by the Claimant to the Respondent. ACAS were contacted by the Claimant on the 1 June 2025, and proceedings were then issued on the 29 July 2025.

18. The Claimants account of the day he was dismissed was that in short [Para 13 WS] after arriving at work on the 7 May 2025 he was called into Mr Downings garage and that he said to him *'this cannot go on.'* He then referred to the Claimant being in direct competition with him and he could not carry on employing him whilst this was happening.

19. The Claimant said he asked how he could be in competition with him when he worked over 45 hours a week plus for him. Further details of the conversation were given.
20. It was not disputed that the Respondent drove him back home as he had driven there in the Respondents vehicle that morning.
21. The directly contradictory account given by Mr Downing was that [Para 1 WS] the Claimant arrived at work and said he wanted *'a word with me.'* He then said the Claimant told him he was giving his notice in due to the recent jobs being a nightmare and that he was not happy with the money he was being paid. He also said the Claimant said he *'would rather be doing his own jobs.'* He went on to say that after this the Claimant *'seemed off with me.'* He said that he then said to him that if this was how it was going to be for the next two weeks then *'I'd rather you weren't here at all.'* He said the Claimant said, *'if you are telling me this now then you have got to pay me my notice'* and that he said he *'just wanted to go.'* He said the Claimant seemed to be trying to manipulate the situation i.e. to be paid his two weeks' notice without working for it. He said that he concluded that the best option was to *'drop him off and be done with it, I have had guys leave before and the notice period is a bit of a nightmare.'*
22. I had two directly conflicting accounts before me where the Claimant said he was dismissed instantly with no warning whereas the Respondent said he resigned on notice and so he decided to drive him home, and without asking him to work his notice due to the atmosphere after he resigned. I found the text the Claimant sent on the day of his dismissal to a friend saying he had been sacked proved that he had been sacked on that day by the Respondent. I did not find on the balance of probabilities that he invented this and sent this text to a friend to 'set up a claim.' I found this after also factoring in evidence that another employee had been similarly instantly dismissed and had regard to messages in the bundle that showed he had been also sacked on the spot in the same manner.
23. Other evidence was put before me such as evidence the Claimant had set up his own company and brought his own van with his company name on it, and that he had also registered with Refcom to buy refrigerant from it. This it was said was evidence of him intending to resign to work for his own company. I found that the Claimant had set this company up due to his increasing concerns about the way Mr Downing spoke to him.
24. The Claimant did not deny he had set up his own company on the 21 January 2024 and gave an explanation in his witness statement why he had done this. He in essence said he did it as an insurance policy as he had been subjected

to aggressive tirades from Mr Downing in the past. He had also he said witnessed another employee Oliver Fenton being sacked without warning at a busy time of year and that he and Dan, another employee, were shocked by this. He said that Mr Fenton [Para 6] following his verbal dismissal was verbally told and bribed to send a message saying that he had quit to ensure that he would be paid, and the Claimant asserted that he was told to do the same thing the day he was dismissed [Para 6 and 16 and 21]. I found on the balance of probabilities that he was told this by the Respondent but stood his ground and decided not to do so.

25. I found that the Respondent knew the Claimant was doing '*outside jobs*' while working for him as referred to by the Claimant in his witness statement, and the oral evidence given was that this was very occasional. The respondent did know of it as the Claimant bought parts from him as evidenced in the bundle.
26. I found that the Respondent had no objection to him doing the odd job here and there. I found that on this small occasional scale the Respondent was not concerned about this. I accepted however the Claimants account that the Respondent started to ask him what he wanted refrigerant for [para 11 WS] and it is at this point I found the Respondent started to become concerned about the Claimants activities outside the workplace and this was said to be around the 30 October 2024 some seven months before he was dismissed.
27. On the balance of probabilities, I found that the Respondent became concerned that the Claimant was building up his business without his consent on a larger scale and was beginning to compete with him without their consent and that on that morning he did dismiss the Claimant due to this reason of working on a self-employed basis.
28. I also accepted the Claimants evidence that on the day of dismissal the Respondent [Para 15] showed the Claimant his phone whereby his company he had set up could be seen, along with his Refcom registration. I found that upon discovering the Claimant had set up his own company and had registered with Refcom that the Respondent decided to dismiss him.
29. I concluded that as set out in the Claimants witness statement that he said to him [Para 13] '*you are my direct competition.*'
30. Mr Downing admitted during evidence that a mistake appeared to have been made and that he had not paid the Claimant for the bank holiday on the 5 May 2025. I found that he had not paid him this bank holiday as there was no

reference in the payslips to payment for a bank holiday. I also found that the Claimant was still working for the Respondent the day he went into work that day and as the Respondent I found dismissed him that day then I found that he was owed one day's pay for the 7 May 2025 also. I find the Claimant has not been paid for two days' pay which he worked, albeit he was sacked on the 7 May 2025 and taken home that morning, and this amounts to an unauthorised deduction of two days' pay.

31. I found the holiday year ran from January to December 2025. During the hearing the Claimant conceded that he had overclaimed for accrued holiday in his Schedule of Loss as his solicitors had assumed an April to end of March holiday year. He therefore revised his claim for holiday pay from the 7.3 days holiday pay down to 3.3 days holiday pay for the months of January and February during which I found he took no holiday based on the evidence before me. I therefore found holiday which accrued for the month of January and February amounted to 3.33 days holiday pay and was unpaid at the date of termination. In making this finding I factored in that the wage slips did not indicate any payment of any holiday pay to him.

The Law

Failure to supply Statement of Initial Employment Particulars

32. Section 1 of the Employment Rights Act 1996 provides as follows: -

1 Statement of initial employment particulars

(1) *Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.*

(2) *Subject to sections 2(2) to (4)—*

(a) the particulars required by subsections (3) and (4) must be included in a single document; and

(b) the statement must be given not later than the beginning of the employment.

(3) *The statement shall contain particulars of—*

(a) the names of the employer and worker,

(b) the date when the employment began, and

(c) in the case of a statement given to an employee, the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment of a statement given under section 2(4) containing them) is given, of—

(a) the scale or rate of Remuneration or the method of calculating Remuneration,

(b) the intervals at which Remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work including any terms and conditions relating to—

(i) normal working hours,

(ii) the days of the week the worker is required to work, and

(iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined.

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the worker's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, any other paid leave, and

(iii) pensions and pension schemes,

(iv) and any other benefits provided by the employer that do not fall within another paragraph of this subsection,

(e) the length of notice which the worker is obliged to give and entitled to receive to terminate his contract of employment or other worker's contract,

(f) the title of the job which the worker is employed to do or a brief description of the work for which he is employed,

- (g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,*
- (ga) any probationary period, including any conditions and its duration,*
- (h) either the place of work or, where the worker is required or permitted to work at various places, an indication of that and of the address of the employer,*
- (j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made,*
- (k) where the worker is required to work outside the United Kingdom for a period of more than one month—*
 - (i) the period for which he is to work outside the United Kingdom,*
 - (ii) the currency in which Remuneration is to be paid while he is working outside the United Kingdom,*
 - (iii) any additional Remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and*
 - (iv) any terms and conditions relating to his return to the United Kingdom.*
- (l) any training entitlement provided by the employer,*
- (m) any part of that training entitlement which the employer requires the worker to complete, and*
- (n) any other training which the employer requires the worker to complete and which the employer will not bear the cost of.*
- (5) Subsection (4)(d)(iii) does not apply to a worker of a body or authority if—*
 - (a) the worker's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act, and*
 - (b) any such provision requires the body or authority to give to a new worker information concerning the worker's pension rights or the determination of questions affecting those rights.*
- (6) In this section "probationary period" means a temporary period specified in the contract of employment or other worker's contract between a worker and an employer that—*
 - (a) commences at the beginning of the employment, and*

(b) is intended to enable the employer to assess the worker's suitability for the employment.

33. The right not to suffer unauthorised deductions from wages is set out in s.13 of the Employment Rights Act 1996 as follows:

13 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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of

any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

34. The right to be paid holiday pay is governed by the Working Time Regulations 1998 as follows:

13 Entitlement to annual leave

(29) Subject to paragraph (5), a worker is entitled to four weeks’ annual leave in each leave year.

(3) A worker’s leave year, for the purposes of this regulation, begins—

(29) on such date during the calendar year as may be provided for in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply—

(29) if the worker’s employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or

(ii) if the worker’s employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.

(4) Paragraph (3) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture in Wales or Scotland) except where, in the case of a worker partly employed in agriculture in Wales or Scotland, a relevant agreement so provides.

- (5) *Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which his employment begins.*
- (6) *Leave to which a worker is entitled under this regulation may be taken in instalments, but—*
- (29) *subject to the exception in paragraphs (10) and (11) it may only be taken in the leave year in respect of which it is due, and*
- (b) *it may not be replaced by a payment in lieu except where the worker's employment is terminated.*
- (7) *Where in any leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under this regulation as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society), the worker shall be entitled to carry forward such untaken leave as provided for in paragraph (11).*
- (8) *Leave to which paragraph (10) applies may be carried forward and taken in the two leave years immediately following the leave year in respect of which it was due.*
- (9) *An employer may only require a worker not to take leave to which paragraph (10) applies on particular days as provided for in regulation 15(2) where the employer has good reason to do so.*
- (10) *For the purpose of this regulation "coronavirus" means severe acute respiratory syndrome corona-virus 2 (SARS-CoV-2).*

13A Entitlement to additional annual leave

(29) *Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).*

(2) *The period of additional leave to which a worker is entitled under paragraph (1) is—*

(29) *in any leave year beginning on or after 1st October 2007 but before 1st April 2008, 0.8 weeks;*

(b) *in any leave year beginning before 1st October 2007, a proportion of 0.8 weeks equivalent to the proportion of the year beginning on 1st October 2007 which would have elapsed at the end of that leave year;*

I in any leave year beginning on 1st April 2008, 0.8 weeks;

(d) *in any leave year beginning after 1st April 2008 but before 1st April 2009, 0.8 weeks and a proportion of another 0.8 weeks equivalent to the proportion of the year beginning on 1st April 2009 which would have elapsed at the end of that leave year;*

I in any leave year beginning on or after 1st April 2009, 1.6 weeks.

(3) *The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.*

(4) *A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 13.*

(5) *Where the date on which a worker's employment begins is later than the date on which his first leave year begins, the additional leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.*

(6) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where—

(29) the worker's employment is terminated; or

(b) the leave is an entitlement that arises under paragraph (2)(a), (b) or (l); or

l the leave is an entitlement to 0.8 weeks that arises under paragraph (2)(d) in respect of that part of the leave year which would have elapsed before 1st April 2009.

(7) A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.

(8) This regulation does not apply to workers to whom the Agricultural Wages (Scotland) Act 1949 applies (as that Act had effect on 1 July 1999).

14 Compensation related to entitlement to leave

(29) Paragraphs (1) to (4) of this regulation apply where—

*(29) a worker's employment is terminated during the course of his leave year,
and*

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(29) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - I$$

where—

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

B is the proportion of the worker's leave year which expired before the termination date, and

I is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

(5) Where a worker's employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under regulation 13(10) and (11), the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave.

16 Payment in respect of periods of leave

(29) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A, at the rate of a week's pay in respect of each week of leave.

(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3) and the exception in paragraph (3A).

(3) The provisions referred to in paragraph (2) shall apply—

(29) as if references to the employee were references to the worker;

(b) as if references to the employee's contract of employment were references to the worker's contract;

I as if the calculation date were the first day of the period of leave in question;

(d) as if the references to sections 227 and 228 did not apply;

I subject to the exception in sub-paragraph (f)(ii), as if in sections 221(3), 222(3) and (4), 223(2) and 224(2) and (3) references to twelve were references to—

(29) in the case of a worker who on the calculation date has been employed by their employer for less than 52 complete weeks, the number of complete weeks for which the worker has been employed, or

(ii) in any other case, 52; and

(f) in any case where section 223(2) or 224(3) applies as if—

(29) account were not to be taken of remuneration in weeks preceding the period of 104 weeks ending—

(aa) where the calculation date is the last day of a week, with that week, and

(bb) otherwise, with the last complete week before the calculation date; and

(ii) the period of weeks required for the purposes of sections 221(3), 222(3) and (4) and 224(2) was the number of weeks of which account is taken.

(3A) In any case where applying sections 221 to 224 of the 1996 Act subject to the modifications set out in paragraph (3) gives no weeks of which account is taken, the amount of a week's pay is not to be determined by applying those sections, but is the amount which fairly represents a week's pay having regard to the considerations specified in section 228(3) as if references in that section to the employee were references to the worker.

(3B) For the purposes of paragraphs (3) and (3A) "week" means, in relation to a worker whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day and, in relation to any other worker, a week ending with Saturday.

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration") (and paragraph (1) does not confer a right under that contract).

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Unfair Dismissal

35. The right not to be unfairly dismissed is dealt with by s.98 of the Employment Rights Act 1996 as follows: -

98 General

(1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) *A reason falls within this subsection if it—*

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) *In subsection (2)(a)—*

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

(5) *Subsection (4) is subject to—*

(a) sections 98A to 107 of this Act, and

(b) sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).

36. The correct approach for the Tribunal to adopt in considering section 98(4) of the ERA (as set out in **Iceland Frozen Foods v Jones [1982] IRLR 439**) is as follows:

“... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.”

37. The ACAS Code of Practice on Disciplinary and Grievance procedures sets out matters that may be taken into account by tribunals when assessing the reasonableness of a dismissal on the grounds of conduct, as follows:

'Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

Employers and employees should act consistently.

Employers should carry out any necessary investigations, to establish the facts of the case.

When investigating a disciplinary matter take care to deal with the employee an affair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee’s case as well as evidence against it. Be careful when dealing with evidence from a person who wishes to remain anonymous. In particular, take written statements that give details of the time, place, dates as appropriate, seek cooperative evidence check that the person’s motives are genuine, and assess the credibility and weight to be attached to their evidence.

Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.

If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct. And its possible consequences to enable the employee to prepare to answer the case of the disciplinary hearing. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements within the notification. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should also be given a reasonable opportunity to ask questions, present evidence, and call relevant witnesses.

They should also be given the opportunity to raise points about information provided by witnesses.

Employers should allow an employee to appeal against any formal decision made.”

Applying the Law to the Issues and the Facts

Unfair dismissal

1.1 Was the claimant dismissed?

38. I found the Claimant was dismissed on the 7 May 2025 as set out above.

1.1.1 Did the respondent do the following things:

1.1.1.1 Dismiss the Claimant upon discovering he was also working in a self-employed capacity?

39. I found the Claimant was dismissed on that date due to the Respondent discovering that his self-employed work was likely to be expanding upon discovering he had set up his own company and was registered with Refcom to buy refrigerant for his own self-employed activities.

40. Whilst it was not in dispute the Claimant did the odd job for others and that the Respondent knew of this, as he purchased items from them on at least a couple of occasions it was, I find, initially an occasional activity by the Claimant on the balance of probabilities and on the evidence before me. Whilst the Facebook posts were not dated on the balance of probabilities I found they evidenced work he was doing for others while he still worked for the Respondent and that this work had started before he resigned. I find that upon the Respondent discovering evidence of the work he did for others and that he had set up his own company, and also that he had registered with Refcom, that they then sacked him instantly.

1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal - i.e. was the reason misconduct?

41. The Respondent did not advance a fair reason for dismissal as they argued that he resigned. The burden of proof is on them to establish the fair reason for dismissal, and none was advanced. I found therefore that no fair reason for dismissal was established.

1.2.1 at the time the belief was formed the respondent had carried out a reasonable investigation;

42. I found no investigation was carried out whatsoever.

43. I found there was no disciplinary process followed with the Claimant whatsoever about his potential dismissal and therefore found that his dismissal was unfair. He was simply orally and instantly dismissed.

44. The range of reasonable responses test applies as much to the procedure which is adopted by the employer as it does to the substantive decision to dismiss (**Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23**).

45. This was outside the reasonable band of responses of any other employer to carry out no investigation as to how much work the Claimant was carrying out for others and why he had set up his own company before deciding to dismiss him.

1.2.2 the respondent otherwise acted in a procedurally fair manner;

46. I did not find the Respondent acted in a procedurally fair manner otherwise. It did not call the Claimant to any form of disciplinary hearing it simply instantly dismissed him on the spot.

47. The claim for unfair dismissal therefore succeeds.

Polkey Reduction

48. There were no arguments advanced by the Respondent about the case of **Polkey v A. E. Dayton Services Ltd [1987] UKHL J1119-2Polkey** i.e. that even had they followed a fair procedure that he would have been sacked in any event. This was because their case was, he had resigned. I therefore make no reduction on the grounds of **Polkey**.

Contributory Fault

49. I leave the issue of contributory fault to a future remedy hearing where I will hear submissions by how much, if at all, the Claimant contributed to his own dismissal.

ACAS Uplift

50. I will leave the issue of any ACAS uplift to a future remedy hearing where I will hear submissions from both parties by how much, if at all, any compensation should be uplifted by for failing to follow the ACAS procedure.

Unauthorised Deductions from Wages

51. There was a concession that the bank holiday on the 5 May 2025 had not been paid to the Claimant. As to the 7 May 2025 the Respondent argued as he did not work that day, he was not entitled to be paid for it. I found he did go to work that day, and he was dismissed so he was entitled to be paid for it. The claim for two days' pay not paid to him as an unauthorised deduction from wages succeeds as set out in this Judgement.

Holiday Pay

52. I found the Claimant was not paid his holiday pay accrued in January and February 2026 and I find he is owed 3.33 days holiday pay in the amount set out in this Judgment.

Failure to provide particulars of employment

53. This was not a case where I judged four weeks' pay should be awarded. This was a small employer and so I award two weeks' pay.

Directions for Remedy Hearing

54. The parties should write to the Tribunal within the next four weeks to advise whether settlement has been achieved and if not, a remedy hearing will be listed for one day.

55. If settlement is not achieved, then I make the following directions: -

54.1 By the **6 April 2026** and for the current financial year just ended the Claimant will provide all details of sales turnover and outgoings together with a projected net profit estimate for the year April 2025 to April 2026 and any company accounts.

55.2 By the **6 April 2026** the Claimant will provide a copy of his annual return filed by the end of January 2026 to include all dividend payments made to him by the company he trades through.

55.3 By the **6 April 2026** the Claimant will provide a copy of all his bank statements (both personal and for the company) showing all income paid to himself since trading on a self-employed basis following his dismissal.

55.4 By the **6 April 2026** the Claimant is to serve a revised and updated schedule of loss.

56. The Claimant at the hearing before me relied on the amount his accountant told him to withdraw for the purposes of tax efficiency as his earnings, and it was conceded this was the amount set out in his ET1 Form. The Claimant should note that the proper basis of loss is what his actual net earnings are based on a reasonable level of drawings from his company having regard to net profits made.

57. The parties are to provide to each other a copy of any documents upon which they intend to rely at any future remedy hearing by the **6 May 2026**.

58. The parties are to agree a joint remedy bundle by the **6 June 2026** and the Respondent is to prepare this and also bring three copies to the hearing together with three copies of any witness statements exchanged.
59. These documents are also to be uploaded via a DUC link 14 days before the listed remedy hearing.
60. Any witness statements are to be exchanged at 4.00 pm on the **6 July 2026**.

Approved by:

Employment Judge Brown

6 February 2026

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/