



EMPLOYMENT TRIBUNALS

Claimant: P OVAT

Respondent:
EFFECTIVE SECURITY SERVICES LTD T/A PROFESSIONAL SECURITY

Heard at: Newcastle Upon Tyne **On:** 20,21,22,23 October 2025

Before: Employment Judge O'Dempsey

Representation

Claimant: self

Respondent: Wilshire (counsel)

JUDGMENT

***The claimant's claim for unlawful deductions from wages succeeds;
The remainder of the claimant's claims for unfair dismissal (section 103A
and 104A), detriments under the National Minimum Wage Act 1998 and
under the Employment Rights Act 1996, are dismissed.***

REASONS

1) By a claim form presented on 27 November 2024 the claimant who was a door supervisor for the respondent from 20 April 2024, on terms and conditions to be referred to later, made claims for arrears of pay and other payments. He also made a claim for "reimbursement" and "bullying".

2) He said he had started working for the respondents (in box 8.2 of the claim form) in April 2024 after the national minimum wage had been increased but he

realised that he had been paid below the national minimum wage. He said his payslips record base pay of £10.71 p and holiday pay of £1.29 p.

3) He said that the national minimum wage was £11.44 and so the pay was actually £10.71 and was below the national minimum wage.

4) In his claim form, but not in the course of the proceedings, the claimant said that he had reached out to the management but that his manager had said that he would never increase pay as long as he was his manager. The claimant said that he had been bullied by the manager for a long time and that he was not bringing a claim for racial discrimination because he was not the only black person working for the company.

5) He said that this manager was looking for ways in which to cut down his hours.

6) He complained that they were deducting uniform fees. The allegation was that the respondent continued debiting him beyond the agreed date stated in the contract for uniform payments. He complained about it and these other matters and he said that they had no chance to resolve it because they were aware he had reported them to ACAS at that time.

7) He also complained that there was a fight at one of the venues he worked at and he got injured and lost his glasses and chain. He said that he had asked for reimbursement the glasses and chain even without even talking about his injuries but nothing had been done about it.

8) The head of operations had told him that he was not sure that anything can be done about his chain. The chain he said had been his since 2024 and was of sentimental value and that he wanted to replace it.

9) In his claim form he said he wanted to claim compensation only. During the course of the hearing he indicated that he was not seeking reinstatement or engagement if he was found to be an employee. In the claim form he said that he wanted all the money he had been out since the start of work for the respondents to be paid and that at the time of writing the claim form the employer did not want to give him any shifts again so you might have to look for another job. He says that he wanted them to compensate him for the months it might take him to get

another job because his bills were not going to pause. He said he wanted his glasses which he had replaced to be reimbursed any wanted a new chain. He wanted to receive compensation for the mental and physical pain he had endured and he claimed £16,000.

10) The respondents entered their response form on 9 January 2025. It was filled out by their contact Head of People (from whom I did not hear) who I learnt was the human resources person for the respondent.

11) The respondent argued in its grounds of resistance that the current published NMW legislation stated that if holiday is not actually being taken at the time of holiday payment being received it does not reduce the remuneration in respect of national minimum wage.

12) The respondent went on to say that as holiday pay is rolled up and paid at the time that person is working and it was said that it was not paid in respect of an absence, it stayed within the calculation. The respondent referred to a HMRC website extract, and referred to regulation 9 and 10 of the National Minimum Wage Regulations 2015. It said that holiday pay should initially be included in the workers total remuneration and that if the worker takes the holiday it is appropriate to consider whether the payment is in respect of an absence. If so the amount needs to be reduced from the calculation of national minimum wage paid. However if the worker does not actually take the holiday the holiday pay will remain included in the total remuneration and there is no corresponding reduction when calculating the national minimum wage paid. The respondent said it felt it was fully compliant with National Minimum Wage Regulations and that the claimant had been paid correctly. The respondent also said that if they fell within legislation and complying with it if they were to pay the rolled up holiday pay in addition to national minimum wage the difference in pay would be £306.79.

13) The respondent conceded that the claimant has worker status but not employee status.

14) They pointed out that even if he was an employee he did not have 2 years continuous service.

15) They did not accept that there was bullying. They also suggested, but this was not put to him in cross examination, that he had secured work for another security firm on a "cash in hand" basis.

16) On 3 February 2025 the respondents' solicitors came on record with the tribunal. A named person was said to have responsibility for the matter and would be the primary point of contact.

17) On 11 February 2025 the respondents asked for a hearing that had been listed for 2 hours on 28 February 2025 to be converted from a final hearing to a preliminary hearing for case management. On 12 February 2025 the claimant objected to that proposal.

18) The claimant sent in a schedule of loss setting out a claim which totalled £29,973.78 p.

19) On 12 February 2025 the respondents objected to an application that the claimant had made to amend the claim. These amendments were to include detriment for asserting a statutory right and automatic unfair dismissal (because he had complained about being below minimum wage). He wanted also to bring a whistleblowing complaint.

20) On 14 February 2025 the claimant sent in his witness statement. In addition he sent in a list of documents containing evidence in a bundle which ran to 24 pages. This included certain documents which did not find their way into the bundle for the full hearing but did include his witness statement which he relied on before me and which was dated 14 February 2025. The respondents therefore had that document since February 2025. He included witness statements from his brother and his girlfriend which appeared to me to be relevant to the question of remedy, and who the claimant did not call to give evidence on that basis. He also sent to the respondent the statement of a doorman Mr Anthony Kellet (who was not called to give evidence before me, albeit his witness statement was put in evidence). The respondent had all of these from around 17 or 18 February 2025 or thereabouts.

21) A draft list of issues was drawn up which dealt with the application to amend and in particular including the detriments for asserting a statutory right or whistleblowing as well as the automatic unfair dismissal claims. In their agenda

the respondents said that they would be calling the Head of People (Julia Edgley) to explain the employment contract and the approach to rolled up holiday pay and the Chief Financial Officer who would explain the calculation of the claimant's pay including basic pay and rolled up holiday pay and the respondents corresponding position on national minimum wage. In the event I did not hear from either of these. I did however hear from Mr Caulton. Further, the respondents said the other witnesses were to be confirmed depending on the application to amend and that they could be two additional witnesses perhaps namely Mr Mark Boyd (from whom I did here) and the line manager Mr Jordan Johnston (again who I did hear from, and he said that he had been notified of the case approximately a month before the hearing).

22) On 26 February the hearing on 28 February 2025 was converted to a private preliminary hearing.

23) On 12 March 2025 the claimant complained that the respondent fail to adhere to the orders given to them to respond to his claim by 9 January 2025 the response being sent on 10 January 2025. At that stage the claimant made a request that a preparation time order should be made in his favour. When I asked him what he knew about preparation time orders at the hearing today he said that he knew very little. He also made an application to amend his claim on 12 March 2025.

24) At the case management hearing on 28 February 2025 the respondents were represented by the named person dealing with the case and the claimant was in person. The hearing before me was fixed at that hearing. There was a hearing timetable which envisaged submissions on day 3 and the tribunal giving a decision and judgement on day 4. For reasons which I will set out that timetable could not be adhered to. The judge granted permission to the claimant to amend the claim to add a complaint that the respondents terminated the engagement with them because he had complained he was being paid below the national minimum wage. It was pursued in the alternative as a detriment under section 23 of National Minimum Wage Act 1998 if he was found a worker and as an unfair dismissal under section 104A of the Employment Rights Act 1996 if he was an employee. His claim was that he had suffered detriment due to asserting his statutory rights resulting in an automatic unfair dismissal because he complained

about being paid below the national minimum wage which was a breach of the obligations of the respondent.

25) The claimant was ordered to provide further particulars of his whistleblowing complaint in particular about the protected disclosures. At the hearing before me the question of whether there had been protected disclosures was not in issue. The respondent accepted that his disclosures were protected.

26) The respondent was given the opportunity to deal with the amendment and was asked to specify whether the application can be dealt with on paper or whether it needed a preliminary hearing.

27) The respondent was given permission to amend the response within 4 weeks of the date on which the parties were notified of the outcome of the application to amend or 6 weeks if none was made. The parties were ordered by 30 June 2025 to send each other copies of all documents relevant to the issues listed in the case summary. In particular it was made clear that “documents” included recordings emails text messages social media and other electronic information. All relevant documents were required to be sent which were in a party's possession or control even if they did not support the case. They were told the document was in their control if they could reasonably be expected to obtain a copy by asking somebody else for it.

28) The parties were told to agree the hearing bundle by 14 July and that the respondent was to send an electronic copy to the claimant by 21 July 2025. The parties were told that by 15 September 2025 they must exchange electronic copies of their witness statements and the contents of the witness statement were described at paragraphs 23 – 26 of the case management summary.

29) The parties were told to write to the tribunal by 3 October 2025 to confirm that they were ready for the hearing or to explain why not. The list of issues was dealt with at paragraph 64 and following in the case management order and summary. Before me the question of employment status was alive however no points were being taken on time limits. I was to determine whether the respondent made unauthorised deductions from the claimant's wages and if so how much was deducted and how much is owed to the claimant if so. The claim for unfair dismissal under section 104A was set out. This included whether the

reason or principal reason for dismissal was that the claimant had tried to enforce or secure the benefit of a right mentioned under section 104A or that the claimant qualifies or will or might qualify for NMW or for a particular rate of NMW. The claimant made it clear that he relied on the complaint about being paid below NMW on 21 August 2024 and 1 October 2024 and that he started the ACAS early conciliation process.

30) The issues also included the detriment claim under section 23 of the National Minimum Wage Act 1998. This was that if the claimant is found to be a worker did the respondent terminate the claimant's engagement and by doing that subject him to a detriment. If I find that that was done I had to determine whether it was done on the ground that any action was taken or proposed to be taken by or on behalf of the claimant with a view to enforcing or otherwise securing the benefit of right of the claimants to which section 23 of the NMWA applies or the claimant qualifies or will or might qualify for the national minimum wage or for a particular rate of national minimum wage. The same dates of complaint were relied on.

31) From all of these thus far it was completely apparent that the question of the basis for the action taken by the respondent was going to be in issue in the case and in particular that the question of the reason or principal reason for dismissal if he was an employee was squarely and firmly in issue in the case.

32) Accordingly claimant made the application to amend on 31 March 2025 with the specificity that the tribunal had sought. He attached WhatsApp messages in support of that, which accordingly the respondents had. The claimant set out his complaints on a further claim form but it the respondent's counsel sensibly accepted that these represent further particulars of his existing claim. The claimant set out in a lot of detail what his case was in respect of public interest disclosure and also what he said were unlawful detriments resulting from workplace bullying.

33) In his email of 8 April 2025 the claimant made clear, as he repeated before me, that he did not wish to be reinstated or engaged. He also set out a detailed schedule of loss.

34) This time the claim reached a grand total of hundred and £37,557.45 p. On 24 June 2025 the respondents wrote to the tribunal saying that they were still awaiting an outcome to the objection they had made to the part of the amendment application by the claimant. On 9 August 2025 the tribunal told the parties that the question of the member would be dealt with at a preliminary hearing. That hearing was initially listed for hearing on 14 January 2026. However it was dealt with at a hearing before Employment Judge Sweeney KC (referred to below).

35) After that hearing before EJ Sweeney KC, detailed amended grounds of resistance, were presented on 30 September 2025. The respondent said that the reason for the claimant's termination of engagement was that their system ended the claimant's engagement because he had not worked for the respondents for 12 weeks as is custom and practice. I did not hear any evidence on this point but it appears to be a reference to an event in 2025. Second, the respondent said that the claimant had failed to produce right to work documentation. It said that the respondent had already been in communication with the claimant to request such documents from the claimant before the claimant complained about allegedly not been paid national minimum wage. The request documentation it says was not motivated by the claimant's complaint about national minimum wage.

36) On 2 September 2025 there was a hearing before Employment Judge Sweeney. He defined the issues between the parties. The respondent was ordered, no later than 12 September 2025, to present to the claimant a list of and copies of all documents in its possession that are relevant to the issues in case. The parties were to agree the hearing bundle by 19 September and the respondent was to send a PDF copy of that by 26 September 2025. The amended response was supposed to include any response to the amended claim as set out in the case management summary. The judge remarked on the unsatisfactory situation of the respondents initially not attending that hearing and then Ms Harvey of the respondent's solicitors having to come in at very short notice to deal with the hearing. The judge noted that the claimant had complied with the directions and that the respondent had not complied with some of the orders previously made. There was a suggestion from the respondents in correspondence that the case management orders should be suspended but the

judge noted that there was no suspension and there was no justification for not complying with the orders in such circumstances.

37) The judge was anxious not to lose the four-day hearing in October if the situation could be salvaged.

38) The judge did not give permission to the claimant to amend the claim form to include any discrete legal complaint based on what was set out in the case management order at paragraph 32. The claim was to be considered by reference to what was set out in the previous orders. What happened in May through to August might be potentially relevant contextual background evidence in support of what the claimant says happened later. He had the option to set those matters out in his witness statement.

The hearing before me

39) The list of issues is set out at paragraphs 35 and following in that document and I have determined those issues which remained relevant in the light of findings on the facts.

40) Employment status was in issue; unauthorised deductions were in issue. In addition section 104A was in issue; section 103A was now in issue. There remained a claim under section 23 for NMWA 1998 detriment. The detriment being the termination of the claimant's engagement. In respect of section 48 and 47B of the 1996 Act detriment claims the detriments were the termination of the engagement but also failing to reimburse the claimant the cost of replacing his glasses and chain following an incident on 2 November 2024.

41) There was no dispute between the parties that the claimant had made disclosures on 1 October 2024 which constituted protected disclosures and also assertion of the right to be paid national minimum wage. There was also no dispute that the information in paragraph 10.3.1 of Judge Robertson's orders was disclosed which related to the claimant's pay.

42) The claimant relied on the disclosure "my pay is £10.71 plus the holiday pay of £1.29, this is below the national minimum wage and I have been receiving this fee since I began in April 2023. I would like this issue to be resolved because it is illegal. I have followed due process by first complaining to my employer I hope I

will be glad to hear from you soon on this issue". This was written on 1 October 2024 to Jordan Johnston and Mark Boyd.

The law

43) I set out the provisions which are relevant to the findings I have made, without repeating material which relates to matters on which I do not need to make a decision.

44) The National Minimum Wage Act 1998 (NMWA 1998) provides that provides that "a person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage" (section 1(1)". The National Minimum Wage Regulations 2015 (SI 2015/621) (NMW Regulations 2015) are made under that Act.

45) A claimant may also bring a claim for unfair dismissal (section 25, NMWA 1998) or a detriment claim (section 23, NMWA 1998) if the respondent dismisses them or takes any detrimental action against them because of (among other things):

- Becoming or being eligible for the NMW, or a particular NMW rate.
- Taking any action to seek to ensure that they receive the appropriate NMW.

46) Any dismissal of an employee in those circumstances will be automatically unfair (section 104A, ERA 1996), and there is no qualifying period (section 108(3)(gg), ERA 1996).

47) Section 24(2) of NMWA applies the principle in section 48(2) of the ERA 1996 that it is for the respondent to show the ground on which any act or deliberate failure to act, was done. That principle also applies to cases of detriment for making a public interest disclosure under the ERA 1996.

48) In other words if the claimant can show a detriment it is for the employer to show that there is an innocent explanation (in the sense that the detriment is not influenced materially by the making of the assertion of right or the public interest disclosure) for the treatment. If the employer cannot do that I may reach the

conclusion that the treatment was on the ground of (i.e. because of) the disclosure or assertion.

49) The claimant is claiming unlawful deductions from his wages, including consequential loss. It is unlawful for an employer to make a deduction from a worker's wages unless:

- The deduction is required or authorised by statute or a provision in the worker's contract; or
- The worker has given their prior written consent to the deduction.

(Section 13, ERA 1996.)

50) By section 13(3) of ERA 1996 there is a deduction from wages where the total amount of wages paid on any occasion 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 is treated as the amount of the deduction.

51) Section 13 applies to an advance of wages (section 27(2)(a) ERA 1996.

52) Section 104A applies to render the dismissal of an employee unfair if the reason or principal reason for the employee's dismissal is the assertion of rights to the National Minimum Wage; section 103A applies to render the dismissal of an employee unfair if the reason or principal reason for the employee's dismissal is that the employee made a protected disclosure.

Glasses and watch compensation – findings of fact

53) The first claim I need to determine is whether there was detrimental treatment namely the deliberate failure to reimburse the claimant to the cost of damage to his glasses and chain following the incident referred to above and the request for reimbursement by the claimant on 18 November 2024. This is a claim for a detriment for public interest disclosure and applies to a worker.

54) The claimant gave evidence that he mentioned his injuries to the area manager at the time he was Mr Beeby. He said that Mr Beeby saw what had happened and saw the injury to the other door staff as well. He had seen that the glasses were broken and the claimant says and, I accept, that he mentioned his

injuries to Mr Beeby. I accept that Mr Beeby said that he was going to escalate the matter to senior management. The claimant communicating with Mr Boyd later on Mr Boyd said he was not aware that he had sustained injuries that fight. The claimant said that he needed to get reimbursement for his glasses.

55) The claimant said that his recollection of the procedure was that he would declare his injury. He was aware that there was something in the insurance policy that meant that if he could not work he might be paid for up to 2 years. The claimant said that he was told he would not be paid for 2 weeks, but after his shift he could not take another shift because he could not work. He said he had to stop for a whole week. It was put to him that he did work during that time but he said he did not and that the payslips showed that he was being paid in arrears. He accepted that the payslips showed that he worked on the second week and after. He said he was willing to work. He was questioned as to whether he told anybody that he was not physically able to work and he said that he told Mr Beeby that he was taking time off on the night. It was put to him that it had been explained that the claimant had been a bit sore but he wanted to continue accepting shifts and that he did not appear to have any real lasting injuries. The claimant did not accept that this is what Mr Boyd thought. The respondent relied on the reaction of the compliance manager Greg Kelly who said in email correspondence that they were regularly claims for glasses and phones and "these are rejected in 9/10 cases exactly because there is submitted as purely property-based matters".

56) It was put to the claimant that Mr Kelly made the decision. Seems to me that Mr Kelly was advising management on the fate of most claims in this context. As far as the claimant was concerned he was supposed to report the matter to the area manager who would escalate it. I was not shown any procedures relating to this from the respondents.

57) It seems to me that Mr Boyd was aware that the claimant had been a bit sore. In the context of the insurance document which I have seen it is not surprising that the respondent did not treat this as a claim for injury as such. However the respondent was supposed to report incidents of this nature. It appears that nobody did.

58) I have considered that the respondent did not disclose any procedures relating to when incident should be reported to whom they should be reported and what action should be taken. In those circumstances I am mindful of the fact that the only disclosure that was recently made by the respondent appears to be of documents which assisted their case. In the context of this case it was plainly obvious that the reason why reimbursement did not take place was going to be central to this case.

59) The respondents asked me to make finding that the claimant's evidence was not credible because he would not make appropriate concessions on this point. I have taken into account the fact that the insurance policy on which he was cross-examined, and on the basis of which this submission appears to be found it was only given to the claimant during the course of the hearing and he was seeking to respond to this evidence with very little notice whatsoever. I am not prepared to make of global finding of lack of credibility against him in those circumstances and, on the contrary it appeared to me, that the claimant's evidence, save where I indicate otherwise, was broadly speaking credible.

60) The claimant, during the course of his evidence described the effects on his ability to attend to the main duties. He said that although he was present at the shifts that he worked after the incident he was unable to do his job in the same way and he described to me a reduction in the number of physical contacts he had as he could not hold people without feeling pain and therefore could not have scored as many people and had to give that duty to someone else. He also mentioned the was unable to stand shift because of pain in his ankle. I accept that these are substantial effects on his ability to attend to his duties. Had all of these facts been notified to the respondents and had they not acted in a way which did not pay very much attention to the claimant's injuries because it was regarded as him being "a bit sore", he might well have qualified for reimbursement under the policy. Whilst that might be a matter for the parties to sort out in terms of whether there has been a breach of contract, it does not appear to me that the reason for the failure to reimburse was materially influenced by the fact that the claimant had made assertions of statutory right or protected disclosures.

61) I have considered also that the respondents appeared to have identified the claimant as having gone to ACAS at the time that some of the correspondence was taking place. What is interesting in these terms about that correspondence is that around 18 November 2024 Mr Boyd was writing to Head of People referring to the claimant in the context of glasses being broken. The subject line included "ACAS complaint Precious". He was asking for information and advice, and on 19 November 2024 Head of People wrote to Mr Boyd and Mr Kelly remembering that they had discussed these matters but that Mr Kelly was responsible. She said that she thought that the claimant had sustained some injury, from memory. She suggested that if there was no injury they could ask finance whether it could be put through those expenses but said they might not want to open those floodgates. Mr Kelly was aware of the ACAS claim and so might "flex, given that we want that claim to go away!".

62) There is then a gap until March 2025 when somebody called at the Fullerton remarks that the personal accident insurance was not believed to cover the damaged property. It was only on 3 March 2025 that Mr Kelly said that personal accident insurance does not cover possessions. He said that those personal effects are covered if they are damaged in the course of somebody being injured and asked the question whether the claimant was during the incident. The Head of People replied that she was unsure whether he was injured but that he did send in photographs of being covered in blood but that could have been the other person's blood. She said that she knew that the claimant had approached Mr Kelly about his glasses and possibly the gold chain. She asked for communications about why his claim was rejected. I did not see a response to that email.

63) Mr Kelly pointed out in that email that the insurance is not between the claimant and the insurer. The insurance policy is held by ESS and covers those working on their behalf. It is in that context that he remarks that it is slightly misleading as the door staff believe that they pay for insurance which is not directly accurate. He said the payments on claims either come to him to administer or in most cases they authorise the funds to be paid into nominated accounts. The email from Head of People to Mr Kelly does not appear to have been copied to Mr Boyd as to whether the claimant was injured. Mr Beeby does not appear to have been copied in on it either.

64) Looking at the chain of correspondence in the light of what Mr Boyd said in his witness statement, it appears that Mr Boyd had been asked to speak to Mr Kelly with the details of injury and Head of People's recollection of the conversation that was then had with Mr Boyd was that the claimant had sustained some injury. On Mr Boyd's evidence rather than contacting Mr Kelly with the details he says he spoke (on the telephone) to Head of People. He then says he cannot remember the exact details of the conversation but he knew that he explained that the claimant had been a bit sore.

65) I find that it is likely that Mr Boyd did know that the claimant had sustained injuries, did not communicate this correctly and in accordance with the insurance policy, as he should have done to Mr Kelly (and indeed as he had been expected to by Ms Edgley), and this is the reason why the claimant was not reimbursed.

66) I then have to consider what role if any the fact that the claimant had made assertions of statutory right including going to ACAS had on that situation.

67) Here I accept Mr Boyd's evidence that the assertions of statutory right including protected disclosures did not play a material role in the failure to provide reimbursement to the claimant. In the absence of any clear procedure it seems to me that there is an explanation for why reimbursement did not happen which is not on the basis of the claimant having made assertions of statutory right or protected disclosures. In essence nobody took responsibility for what appeared to be a relatively minor incident in terms of physical injury at the time. It appears to me that the most likely explanation is that the respondent through incompetence did not relay the information.

68) I have considered in this context the question of whether I should draw an adverse inference from the way in which the respondent has provided disclosure in this case.

69) The respondent has not complied with the duty to make disclosure. The documents that have been included by way of email chains appear to be limited and, for reasons which are not really explained, the respondent appears to have ignored HR's request to provide Mr Kelly with the information he needed to make a proper decision, namely whether the claimant had sustained an injury, I find it unsatisfactory but it seems to me most likely that the explanation is that Mr Boyd

was talking to the HR officer and simply picked up the phone to her and explained what he knew in terms which minimised the question of injury. His motivation for that however I do not think was the assertion of statutory rights. His motivation was, I consider that the claimant had himself downplayed the extent of his injuries to the respondent. For very understandable reasons, due to their sentimental value and financial value, he was more concerned with the immediate financial loss and stressed the loss of his valuables. He was, as he said, desperate for money at the time again for very good reasons.

70) It was only in reply to my questions that he gave any details of how those injuries impacted on his ability to attend to his duties. On that basis, and because none of the detail of the impact on his ability to attend to his duties was put to any of the respondent's witnesses, I conclude that he did not explain at that level of detail.

71) For those reasons the claimant's claim for detriment in respect of the glasses and chain does not succeed and is dismissed. I find that there was no causal connection between the claimant's treatment in relation to the insurance claim and either his protected disclosure or assertion of statutory right.

The termination of the claimant's contract – findings of fact.

72) I have to ask myself whether the respondent decided to stop providing the claimant with shifts and whether that was on the ground that he had made disclosures (and in particular whether it was influenced by his assertions as to National Minimum Wage).

73) On 21 August 2024 the claimant sent Mr Boyd a WhatsApp message complaining about his rate of pay. On 1 October 2024 the claimant sent a WhatsApp message complaining that he thought he was not being paid the national minimum wage.

74) Mr Boyd devotes a part of his witness statement to the termination of the claimant's engagement. He says that the reason for the termination of his engagement was because the claimant failed to produce a copy of an in date international passport when requested to do so.

75) Mr Boyd asserts, without any supporting documentation, that the respondent has to meet certain legal obligations to ascertain and keep records of the right to work in the UK. I accept that that is probably the case. I did not have any documentary evidence telling me which documents the respondent claims he has to have to evidence this right, and there was some confusion in the respondent's evidence on this point. He also refers to accreditation by the approved contractor scheme which is a UK Security industry authority voluntary quality assurance scheme that assesses and approves private security business is based on criteria covering things like staffing and customer service. I was not shown any documentary evidence of the criteria involved in that and indeed the respondent did not disclose its vetting policy or any other of the document which might have supported the assertions made here. I found this somewhat odd. The oral evidence I received on this from the respondent was not clear.

76) Mr Boyd said he receives a spreadsheet weekly from the vetting and talent department regarding outstanding documents that need to be supplied by workers. He explained that it is produced with a 12 week lead in time. He said that this meant they had to request documents from the relevant individual and were required to update it with progress made, weekly.

77) Mr Boyd said that at the time, and he gives no dates for this, that he had chased his colleague Mr Johnston who was an area manager to ensure that he got the correct documents from the claimant.

78) Mr Boyd asserted that Mr Johnston chased the claimant for the documents but the documents were not provided by the claimant. Mr Boyd said that the claimant's engagement ended on that basis. He denied that there was any connection between the complaints about national minimum wage or the claimant having started his ACAS early conciliation process and the termination of his engagement.

79) From the communication that the claimant had with Mr Boyd on 1 October 2024 it is clear to me that the claimant was saying that he was taking a first step in pursuit of his case. He also had mentioned to Mr Boyd that he had spoken to Mr Anthony Kellet who had communicated his concern to Mr Boyd.

80) In an email from Mr Boyd to the human resources Department dated 7 November 2024 Mr Boyd speaks in the following terms

"I've spoken with Jordan about the points below," (this is in the context of referring to the claimant – pay rate)

- "Jordan (Mr Johnston) employed (the claimant).
- (The claimant) was employed on £12 per hour.
- A couple of months ago he asked Jordan to be placed on £13 per hour.
- Jordan explained that this wasn't possible and told him that this rate comes when you have experience on the doors and if the charge rate allows this.
- Anth (Anthony Kellett) HD RDC jumped into this discussion and started saying we are paying below NMW.
- Anth is 100% behind this and I can see many more complains coming.
- Jordan even gave Precious a second chance after he was DNR' ed from Points for drinking on duty, this is how he was moved to RDC.

Precious did send me a message about three months ago on WhatsApp saying he was being paid under NMW, I spoke to him and assured him this was not the case, he seemed happy.

My concern is that Anth is telling others to do the same.

If you need any further information, please just ask.

I'm not 100% about his glasses but will chase this."

81) It seems to me that Mr Boyd was motivated by the fact that Mr Kellet and the claimant was making a complaint about his being paid below the national minimum wage and he was concerned about many more complaints coming due to his worries about Mr Kellet bringing people together. When I asked Mr Boyd what he meant by 100% behind this. He said he thought that the claimant was being pressured by Mr Kellet. He said that he was concerned that Mr Kellet was trying to build a union. In his witness statement Mr Kellet, who was not called by

the claimant and therefore was not cross-examined (and so I cannot attach a great deal of weight to his evidence) says that the claimant and he did have a discussion about rates of pay and he expressed disbelief that the pay rate was £10.71. He refers to talking to Mr Boyd who he says insisted that the rate was legal and that he had received legal advice saying this.

82) I have to evaluate whether what I was told about the explanation for the failure to offer shifts to the claimant is reliable or credible. The claimant is able, in my view to show that the respondent stopped providing shifts to him, and that at least until the January there was no reason why they should have stopped providing shifts as they had done previously.

83) The respondent says that there is an explanation which shows that the claimant's disclosure or assertion of NMW rights had no material influence on any decision. They say that there was no decision but an automatic suspension from the roster due to the system they used.

84) I have not been provided with any evidence other than the oral assertion of the respondent that there was such an automatic system.

85) Mr Johnston gave evidence on this point. On 9 April 2024, as part of onboarding the claimant to work for the respondent the claimant sent him a Whatsapp message with a photo of his Nigerian passport which expired at the end of October 2024.

86) The time and attendance system known (C247) is used for the allocation of workers to particular shifts. The claimant's profile on C247 has to be kept updated. If his right to work documentation is out of date, Mr Johnston asserted that the worker is automatically suspended by the C247 system so they cannot be allocated to shifts.

87) The respondent, he said, does not have to action, and it happens automatically because the system recognises something is missing and suspends the worker. A "RAG Report" deals with the worker's right to work or Security Industry Authority (SIA) clearance. When required documents are about to expire, the RAG Report indicates this from green at about 12 weeks, amber (between 4-6 weeks) and red (which means that the person cannot be allowed to work for the respondent because required documentation is not in place.

88) The Area Managers are tasked with gathering the documents from the workers in their respective area.

89) Mr Johnston recounted that on 26 September 2024, he sent the claimant a Whatsapp message asking if he had applied for his visa and if he had a UAN application number, explaining that the respondent needed it as soon as possible. When Mr Johnston was asked why he needed it, he explained that the respondent's office required it to keep his profile updated, otherwise it would suspend him.

90) However the claimant said his visa was valid until January 2025. Mr Johnston did not explain the system to the claimant but instead stated "it's just an office thing mate". He did not make it clear that any suspension would be automatic.

91) On 17 October 2024 Mr Johnston asked the claimant again to provide his UNA number for his visa application. He confirmed his visa had been approved. Mr Johnston asked him to provide a screenshot of it in order to send it to the respondent's officer to update the claimant's profile on the C247 system. The claimant did this. Mr Johnston explained that he would still need the claimant's "BRP" (Biometric Residence Permit – a card used to prove immigration status for someone granted permission to live or work in the UK). The claimant did send that to him. Mr Johnston does not appear to have indicated that further documentation would be required.

92) Mr Johnston asserted that the respondent's vetting procedures require a valid Grade A document which includes a birth certificate or an in-date passport. However in evidence he pointed out that a birth certificate would be insufficient for someone born abroad. I was not shown the vetting procedure.

93) Mr Johnston says that he asked the claimant if he had renewed his international passport, as this was due to expire soon and the claimant said he had not, and that he had applied for this providing a screenshot of an email to confirm he had paid for the application.

94) On 27th November 2024 Mr Johnston asked the claimant if he had his new passport and was told that it would be ready in 2025.

95) After that Mr Johnston no longer had responsibility for the claimant, whose area manager became Mr Beeby.

96) It appears from documents which were produced by the respondent during the case and which were plainly relevant documents which ought to have been disclosed on an ordinary reasonable search of the respondent's holdings, that on 21 October 2024 Mr Beeby had extended the claimant's right to work for a further 2 weeks to allow for his passport to arrive. Jordon Johnston had sent a message on the same day, slightly earlier stating that what he was sending was "the last missing piece he needed he's just sent it". However that appears to be incompatible with the idea, put forward by Mr Johnston, that he had indicated to the claimant that further documents would be required and in particular that a copy of his passport would be required. I think it is likely that Mr Johnston had given the claimant an impression about what he needed to do which did not accord with what the respondent as a whole thought it needed. There was no explanation as to why (as Mr Johnston put it in a message on 21 October 2024) "the system keeps kicking him out". On anyone's view he had not come to the end of the validity of his right to work documents at that stage. However the Superadmin suspension of the claimant from shifts at the start of November 2024 is consistent with the fact that the claimant's passport had expired at the end of October 2024.

97) On 2 November 2024 someone called Paulina Danik wrote to Breanne Shepherd stating that "candidate Mark Boyd whose passport has expired". She said she was "raising his suspension" for 4 weeks, and that "his BRP expires on 31 December 2024". It seems to me, and I find, that this was a reference to the claimant and noted both the expiry of the passport and the limit on the BRP. The claimant pointed out in his witness statement that the last shift he worked was 9 November. At that point he was not within striking distance of the red status. That, on the respondent's reckoning would only happen in January 2025. It appears that the "SuperAdmin" of C247 suspended him at the end of December. That leaves the period between 9 November and the end of December. Why was he not receiving shifts during this time?

98) I find that the claimant gave the respondent the impression that he was not taking work for a period of 2 weeks after the incident which the claimant states took place on 2 November 2024.

99) Looking at the document provided late in the proceedings by the respondent (page 514) which appears to have been generated on 16 October 2025 there was an “automatic” suspension by “SuperAdmin” on 2 November 2024. This was said to be due to “automatically suspended due to their RTW/Visa Expiry date being within 24 hours or less”. This appears to be consistent with the respondent’s evidence that a process was taking place within their vetting system.

100) I have therefore reached the conclusion that it was more likely than not that the reason the claimant did not get shifts after the end of December and for a short period in November was that he had been suspended in accordance with a process for the respondents ensuring compliance with immigration laws and an accreditation system.

101) I consider that the assertion of his rights irritated the respondent, but that there is no evidence that it was an influence to any extent, let alone a material extent on the decision to offer him no more shifts. There does not appear to have been any human intervention in the decision, save that at least one extension was given to the claimant by the intervention of Mr Boyd after the point at which he had expressed his views on the intervention of Mr Kellet and his possible annoyance that the question of wages was being raised. This also suggests that he was not influenced adversely against the claimant during the relevant period and that the explanation for the absence of shifts from 9 November onwards had nothing to do with the protected disclosures or assertion of right to the national minimum wage by the claimant.

102) In finding that the protected disclosure and assertion of statutory right played no part in the decision to offer no further shifts to the claimant I have also, obviously, reached the conclusion that neither was the reason or principal reason for any dismissal by the respondent. The claims for unfair dismissal must therefore be dismissed.

103) In the light of that it is not necessary to examine the question of whether the claimant was an employee or not, and therefore I do not determine that issue. I am conscious of the need to keep reasons proportionate. Had I been required to decide that point I would have decided that he was not an employee.

104) There is also no evidence to support the idea that the failure to process the claimant's insurance claim for the glasses and watch was motivated by the fact that he had made disclosures/assertions of right.

105) In considering these matters, I have not accepted the respondent's submission that it would be inappropriate to draw an inference from the way in which the respondent made disclosure. Counsel concentrated on the fact that the respondent had made late disclosure, and had ultimately complied with the duty to make disclosure. However that is not correct. The respondent accepted that there is a policy on vetting this had not been provided in disclosure, despite the crucial role it might play in determining whether the respondent's oral assertions about what the policy was should be accepted.

106) Having said that, I have to look at all of the evidence before me and ask whether it is likely that the materials, such as the late provided screen shots of the C247 system and the email exchanges indicated that there was a vetting process involving that department requiring particular documents to be provided, and I have concluded that it is more likely than not that there was such a system. The respondent's failure to disclose relevant documents, such as the policy, is serious but ultimately is outweighed by the sources of information (other than the live evidence) suggesting that the claimant was suspended from working the shifts because of that process and not because he had made disclosures/assertions.

Unauthorised deductions.

107) I conclude that the respondent failed to pay the claimant the minimum wage for the following reasons. I read and considered the respondent's skeleton argument and in particular the case of **Commr HMRC v Taylor Services Ltd and others** [2025] EWCA 956 at paragraphs 91 ff. However I did not find the propositions relied upon of assistance, because it is not necessary to rewrite the statutory scheme in order to achieve a proper construction of both pieces of

legislation (the ERA 1996 and the NMW Regulations of 2015). The matter is one, I consider, of statutory construction in accordance with ordinary principles to be applied to a piece of social legislation which has a protective purpose, in particular in ensuring a minimum wage is paid. I did not find the non-binding view of the HRMC of assistance or persuasive in the light of the wording of the Regulations in particular. The rolled up holiday pay appears to be paid from the first day, and at that stage it must plainly be an advance of wages relating to untaken holiday. The references to Regulation 10(h) and or (i) and or regulation 35 similarly did not assist. All of these deal with the treatment of time relating to certain types of absence none of which are holiday absences.

108) Under the National Minimum Wage Regulations 2015 regulation 10(1)(a) an advance of wages does not form part of the remuneration of the worker. I consider that the element of holiday pay constitutes an advance of wages. Second, I consider that the respondent cannot lawfully calculate rolled up holiday pay predicated on a basic pay rate which is below the minimum wage. Such a basic rate would be unlawful. The calculation of rolled up holiday pay must be based therefore on a lawful rate of pay.

109) The claimant was paid a basic rate of pay at £10.27. The holiday pay was rolled up. It was calculated at 12.07% of that basic rate of pay and was analysed by the respondent as an addition to that basic rate of pay. Holiday pay, so rolled up, must be 12.07% of something, namely basic pay. If the basic rate is below NMW and the holiday pay is supposed to represent the payment of basic pay for a (notional) holiday, then the base rate of pay must be a lawful rate of pay for any notional holiday to be paid at NMW rates.

110) I find that rolled up holiday pay, in the circumstances of this case where it has been calculated separately in the manner described to me, is therefore not part of pay for the purposes of National Minimum Wage Regulations 2015 regulation 10 (a).

111) I have to compute the amount that was properly payable to the claimant under the 1996 Act section 23. I do this to ascertain whether there had been unlawful deductions from pay.

112) In this case the basic pay was below national minimum wage and should at that time have been £11.44. If holiday pay was to be rolled up, it would have to be paid on that minimum wage. The element for holiday pay is supposed to represent that and not an element of basic pay.

113) The amount payable by way of rolled up holiday pay was £1.29. But this was 12.07% of pay below the minimum wage level. In that context the intention of the parties must have been that the pay should be 12.07% of a lawful rate of pay. The rate of pay to which 12.07% was applied was not lawful because it was not in accordance with the national minimum wage rate of pay. I therefore find that there was an unlawful deduction of pay. The claimant is therefore entitled at least to a declaration. If the payment of the unlawful deductions has not been made to him he is entitled to an order of compensation reflecting the amount that should have been paid to him. However I understand that the money has been paid to him, subject to further argument, but I have not heard evidence on the question of consequential losses.

114) The case will be relisted for a remedy hearing, unless the parties can agree that element of the claim.

115) I am directing that listing letters are sent out to the parties for their dates to avoid. The case will be heard before me sitting alone by video link and the parties do not need to attend in person. 48 hours before the hearing date the parties will exchange any skeleton arguments, and or case law upon which they propose to rely at the hearing and shall exchange any further documents relevant to the question of remedy 14 days prior to the hearing. The respondent shall provide any updated bundle electronically at that point to the tribunal.

116) The case is to be listed for one day for hearing of any further evidence relating to loss (which will not include any damages for injury to feelings) submissions, deliberations, and delivery of oral judgement.

Case No: 6019957/2024

D O'Dempsey

Employment Judge O'Dempsey
Date 9 December 2025