EMPLOYMENT TRIBUNALS

Heard at:	London South
On:	29 April 2026
Claimant:	Mr A Smith
Respondent:	ICPS Business Management Ltd (in voluntary liquidation)
Before:	Employment Judge Ramsden
Representation:	
Claimant	In person
Respondent	Mr Gokhool, Chief Executive Officer

JUDGMENT

1. The Claimant's claim succeeds – the Respondent made unauthorised deductions from his wages in the aggregate amount of £11,201.39 net. The Respondent is Ordered to pay £11,201.39 net to the Claimant.

REASONS

2. These written reasons are provided at the request of the Respondent following oral reasons given earlier today.

Background

3. The Claimant worked for the Respondent in a Sales role from 1 October 2014 until 1 July 2025.

4. Following a period of ACAS Early Conciliation which began on 2 July 2025 and ended on 8 July 2025, the Claimant presented a claim to the Employment Tribunal on 24 July 2025.

5. The Claimant's complaints are that the Respondent made unauthorised deductions from his wages in the period January to May 2025, in the aggregate amount of £12,201.39, contrary to section 13 of the Employment Rights Act 1996 (the **1996 Act**). The Claimant sought payment of that sum, plus an award of interest at 8% pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, which he calculated as amounting to £266.91 at the date the Claim Form was presented.

6. The Respondent presented a Response in time to the Tribunal on 22 August 2025, agreeing with the dates of employment provided by the Claimant, agreeing that sums had been withheld from his pay, but saying that it was entitled under his contract of employment to withhold those sums due to the fact that very little work performed by the Claimant.

7. The Respondent went into creditors' voluntary liquidation on 17 March 2026.

The hearing

Adjustments

8. Neither Party sought any adjustments to the way the hearing was conducted.

Representation

9. The Respondent was represented in the hearing by Mr Gokhool. At times, Shane Shaw, an employee of the Respondent, talked to the Employment Judge about the sums paid to the Claimant. The Claimant appeared in person.

Compliance with Case Management Orders

10. The Tribunal had Ordered the Claimant to set out to the Respondent the amount he was claiming, and how that amount had been calculated, together with copies of all supporting documents and evidence.

11. The Respondent was Ordered to disclose its documents and evidence.

12. The Parties were to send all documents and evidence to the Tribunal before the hearing.

Documentary evidence

13. The Respondent prepared a 23 page hearing bundle, which in fact comprised:

    a) A letter from the liquidator authorising Mr Gokhool to negotiate with ACAS and the Claimant in respect of Employment Tribunal matters on behalf of the Respondent;

    b) A skeleton argument from the Respondent and hearing submissions;

c) Evidence of:

(i) Telephone and email usage by the Claimant in the latter period of his employment with the Respondent;

(ii) Records of the Claimant's use of the Respondent's accounting/booking system; and

(iii) Sales records for 2024 and 2025;

d) Some email correspondence about annual leave; and

e) An extract from the Respondent's disciplinary policy.

14. The Claimant had provided the Tribunal with:

a) Copies of monthly payslips he had received from the Respondent for the period December 2024 to June 2025; and

b) Nine attachments to an email from the Claimant (copied to the Respondent) which included various emails as well as a photograph of payments received from, or on behalf of the Respondent, to his bank account in the period 1 January 2025 to 31 May 2025.

Witness evidence

15. The Tribunal did not hear evidence from either Party, as the Respondent accepted that deductions of £11,201.39 net had been made, and its explanation for its basis for doing so was clearly without merit.

The Respondent's resistance of the Claimant's Claim

16. The Respondent accepted in its Response to the Claim that it had withheld sums from him, saying it had done so on the basis of a contractual right to do so.

17. At the outset of this hearing, the Employment Judge raised with the Respondent the fact that no copy of the Claimant's contract of employment appeared in the Bundle. Mr Gokhool stated that the Claimant's contract of employment was simply a basic offer letter, but that the Respondent's handbook was provided to him at the same time, and that handbook contained a disciplinary policy, an extract of which was in the Bundle. Upon questioning, Mr Gokhool said that the whole of the Respondent handbook was incorporated into the Claimant's written terms and conditions by the terms of the offer letter. No evidence documentary of that had been provided.

18. The Employment Judge noted that the extract from the disciplinary policy provided was in the following terms:

6.6 Other penalties

The following penalties may be imposed in addition to a written or final written warning or as an alternative to dismissal:

6.6.1 Pay may be deducted or withheld where absence from work is unauthorised or where theft or fraud is found, by way of reimbursement for money or goods taken or for unauthorised absence
6.6.2 Withholding of incremental progression
6.6.3 Reduction of salary for staff on Personal to Holder salary, or loss of increment(s)
6.6.4 Demotion to an alternative post (subject to availability)
6.6.5 Suspension without pay.

19. The Employment Judge noted that there was no evidence of any disciplinary process having been gone through with the Claimant. Mr Gokhool stated that:

    a) The Claimant's performance had been poor for some time prior to termination of his employment on 1 July 2025;

    b) He had raised this with the Claimant, who had requested time to improve, noting that there were things going on in his personal life that were affecting his performance;

    c) Mr Gokhool had agreed to give the Claimant time to turn things around, on the basis that they had a good personal relationship. Mr Gokhool said that the situation would be revisited on 1 July 2025; and

    d) When 1 July 2025 came around, there had been no change in the Claimant's performance, and the Claimant pre-empted the Respondent taking action by resigning.

20. Later, in the course of making more submissions, Mr Gokhool said that the Respondent had terminated the Claimant's employment summarily on 1 July 2025, and had done so as a disciplinary matter, and that sums had been withheld from the Claimant's pay in connection with that – but even if the Respondent did terminate the Claimant's employment on 1 July 2025, the deductions pre-dated that date.

<u>Interest</u>

21. The Claimant had ticked the box on the ET1 Claim Form to indicate that he was seeking recovery of "other payments". Upon enquiry, those "other payments" were confirmed by the Claimant to be a payment of interest on the sums deducted from his wages. The Employment Judge explained that there is no power for the Tribunal to award interest to a successful claimant for unauthorised deductions from wages, but there is a discretionary power for the Tribunal to Order a respondent to compensate a successful claimant for any financial loss sustained by them attributable to the unauthorised deduction (section 24(2) of the 1996 Act).

<u>Amendments/supplementary evidence</u>

22. In the course of discussing whether the Respondent had mounted a defence to the Claim, the Respondent enquired about its ability to amend its Response to include an argument that the Claimant was not entitled to be paid his salary (as an alternative to an argument that it was entitled to make deductions from it), on the bases:

    a) That he had done so little work that wages were not due to him; or

    b) Because case law (*Delaney v Staples* [1992] ICR 483, *Wiluszynski v Tower Hamlets* [1989] ICR 423 and *Miles v Wakefield MDC* [1987] AC 539) provides that pay is conditional upon performance of contractual duties.

23. The Employment Judge noted that this hearing was, in fact, a relisted Final Hearing of this matter (which was originally due to be determined at a hearing in January 2026, postponed following an application from the Respondent), and that any application to amend would be too late. The hearing was time-limited, and it was not proportionate to relist it for a third time in a hearing centre with a terrific backlog of cases waiting to be heard.

24. The Claimant later asked to submit evidence of financial loss he had incurred due to the unauthorised deductions from his wages. The Employment Judge noted that the Claimant had been Ordered to provide evidence of his losses in August 2025 by the terms of Case Management Orders made at the listing of the original Final Hearing, and it was also too late for the Claimant to add to documentary evidence part way through the Final Hearing.

Facts

25. The Parties agree that:

    a) The Claimant worked for the Respondent from 1 October 2014 until 1 July 2025;

    b) The Claimant’s employment terminated summarily on 1 July 2025; and

    c) Sums were withheld from the Claimant’s salary in the period January to May 2025.

26. They disagree about:

    a) Which Party terminated the Claimant’s employment;

    b) Whether the Respondent had a right to withhold pay from the Claimant; and

    c) The amount withheld. The Claimant says the amount withheld was £12,201.39. The Respondent says it was £11,201.39.

27. As to which Party terminated the Claimant’s employment:

a) Mr Gokhool initially said that the Claimant pre-empted the Respondent's move to discipline him by resigning, and later said that the Respondent had summarily dismissed him.

b) The Respondent's Response to the Claim stated that: "*The company acted within its rights to terminate employment and offset contractual breaches against claims for unpaid wages*".

c) However, the Respondent's skeleton argument said that the Respondent's disciplinary process had begun in February 2025, the Claimant was warned about his conduct, and the Claimant was then given an opportunity to improve, but the Claimant's conduct/performance did not improve. It stated "*The Respondent intended to hold a further meeting with the claimant on or around 1 July 2025 in order to discuss the extent of the time not worked and the corresponding salary recovery. Before that process could be commenced, the claimant resigned with immediate effect on 1 July 2025.*"

d) On the Respondent's own case, therefore, while it intended to terminate the Claimant's employment, he pre-empted that by resigning before it could do so. The Respondent's skeleton said: "*The Respondent also contends that the claimant acted in bad faith immediately prior to his resignation. On 1 July 2025, despite his line manager having attempted to contact him repeatedly by telephone and text over a number of hours regarding the disciplinary concerns and salary recovery, the claimant sent a text message purporting to provide an ordinary work update… The Respondent's position is that the claimant knew perfectly well why his line manager was attempting to contact him and deliberately sought to avoid that discussion whilst presenting the appearance that he was continuing to work normally*."

28. As to whether the Respondent had a right to withhold pay, the Respondent's submissions were that it was attempting to reinvigorate a disciplinary process that had not concluded in February 2025, and that before that reinvigoration process could commence, the Claimant resigned. Even if paragraph 6.6 from the Respondent's disciplinary policy was incorporated into the Claimant's contract, the Respondent has not satisfied the Tribunal that it was engaged. The disciplinary process had not concluded, and so it had no right to withhold pay.

29. Moreover, even if on 1 July 2025 the Respondent intended to reinvigorate an extant disciplinary process, and even if it had done so on 1 July 2025, that had not happened on the dates when pay was withheld, which occurred (as the Respondent agrees) in the period January to May 2025.

Law

Unauthorised deductions from wages

30. Section 13 of the 1996 Act provides:

"*(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…

(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*" (emphasis added).

31. Section 27 of the 1996 Act defines wages as "*any sums payable to the worker in connection with his employment*", and that includes, in subsection (a), "*any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise*".

32. A claim of unauthorised deductions is not the same as a claim for breach of contract or for misrepresentation (where damages may be awarded if the claim is successful) - rather it is a statutory claim based on an entitlement to payment which has not been made (or not made in full). This will involve a factual determination of whether the claimant had a legal entitlement to the payment in question (*Steel v Haringey LBC* EAT 0394/11).

Repudiatory breach of contract

33. One feature of a contract of employment is that it is a wage-work bargain.

34. Whether a breach of the employment contract by one party to it is a repudiatory breach is a question of fact.

35. A repudiatory breach does not automatically bring an employment contract to an end – it gives the innocent party the right of election as to whether or not to accept the breach and bring the contract to an immediate end (*Geys v Société Générale, London Branch* [2013] ICR 117). Whether the innocent party has accepted the repudiation is a question of fact.

36. Where the innocent party waits too long after the other party's repudiatory breach before accepting it, that party will be taken to have affirmed the contract. The question of whether a breach has been left "too long" for it to be accepted is not one only of time, but also of conduct (*Chindove v William Morrison Supermarkets plc* UKEAT/0201/13/BA).

Application to the Claim

<u>Liability</u>

37. The Parties agree that the Respondent made deductions from the Claimant's salary in the period January to May 2025, therefore the relevant questions are:

    a) Were wages "properly payable" under the contract? The Respondent says they were not, as the Claimant did very little work under the contract.

    b) Were those deductions authorised by statute or contract? (The Respondent does not seek to argue that the deductions were authorised by statute – it relies on a contractual right of deduction.)

38. The Respondent's position in its Response was that the Claimant's Claim fails because the deductions it made were authorised by the terms of his contract. It has failed to satisfy the Tribunal that that was the case. Its own submissions were that a disciplinary process had been paused in February 2025, and it agreed that the situation would be revisited in July 2025, but the Claimant pre-empted that process by resigning. As noted above, even if the extract from its disciplinary policy relied upon by the Respondent as giving it the right to make deductions from the Claimant's wages was incorporated into his contract, the disciplinary process was still extant when the Claimant's employment terminated.

39. Even if the Respondent had terminated the Claimant's employment on 1 July 2025, and the clause it relies upon entitled it to withhold sums from his salary, that would only have applied from July 2025 – not from the earlier times in January to May 2025 when the deductions were in fact made.

40. At the time the deductions were made, they were not authorised by statute or contract.

41. As a new point made in Final Hearing, the Respondent sought to argue that the Claimant's salary was not wages "*properly payable*", because the Claimant had failed to do more than a few hours' work in the whole course of the last year of his employment. This was not an argument raised by its Response, and it was not permitted to amend its Response to include it.

42. However, even if the Tribunal's decision on that amendment request was wrong, the true analysis of what the Respondent says happened was that the Claimant committed a repudiatory breach of his contract of employment, and the Respondent raised that breach with him in February 2025, whereupon the Respondent affirmed the contract by agreeing to give the Claimant until the end of June/1 July 2025 to improve his performance. Without the Respondent accepting that breach, the contract of employment between them continued (*Geys v Société Générale, London Branch* [2013] ICR 117), and the obligation to

pay the Claimant wages under that contract persisted absent a right to withhold it.

43. Even if the Claimant's further conduct, together with his earlier conduct, amounted to a repudiatory breach (the Employment Judge agrees that it could – it is not a *Chindove* situation as the Respondent expressly reserved its rights to rely on what it says was the Claimant's poor conduct earlier in 2025), it is clear that the Respondent did not communicate any acceptance of such a repudiatory breach until 1 July 2025 (if it dismissed him them). That did not give the Respondent a right to withhold the Claimant's pay from January to May 2025.

44. The Respondent cited various pieces of case law, and relied on what was said about those cases by Chat GBT – that those cases stood for the proposition that the Claimant had no entitlement to pay where no work was performed. However, when invited to direct the Employment Judge to the parts of the judgments it sought to rely upon, the Respondent could not do so. The Employment Judge was not satisfied that wages were not due to the Claimant.

<u>Remedy</u>

45. The Claimant provided copies of his payslips for December 2024 to January 2025, documents which the Respondent did not dispute (and, indeed, the Respondent relied on those payslips for doing its own calculations of the sums it had withheld).

46. The Claimant also provided a copy of his online banking records showing payments received. In essence, the Parties agreed that the Respondent withheld £11,201.39 net from the Claimant in this period.

47. The Claimant said that a payment of £1,000 his banking records show he received on 31 January 2025 was in respect of December 2024's pay. The Respondent disagreed and said that formed part of January 2025's pay. Further extracts from the Claimant's online banking looking at what payments were received earlier had not been provided ahead of the hearing. This meant that the Employment Judge had to decide whether the payment made on 31 January 2025 was in respect of the pay owed to the Claimant in respect of December 2024 or January 2025. The Employment Judge considered it inherently more likely that it was in respect of January's pay, and considered it was for the Claimant to prove otherwise, which he could not do.

48. Therefore the Employment Judge determined that the principal sum of £11,201.39 net was the aggregate value of the sums deducted from the Claimant's salary in the period January to May 2025.

49. The Claimant stated that he had borrowed £10,000 from a family member, and he agreed to pay that person back £12,000 – but he accepted that he had not provided evidence of that fact. The Employment Judge therefore declined to exercise the discretionary power in section 24(2) – she was not satisfied that

there was sufficient evidence to award him compensation for the financial loss he was asserting for the first time in this Final Hearing.

Conclusions

50. For all of the above reasons, the Claimant's Claim succeeds, and the Respondent is Ordered to pay him the sum of £11,201.39 net. That sums is the aggregate amount of the sums deducted from his wages in the period January to May 2025 in contravention of section 13 of the 1996 Act.

Employment Judge Ramsden

Date: 29 April 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.

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/