



EMPLOYMENT TRIBUNALS

Claimant: Mr Haily Habtom
Respondent: McGinley Support Services (Infrastructure) Limited

Heard at: Watford Employment Tribunal
On: 16 March 2026
Before: Employment Judge French

Representation

Claimant: In person
(with the assistance of an Amharic interpreter - Miss T Springford)
Respondent: Mr J Horney, litigation consultant

JUDGMENT having been sent to the parties on 6 May 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. The claim was before me on 16 March 2026 where oral reasons for my decision were provided. Judgment was sent to the parties on 6 May 2026 and on 11 May 2026 the claimant requested written reasons in accordance with rule 60. This was not referred to EJ French until 29 May 2026 who was on leave at that time and these reasons follow as soon as possible thereafter. The Tribunal apologises for the delay.

Introduction

2. By claim form dated 6 July 2025 the claimant brings a complaint of arrears of pay. Having clarified the matter with the claimant at the outset of the hearing he says that it runs from the period December 2020 until the end of his employment in May 2025. It relates to the hourly rate that he was paid through his employment in respect of his normal wage but also overtime that was worked at that rate. He says he has been paid at a lower rate than what was contractually agreed resulting in an under payment.

Evidence

3. I had a bundle consisting of 97 pages. The claimant produced a witness statement, and for the respondent, I had statements from Ms Fiona Burke and Ms Ciara Coleman. Each party had the opportunity of cross examining the other parties' witnesses, and I heard closing submissions from both parties which I

have had regard to.

The issues

4. There was no preliminary case management hearing in this case. As such, I took time to confirm the issues at the outset of the hearing.
5. These types of claims can be brought as an unauthorised deduction from wages, effectively, that an individual has been paid less than the amount that was properly payable to them, or can be brought, as a breach of contract, arising at the point of the claimant's termination.
6. The claimant's position is that contractually, he was entitled to a higher rate of pay than that which he was paid. Whatever way the claim is phrased (namely a breach of contract or unauthorised deduction from wages) ultimately, the key question for the Tribunal is what was the claimant's rate of pay? That will in turn determine whether there has been an underpayment.
7. The claimant says that he was entitled to £21.97 per hour and bases that on the assignment document at page 48 of the bundle which states his was employed as a general foreman. The respondent's position is that he was entitled to the relevant rate associated with his actual role as Traffic Marshall supervisor which started at £15.57 but increased through the years by way of general pay rises. That is what the claimant was paid, and therefore they defend the claim on the basis that there has been no underpayment of wages.

The Law

Unauthorised deductions

8. In relation to unauthorised deduction from wages, s.13 of the Employment Rights Act states:

An employer shall not make a deduction from wages of a worker employed by him unless—

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

the worker has previously signified in writing his agreement or consent to the making of the deduction.

9. Section 13(3) of the Act states:

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.

10. Where a claim is made in respect of a 'series of deductions', the three-month time limit starts to run from the date the last deduction in the series was made — S.23(3) Employment Rights Act 1996. This is subject to the condition that a

tribunal cannot consider any part of a claim relating to deductions from wages which occurred more than two years before the claim was brought — S.23(4A).

Breach of contract

11. In Hartog v Colin & Shields (1939) 3 All ER 566, the Court held that a party cannot enforce a contractual term where they knew the offer had been made in error.
12. The principle was further considered in Centrovincial Estates v Merchant Investors (1983) Com LR 158, where the Court of Appeal emphasised that the relevant question is whether the recipient of the mistaken term knew or should have realised the error.
13. A written contract is not necessarily conclusive evidence of the party's agreement. In System Floors (UK) Ltd v Daniel (1982) ICR 54, the Court of Appeal confirmed that written terms may be evidence of the contract but are not determinative where they do not reflect the true agreement between the parties.
14. Under those ordinary contractual principles, the ability of courts to look behind the written terms of a signed contract is normally limited to situations where there is a mistake that requires rectification or where the parties have a common intention to mislead as to the true nature of their rights and obligations under the contract, i.e. the contract is a sham. However, the Supreme Court in Autoclenz Ltd v Belcher and ors 2011 ICR 1157, SC, definitively accepted the premise that employment contracts are an exception to ordinary contractual principles in this regard. It endorsed a line of cases which stressed that the circumstances under which employment contracts are agreed are often very different from those under which commercial contracts are agreed, with employers largely able to dictate the terms. The Court held that 'the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part'.
15. In Ter-Berg v Simply Smile Manor House Ltd and ors 2023 EAT 2, it was held that in a case where the true intent of the parties is in dispute, it is necessary to consider all the circumstances of the case which may cast light on whether the written terms truly reflect the agreement and to do so applying the broad approach that Autoclenz describes, rather than the stricter approach that conventional contractual principles would allow.

Fact finding and conclusions

16. The claimant was employed by the respondent from 3rd August 2020 until 28th May 2025 when his employment terminated by dismissal. The claimant was employed as a Traffic Marshall Supervisor. He managed traffic marshalls and ensured that traffic management on the site was carried out safely. The claimant was deployed at the site 'SCS' in that capacity.

17. The respondent's position is that SCS project roles and associated rates of pay are determined by the client, not the respondent. Any promotion or upskilling on site must originate from the client and be reflected through the formal systems used on the project to ensure appropriate qualification and health and safety compliance.
18. At the outset of his employment, the claimant was issued with an Employment Contract and Assignment Details Form. This set out at page 36 that his rate of pay was £15.57 per hour. This assignment document did not set out the claimant's role.
19. Subsequently, an updated Employment Contract and Assignment Details Form was issued in February 2021 which starts at page 43 of the bundle.
20. The respondent's position is that the assignment details form at page 48 was issued in error following an incorrect trade description being recorded on the respondents' internal systems when a rate uplift took place across the board. The respondents' position is that the claimant was not employed as a general foreman such to attract the rate of pay as detailed at page 48.
21. They say that when this error was discovered, the claimant was informed of this by email on page 54 and the position was corrected. The claimant was then paid the correct rate of £18.75 per hour thereafter reflecting the rate of pay properly associated with his actual role at that time.
22. When I look at the updated contract of employment itself, that does not set out the rate of pay or role that the claimant will be performing. In fact, page 43 of the contract specifically sets out that the job description is set out in a different 'assignment details' form. Page 44 goes on to state "In relation to pay, that will be set out in the assignment details form."
23. I can see that form at page 48 of the bundle. That is the document that the claimant relies on as the contractual agreement between the parties for the rate of £21.97 per hour. That document also states the claimant's role is General Foreman.
24. The claimant accepts that he was not employed as a general foreman. However, I am not clear on whether or not the claimant does say he was qualified or not for that role because, during cross examination, he gave contradictory answers. At first, he said he was qualified for such a role, then said he was not qualified, but then later went back on that and said he was in fact qualified to perform such a role.
25. Whatever the position with the qualifications however, the claimant ultimately accepts that he was not employed as a general foreman. His position is that was recorded at page 48 was to allow for that rate of pay because he was a supervisor. He says that was directly agreed with the manager on site, namely an individual called 'Rudi' who I understood to be associated with the respondent's client.
26. Whilst the claimant relied on that conversation to support his position, in cross

examination, the claimant was reluctant to accept that any agreement in terms of promotion or pay, would be done through the client and instead placed reliance on the fact that the respondent was his employer. That is quite correct, the respondent is the claimant's employer. However, the respondent's position was that, ultimately, the role and rate of pay was agreed with the client which the claimant was reluctant to accept. That appears inconsistent with his position that he had a direct agreement with the individual Rudi for the higher rate of pay.

27. When I look at the document at page 48, I do accept that that purports to be the contractual terms between the parties. The contract refers to the assignment details as to specific terms including pay. That is the assignment details form that attaches itself to the employment contract.
28. However, as identified in the law section above, Employment Tribunals are entitled to examine the true contractual arrangements and the reality of the working relationship, rather than relying solely on written labels or contractual terms. Further a written contract is not necessarily conclusive evidence of a party's agreement. As such whilst the contract may be strong evidence in support of the contractual arrangements between the parties, I do not have to accept it as conclusive in its own right.
29. In that regard, I can see that shortly after the updated assignment details were issued in February 2021, an email which can be seen at page 54 was sent by Melissa Foley to the claimant in which it was explained that the revised details sent in February were incorrect. It states

'When the contract was sent to you, the incorrect trade description was on the assignment detail, which in turn dictates the rate. I can only apologise for this oversight on their part, and would be happy to reissue the contract as it should have been.'
30. This was sent on 16 March 2021, so within a few weeks of the updated contract having been signed by the claimant on 21 February 2021. That is an exchange between the claimant and Melissa Foley. The evidence of both respondent witnesses is that she was the Operational Support Coordinator at the time but has since left the respondent's employment and as such was not able to attend the Tribunal.
31. I conclude that the content of that email clearly indicates that an incorrect trade description was used on the assignment details which has in turn dictated the rate. It goes on to apologise for the oversight and says that she would be happy to reissue the contract. I am not taken to any subsequent correspondence by the claimant disputing that position at the time. He does not reply to suggest that was in fact the correct trade description or rate.
32. In those circumstances I am satisfied that the assignment details issued at page 48 were done so in mistake and did not represent the true agreement between the parties.
33. Subsequently, the claimant is then paid £18.75 per hour, being the rate associated with his role at that time and continued to work at that rate. There

are then subsequent pay rises with his final pay reflecting an hourly rate of £20.96 reflected in his wage slips at page 91.

34. The reality of the situation is that those rates were below what the claimant says he was contractually entitled to (with reliance on the document at page 48) yet he continues to work under those terms for a number of years. I conclude that is because the claimant knew that he was not a general foreman such that he was not entitled to the rate identified at page 48. The claimant continued to work in his role and did so being paid the rate he knew was associated with it.
35. The claimant's position is that he did not challenge or raise the rate of pay during this period due to fear of losing his job. He says he had a family to support, and it was during the period of covid. I reject that suggestion on the evidence. It is unclear on what basis the claimant suggests he would have lost his job in circumstances where his position is that that is what he was contractually entitled to.
36. There is also evidence that the claimant did challenge his rate of pay. I can see that at page 54 but also by text at page 53. He is then provided with the explanation that this was a mistake as identified above and takes the matter no further.
37. In fact, the claimant contradicted himself in this regard and suggested he had actually raised it more times than is evidenced in the bundle. If that is the case, that does not suggest somebody who was fearful of losing his job if he raised it, which in turn is at odds with his original position that he feared losing his job.
38. Further, even if there was a reluctance at that particular point in time because of the impact of the covid pandemic, there is no explanation as to why then it was not raised until 2025. When it is raised again in 2025 it coincides with a period of unauthorised leave which ultimately led to the claimant's dismissal.
39. Those observations are also relevant to any separate agreement the claimant says he had with the individual called Rudi. Although on the respondent's account it would be for the client to agree the associated rate of pay, the claimant did not accept this and as such it is unclear on what basis he relies on any such agreement with the respondent's client as to the rate of pay.
40. However, throughout this period the claimant again does not raise any suggestion with the respondent that there has been that agreement such that the rate of pay at page 48 is a true reflection of the position. On the evidence before me, when it is explained this was a mistake he takes the matter no further.
41. I find therefore in those circumstances that there was no separate agreement with Rudi to pay the rate of £21.97 because if there genuinely was, I conclude the claimant could and would have raised it with the respondent because I reject the suggestion that he was fearful about loss of employment.
42. In those circumstances, I find that there was no contractual agreement between the parties for the claimant to be paid £21.97. The document at page 48 was issued in mistake, and the claimant was informed of this at the time. The

claimant's subsequent conduct in working a number of years at that rate reflects his understanding of the true position and agreement between the parties.

43. I do not accept that there was an agreement to pay £21.97 per hour because there is clear evidence shortly after that that it was a mistake, and that was corrected. That document also at page 48 cannot be correct in circumstances where the claimant accepts he was not a general foreman and, in circumstances where on the claimant's own evidence it is unclear if he was qualified for such a role.
44. As such, in those circumstances, there has not been any breach of contract in terms of the rate of pay because I am satisfied that the claimant was paid at the rate which reflected the true agreement between the parties and that associated with his actual role of traffic marshall supervisor. For there to be an unauthorised deduction from wages, the claimant must first establish that the rate of £21.97 was properly payable to him. On my findings, he has not established that £21.97 was properly payable and, as such, there cannot have been an unauthorised deduction in those circumstances.
45. The claim therefore fails and is dismissed.

Approved by:

Employment Judge French

16 June 2026

JUDGMENT SENT TO THE PARTIES ON
24 June 2026

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FOR THE TRIBUNAL OFFICE