



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Matthews

**Respondent:** London Borough of Brent

**Heard at:** Watford (by CVP)

**On:** 8 May 2026

**Before:** Employment Judge Price

## **Representation**

claimant: In person

respondent: Mr T Lester, Counsel

# JUDGMENT

1. The claims for breach of contract and unlawful deduction from wages made are dismissed.

## REASONS FOR JUDGMENT

### **The claim**

1. The claim before me concerns an alleged non-payment of wages. The claim is therefore either one for breach of contract on the termination of a contract or unlawful deduction of wages under the Employment Rights Act 1996.
2. There is no dispute that the claimant was a foster carer at the material time and provided care on behalf of local authorities. The claimant presented a claim before the Employment Tribunal. The respondent made a strike out application that questioned the validity of the claim on the basis that the relationship

between a foster carer and a local authority is not one that entitles the claimant to seek redress before an employment tribunal as there is no contract between them. This argument relies on the finding of the Court of Appeal in *W v Essex County Council* [1999] Fam 90 which stated that foster carers did not work under a contract, but that their relationship with local authorities was instead governed by a statutory regime, including under the Children Act 1989 and Fostering Service (England) Regulations 2011. The strike out application was refused prior to this hearing, on the basis that this issue would be the primary issue that had to be decided in the full merits hearing of the claim and it was appropriate that the claim proceed to a hearing.

### **The issues**

3. I discussed with the parties the issues as to liability in this claim. The issues are as follows:
  - a. Were the claimant and respondent in a contractual relationship?
  - b. If so, what were the terms of that contract (specifically in relation to payment)?
  - c. Was a new contract formed, or did the terms vary in or around?
  - d. Had any of the terms of the contract been breached?
  - e. What (if any) wages were owed to the claimant under the contract?
  - f. Was there a deduction from those wages?
  - g. If so, was it a lawful one?

### **Preliminary issue- case management**

4. Arguably, as was held in *Oni & Others v London Borough of Waltham Forest*, 3204635/2021 and 2300852/2022 and 3302687/2022 the Tribunal remains bound by the decision of the Court of Appeal in *W v Essex County Council* [1999] Fam 90 and therefore must find that the relationship between the claimant and the local authorities for whom he worked was not pursuant to a contract. This precludes the jurisdiction of the employment tribunal in relation to Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and also section 230 of the Employment Rights Act 1996. The decision sets out the Judge's view that were he not bound by the Court of Appeal in *W v Essex*, he would have found there was a contract in place. *Oni* is currently being appealed to the Employment Appeal Tribunal. A full merit hearing is listed to take place in March 2027. A leapfrog application to the Supreme Court was refused by the EAT in 2025, but the EAT confirmed this could be remade.
5. At the outset of the hearing today, I explained to the parties that there was some relevant case law I would have to decide in determining the first issue today,

which is whether there was a contract in place between the claimant and the respondent. I referred to *W v Essex* and the fact that it is a Court of Appeal case and so it binds this tribunal. I also referred to *Oni* and the fact it is on appeal.

6. The clerk of the tribunal then sent the decision in *Oni* to the parties and I gave them an opportunity to read this case, as the claimant, as a litigant in person was not aware of it and had not previously had an opportunity to read it.
7. I then asked a. the claimant if he wanted to proceed today or if he wanted time to get legal advice, b. if the parties wanted a stay or adjournment of the hearing in order to wait the outcome of *Oni*, or if c. they wanted to proceed today. Mr Lester referred to the fact that this current claim may go further. I explained to the claimant this was a reference to the claimant's right of appeal arising from this case.
8. After consideration, both parties expressed that they wished to proceed and the claimant did not want time to get legal advice.

**Preliminary issue- was there a contractual relationship between the parties?**

9. I decided to deal with the first issue, whether there was a contractual relationship, as a preliminary issue as this was a proportionate approach to the case.
10. Both parties confirmed the following were agreed facts. Mr Matthews worked as a foster carer. He was paid as foster carer. The rate of payment changed at a point in time and he was paid a lesser sum. Mr Matthews seeks to recover the difference between what he was paid in the first period and the second period. The parties agreed that claimant's claim is that he is seeking the difference in payment as he provided care to a young person throughout and he did that under a national foster carer agreement, for at least the first period.
11. It was on the basis of this set of facts that the preliminary issue had to be determined. Neither side sought to call factual evidence on the preliminary issue, given it was a legal argument about the nature of the agreement.
12. I heard from both parties who made oral submissions, I then gave both parties an opportunity to provide any further submissions they wanted to in writing. The claimant provided further submissions in writing, the respondent re-sent to the tribunal the relevant legal authorities and statutory law they relied upon, namely, *W v Essex*, Care Planning Placement and Case Review England Regulations 2010, *National Union of Professional Carers v Certification Office* [2020] ICR 607.

13. The employment tribunal is a creature of statute. This means its jurisdiction is limited by statute, it can only hear and decide upon claims where it has been given jurisdiction to do so by parliament. A claim for money owing such as the one the claimants wish to bring, could be brought as an unlawful deduction from wages claim under section 13 of the Employment Rights Act 1996 or a breach of contract claim. The employment tribunal has jurisdiction to hear the latter by virtue of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
14. The scope of the various employment rights afforded by the Employment Rights Act 1996 is in part delineated by Section 230 of the ERA 1996 the material parts of which say: 230 Employees, workers etc. This provides, (1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment (2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing. (3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)— (a) a contract of employment, or b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual. It is only employees or workers within this definition who gain various rights under the Act.
15. Further, the right to complain of a breach of contract (including wrongful dismissal) under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 is limited to employees by reason of the wording of article 3 of that Order, which provides ‘Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum...’ The Order therefore enables an employee to bring a claim for damages for breach of his contract of employment.
16. In *W v Essex* the Court of Appeal held as follows,

*In S. v. Walsall Metropolitan Borough Council [1985] 1 W.L.R. 1150 ‘the question was whether foster parents were the agents of the defendant council who had placed the child in care. Oliver L.J., with whose judgment Balcombe L.J. agreed, reviewed the statutory provisions which are similar to those relevant in this case. He said, at p.1154F, that the statute and the regulations “provide a statutory code and they underline the fact that the whole of this area*

*is covered by a complicated and detailed statutory scheme.” And later he said, at p. 1155e, that the “relationship between the child and the local authority, and indeed between the child and the foster parents, is one which is regulated . . . simply and solely by the provisions of the statutory scheme.” It is true that he does not include the relationship between the foster parents and the council as being so regulated; but it must, in my judgment, follow. The contents of the agreement are strictly laid down in the regulations and cannot be varied. The remuneration is set by the statutory scheme and cannot be freely negotiated.*

*Furthermore, I am very doubtful whether the judge was right to consider the Specialist Foster Carer Agreement separate from the Code of Practice, which specifically stated that it is not to be legally binding. The plaintiffs had pleaded that this document formed part of the agreement, and if that is correct it shows that the agreement, whatever it was, was not to be regarded as a legally binding contract. Even if I am wrong in the conclusion I have reached in paragraph 50, I would agree with the judge that paragraph 6.4 of the Code cannot be relied upon as an express term of the contract in view of the express disclaimer to which I have referred [§51-52].*

17. An extensive summary of the relevant case law was helpfully set out by the employment tribunal in *Oni*. Although I am not bound to follow *Oni* as it was a decision made in the employment tribunal I have carefully considered its reasoning. Not only did it considered the same point I am being asked to decide, but the tribunal in that case also had the assistance of a significant number of legally representatives who provided extensive submissions on the relevant case law and the Secretary of State for Education intervened, its reasoning is therefore both extensive and informative.
18. As explained in *Oni*, *W v Essex* has been applied and followed in a number of cases, including *Rowlands v City of Bradford Metropolitan District Council* [1999] EWCA Civ 1116 and *Bullock v Norfolk County Council* [2011] UKEAT 230/10.
19. In *Bullock*, Slade J said at paragraph 39,  
*‘The fact that the Court of Appeal reached their decisions in W and in Rowlands that the relationship between foster carers and local authorities was not contractual in different contexts does not affect their relevance and binding effect on the issue in the appeal before us. ‘Contract’ is not given a different meaning in the ERA 1996 or 1999 from that which it ordinarily bears. There is no basis for making a different categorisation of the relationship between foster carer and local authority in the factual context of W and Rowlands on the one*

*hand and in the appeal before us on the other. The relationship is not governed by contract’.*

20. *Oni* also considered ‘other cases dealing with the question of no contract in a statutory context’, including the case of *Roy* that the claimant relied upon before this tribunal. It summarised,

*‘the position of GPs was revisited in Roy -v- Kensington, Chelsea and Westminster Family Practitioner Committee. Dr Roy had brought a private law claim complaining about the reduction in an allowance paid to him. In the High Court the judge held that: ‘The rights and duties of those within the scheme stem from and are entirely dependent on statute and regulation. They are not dependent on a contractual relationship’. The relationship between the parties was not contractual. On appeal that conclusion was held to be incorrect. All three members of the Court of Appeal accepted that the relationship between the parties was contractual relying on Reg. v. East Berkshire Health Authority, Ex parte Walsh [1985] Q.B. 152. On further appeal to the House of Lords they concluded that the outcome of the appeal did not turn on whether there was a contract. It was sufficient that he had a private law right to payment under the statutory scheme. Lord Lowry deals with the question of the existence of a contract at page 649 where he says:*

*‘I cannot altogether accept the reasoning which led the members of the Court of Appeal to conclude that there was a contract, because, although there may well have been a contract for services, I am not satisfied that there was. Reg. v. East Berkshire Health Authority, Ex parte Walsh [1985] Q.B. 152 does not in my view provide a reliable argument in favour of saying that there was a contract in the present case and Wadi v. Cornwall and Isles of Scilly Family Practitioner Committee [1985] I.C.R. 492 indicates the contrary. At the same time, I would be foolish to disregard the fact that all the members of a distinguished Court of Appeal held that a contract for services existed between Dr. Roy and the committee. It shows, to say the least, that there are "contractual echoes in the relationship," as Judge White [1989] 1 Med.L.R. 10, 12, put it and makes it almost inevitable that the relationship, as was said of that which arose in Wadi's case, gave rise to "rights and obligations" and that Dr. Roy's rights were private law*

*rights. I would here observe that the mere fact that the Act and the Regulations constitute a statutory scheme which lays down the doctor's "terms of service" (an expression which has contractual overtones) and creates the relationship between him and the committee, is not fatal to the idea of a contract, but that relationship did not need to be contractual. Moreover, the discretion which the scheme confers on the committee is not typically characteristic of a contractual*

*relationship, and the same can be said of the appellate and supervisory role given to the Secretary of State' [131].*

*The judgment of Lord Lowry clearly recognises the possibility of a working relationship arising from a statutory background not being contractual. The effect of the decision in Roy was considered by the Employment Appeal Tribunal in Ealing Hammersmith and Hounslow FHSA -v-Shukla [1993] ICR 710. The EAT held that the House of Lords had overruled the Court of Appeal on whether the relationship was contractual. They went on to add the following reasons at page 718 (emphasis added):*

*'We ourselves would respectfully add some comments. First, since the relationship of general practitioners with the family health services authority is based on statutory provisions, there is no need to seek to explain it in contractual terms. The sources of the obligations are statutory. Secondly, the relationship does not sound in the contractual concepts of offer and acceptance; we doubt whether consideration can be spelt out. Thirdly, the appointing body was the medical practices committee not the family health services authority. Fourthly, the obligations arising do not arise out of a bargaining process between the parties. Fifthly, such discretion as is available to the family health services authority is subject to appeal to the Secretary of State, who is in fact the arbiter. Sixthly, the situation is distinguishable from those instances where a contract exists and statutory terms are to be implied into it. Hospital doctors, nurses and ancillary staff are employees under contracts of service [132].*

21. Having considered various authorities, the tribunal held in *Oni* that *'What I draw from Norweb but also from the other authorities I have referred to above is that the question of whether a transaction arising in the context of a statutory scheme leaves any room for a private law contractual relationship is a matter of judgment and will depend on the scope of the statutory intervention into the terms of the arrangements. That is supported by the statement of Lord Lowry in Roy where he said 'the mere fact that the Act and the Regulations constitute a statutory scheme..... is not fatal to the idea of a contract, but that relationship did not need to be contractual...Each statutory scheme will require individual consideration as to the scope and extent of the obligations that are imposed. I am driven to the conclusion that it was this exercise of judgment that was undertaken by the Court of Appeal in W v Essex' [137].*

22. I agree with the decision in *Oni* to the extent that *W v Essex* decided that the arrangement of foster carers with local authorities is not contractual. I am bound by this decision as it was made by the Court of Appeal. Therefore, the claimant did not have a contract of employment, or contract for services (for the purpose

of being a worker). It therefore follows that the rights under section 230 of the ERA or the 1994 Order cannot be invoked by the claimant.

23. I have set out above that *Oni* is appealed and the claimant has been made aware through a submission of Mr Lester that he too has a right of appeal to the employment appeal tribunal.

Approved by

**Employment Judge Price**

**15 July 2026**

JUDGMENT SENT TO THE PARTIES ON  
11 August 2026

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FOR THE TRIBUNAL OFFICE