EMPLOYMENT TRIBUNALS

Claimant: Mr J Tustin

Respondent: Gary Wills Gas Services

Heard at: **Bristol (by video)** **On:** **13 March 2026**

Before: **Employment Judge Bradford**

Representation
Claimant: Miss J Gommer, lay representative (mother)
Respondent: Mr Wills, owner of business

JUDGMENT

1. The Claimant's complaint of unauthorised deductions from wages in contravention of Part II Employment Rights Act 1996, in that he was paid the apprentice minimum wage when he should have been paid the national minimum wage is well-founded. The Respondent underpaid the Claimant the gross sum of £11,064.41.

2. The Claimant's complaint of an unauthorised deduction from wages in that training costs were deducted from his salary in December 2024 is well-founded. The Respondent made an unauthorised deduction of £1,510.53 net.

3. The Claimant's complaint that there was an unauthorised deduction from pay relating to holiday pay in December 2024 is not well-founded and is dismissed.

4. The Claimant's complaint of breach of contract in that he was not paid in lieu of notice is well-founded. A month's gross pay was £1,982.55. The Claimant is owed the net sum after deductions for tax and national insurance.

5. The Claimant's complaint that he is owed holiday pay for the annual leave accrued during his notice period is well-founded. The gross sum of £108.55 is due, subject to deductions for tax and national insurance.

6. The Respondent having made payments to the Claimant, said to be £14,346.35 gross (£12,188.10 net) will need to recalculate the gross

and net sums owed in view of the foregoing and make any additional payments required.

7. The Claimant's complaints of unfair dismissal and whistleblowing detriment are dismissed on withdrawal.

REASONS

1. By a claim form filed on 24 April 2025 the Claimant brought complaints including unauthorised deductions from wages, accrued but untaken holiday pay, and breach of contract claim relating to notice pay.

2. The Claimant had stated he was brining an unfair dismissal complaint and a whistleblowing complaint. Those have been dismissed on withdrawal.

3. The Claimant was employed by the Respondent, according to his contract, as an 'Engineer' from 30 October 2023 until his employment terminated on 12 December 2024. He contacted ACAS on 15 February 2025 and the certificate was issued on 29 March 2025. There are no time limit issues.

Unauthorised deductions – pay below national minimum wage

4. The Respondent's position was that the Claimant was an apprentice, and indeed there was reference to apprenticeship and training within the contract. The issue was whether the Claimant was an apprentice and was properly paid the apprentice minimum wage, or whether there was no apprenticeship contract, and he was a regular employee.

5. It was common ground that the Claimant's contract did not meet the statutory requirements of the Apprenticeship Skills Children and Learning Act 2009 and was not an Approved English Apprenticeship.

6. I have considered whether the contract was a common law apprenticeship. The Employment Appeal Tribunal (EAT) in *Commissioners for HM Revenue and Customs v Jones and ors (Trading as Holmescales Riding Centre) 2014 ICR D43, EAT*, made the point that, while it is not determinative, it is legitimate for the court to have regard to the way in which the parties have chosen to categorise their relationship. The Employment Tribunal had held that live-in workers at a riding school were apprentices. However the EAT overturned that decision on the basis that the training they received was incidental to work and as such the essential characteristic of apprenticeship was missing.

7. At common law, as confirmed by this case, a contract of apprenticeship must be fixed term with an objectively ascertainable end, such as a specific end date or the conclusion of a prescribed course of study or training.

8. Additionally, a contractual provision for dismissal without notice for gross misconduct points away from the contract being an apprenticeship. Generally, provision for early termination is inconsistent with a contract of apprenticeship.

9. In the present case I find that the primary objective of the contract between the Respondent and the Claimant was work, rather than learning because the training did not commence until February 2024, in circumstances where the contract commenced on 30 October 2023. Further, the contract was not fixed term but open-ended. It included provision for dismissal without notice for gross misconduct and for termination by either party on one month's notice. The Claimant is described in the contract as an Engineer, not an Apprentice Engineer. I find that the training was incidental and the terms of the contract were such as are commonly found in contracts of employment. As such, I do not find that the Claimant had a common law apprenticeship.

10. It follows that the Claimant was not an apprentice but an employee and he should have been paid at the national minimum wage, not the apprentice minimum wage.

11. I have calculated the shortfall as follows:

    The Claimant was paid for 173.3 hours/month. In 23/24 his monthly salary was £915.20 ÷ £5.28/hr = 173.3 hours/month. In 24/25 his monthly salary was £1,199/33 ÷ £6.40/hr = 173.3 hours/month.

    In 23/24 monthly salary at the minimum wage of £10.42 would have been £1,805.79, so there was a shortfall of £890.59/month

    In 24/25 monthly salary at £11.44/hr would have been £1,982.55, so there was a shortfall of 783.22/month

12. Calculation for 23/24

    1 November 2023 to 31 March 2024

    5 months x 890.59 = £4,452.95

    30 October 2023 and 1-5 April 2024

    Month = 30.4 days. £890.59 ÷ 30.4 = 29.30/day

6 days =	£175.80
Total for 23/24	£4,628.75

13. Calculation for 24/25

May to 30 November

7 months x 783.22 =	£5,482.54

6 - 30 April (25 days) December (12 days) = 37 days

£783.22 ÷ 30.4 = 25.76/day

37 days x 25.76 =	£953.12
Total for 2024/25	£6,435.66
Total due for shortfall in pay at MNW	**£11,064.41**

14. I do not find that the national minimum wage rate used to calculate the deduction is the current, 2025/26 NMW of £12.21/hour as claimed. The reference to this on the Claimant's behalf relates to circumstances where HMRC has issued a 'notice of underpayment' in accordance with s19 National Minimum Wage Act 1998. That does not apply here.

Unauthorised deductions – training costs

15. The applicable legislation is s13 ERA which states:

13 Right not to suffer unauthorised deductions.

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

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

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

16. And

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

17. The Claimant's contract with regard to training stated that training costs were 'fully repayable' should the employee leave or be dismissed within 5 years of the company incurring the cost.

18. The contract was signed by the Claimant on 23.09.24.

19. In addition, on the same date, the Claimant had signed a document headed 'Training Agreement Request'. That stated that where the employee resigned or was dismissed, the 'Associate' was required to repay training costs; If the employee resigned or was dismissed following successful completion of the training, 100% of the cost was to be repaid if the dismissal or resignation was within 12 months, and then a sliding scale, such that no repayment was required if the employee left or was dismissed 2 years or more after completion of the training.

20. The declaration at the end of the form did not refer to dismissal but referred to the employee being required to make repayment if they left during or after completion of training.

21. This agreement was both internally inconsistent as to whether there was to be repayment in the event of dismissal, and was inconsistent with the contract of employment, with regard to whether repayment was required if the employment terminated within 2 years or 5 years.

22. Further, the agreed evidence was that the training commenced in February 2024, some months before either the contract or agreement were signed.

23. The training costs prior to 23 September 2024 are not therefore recoverable by the Respondent in accordance with 13(6) ERA. There was no evidence, beyond an invoice due for payment by 10.07.24 in the sum of £560, of when the training costs were incurred.

24. However, the issue of the costs incurred prior to the agreement being signed becomes academic as caselaw makes clear that contractual clauses or agreements relating to repayment should be subject to a considerable degree of scrutiny because of the vast disparity in economic power between employer and employee - *Yorkshire Maintenance Company Ltd v Farr EAT 0084/09*. Further, the clause must be enforceable at common law and must be a genuine pre-estimate of the loss likely to be suffered as a result of the employees breach of contract. Anything in excess is considered a penalty clause and is void at common law - *Giraud UK Ltd v Smith 2000 IRLR 763, EAT*.

25. Given the discrepancy with regard to the time within which repayment was required (2 years or 5 years), I do not find there can have been a

genuine estimate made of the likely loss suffered. Additionally, this inconsistency between the contract and the agreement, as well as the inconsistencies within the agreement as to whether repayment was to be made only where the employee leaves (declaration) or also if they are dismissed (body of document) is, in accordance with contract law and the ‘contra proferentem’ rule, to be resolved against the party seeking to rely on it, here the Respondent.

26. In evidence, Mr Wills referred to the provision for recuperation of training costs being standard practice were an employee leaves within a timeframe. This indicated an intention that the provision was limited to that circumstance.

27. In summary, in the absence of a clear and consistent contractual provision regarding repayment, both in terms of the period within which repayment was due and whether the provision applied only where the employee voluntarily left or also applied where they were dismissed, I am not satisfied that there was a valid contractual provision or a written agreement authorising the deduction for training.

28. As such, the net sum of £1,510.63 deducted from the Claimant’s December 2024 pay was an unauthorised deduction and must be repaid.

Notice Pay

29. The contract states that either party may bring the employment to an end by giving one month’s notice. No notice was given. There is a dispute as to whether the Claimant resigned or was dismissed and hence whether pay in lieu of notice was due.

30. Mr Wills in evidence said that the Claimant leaving was a mutual decision. The Claimant had told Mr Wills, he said, that he no longer wanted to work for the company and that he had another job. However, the evidence was that the Claimant did not commence alternative work until February 2025. He said he could not get other work any sooner after his dismissal.

31. The letter confirming the termination of employment dated 22.12.24 stated “*The decision to terminate your employment was not taken lightly*”. If find that this is inconsistent with the Claimant having resigned, and consistent with the Respondent having made a decision to terminate his employment. If the Claimant had resigned, no decision would have been taken by the Respondent. Further, the Respondent’s closing submissions referred the Claimant’s conduct in using his mobile and being disengaged. This is indicative that conduct was the reason for dismissal, although I do not make such a finding.

32. I find that the Claimant was dismissed without notice on 12 December 2024. I find that he was contractually entitled to one month's notice pay. His employment was terminated without notice and therefore in breach of contract. He is entitled to pay in lieu of notice.

33. One month's pay at £11.44/hour, £1,982.55 is owed by the Respondent to the Claimant. The Respondent will need to deduct tax and national insurance and pay the net sum to the Claimant.

Holiday pay

34. The agreed evidence was that the holiday year ran from May to April. Between May and December 2024 the Claimant took 18 days holiday, excluding bank holidays. His contractual entitlement was 20 days excluding bank holidays.

35. The Claimant claims that the net deduction of £335.70 from his salary for overtaken holiday was an unauthorised deduction.

36. The calculation is as follows:

    226 days (1 May to 12 December) is 62% of the year.

    62% of 20 days is 12.4 days. This was the pro-rata holiday entitlement

    The Claimant took 5.6 days more than his entitlement.

    1 day's pay is £65 (monthly pay at £11.44/hr = £1,982.55 ÷ 30.4)

37. The gross sum of £364 (65 x 5.6) fell to be deducted from the final pay. I find that the net deduction was likely correct.

38. However the Claimant is owed 1.67 (20 ÷ 12) days holiday accrued in the one month notice period, £108.55 gross.

Employment Judge Bradford
Date: 13 March 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
26 March 2026