



EMPLOYMENT TRIBUNALS

Claimant: Mr Paul Dullenty

Respondents: Blackburn with Darwen Borough Council

Heard at: Carlisle (Remotely by Video)

On: 30 June 2026

Before: Judge C Cowx (sitting alone)

REPRESENTATION:

Claimant: Represented Himself

Respondent: Mr Martin Mensah of Counsel

JUDGMENT having been sent to the parties and written reasons having been requested by the claimant in accordance with Rule 60(4)(a) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. The claimant brought a claim of unlawful deduction from wages in that he claims he was not paid the correct amount of holiday pay.

PRELIMINARY MATTERS

2. The respondent argued that the Tribunal did not have jurisdiction to deal with the claimant's claims relating to alleged deductions made for the winter of 2023/2024 on the basis they were brought out of time.

3. The respondent conceded that claims relating to the winter of 2024/2025 were brought in time.

4. The claimant argued that the first winter and second winter periods i.e. 2023/2024 and 2024/2025 formed part of a series of deductions and were therefore linked.
5. I found that the claimed deductions did amount to a series of claimed deductions. There was a clear link between the two, in that they were related to the same duties which came round each year for a period of a few months only and the break between the two periods was out of the claimant's control.
6. Therefore, the Tribunal did have jurisdiction to deal with the merits of both sets of alleged deductions because they formed a series of deductions.
7. The Tribunal heard evidence from the claimant.

FACTS

8. I found the following facts.
9. The claimant is employed full time as a salaried assistant manager in the respondent's highways department. He is entitled to 31 days holiday a year, which is more than the statutory minimum.
10. For a number of years, the claimant has volunteered to be on the respondent's rota for carrying out road gritting duties in the winter. This is not a separate contracted role but an additional duty he volunteers to perform for the respondent and for which he is remunerated.
11. Over the winter period he receives a standard payment for being on standby plus an hourly rate payment when actually called out to grit the roads.
12. In addition to the standby and callout payments he also receives an additional holiday pay allowance. The respondent is not obliged to grant any further holidays or holiday pay for these additional winter gritting duties. The claimant already receives the maximum number of permitted days of annual leave. The claimant receives additional holiday pay for his winter gritting duties because this was agreed between the respondent and the claimant's trade union. The rate of holiday pay was also agreed between the respondent and the claimant's trade union. The rate agreed was and is 7.67%.
13. The claimant's case was that he was entitled to a rate of 12.07% and that he was underpaid £124 in May 2024 for the 2023/2024 winter and underpaid £111 in May 2025 for the 2024/2025 winter. The claimant's argument was that the 7.67% rate is derived from a calendar day formula i.e. 28 days divided by 365 days and is incorrect. He argued that the same formula as used for statutory holiday pay was the correct formula. He also argued that his seasonal gritter pay should be combined with his assistant manager pay when calculating his holiday pay.
14. The claimant said there was case law to support his argument, but he did not refer me to any such case law.

15. The respondent did not provide written evidence of the agreement reached between the respondent and the trade union. Similarly, the claimant who received support and advice from the same union but did not ask his union to confirm or deny that 7.67% was the agreed rate for winter gritting holiday pay.

16. On the balance of probabilities, with no effective challenge to the respondent's case that a rate of 7.67% was agreed, I found that this was the agreed rate. I was not persuaded by the claimant's contention that the higher rate should apply in his case or that his substantive pay should be lumped together with his additional gritter pay. This is because his gritter duties are not a separate form of employment. They form part and parcel of his employment with the respondent, albeit duties additional to his core role. The respondent is not obliged by statute or the claimant's contract of employment to pay the claimant the additional holiday pay for the gritting duties. It does so because of an agreement reached with the trade union.

THE LAW

17. The relevant law on unlawful deduction from wages including non-payment of holiday pay is to be found in the Employment Rights Act 1996 (*"the ERA"*) at:

Section 13

(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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

APPLYING THE LAW TO THE FACTS

18. As an employee of the respondent the claimant receives a generous holiday allowance in excess of what is demanded by statute. Whilst there is an agreement

between the respondent and the union that the respondent will pay holiday pay for the additional gritter duties, it is not the same sort of holiday allowance as that which the claimant receives under statute for his primary role. In effect the claimant is comparing apples with oranges. In receiving remuneration for his winter additional duties, including holiday pay, he benefits from a bespoke arrangement between the respondent and his trade union. The parties were at liberty to negotiate and agree upon whatever rates they saw fit.

19. The gritter holiday payments are an extra, a perk, a nice to have. They are not determined by statute and so the claimant cannot rely upon statute in this claim. He has been paid holiday pay at the agreed rate and so no deductions from his wages have been made. The claim is therefore unfounded and fails.

Judge C J Cowx

15 July 2026

REASONS SENT TO THE PARTIES ON
27 August 2026

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