EMPLOYMENT TRIBUNALS

Claimant: Mr Slifkin

Respondent: Bay Freight Limited

Heard at: Manchester **On:** 29 and 30 April 2026

Before: Employment Judge Ross (by CVP)

REPRESENTATION:

Claimant: In person
Respondent: Mr Randall, Attorney qualified in USA

JUDGMENT having been sent to the parties on 1 May 2026 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant was employed by the respondent as an HGV Driver at their Stalybridge depot from November 2021 until he gave his resignation on 7 July 2025 leaving on 11 July 2025.

2. The claimant claimed unfair constructive dismissal pursuant to Section 95 and Section 98 Employment Rights Act 1996. The respondent disputed the claim.

3. There had been no previous case management hearing. At the outset of the hearing I clarified with the claimant, a litigant in person, how he put his claim. He confirmed he considered the respondent had breached his contract either as a direct breach of contract or as a breach of the implied duty of trust and confidence. He relied on the breach in two ways. Firstly, that the respondent had broken his contract by changing his pay from weekly pay to monthly pay, without his consent, and secondly, by changing the terms of when he was paid from weekly to monthly pay without his consent, paying him an average wage instead of the days or hours he had actually worked, causing monies to be owed to him.

4. The claimant also brought a claim for unlawful deduction from wages in the sum of £341.72. After a short break for me to read witness statements, the

respondent agreed to pay the claimant that sum and the claimant withdrew that claim leaving only the constructive dismissal claim.

Facts

5. I found the following facts. The respondent, for business reasons, decided to move its employees from being paid each week to being paid each month. The decision was taken in January 2025. The reason for the change was for the respondent to save money across its group of companies. Instead of generating payslips weekly they would only need to be generated monthly saving administrative time and resource.

6. There is a factual dispute about what information was received by the claimant. The respondent says an email was sent to the claimant together with all the other relevant affected employees on 27 January 2025 at 10.38 which explained that in due course existing employees will be moved to monthly payroll from weekly payroll and that new starters would move immediately onto monthly pay. P37 of the Bundle.

7. The claimant said in cross examination that he did not receive an email about this, but he did see a notice on the company notice board at the depot. In his statement he says he did receive the January email. I find whether it was by email or on the notice board the claimant was aware of the contents of the January email alerting him that the way he was going to be paid would be monthly instead of weekly.

8. The respondent says it emailed the claimant on 24 February 2025 informing him that 4 April 2025 would be his last weekly pay though he would receive a transitional payment on 11 April and his first monthly pay would be received on 30 April 2025.P38. The email says there is a question-and-answer document attached to it. A question-and-answer document is included in the bundle.

9. There was no clear evidence in the bundle to show that either email had been sent from the respondent to the claimant. There is a date and time on each email, but the header is not in a format that the Tribunal would usually see for a document which is emailed. The time on the second email was not the same time (document 38) as a document produced later by the respondent partway through the hearing.

10. The claimant disputed he had ever seen the more detailed email of 24 February 2025. In evidence he said if it had been sent it may have gone into his junk folder. I find the claimant did become aware of how the monthly salary would be calculated because it is referred to in his statement, but it is unclear how or when he became aware of that information. The claimant also said in his statement that Dave Cork the Depot Manager informed him they were being moved to monthly pay and told the claimant that there was nothing he could do about it.

11. The claimant says once he was moved to monthly pay his wages were reduced. Because of the way the calculation was done by payroll he was not paid for work done on 31st March 2025. He says he also lost out on holiday pay because it was paid as an average worked out over the weeks before holiday was taken. He says he was not paid for lunch breaks. See the claimant's calculation at page 47 in

the bundle. The total loss in the 3 months after the change in pay from weekly to monthly was £341.72.

12. The claimant says he complained to both his line manager Dave Cork and depot manager Carl Wagstaffe in the office about the problem with his wages and moving to monthly pay and says he was told to "like it or lump it". I did not hear from Mr Dave Cork or Mr Carl Wagstaffe. I accept the claimant's evidence that he complained to them about the change and the problem with his wages. I heard from Mr Knowles who is Head of People Services for the group of companies not just the respondent Bay Freight Limited. He says the respondent was unaware of the claimant's concern about the change in his wages causing him a financial problem until after his resignation.

13. I find that this is not correct. Although I entirely accept Mr Knowles' evidence that he and his HR team were unaware of the claimant's concerns, I find the claimant did raise concerns with his managers, both his Line Manager and the Depot Manager but they did not escalate the matter for him or answer his queries or inform him how to progress the matter. I bear in mind that the claimant is an HGV Driver working out of a depot where he reasonably informed both his Line Manager and Depot Manager of his concerns.

The Law

14. The relevant law is Section 95 and Section 98 of the Employment Rights Act 1996. The old case of Weston Excavating (ECC) Ltd -v- Sharp 1978 ICR 221 CA remains relevant as does Malik -v- BCCI 1997 ICR 606. The questions I must ask myself are firstly what the factual things were the respondent is alleged to have done which amounts to a breach of contract. The claimant relies on: -

(i) Changing his pay from being payable weekly to payable monthly; and in the alternative

(ii) changing his pay from weekly to monthly therefore paying him an average wage instead of the days or hours he had actually worked causing monies to be owed.

15. The second issue is did that breach a term of the contract? If yes, was the breach fundamental? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

16. I must then consider whether the fundamental breach of contract was a reason for the claimant's resignation and whether the claimant affirmed the contract before resigning by delay or otherwise. I will need to consider whether the claimant's words or actions showed that they chose to keep the contract alive, even after the breach.

17. In the alternative the claimant relies on both factual matters (i) and (ii) as a breach of the implied duty of trust and confidence. I must take into account of the factual allegations relied upon by the claimant, did they individually or cumulatively indicate the respondent had reasonable and proper cause for those actions or omissions and if not, whether the respondent behaved in a

way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

18. I am going to deal in this judgment with the second allegation first, namely did the respondent change the claimant's terms of his pay from weekly to monthly without his consent therefore paying him an average wage instead of the days or hours he had actually worked, causing monies to be owed.

19. I find that that allegation is factually correct. I find that the claimant was not paid for the 31 March 2025 which was conceded by Mr Knowles in cross examination. In the absence of any detailed explanation to the contrary by the respondent and having regard to the clear assertion of the claimant as set out in his calculation on page 47 of the bundle that he was owed £141.31 for the 31st March 2025, £50 for lunch breaks and £150.41 in relation to the calculation of his pay following the change from weekly to monthly pay, I find the claimant was owed those sums by the respondent as a result of the change in pay from weekly to monthly.

20. I must then consider whether that amounted to a breach of contract. I find that it was. First of all there was a breach of Section 5.1 of his contract of employment which stated he was weekly paid. Secondly, I am satisfied that a failure to pay a claimant wages for work he has done or holidays he has taken amounts to a breach of contract.

21. I am satisfied that a change in the way the claimant was paid causing him to suffer a reduction in his wages amounts to a breach of contract. I must then consider whether the breach was fundamental and so serious that it entitled the claimant to treat the contract as being at an end.

22. I am satisfied that a loss to the claimant in the sum of over £300 is a significant sum for a person whose hourly rate of pay is £12.90, noting that that sum was accrued over three months. I rely on the evidence of the claimant in his statement that the wages lost amounted to approximately £100 per month. I am satisfied the claimant was trying to raise his concerns about this change from weekly to monthly pay and the problems it caused with his managers, but they told him it was a question of "like it or lump it".

23. I am satisfied the respondent was aware of the claimant's concerns because although the HR Department did not know about the problem, the claimant's managers did and they took no action about the issue.

24. I turn to the next issue: was the fundamental breach of contract the reason or principal reason for the claimant's resignation. I find there is no dispute the claimant left because of the change from weekly to monthly pay, see his email of 6 June and I am satisfied that this was in part due to the shortfall in his pay.

25. I am therefore satisfied that the reason he left was the breach of contract. I now turn to the next issue did the claimant affirm the contract before resigning by delay or otherwise. I am satisfied that the claimant did not delay too long and affirm the contract. I find the claimant realised after he received his pay

slip of 30 April, see page 64, that he had not been paid correctly. I find he was raising his concerns about the change with his managers. He identified what he considered to be a further shortfall after the May payslip and June payslip. I rely on the evidence in his witness statement that the claimant realised his pay had "reduced by about £100 per month" and "complained constantly about what the respondent had done but was told to "shut up and get on or leave". I find the claimant had complained to his Line Manager and Depot Manager about the breach of contract and that is clear evidence that he had not affirmed the breach. Accordingly, the claimant has shown that he was constructively dismissed.

26. I must now go on to consider whether the respondent has shown the reason or principal reason for the breach of contract. The respondent relied on some other substantial reason "SOSR". SOSR is a potentially fair reason under Section 98 of the Employment Rights Act 1996.

27. I am satisfied that although a business reorganisation in relation to the payslips is a potentially fair reason for changing the claimant's pay from weekly to monthly pay, but I am not satisfied that SOSR is a fair reason not to pay the claimant correctly for the hours he had worked in consequence of the change from weekly to monthly pay.

28. If I am wrong about that and SOSR is a fair reason why the claimant was suffering a loss of earnings following the change from weekly to monthly pay, I go on to consider whether the dismissal was procedurally fair and whether it was within the band of reasonable responses of a reasonable employer.

29. I am not satisfied that any detailed procedure was followed. The respondent simply sent out two emails. There is a lack of clarity as to whether the claimant actually received those emails or whether he received the information about the change from weekly to monthly paid via his managers. There was no meeting held with the claimant or the other employees where a questions or concerns could be raised, and answers given. When the claimant did raise concerns with his managers(as suggested in the Q and A document attached to the February email) they ignored his concerns. So even if the respondent can rely on a fair reason (which I have found they have not) I find that the dismissal (constructive) is procedurally unfair.

30. Because I have found there has been a breach of contract there is no requirement or need for me to go on to consider whether it amounts also to a breach of the implied duty of trust and confidence.

31. Nor is there any requirement for me to go on and consider whether allegation 1 is made out. However, for the sake of completeness I find that changing the claimant's pay from weekly to monthly amounts to a breach of contract because the claimant was contractually entitled to be paid weekly. (See clause 5.1 of his contact of employment at page 30 of the bundle) but I am not satisfied it was a fundamental breach of contract. If this had been a case where there had been no reduction in the claimant's pay and the transition had worked as the respondents suggested it would with no loss of pay to the

claimant, it not have amounted to a fundamental breach of contract and the claim would have failed.

Approved by Employment Judge Ross

Date: 4 June 2026

REASONS SENT TO THE PARTIES ON
Date: 18 June 2026

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FOR THE TRIBUNAL OFFICE

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