



# EMPLOYMENT TRIBUNALS

## Claimant

Miss VC Silva Ventura de Oliveira v

## Respondent

Grim 2 Prim Limited

**Heard at:** Cambridge

**On:** 1 March 2019

**Before:** Employment Judge Tynan

## Appearances

**For the Claimant:** In person

**For the Respondent:** Unrepresented

## JUDGMENT

1. The tribunal declares that the claimant's complaint that the respondent made an unlawful deduction from her wages is well founded. The Employment Tribunal orders the respondent to pay to the claimant the sum of £1,760.97 in respect of the unlawful deduction.

## REASONS

1. By a claim form received by the Employment Tribunal on 15 August 2018, the claimant brings a claim against the respondent in respect of arrears of pay and holiday pay. The respondent failed to file a response with the Employment Tribunal and accordingly judgment was entered under Rule 21 of the Employment Tribunals Rules of Procedure 2013. However, the claim was not sufficiently quantified to enable a full judgment to be entered and instead the matter came before me to determine.
2. The claimant's first language is Portuguese. Although she comprehends English, she was accompanied at tribunal by a friend who translated what I was saying to ensure she could follow the proceedings.
3. The claim to wages comprises two elements, namely unpaid wages and unpaid travel expenses. The claimant was employed by the respondent as

a cleaner between October 2017 and June 2018. Each month she submitted time sheets to the respondent in respect of the hours that she had worked that month. From time to time there was a difference of opinion between the claimant and the respondent as to the hours she had worked and, as a result, the claimant retained her own detailed diary records of her hours of work. She was therefore able to confirm to the tribunal that in June 2018 she worked a total of 125 hours up to the date she resigned her employment. That is consistent with the pattern of her hours over previous months. I am entirely satisfied that she has retained a reliable record of her hours of work and, accordingly, that I am in a position to calculate the wages owed to her on the strength of her diary records of the hours she worked up to the date she resigned her employment.

4. The claimant was paid an hourly rate of pay of either £8 or £9 according to when the hours were worked. She claims 95 hours at £8 per hour and a further 30 hours at £9 per hour, giving a total of £1,030.00. That is the gross amount of the wages due to her. The claimant did not pay income tax as her earnings had not reached the threshold at which income tax is payable. However, she did pay national insurance contributions on her earnings. I calculate that in the eight months between October 2017 and May 2018 the claimant paid on average 5.26% of her earnings by way of employee national insurance contributions. It is also the case and conceded by the claimant, that the respondent paid her £500 on account of her wages for June 2018. Accordingly, there is a gross balance owing to her in the sum of £530.00. Applying a notional deduction rate of 5.26% in respect of employee national insurance contributions, the net unlawful deduction from wages is £502.12.
5. I also accept that the claimant has kept an accurate record of her mileage, namely 305.5 miles in June 2018. Mileage is paid at 30 pence per mile. Income tax and employee national insurance contributions are not deductible from her mileage expenses. I calculate that the unlawful deduction in respect of mileage expenses is £91.65.
6. As regards to the claimant's claim to holiday pay, the claimant took advice from Peterborough Citizen's Advice Bureau. The Citizen's Advice Bureau put the claimant in contact with an organisation called DVM Community Office. DVM is a community support service for those whose first language is Portuguese. DVM supported the claimant in carrying out a calculation of her holiday entitlement. I am content to accept her, and their, calculation that during her employment the claimant had accrued 164 hours of holiday entitlement equating to outstanding holiday pay of £1,312.00. However, in March 2018 the claimant was paid £80 for four days of holiday. Accordingly, the respondent is to be given credit for that payment meaning that there is a balance owing to her of £1,232.00 (gross). Again, applying an average employee national insurance contribution rate of 5.26% the net unlawful deduction of wages is £1,167.20.

7. Adding the three deductions together, the total unlawful deduction from wages was £1,760.97. I shall make a declaration to that effect and order the respondent to pay that sum to the claimant.

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Employment Judge Tynan

Date: 28 March 2019

Sent to the parties on: .....

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For the Tribunal Office