



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr W Sewell

**Respondent:** Reedscore Group Limited

**Heard at:** Midlands West Employment Tribunal (conducted as a hybrid hearing by CVP)

**On:** 10 October 2024 at 10:40am

**Before:** Employment Judge Platt

## **Representation**

Claimant: in person, Miss L May in attendance

Respondent: Mr Gabula and Mrs C Pearce

## **JUDGMENT**

1. The complaint of unauthorised deductions from wages is well-founded. The respondent made an unauthorised deduction from the claimant's wages in the total sum of £2,625.00. The respondent shall pay the claimant the gross sum of **£2,625.00** which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.
2. The complaint in respect of holiday pay is well-founded. The respondent made an unauthorised deduction from the claimant's wages by failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended. The respondent shall pay the claimant the gross sum of **£2,602.47**. The claimant is responsible for paying any tax or National Insurance.
3. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant **£2,564.00**.

## REASONS

### Procedure

4. The hearing took place as a hybrid hearing further to the claimant informing the Tribunal that he was unable to participate remotely. The claimant attended the Tribunal in person and the respondent attended remotely by CVP. The judge attended the Tribunal in person. The start of the hearing was delayed due to the claimant not having received confirmation from the Tribunal that he could attend in person.
5. The claimant had prepared a bundle of documents, a detailed Schedule of Loss supported by documentation in the bundle and provided a short witness statement.
6. The respondent had responded to the claim and appended some documents (including payslips) to their ET3 Form. The respondent did not present any witness evidence.
7. The claimant gave evidence primarily by reference to the information and documentation referred to in his Schedule of Loss. The respondent and the Tribunal asked questions of the Claimant. The respondent was given the opportunity to confirm its position on the contents of the Schedule of Loss and participated fully in the hearing.
8. The Tribunal took significant time to explore the background to the claim and clarify the response submitted by the respondent whose position as set out in the ET3 Form was that the claimant had only been employed for one month during March/April 2024 and was therefore not entitled to be paid the monies claimed. Mr Gabula accepted that this was incorrect and confirmed that the claimant had been employed since 2017 but that his original employer Rodor Housing and Support Limited was in compulsory liquidation and subject to a compulsory winding up order, dated 23 March 2023.
9. The respondent was incorporated on 16 March 2023, initially under a different name Rodor Housing Group Limited, which then changed its name to Rothschild Care Limited and then Reedscare Group Limited. It was accepted by the respondent that although the claimant could no longer be employed by his original employer (now in compulsory liquidation) that he was employed from the outset by the respondent Reedscare Group Limited.
10. The Tribunal explained to the parties that it could not deal with any matters against the claimant's original employer because it was now in compulsory liquidation and therefore the Tribunal were not permitted to do so. The claimant was understandably frustrated about this. However, it was accepted by both parties that the Tribunal could only deal with matters against the respondent which post-dated the compulsory liquidation of the original employer.
11. The claimant set out in his ET1 claim form and his Schedule of Loss complaints in respect of pension, child maintenance and matters that were apparently being investigated by the DWP and the Pensions Regulator. He was concerned that monies had been taken out of his salary and had not been paid into his pension or to the DWP in respect of child maintenance.

The Tribunal explained to the parties that it could not determine matters which may be the subject of enforcement action by other entities where the issue was not whether the deductions were lawful but rather where the monies that had been deducted were now located.

12. It was explained to the parties that the only matters the Tribunal could determine at the hearing were in respect of the complaint in respect of owed holiday pay and the complaint of unauthorised deductions from wages in respect of the period December 2023 – April 2024 as set out in the claimant's Schedule of Loss.

### **Issues**

13. For the reasons set out above the issues to be determined by the Tribunal were:
  - a. Whether the claimant was owed holiday pay in respect of holiday accrued during his employment with the respondent, and if so, how much he was owed. The Respondent conceded that the claimant was owed 82 hours of holiday pay. The claimant did not accept that was the correct amount owing.
  - b. Whether the respondent had made unlawful deductions from wages by failing to pay him during December 2023 – April 2024 for all the hours he had worked, and if so, how much had been deducted. The respondent accepted that 40 hours were owing to the claimant which should have been paid in January 2024 and therefore that £500 was due to the claimant. The claimant also claimed £250 which should have been paid in December 2023 in respect of 20 hours worked in November 2023; £562.50 which should have been paid in February 2024 in respect of 45 hours worked in January 2024; £687.50 which should have been paid in March 2024 in respect of 55 hours worked in February 2024; and £1250 which should have been paid in April 2024 in respect of 100 hours worked in March 2024. The respondent did not accept the other deductions claimed.

### **Findings of fact**

14. The corporate history is set out above. The claimant was paid at a rate of £12.50 per hour and received an additional payment of £27.50 for sleep ins. During the period in question he was working to support one particular service user and generally worked around 50 hours per week. Those hours were usually spread across 3.5 days. The claimant was paid around 15<sup>th</sup> of each month for hours worked in the previous month.
15. The claimant resigned with immediate effect on 23 April 2024 citing late and incorrect payments as the reason for his resignation.
16. It was accepted by the parties that the claimant had been paid some holiday pay in March 2023, September 2023 (£712.50 gross in respect of 57 hours) and March 2024 (£625 gross in respect of 50 hours) as per pay slips that had been provided to the Tribunal. This amounted to 143 hours of holiday

that the claimant had been paid for during this period. However, the holiday pay paid in March 2023 was paid by the previous employer (now in compulsory liquidation) as shown on the payslip and did not relate to employment with the respondent. As such the claimant had been paid £1,337.50 in respect of 107 hours holiday by the respondent.

17. The respondent's position is that the holiday year runs from April – March. The claimant did not disagree with that proposition and the Tribunal accepts that position. The respondent's position is that its staff are entitled to the minimum statutory holiday entitlement under the Working Time Regulations 1998 (5.6 weeks per annum). The claimant did not assert that he was entitled to holiday in excess of the statutory minimum and the Tribunal accepts that position. The respondent's position is that the claimant could not be entitled to more than 225 hours of holiday in any holiday year. The claimant did not accept that 225 hours per year was correct and his position was that he did not understand how his holiday should have been calculated. The Tribunal was presented with no clear explanation or evidence from the respondent for this figure of 225 hours.
18. The respondent accepted that 82 hours of holiday pay were owed to the claimant. However, the Tribunal finds that 107 hours were paid by the respondent in the relevant holiday year, which on the respondent's analysis would mean that 118 hours are owed to the claimant (which would amount to £1,475.00 gross).
19. The Tribunal did not have the benefit of a contract employment or a written policy explaining the respondent's policy on holiday. There was no other documentation put forward by the respondent to explain how it had calculated holiday.
20. In respect of unlawful deductions from wages which the claimant stated were as a result of failing to pay him for the hours he had worked, the respondent accepted that 40 hours were owing to the claimant which should have been paid in January 2024 and therefore that £500 was due to the claimant. The claimant also claimed £250 which should have been paid in December 2023 in respect of 20 hours worked in November 2023; £562.50 which should have been paid in February 2024 in respect of 45 hours worked in January 2024; £687.50 which should have been paid in March 2024 in respect of 55 hours worked in February 2024; and £1250 which should have been paid in April 2024 in respect of 100 hours worked in March 2024. The respondent did not accept the other deductions claimed.
21. The Tribunal makes the following findings of fact in respect of the unauthorised deductions claimed by the claimant as follows:
  - a) **December 2023:** The claimant's payslip dated 15 December 2023 (which the claimant stated he did not receive) shows that he was paid 220 hours plus 15 hours sleep ins for hours worked in November 2023. These hours are also reflected in the timesheet submitted. The claimant's bank statement dated 15 December 2023 shows he was paid £2,380.20. This appears to be the net amount paid for the hours worked after deductions. The Tribunal finds that the claimant was paid for the correct number of hours worked in November 2023 which were paid on 15 December 2023 and no

monies are owed in respect of the hours the claimant worked in November 2023.

- b) **January 2024:** The respondent accepts that the claimant is owed pay in respect of unlawful deductions made in respect of 40 hours he was not paid for in January 2024 which he worked in December 2023. The respondent made an unlawful deduction of £500 from the claimant's wages.
  - c) **February 2024:** The claimant's payslip dated 15 February 2024 (which the claimant states he did not receive from the respondent) shows that the claimant was paid for 150 hours plus 13 hours sleep ins for hours worked in January 2024. The net amount on the payslip (£1,289.25) does not correlate with what was paid into the claimant's bank account on 16 February 2024 (£2,084.00). The claimant's timesheet shows that the claimant worked 215 hours and 13 sleep-ins. Based on the evidence available and the lack of correlation between the payslip and what was paid to the claimant, the Tribunal accepts the claimant's evidence that he worked an additional 45 hours and that the respondent made an unlawful deduction of £562.50 from the claimant's wages.
  - d) **March 2024:** The claimant's payslip dated 15 March 2024 (which the claimant stated he did not receive from the respondent) shows that he was paid for 150 hours plus 13 hours sleep ins for hours worked in February 2024 and the claimant accepts that £1,945.40 was into his account which is the amount shown on the payslip. However, the February 2024 timesheet shows the claimant worked 205 hours plus 13 sleep ins. The Tribunal accepts the claimant's evidence and finds that the claimant worked an additional 55 hours for which he was not paid and that the respondent made an unlawful deduction of £687.50 from the claimant's wages.
  - e) **April 2024:** The claimant's payslip dated 15 April 2024 (which the claimant stated he did not receive from the respondent) shows that he was paid for 100 hours plus 10 sleep ins for hours worked in March 2024 and was paid in respect of 50 hours holiday pay. The net amount shown is £1,895.64. The claimant's position is that he was only paid £1,500. The claimant's time sheet for March 2024 shows 220 hours worked and 10 sleep ins. However, the claimant appears to have counted 50 hours holiday as hours worked when the timesheet shows that he worked 170 hours and was paid 50 hours holiday pay. The claimant's evidence was that £1,500 had been paid into his bank account. However, no bank statement was provided by the claimant. The Tribunal finds that the claimant was not paid for 70 hours worked as shown on his timesheet and that the respondent made an unlawful deduction of £875.00 from the claimant's wages.
22. There was no evidence in respect of what hours the claimant worked or was paid in the last week of March 2023 after his previous employer went into compulsory liquidation. The Tribunal makes the following findings of fact in respect of the number of hours worked by the claimant during the period April 2023 – March 2024 and the number of sleep ins:

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**April 2023:** the claimant's bank statement shows the claimant was paid £2,300.76 on 15 May 2023. No pay slip was provided but the Tribunal considers this must be a net figure which is equivalent to approximately 220 hours and 12 sleep ins based on other pay slips submitted for similar amounts (£2,750 and £330 sleep ins = £3,080 gross).

**May 2023:** the claimant worked 252 hours @ £12.50 and 17 sleep ins @ £27.50 (as shown on pay slip dated 15 June 2023) = £3,150 + £467.50 = £3,617.50 gross.

**June 2023:** the claimant worked 197 hours @ £12.50 plus 16 sleep ins @ £27.50 (as shown on pay slip dated 14 July 2023) = £2462.50 + £440 = £2,902.50 gross.

**July 2023:** the claimant worked 193 hours @ £12.50 and 16 sleep ins @ £27.50 (as shown on pay slip dated 15 August 2023) = £2,412.50 + £440 = £2,852.50 gross.

**August 2023:** the claimant worked 207 hours @ £12.50, 14 sleep ins @ £27.50 and received 57 hours holiday pay @ £12.50 (as shown on pay slip dated 15 September 2023) = £2,587.50 + £385.00 + £712.50 = £3,685 gross.

**September 2023:** the claimant worked 207 hours @ £12.50 and 12 sleep ins @ £27.50 (as shown on pay slip dated 15 October 2023) £2587.50 + £330.00 = £2,917.50 gross.

**October 2023:** the claimant worked 231 hours @ £12.50 and 13 sleeps ins @ £27.50 (as shown on pay slip dated 15 November 2023) = £2,887.50 + £357.50 = £3,245.00 gross.

**November 2023:** the claimant worked 220 hours @ £12.50 and 15 sleep ins @ £27.50 (as shown on pay slip dated 15 December 2023) = £2,750 + £412.50 = £3162.50 gross.

**December 2023:** the claimant worked 243 hours @ £12.50 and 15 sleep ins @ £27.50 (as shown on pay slip dated 15 January 2024) = £3037.50 + £412.50 = £3,450.00 gross.

**January 2024:** the claimant worked 215 hours @ £12.50 and 13 sleep ins @ £27.00 =£2,687.50 plus £351 = £3,038.50 (see paragraph 20 (c) above).

**February 2024:** the claimant worked 205 hours @ £12.50 and 13 sleep ins @£27.00 = £2,562.50 + £351 = £2,913.50 gross (see paragraph 20 (d) above).

**March 2024:** the claimant worked 170 hours@ £12.50, 50 hours holiday @ £12.50 and 10 sleep ins @ £27.00 = £2,750 + £270 = £3,020.00 gross (see paragraph 20(e) above).

**April 2024:** no evidence before the Tribunal.

23. The claimant was paid £1,337.50 in respect of 107 hours of holiday pay by the respondent during April 2023 until end of March 2024. This was calculated by reference to basic hourly pay of £12.50.

24. Based on the evidence set out above, from April 2023 until end of March 2024 the total number of hours was 2667 and there were 182 sleep ins. The claimant was paid a gross total of £37,884.50 including sleep ins. The gross total without sleep ins was £33,337.50. This amounts to gross weekly pay of £728.55 including sleep ins and £641.10 without sleep ins.

## **Law**

25. The Employment Rights Act 1996 provides protection to workers pursuant to section 13(1) which sets out that a worker has a right not to suffer unauthorised deductions from their wages. If a worker is not paid in respect of the hours they have worked this will amount to an unlawful deduction from their wages.
26. Regulations 13 and 13A of the Working Time Regulations 1998 provide that workers are entitled to 5.6 weeks of leave each leave year including bank holidays. Employees are entitled to be paid in lieu of accrued untaken holiday on termination of their employment.
27. The rate of holiday pay in respect of Regulation 13 of the Working Time Regulations 1998 (which provides for four weeks holiday) must be calculated by reference to normal remuneration and the principles as articulated in *Fulton and Baxter v Bear Scotland Limited UKEATS/0010/16 11 May 2017* and *British Gas Trading Ltd v Lock and another [2016] EWCA Civ 983*, apply whereby any payments that are intrinsically linked to the tasks which the worker carries out under their contract must be included in the calculation of holiday pay.
28. In respect of Regulation 13A of the Working Time Regulations 1998 (which provides for the additional 1.6 weeks holiday) the rate of holiday pay should be calculated based on the definition of a week's pay under sections 221 – 224 of the Employment Rights Act 1996 by reference to the average hourly rate of remuneration when the employee was working and the remuneration payable for those hours. The reference period for the purposes of calculating a week's pay is 52 weeks.

## **Conclusions**

29. Based on the findings of fact set out above, the Tribunal concludes that the respondent made unlawful deductions from the claimant's wages in respect of January 2024, February 2024, March 2024 and April 2024. The applicable rate of pay for the hours worked is £12.50. The respondent accepted that the claimant was owed £500 in respect of hours worked in December 2023 which should have been paid in January 2024.
30. The claimant is owed £562.50 in respect of 45 hours he worked in January 2024 and was not paid for in February 2024. The claimant is owed £687.50 in respect of 55 hours he worked in February 2024 but was not paid for in March 2024. The claimant is owed £875 for 70 hours he worked in March 2024 and was not paid for in April 2024. The claimant is owed a total of £2,625 gross in respect of 210 hours which he worked but was not paid for.
31. In respect of holiday pay, the Tribunal has calculated the total number of hours during the period 1 April 2023 until 31 March 2024 by reference to the

evidence before it. This amounts to 2667 hours and 182 sleep ins across 52 weeks. The value of the total number of hours is £33,337.50 gross and the value of the sleep ins amounts to £4,547.00 gross. This is a total amount of £37,884.50 gross. This amounts to gross weekly pay of £728.55 including sleep ins and £641.11 without sleep ins.

32. The Tribunal concludes that four weeks of the claimant's holiday entitlement under Regulation 13 of the Working Time Regulations 1998 should be calculated by reference hours worked and payments received for sleep ins in accordance with the *Bear Scotland* principles.
33. The Tribunal concludes that 1.6 weeks of the claimant's holiday entitlement should be calculated by reference to basic hourly pay only under Regulation 13A of the Working Time Regulations 1998.
34. The total amount of holiday pay due to the claimant for 1 April 2023 – 31 March 2024 based on an entitlement of 5.6 weeks is as follows:
  - a.  $4 \times £37,884.50/52$  ( $£728.55 \times 4$ ) = £2,914.20
  - b.  $1.6 \times £33,337.50/52$  ( $£641.11 \times 1.6$ ) = £1,025.77
  - c.  $£2,914.20 + £1,025.77 = £3,939.97$
35. The claimant was paid £1,337.50 gross in respect of 107 hours holiday pay by the respondent. The total amount of holiday pay owed to the claimant minus the amount he has already been paid by the respondent is: £3,939.97 - £1,337.50 = £2,602.47 gross. The claimant is therefore entitled to be paid £2,602.47 gross in respect of holiday pay outstanding on termination of his employment.
36. Finally, based on the evidence before the Tribunal the claimant was not issued with a statement of written particulars of employment when his employment with the respondent commenced. Pursuant to section 38 of Employment Act 2002 the Tribunal must make an award when it finds in favour of an employee in respect of any of the complaints set out in Schedule 5 of the Employment Act 2002 (which includes complaints in respect of unlawful deductions from wages), and where a statement of written particulars of employment has not been given to the employee at the date on which the proceedings began. The Tribunal considers it just and equitable to award four weeks' pay in respect of the respondent's failure to provide written particulars of employment. The Tribunal makes an award based on four weeks' pay of £641.11: a sum of £2,564.00.

**Signed by: Employment Judge Platt**  
**Signed on: 6 November 2024**