



# EMPLOYMENT TRIBUNALS

Heard at: London South by CVP  
On: 19 December 2023  
Claimant Alisha Hasnat (2301362/2023)  
Respondent: Home Comfort Care Agency Limited  
Before: Employment Judge O'Neill  
Representation:  
Claimant In person  
Respondent Mr Florin Mihai, director

## JUDGMENT

1. Mrs Hasnat's claim for
  - a. unlawful deductions from wages is well founded and succeeds;
  - b. breach of contract for failure to reimburse expenses succeeds; and
  - c. an amount for 'inconvenience' does not succeed and is dismissed.
2. The respondent is therefore ordered to pay to the claimant the **gross sum of £406.72**. This is calculated as follows:
  - a. **£127.94** in respect of underpayment wages that were unlawfully deducted; and
  - b. **£278.78** damages for breach of contract.

## REASONS

### INTRODUCTION

2. The respondent is an agency that provides employment to care workers to work at various locations. The claimant, Mrs Alisha Hasnat, worked as a carer for the respondent from November 2022 to March 2023.
3. The claimant claims
  - 3.1. £3,751.75 being the sum of
    - 3.1.1. unpaid wages of £2,591.75;
    - 3.1.2. unpaid expenses of £980; and
  - 3.2. £3,751.75 in compensation for inconvenience.
4. The respondent denied that any monies were outstanding. The respondent is not making a counterclaim.

### PROCEDURE AND EVIDENCE

#### *The Hearing*

5. The hearing was conducted by CVP. There were no technical issues, and a recording was made.

#### *Evidence*

6. Written evidence was not prepared as a bundle but came to approximately 226 pages.
7. I heard evidence from:
  - 7.1. The claimant, who adopted her ET1 as her witness statement and confirmed that it was true and accurate, and
  - 7.2. Mr Florin Mihai on behalf of the respondent.
8. Each witness answered supplementary questions and questions in cross-

examination.

## LIST OF ISSUES

9. The issues I needed to decide were as set out below: -

### ***Employment status***

9.1. Was the claimant an employee or worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996 (**ERA96**)?

9.2. On what dates did claimant's employment terminate?

### ***Unlawful deduction from wages***

9.3. What was the claimant entitled to be paid during the relevant period?

9.4. Did the respondent make deductions from the claimants' wages and if so how much was deducted?

9.5. Was any deduction required or authorised by statute or by a written term of the contract?

9.6. Did the claimant agree to the deduction before it was made?

9.7. How much is the claimant owed?

### ***Breach of contract***

9.8. Did the expenses claim arise or was it outstanding when the claimant's employment ended?

9.9. Did the respondent fail to reimburse the claimant in accordance with their contract?

9.10. How much should the claimant be awarded as damages?

## FINDINGS OF FACT

10. Having considered that evidence and material I make the following findings of fact.

11. The claimant was employed by the respondent as a care assistant from 28 November 2022. The claimant was an employee or worker of the respondent within the meaning of section 230 of ERA96.

12. I find that the claimant was not provided with written particulars at the time her employment commenced because:

12.1. The WhatsApp messages and witness evidence demonstrated that from

the start of the claimant's employment there was considerable confusion about the terms on which she was employed.

- 12.2. The claimant said that she was not provided with a contract or written particulars at the start of her employment, but she was subsequently provided with a contract, which she signed then and backdated.
- 12.3. The respondent submitted a "statement of main terms of employment" which was signed by the claimant as 27 November 2022. However, this document refers to the claimant's start date in the past tense "*Your employment began on 28/11/2022*" and this sentence is typed into the document, not added manually.
13. In a WhatsApp message dated 4 February 2023, Mr Mihai said that he would get a contract ready, and they should meet in the office. I find that the employment contract was signed at that date and backdated.
14. The claimant's hours varied but the claimant was paid at a rate of £11 per hour of work on a weekday and £12 per hour at weekends. The claimant was paid weekly.
15. The claimant resigned by email on 12 March 2023, and commenced ACAS early conciliation on 13 March 2023, this concluded on 24 March 2023.

### ***Travel expenses***

16. The claimant's job involved visiting clients in many different locations that were not accessible by public transport.
17. It is not disputed that petrol was to be reimbursed at a rate of 30p per mile and that mileage was recorded on the "NurseBuddy" system. However, at the start of her employment the claimant did not have a car and Mr Mihai was aware of this fact.
18. It is clear from the WhatsApp messages that both parties recognised that as the claimant had no car, she would need to incur travel expenses other than mileage and that these other travel expenses would be reimbursed. In the absence of written particulars or a contract it was unclear how which expenses would be reimbursed and how.
19. On 29 December 2022 Mrs Cheema-Shergill, a manager at the respondent emailed the claimant saying that "*Home Comfort Care have made some changes regarding your travel expenses*". She said that effective from that date the

respondent was “*not in a position to support you with travel expenses, eg UBER unless authorised by Florin Mihai*” and she clarified that bus expenses would not need authorisation. The email from Mrs Cheema-Shergill indicates that this was a change to the policy.

20. In later messages from Mr Mihai, it was apparent that he had agreed they would be paid to the claimant (see paragraphs 22 and 23).
21. I therefore find that Mr Mihai had initially led the claimant to believe that her ‘non-mileage’ travel expenses would be reimbursed. I find that from 29 December 2022, the claimant also understood that these ‘non-mileage’ travel expenses would need to be authorised by him.

***Increasing confusion and tension***

22. On 3 January 2023, in a WhatsApp message to Mr Mihai, the claimant reiterated her claims for £174.39 in travel expenses for the first three weeks and added £92.19 for her fourth week. Mr Mihai responded with “*Alisha, I have told you I have send it*” and “*be patient pls*”.
23. WhatsApp messages confirm that this confusion was still ongoing by mid-January, as on 11 January 2023 the claimant asked when her expenses would be processed, and Mr Mihai told her not to worry and that he was just busy.
24. On 20 January 2023, the claimant again pressed Mr Mihai for her travel expenses. By this time, it appears from the WhatsApp messages that the claimant now had her own car and was being reimbursed mileage via the Nursebuddy system for her ongoing costs and this is supported by the payslips.
25. By WhatsApp on 3, 16, 24, 26 February 2023 the claimant reiterates her claim for expenses and asks for reconciliations for hours worked v pay. Mr Mihai repeatedly assures her that he will look into it. Mr Mihai pays her money on 6,9, 13 and 16 February 2023. These amounts do not tally with the payslips that he subsequently provides.
26. On 26 February Mr Mihai tells the claimant that according to her contract she is now paid monthly (the contract that was signed in early February and backdated). The claimant was expecting to be paid weekly.
27. On 27 February 2023 Mr Mihai says that he has “*done big parts of the calculation*”.

28. On 5 March 2023, the claimant contacts Mr Mihai and asks whether she is getting paid. He assures her that she will have 4 payslips and 4 bank transfers and that “*all will be cleared*”. The claimant is disappointed and says that she has no motivation to work and wishes to resign. She offers to do a week’s notice work, once all her arrears are cleared.
29. On 6 March 2023, they agree via WhatsApp to meet in the office at midday. What happened at that meeting is in dispute. The claimant says that Mr Mihai told her to take a week off and that he would sort the payments. Mr Mihai says that she refused to work until she received payment. The same day he paid an amount that did not tally with the payslips.
30. On 9 March 2023, by WhatsApp, the claimant queries the payslips that have been provided. Mr Mihai says he will check. As the payments into the bank account do not align with the payslips in any meaningful way (see table in paragraph 38). It is understandable that the claimant became very confused about what had been paid or withheld.
31. On 11 March 2023, the claimant asks again for her money and payslips and received no response from Mr Mihai.

***Termination***

32. At 6:45am 12 March 2023 the claimant asks if Mr Mihai will be in the office that day, he says no and that he is busy and that he might have time to look at finances the following Tuesday (presumably 14 March). At 10:39am, the claimant formally resigns by email and offers to work a one-week notice period.
33. There are no further WhatsApp messages from Mr Mihai. He does not offer her work at any point thereafter, making it impossible for the claimant to work her notice period, nor does he query or dispute her resignation email which refers to a notice period of one week.

***Reconciliation: hours worked v hours paid***

34. The respondent submitted weekly payslips for the period of the claimant’s employment for all bar two weeks (week ending 23 January 2022 (week 42) and week ending 6 March 2023 (week 48)).
35. The respondent and claimant evidence tallies in respect of the amounts and dates

paid, and therefore the total amount paid over the course of her employment.

36. The first seven weeks of payment tally with the payslips.
37. However, from the date of the first missing payslip in week 42 to termination in week 48, it is impossible to reconcile the payments made with the payslips provided by the respondent. It is equally difficult to understand the claimant's claim for that same period.
38. The table below attempts to reconcile the payslips (columns 1-5) with the amounts actually paid (columns 6-7). This table, derived from payslips and bank records, shows that the claimant was paid £127.94 less than the payslips indicate she was entitled to.

PAYSLIP DATA					BANK DATA	
week	week to	hourly £	mileage	Net £	£ paid	payment
42	23 Jan 2023	<i>Missing payslip</i>				
43	30 Jan 2023	£1767.75	£280.50	£165.24	£500.00	31 Jan 2023
44	06 Feb 2023	£535.75	£90.30	£590.80	£500.00	06 Feb 2023
					£500.00	09 Feb 2023
45	13 Feb 2023	£428.50	£88.50	£494.62	£12.00	13 Feb 2023
					£280.50	16 Feb 2023
46	20 Feb 2023	£689.50	£126.00	£761.80		
47	27 Feb 2023	£602.25	£105.00	£664.02		
48	6 Mar 2023	<i>Missing payslip</i>			£756.04	06 Mar 2023
<b>TOTAL</b>				2676.48	2548.54	

39. The claimant submitted a spreadsheet in evidence that seemed to claim a shortfall of £3,596.67 over the whole period and this is a different figure to the £3,751.75 claimed in her ET1. The claimant's spreadsheet does not make it clear how she arrives at the figure of £3,596.67; instead, it appears to be made of highlighted figures, populated across different columns without any supporting evidence.

40. Consolidated it appears to reflect the following (note a 56p discrepancy):

payslip week	week to	£s claimed	Explanation from claim
35-40		372.42	Total <i>expenses</i> for period
41	16 Jan 2023	250.00	Wrong hours calculated, payslip says I worked for 31 hours on weekdays and 15 hours on weekend whereas I worked for 52.50 hours on weekdays and 7.75 hours on weekends
42	23 Jan 2023	103.25	Partial payment without payslips
43	30 Jan 2023		
44	06 Feb 2023		
45	13 Feb 2023	494.62	Unpaid less fuel given
46	20 Feb 2023	761.80	Unpaid less fuel given
47	27 Feb 2023	664.02	Unpaid less fuel given
48	6 Mar 2023	950.00	Unpaid
<b>TOTAL</b>		<b>3596.11</b>	

41. The claimant did not produce any evidence to demonstrate exactly how she derived the figure of £3596.67 (or such other numbers as she might have claimed) and as such any reconciliation for the period to 27 February 2023 is impossible.
42. The claimant's oral claim that she worked 46.5 weekday hours and 12 weekend hours in week 48 (i.e. for the week to 6 March) would be £655.50 and is at odds with the amount she has claimed for the period (£950) and the respondent had no payslip or other evidence to disprove that.
43. In the absence of a clear and itemized claim and so much conflicting evidence from the claimant, I find I must rely on the payslips and the bank statements in order to determine whether there was a shortfall between the hours she worked and the amount she was paid.
44. I therefore find the respondent withheld £127.94 from the claimant's wages.

***Reconciliation: travel expenses***

45. Claimant's claim:

45.1. In WhatsApp messages to Mr Mihai, the claimant asked for £174.39 in



- travel expenses for the first three weeks. This was later increased by £92.19 for expenses in the fourth week, bringing the total expenses claimed at the time to £266.58.
- 45.2. The claimant's spreadsheet shows expenses of £372.42 for the period to 11 January 2023.
- 45.3. The claimant has submitted a claim for £980 for the whole period of her employment.
- 45.4. No supporting receipts or itemisations have been included in the claimant's claim.
46. In her closing submissions, she agreed that she would be prepared to forego the claim for Uber costs but would not concede public transport costs, which came to £136.28 for the first four weeks.
47. Mr Mihai conceded in his closing submissions that he would be prepared to reimburse mileage rather than petrol cost for the Christmas period (24-28 December. This was 475 miles at 30p per mile, totaling £142.50.
48. As it was clear that there was an agreement between the two parties that as her job involved travel, her reasonable travel expenses would be reimbursed, I find that the claimant was entitled to her public transport costs (£136.28) and mileage (£142.50) in the period before there was a clarification of the expenses process and she bought her own car. This amount comes to £278.78.

## **RELEVANT LAW**

### ***Unauthorised Deduction of Wages***

49. An employer shall not make an unlawful deduction from a worker's wages. (s.13 ERA96). A deduction occurs where the total wages paid on any occasion is less than the amount of the wages properly payable on that occasion.
50. Wages are defined as "*any sums payable to the worker in connection with his employment*" and the legislation contains a non-exhaustive list of types of sums that would be included in the term 'wages'. (s27(1) ERA96)
51. An unlawful deduction claim must be brought in an employment tribunal within three months of the date of the deduction or the last in a series of

deductions. (s23(2) ERA96).

52. Employment tribunals have the power to interpret the relevant provisions of a contract of employment to determine the amount properly payable to an employee. (Agarwal v Cardiff University & Anor [2018] EWCA Civ 1434)
53. An employer shall not make a deduction from a worker's wages unless:
  - 53.1. The deduction is required or authorised by statute or a provision in the worker's contract; or
  - 53.2. The worker has given their prior written consent to the deduction. (Section 13 ERA96)

***Breach of contract***

54. Under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 the Tribunal has jurisdiction to hear contractual claims. That claim must arise or be outstanding on termination of the employee's employment and must seek one of the following:
  - 54.1. Damages for breach a contract of employment or any other contract connected with employment.
  - 54.2. The recovery of a sum due under such a contract.
  - 54.3. The recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract.

**DECISION**

***Unpaid wages***

55. The payslips indicate that the claimant was due to be paid £2,676.48 (net) during her employment and the bank transfers show that the respondent paid her £2676.48, so £127.94 was withheld from her wages. The respondent failed to demonstrate that this deduction was required by statute or by a written term of her contract. At no point did the claimant agree to a deduction.
56. For these reasons I find that **£127.94** was unlawfully deducted from her wages.

***Unpaid expenses***

57. The claimant's claim for unreimbursed expenses was outstanding at the point her employment ended.

58. There was no written agreement between the two parties for the first four weeks of the claimant's employment, but there was an oral agreement that her travel expenses would be reimbursed. The respondent failed to do so in breach of that agreement and the claimant is therefore entitled to damages. In oral submissions during the claimant conceded that she would be happy with her public transport costs only and the respondent agreed to cover the cost of her mileage in a rental car.
59. This amount shall be awarded as damages for breach of contract and comes to **£278.78**.

Employment Judge O'Neill

Date 15 January 2024