



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Harvey  
**Respondent:** TOP 100 Ltd - Westdrive  
**Heard at:** East London Hearing Centre  
**On:** 11 October 2024  
**Before:** Employment Judge C Lewis

## Representation

**Claimant:** In person  
**Respondent:** Mr Graham Jones - Consultant

# JUDGMENT

The judgment of the Tribunal is as follows:

The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

# REASONS

**Written reasons provided pursuant to the Claimant's oral request at the hearing**

1. The Claimant was employed by the respondent as a Parts adviser from 15 May 2023 to 29 February 2024. The Claimant gave the date the claimant left the Respondent's employment as 29 April 2024 but it was accepted before me that this was a mistake and the correct date was 28 February 2024 which is the date on which the Claimant resigned and left without giving notice.
2. By a claim form presented on 30 April 2024, following a period of ACAS early conciliation between 28 April and 29 April 2024 the claimant brought a complaint of unlawful deductions from wages. The respondent denied the claim.

3. The claim form referred to payments deducted in February 2024 in relation to 6 days where the claimant was marked as absent on sick leave; the claimant challenged this and on 29 February 2024 the respondent accepted he had been at work for 5 of those days. The pay for those 5 days was paid in March and shown on the March pay slip as “leave payments (from previous months)”.
4. It was agreed that those days had been reimbursed in March and the claim was solely in respect of a deduction the respondent made from the claimant's wages in March 2024 in the sum of £384.06. The deduction was made from the Claimant's last pay in March and reflected in his pay slip as being in respect of “Deduction-in-lieu of holiday (end of contract)”. The respondent stated the deduction was in respect of holiday the Claimant had taken in excess of the holiday accrued at the date of leaving the respondent's employment.
5. I heard evidence from the Claimant and from James Carrington who is the Respondent's Head of Finance.
6. The claimant and respondent agreed that the claimant's annual holiday entitlement was for 22 days plus statutory bank holidays and that the leave year ran from 1 January to 31 December. The Claimant did not dispute the respondent's leave records which showed that he had taken 4 days leave in January and 3.5 days in February 2024. The Claimant accepted that his pay slips showed the total number of holidays he was entitled to for the complete leave year as 22 and that his pay slip for February showed him as having used 7.5 days, although he pointed out that it also said he had 14.5 days remaining; he accepted this reflected the balance remaining for the rest of the complete leave year.
7. The Claimant signed a two-page document titled “Principal Terms and Conditions of Employment” on 25 May 2024. Immediately underneath his signature the document contained the words:

“I understand and accept these Principal terms and Conditions of Employment. I received a copy of the staff Handbook.”

The last paragraph on the first page of the document states as follows:

“Grievance and Disciplinary matters are set out in some detail in the Company Handbook. All grievances or appeals should be addressed to the Managing Director. The appeals Process is set out in the Company Handbook. The Company Handbook and the various Company Policies and Procedures form an integral part of your principal terms and conditions of employment.”

8. An extract from the company handbook was provided by the Respondent. The Claimant did not dispute that the page came from the Company Handbook. The paragraph relied on by the Respondent reads as follows:

**What happens to my holiday entitlement if I leave the Company's employment?**

Holiday will continue to accrue during any notice period. Holiday may not usually be taken during any period of notice, but the Company reserves the right to ask you to take any accrued holiday during your notice period.

If you have not taken all of your accrued entitlement when you leave, the Company will calculate this by dividing 30 days holiday (including the bank holidays) by 52 weeks, multiplied by the number of complete weeks you have worked in that year. We will then deduct from that entitlement, the number of days taken to date, to calculate your remaining entitlement, for which you will be paid. Similarly, if your annual year to date entitlement is less than you have taken year to date, the Company will deduct a sum from your final salary for each day exceeding your entitlement.

9. The Claimant disputed that the respondent was entitled to deduct the sum paid to him for holiday taken in February in excess of his annual leave accrued at the date he left the respondent. He disputes receiving the Company Handbook at the time he signed the principal terms and conditions document. However, the Claimant accepted that he had been provided with a copy of the handbook by James Carrington on 29 January 2024 in response to his request. I was provided with a copy of the relevant email exchange from 29 January 2024.
10. The claimant's case was that the relevant deduction was an unauthorised deduction as it was not made by virtue of a relevant provision of his contract and nor had he previously signified in writing his agreement to the making of the deductions; he did not accept that the holiday pay paid in February amounted to an overpayment of wages which would fall under s 14 ERA 1996 (as argued by the Respondent). The Claimant also argued that the deduction brought his pay below the National Minimum Wage and was therefore unlawful.
11. Mr Jones, on behalf of the Respondent relied and the Principal terms and conditions document expressly referring to the Handbook as being an integral part of the terms and conditions as incorporating its content into the contract and on the extract from the Company Handbook set out above.
12. Mr Jones submitted that the deduction fell within s 13 (1) (a) as being authorised by a relevant provision of the Claimant's contract, which under subsection 2 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, ...”
- (b) In the alternative he relied on section 14 Excepted deductions, submitting that the deduction fell under s 14 (1) (a) as it was in respect of an over payment of wages.

## **Conclusions**

- 13. I am satisfied that the principal terms and conditions signed by the Claimant made specific reference to the policies in the Company Handbook forming an integral part of those terms.
- 14. The Claimant accepted that he was provided with a copy of the Handbook on 29 January 2024. The handbook contains the written term set out above authorizing the deduction of holiday pay from the final wage payment in circumstances where the employee has taken more days holiday than they have accrued at the date of leaving. I find that this was a relevant provision of the claimant’s contract. I am satisfied, on the Claimant’s own admission that he was provided with a copy of the handbook in January 2024, before the respondent made the deduction in question. I am satisfied that the deduction falls under the written term and is authorised by it. It is therefore not an unauthorised deduction under section 13.
- 15. I did not find in favour of the Claimant’s argument in relation to the National Minimum Wage Regulations (SI 2015/621) for the following reasons: Regulation 12(2) provides for exceptions to the general rule that sums paid for the employer's own use and benefit are subtracted from national minimum wage pay as follows:
  - reg 12(2)(a) - deductions or payments made pursuant to the worker's contract and which relate to the worker's conduct or any other event, where the worker is contractually liable, whether that liability arises together with another worker or not:);
  - reg 12(2)(b) — deductions or payments on account of an advance under a loan agreement, or an advance of wages:
- 16. I am satisfied that the deduction falls into the exceptions under regulation 12 (2), either 12(2) (a) as relating to an “event” – namely, the Claimant’s resignation part way through the leave year where he has taken more leave than he has accrued, and which he is contractually liable to repay (for the reasons given above; or in the alternative I am satisfied that the claimant was paid in February for days where he did not work i.e when he took 3.5 days as holidays but for which he had not yet accrued the entitlement to be paid amounted to an advance of wages.

17. I find that the claimant's resignation in February meant that he did not work long enough in the relevant leave year to accrue the additional 3.5 days holiday he had taken and been paid for, and that he was therefore overpaid in February. I have found that the Respondent was entitled to deduct the relevant sum from his final pay as an overpayment of wages on the basis of the provision in the handbook and am satisfied that this also amounts to a "relevant agreement" for the purposes of Regulation 14 (4) of the Working Time Regulations 1998.
18. The Claimant's claim for unauthorised deduction from wages is not well-founded and is dismissed.

**Employment Judge C Lewis  
22 November 2024**