

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101700/2017

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Held in Glasgow on 4 October 2017

Employment Judge: Mary Kearns

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Mr E W Gillies

Claimant

Represented by:

Mr J Gillies

Claimant's Father

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Invincible Security Ltd

Respondent

Represented by:

Mrs S Tumilty

General Manager

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that:-

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(1) The respondent unlawfully deducted sums from the claimant's wages contrary to Section 13 of the Employment Rights Act 1996. The respondent is ordered to pay to the claimant the sum of **£2,560 (Two Thousand, Five Hundred and Sixty Pounds)** in respect thereof.

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(2) The respondent failed to pay the claimant contractual notice pay and is ordered to pay to the claimant the sum of **£793 (Seven Hundred and Ninety Three Pounds)** in respect thereof.

E.T. Z4 (WR)

(3) The claim for compensation for accrued but untaken annual paid leave under Regulation 16 of the Working Time Regulations 1998 is dismissed.

5 (4) The claim for failure to provide a written statement of employment particulars is dismissed.

REASONS

10 1. The claimant was employed by the respondent as an 'apprentice alarm engineer' from 17 October 2016 until 28 April 2017. Having obtained the necessary certificate from ACAS he presented an application to the Employment Tribunal on 3 June 2017 in which he claimed arrears of pay, breach of contract, holiday pay and failure to provide him with a written
15 statement of employment particulars. With regard to the breach of contract claim, the claimant stated in his application that he was on a modern apprenticeship which he believed had to last 12 months and he had been dismissed after 6.5 months. He was therefore claiming 5.5 months' pay. With regard to the claim for arrears of pay, the claimant stated that he was owed
20 overtime payments and had not been paid at the overtime rate. He also claimed that he ought to have been paid by the respondent for the days when he went on day release to college. Finally, the claimant claimed unfair dismissal and a redundancy payment. The Tribunal has no jurisdiction to consider these last two claims because the claimant lacks the necessary
25 qualifying service.

2. The respondent lodged a response to the claim in which it stated that all hours worked were paid, all overtime and holiday were paid, a written contract was given to the claimant but not returned signed, and that the claimant had only attended college for the first two weeks and then had voluntarily given up the
30 course to work full time. Pay slips were produced along with a copy contract. The case was listed for a hearing.

Evidence

3. The claimant gave evidence on his own behalf and lodged documents. The respondent also lodged documents and called Mrs Joann Tumilty, its General Manager.

5 **Findings in Fact**

4. The following material facts were admitted or found to be proved.
5. On 28 August 2016 the claimant started a full time HNC course in electrical engineering at Kilwinning College. He then applied to work for the respondent. He was successful at interview and when he was offered the job he asked the respondent if, once he started working for them, he could continue to attend college on day release. They agreed to this. However, they told the claimant that they would not pay him for his time at college. Once he had been working for the respondent for around two weeks the claimant decided not to continue with his college course and he left the college.
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- 15 6. The claimant began working for the respondent as an apprentice alarm engineer on 17 October 2016. There is no suitable external course and the respondent therefore puts its apprentices through two courses per year in house. On or about 17 October 2016 the claimant and four other trainees were given two days of in house training on intruder and fire systems by a qualified engineer from a training company called 'Select'. The claimant was then given a practical assessment, after which he received a phone call to say he had passed. After the claimant's initial two-day training course the only formal training given to him was in March, when Select again attended to deliver a course in house. The claimant was always deployed with an experienced engineer. He was never sent out on his own. Effectively, he worked as an 'assistant' to a qualified engineer. In the performance of the contract, the primary focus was on the claimant's labour rather than on his training.
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7. On or about 23 November 2016 the claimant was given a document entitled "*Engineers Contract of Employment*" (R1). Paragraph 1 was entitled

5 “General” and stated, so far as relevant: *“1.1 The following particulars are given to you in accordance with the terms of the Employment Rights Act 1996 and other relevant legislation. 1.2 In accepting your employment it shall be deemed that you have accepted all the terms and conditions set out in this document.”*

8. The contract provided that the first three months of employment would be a probationary period. It stated that performance and conduct would be monitored and *“At the end of the probationary period your appointment may be confirmed or your probationary period extended.”* The contract stated that the claimant’s job title was *“apprentice engineer”*. His pay was at the rate of £3.40 per hour. In relation to overtime, the contract stated in clause 8: *“Overtime is not paid unless the period of overtime, and the hourly rate of overtime pay, has been agreed and authorised in writing by your line manager before you work the overtime.”* The contract also contains a clause entitled *“Termination of employment”*. This stated: *“16.1 After the probationary period, the notice required by either of us to terminate your employment will be one month’s notice. 16.2 we reserve the right in our absolute discretion to pay you basic salary in lieu of notice.”* The contract also provided for lay off and short-time working in the event of a shortage of work.

9. The contract stated in relation to training: *“Employees will be offered relevant training courses and on successful completion will be given a wage increase as per training matrix.”* In relation to hours of work, the contract provided that the claimant’s basic hours were 8.30 to 4.30 Monday to Friday with a 30 minute unpaid lunch break. His basic working week was 37.5 hours. The claimant did not return the contract to the respondent with his signature on it. However, the contract was performed in line with its terms.

10. The contract provided that the holiday year ran from 1 January to December. The respondent closed for two weeks over Christmas and New Year and two weeks’ holiday entitlement was taken by all staff at that time. The staff

returned to work after the Christmas shut down in the second week of January 2017.

5 11. In relation to pay and overtime hours, each employee filled in a time sheet on which they would write all basic and overtime hours they had worked, call outs etc. They would then hand this in and would be paid accordingly. The claimant's pay slips were based on the time sheets he had handed in. The claimant did not query any of his pay slips or overtime during his employment.

10 12. In October 2016 the National Minimum Wage for a 20 year old was £5.55 per hour. From 1 April 2017 the rate applicable to the claimant (who turned 21 on that date) was £7.05. The claimant received the following payslips, detailing his hours and the hourly rates paid to him:

Payslip dated 28/11/16 - 135 basic hours paid at £3.40 per hour;

Payslip dated 21/12/16 – 187.5 basic hours paid at £3.40 plus 76 additional hours also paid at £3.40 per hour;

15 Payslip dated 30/1/17 - 111.5 basic hours paid at £3.40 per hour and 37.5 additional hours paid at £5.10 (time and a half);

Payslip dated 24/2/17 – 155 basic hours paid at £3.40 plus 15 hours overtime paid at £5.10 (time and a half) and 40 hours overtime paid at £3.40 per hour;

20 Payslip dated 27/3/17 – 150 basic hours paid at £3.40 plus 17.5 hours overtime paid at £3.40 per hour;

Payslip dated 26/4/17 - 145 basic hours paid at £3.50 per hour plus holiday pay of 41.25 hours paid at £3.50 per hour.

25 13. Overtime was paid at the employee's basic rate for hours on site between 3pm and 10pm. The overtime rate of time and a half was only paid for 'unsociable hours' between 10pm and 6am. In accordance with the contract, the number of hours' overtime to be worked and the rate that would be paid

were discussed and agreed with the claimant by the clerk of works beforehand. Thereafter, the claimant followed the process set out in paragraph 11 above.

14. The length of time before a trainee engineer becomes competent to work alone depends on how quickly they acquire the necessary skills. There is no fixed term. The average time taken is a year to eighteen months.

15. The claimant's employment ended on 29 April 2017. On or around that date the claimant was told by Brian Christie, the respondent's clerk of works that Roger and Joann felt they had to let him go because since the job at St Margaret's Primary School, Johnstone it had been 'downhill from there'. The claimant had been working on the job at the school alongside an experienced engineer. However, the job had not been done to time or to the right standard. The contract time had been extended and the job had been finished by two other staff. The claimant was given one week's notice. The main reason for the termination of the claimant's contract was, however, a downturn in work.

16. Mr Christie himself was dismissed the following day for the same reason.

Applicable Law

17. Regulation 5 of the National Minimum Wage Regulations provides, so far as relevant, as follows:

20 **"5 Determining whether the apprenticeship rate applies**

(1) *The apprenticeship rate applies to a worker—*

(a) *who is employed under a contract of apprenticeship, apprenticeship agreement (within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009) [or approved English apprenticeship agreement (within the meaning of section A1(3) of the Apprenticeship, Skills, Children and Learning Act 2009)], or is treated as employed under a contract of apprenticeship, and*

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(b) *who is within the first 12 months after the commencement of that employment or under 19 years of age.*

(2) *A worker is treated as employed under a contract of apprenticeship if the worker is engaged—*

5 (a) *in England, under Government arrangements known as apprenticeships, Advanced Apprenticeships, Intermediate Level Apprenticeships, Advanced Level Apprenticeships or under a Trailblazer Apprenticeship;*

10 (b) *in Scotland, under Government arrangements known as Modern Apprenticeships;*

(c) *in Northern Ireland.....; or*

(d) *in Wales.....*

15 (3) *In paragraph (1)(b), a worker does not commence employment with an employer where that worker has previously been employed by another employer and the continuity of employment is preserved between the two employments by or under any enactment.*

(4) *In this regulation—*

(a) *“Government arrangements” means—*

20 (i) *in England.....,*

(ii) *in Wales.....,*

25 (iii) *in Scotland, arrangements made by the Secretary of State or the Scottish Ministers under section 2 of the Employment and Training Act 1973 or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990,*

(iv) *in Northern Ireland....;*

5 (b) *“Trailblazer Apprenticeship” means an agreement between an employer and a worker which provides for the worker to perform work for that employer and for the employer, or another person, to provide training in order to assist the worker to achieve the apprenticeship standard in the work done under the agreement;*

10 (c) *“apprenticeship standard” means the standard published by the Secretary of State in connection with the Government arrangements known as Trailblazer Apprenticeships, which applies as respects the work done under the agreement.”*

Discussion and Decision

15 18. In this case the claimant claims arrears of pay, breach of contract, holiday pay and failure to provide him with a written statement of employment particulars. With regard to the breach of contract claim, the claimant stated in his application that he was on a modern apprenticeship which he believed had to last 12 months and he had been dismissed after 6.5 months. He was therefore claiming 5.5 months’ pay. With regard to the claim for arrears of pay, the claimant stated that he was owed overtime payments and had not been paid at the overtime rate. He also claimed that he ought to have been paid by the respondent for the days when he went on day release to college.

Was the contract one of apprenticeship?

25 19. Turning first to the claim for breach of contract, in his ET1 the claimant stated that he was on a Modern Apprenticeship with the respondent, was paid at £3.30 per hour and that he believed such an apprenticeship had to last twelve months. His complaint was that he had been dismissed after 6.5 months. The respondent’s position was confusing. They admitted having paid the claimant at the rate for apprentices set out in the National Minimum Wage Regulations

2015 (£3.40 per hour in October 2016, rising to £3.50 per hour on 1 April 2017). However, their position in court was that the claimant was not on a Modern Apprenticeship. Instead, they described him at the hearing as a ‘trainee engineer’. They produced a contract, which they said (and I accepted) they had provided to all their trainees, though the claimant had omitted to sign his and hand it back. The contract described him as an “*apprentice engineer*”.

20. The question of whether the claimant was an apprentice is key to this case. If he was an apprentice at common law, then he is entitled to be compensated for loss of wages for the remainder of his apprenticeship and also for loss of training and status. However, if he was not employed on a contract of apprenticeship as defined in Regulation 5 of the National Minimum Wage Regulations 2015 then he was entitled to be paid the National Minimum Wage (“NMW”) for his age. The claimant was aged 20 from the beginning of his employment on 17 October 2016 until 31 March 2017. The minimum wage rate for a 20 year old during this period was £5.55 per hour. The claimant was 21 on 1 April 2017 and was dismissed on 28 April 2017. The NMW rate for a 21 year old rose to £7.05 per hour on 1 April 2017. (Coincidentally, the rate rise happened on the claimant’s birthday).

21. Regulation 5 of the NMW Regulations is set out above. The Apprenticeship, Skills, Children and Learning Act 2009 does not apply to Scotland. Thus, the category of ‘apprenticeship agreement’ under that Act is not relevant here. It follows that the apprenticeship rate only applies to the claimant if, for the purposes of Regulation 5(1)(a) he was employed under a contract of apprenticeship or is treated as employed under a contract of apprenticeship. (Paragraph 5(1)(b) must also apply but that would clearly be met here.) The circumstances in which a worker is “*treated as employed under a contract of apprenticeship*” are set out in 5(2). In Scotland, it is necessary that the worker is engaged under “*Government arrangements known as Modern Apprenticeships*”. As the respondent admitted, that is not the case here.

22. Thus, the apprenticeship rate in the NMW Regulations only applies to the claimant in this case if under Regulation 5(1)(a) he was employed under a

“contract of apprenticeship”. It is necessary to look to the case law for the essential features of such a contract. The label the parties apply to the contract is one factor to be considered but is not determinative (See Young & Woods Ltd v West [1980] IRLR 201 at paragraphs 30 and 31).

5 23. In Chassis and Cab Specialists Ltd v Lee EAT0268/10 the EAT held that the question is whether, on the facts, the substantial character of the relationship is one of apprenticeship. One characteristic of the contract of apprenticeship that differentiates it from an ordinary contract of employment is that it is normally for a fixed term and cannot normally be ended at will. Indeed,
10 contracts of apprenticeship may attract substantial damages if ended prematurely.

24. In Flett v Matheson [2006] IRLR 277 the Court of Appeal held on the facts of that case that:

15 *“the arrangements had the essential features of an apprenticeship. The individual learning plan was called an “apprenticeship” and provided for a combination of off and on the job training for a lengthy period. What occurred at the workplace was part of the training. While the employer did not provide the more academic part of the training, he was required to give the apprentice time off to obtain it and to fund the cost of attendance at classes. It was not open to the employer to dismiss on reasonable notice, subject to making reasonable efforts to find another employer willing and able to continue the training. If attempts to find another employer failed, the obligations on the employer remained and, save in certain specified circumstances, the apprentice could not be*
20 *dismissed within the period of training.”*
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25. In Dunk v George Waller and Son Ltd 1970 2 QB 163 CA, Widgery LJ stated, at p.634c–f:

30 *‘A contract of apprenticeship is significantly different from an ordinary contract of service if one has to consider damages for breach of the contract by an employer. A contract of apprenticeship secures three*

5 *things for the apprentice: it secures him, first, a money payment during the period of apprenticeship, secondly, that he shall be instructed and trained and thus acquire skills which would be of value to him for the rest of his life, and, thirdly, it gives him status, because the evidence in this case made it quite clear that once a young man, as here, completes his apprenticeship and can show by certificate that he has completed his time with a well-known employer, this gets him off to a good start in the labour market and gives him a status the loss of which may be of considerable damage to him.*

10 *It seems to me, therefore, that in this case not only must we say that the apprentice is to be compensated for the loss of wages during the remainder of his apprenticeship contract but that we must also give him something in respect of the loss of training and loss of status which has also resulted.”*

15 26. In Wallace v C A Roofing Services Ltd [1996] IRLR 435, the plaintiff was taken on as a trainee by the defendant company in 1990. There was no written contract of apprenticeship, but the plaintiff's written statement of terms and conditions stated that his job title was “apprentice sheet metalworker” and also included a provision that, “at the end of your apprenticeship your employment will terminate unless there is a suitable vacancy that we can offer you at the time.” The plaintiff was paid the apprentice rate of pay and his pattern of work was typical of an apprenticeship, with the emphasis on training. After 19 months, the plaintiff was dismissed on the ground of redundancy because of a fall-off in work. He claimed that his contract with the defendants was a contract of apprenticeship which could not be terminated on that ground, and made a claim for damages. The defendants contended that it was a contract of employment or a training contract which included a term that the plaintiff might have his period of training terminated prematurely on the ground of his redundancy. They contended that such a term had been agreed at interview. However, their evidence to that effect was rejected. The High Court (Mr Justice Sedley) held on the facts before him that *“In the present case, a four-year apprenticeship was offered to the plaintiff and accepted by him, with the*

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sole rider that it did not guarantee employment either at the end of the apprenticeship or continuously thereafter if a downturn in trade should occur. Contrary to the argument for the defendants, the oral agreement between the parties did not include a term that the period of training might be terminated prematurely on the ground of redundancy and, therefore, it was a true contract of apprenticeship.”

27. Mr Justice Sedley went on:

“Although modern legislation has assimilated apprenticeships to contracts of employment, the contract of apprenticeship remains a distinct entity at common law. Its first purpose is training; the execution of work for the employer is secondary. In such a relationship, the ordinary law as to dismissal does not apply. The contract is for a fixed term and is not terminable at will as a contract of employment is at common law.”

28. I accepted the evidence of the respondent that the document they produced entitled “Engineers Contract of Employment” was, indeed passed to all their trainees including the claimant, and that it was subsequently acted upon by both parties and I concluded that it set out the terms and conditions of the claimant’s employment, whether he signed it or not. In any event, paragraph 1.2 provided: “*In accepting your employment it shall be deemed that you have accepted all the terms and conditions set out in this document.*”

29. I considered whether the relationship was one of apprenticeship. On the one hand, the contract described the claimant as an ‘apprentice’. Also, the claimant was given training by the respondent and generally worked alongside a qualified engineer. On the other hand, the contract was not for any particular duration. Indeed, neither party was able to say in evidence what the duration of the contract was. Furthermore, the contract specifically provided for termination on one month’s notice after the probationary period and for the right to pay salary in lieu of notice.

30. In Chassis and Cab Specialists Ltd v Lee EAT0268/10 the EAT held that the question is whether, on the facts, the substantial character of the relationship is one of apprenticeship. A key characteristic of a contract of apprenticeship that differentiates it from an ordinary contract of employment is that it is normally for a fixed term and cannot normally be ended at will. Thus, the incorporation in the claimant's contract of a right of termination and the lack of a fixed term are strong evidence that, whatever the claimant's job title, the contract was not one of apprenticeship. In addition, the level of training provided to the claimant was not of the sort generally given during an apprenticeship. For example, in Flett there was an "*individual learning plan*" which "*provided for a combination of off and on the job training for a lengthy period. What occurred at the workplace was part of the training. While the employer did not provide the more academic part of the training, he was required to give the apprentice time off to obtain it and to fund the cost of attendance at classes.*" The training provided in this case was not characteristic of an apprenticeship. At the beginning of their employment, the claimant and four other trainees were given two days of in house training on intruder and fire systems by a qualified engineer from a training company called 'Select'. The claimant was then given a practical assessment, after which he received a phone call to say he had passed. Thereafter, the only formal training given was in March, again in house by Select. (Whilst it had been agreed initially that the claimant could carry on at college and be given time off to attend, he was not paid or funded for this and he did not continue). Furthermore, per Sedley J (as he then was) in Wallace v C A Roofing Services Ltd a contract of apprenticeship's "*first purpose is training; the execution of work for the employer is secondary*". In the present case the evidence suggested that the claimant was working on jobs assisting the engineer, so that the emphasis in his contract was primarily on the execution of work for the respondent, rather than on his training.
31. For the foregoing reasons I have concluded on the facts before me, having reviewed the case law, that the claimant's contract was not a "contract of apprenticeship" at common law or for the purposes of Regulation 5(1)(a). I

accepted the respondent's submission that the claimant would be better described as a trainee. It was not suggested to me that any of the exclusions in Regulation 51 of the National Minimum Wage ("NMW") Regulations applied, nor were there any facts to that effect. I have therefore concluded
5 that the claimant's claim for compensation for the remaining period of his 'apprenticeship' and possibly for damages for loss of training and loss of status (per Dunk v George Waller) does not succeed. However, the corollary of this is that he has not been paid the NMW for his age and is owed the difference between the apprentice rates of £3.40 (and latterly £3.50) per hour
10 and the National Minimum Wage. Thus, his claim for unauthorised deductions from wages partially succeeds.

Claims for Unauthorised Deductions from Wages

32. Section 13 of the Employment Rights Act 1996 gives workers the right not to suffer unauthorised deductions from their wages. Under section 13(3) a
15 deduction occurs where "*the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion.*" The claimant ought to have been paid at the rate of the NMW for his age. In October 2016 the NMW for a 20 year old was £5.55 per hour. From 1 April 2017 the rate
20 applicable to the claimant (who turned 21 on that date) would have been £7.05. The claimant's payslips show that he worked the following hours:

Payslip dated 28/11/16 - 135 basic hours paid at £3.40 per hour;

Payslip dated 21/12/16 – 187.5 basic hours paid at £3.40 plus 76 additional hours also paid at £3.40 per hour;

25 Payslip dated 30/1/17 - 111.5 basic hours paid at £3.40 per hour and 37.5 additional hours paid @ £5.10;

Payslip dated 24/2/17 – 155 basic hours paid at £3.40 plus 15 hours overtime at time and a half paid at £5.10 and 40 hours overtime paid at £3.40 per hour;

Payslip dated 27/3/17 – 150 basic hours paid at £3.40 plus 17.5 hours overtime paid at £3.40 per hour;

Payslip dated 26/4/17 - 145 basic hours paid at £3.50 per hour plus holiday pay of 41.25 hours paid at £3.50 per hour (see separately below).

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Date	Basic hours	Additional hours at basic rate	Overtime at time and a half	Calculation
28/11/16	135 @£3.40			$\begin{aligned} &£5.55 - £3.40 \\ &= £2.15 \times 135 \\ &= \mathbf{£290.25} \end{aligned}$
21/12/16	187.5 @ £3.40	76 @ £3.40		$\begin{aligned} &£5.55 - £3.40 \\ &= £2.15 \times 187.5 + 76 = \\ &\mathbf{£566.53} \end{aligned}$
30/1/17	111.5 @ £3.40		37.5 hours x 1 ½ time paid at £5.10. Correct rate =£5.55 x 1.5 = £8.33	$\begin{aligned} &£5.55 - £3.40 \\ &x 111.5 = \\ &\mathbf{£239.73} \\ &£8.33 - £5.10 \\ &= £3.23 \times 37.5 \\ &= \mathbf{£121.13} \end{aligned}$
24/2/17	155 @ £3.40	40 @ £3.40	15 @ 1 ½ x Paid at £5.10	$\begin{aligned} &£5.55 - £3.40 \\ &= £2.15 \times 155 \\ &+ 40 = \\ &\mathbf{£419.25} \\ &£8.33 - £5.10 \\ &= £3.23 \times 15 = \\ &\mathbf{£48.45} \end{aligned}$
27/3/17	150 @ £3.40	17.5 @ £3.40		$\begin{aligned} &£5.55 - £3.40 \\ &= £2.15 \times 150 \end{aligned}$

				+ 17.5 = £360.16
26/4/17	145 @ £3.50			£7.05 - £3.50 = £3.55 x 145 = £514.75
TOTAL DUE				£2,560.25

33. In addition to the above claim, the claimant also made the following unauthorised deduction claims: (i) payment for the days he spent on day release at college; and (ii) 138 hours' overtime pay. With regard to (i), this claim was time barred. The claimant only remained at college for two weeks after starting work with the respondent. He had ceased attending college by early November 2016. The respondent disputed that any payment was due. However, since any such payment, if due, should have been paid by the end of November at the latest and the claim was presented on 3 June 2017, it was accordingly out of time. The Tribunal therefore has no jurisdiction to hear it. With regard to (ii), although a claim was made in the ET1 for 138 hours' overtime pay, this was not substantiated or properly quantified in the claimant's evidence. The contract states in relation to overtime: "*Overtime is not paid unless the period of overtime, and the hourly rate of overtime pay, has been agreed and authorised in writing by your line manager before you work the overtime.*" It was clear from the claimant's payslips that different rates had been applied to his overtime. Mrs Tumilty's evidence, which I accepted was that overtime rates varied according to what was agreed with the clerk of works in respect of each period of overtime and that time and a half was only paid for 'unsociable hours' between 10pm and 6am. The system was that each employee filled in a time sheet on which they would write all basic and overtime hours they had worked, call outs etc. They would then hand this in and would be paid accordingly. The claimant's pay slips were based on the time sheets he had handed in and I found that he had not queried his pay slips or overtime during his employment. In these

circumstances, his claim for unauthorised deductions of overtime pay does not succeed, except in relation to the correction in the above table for the minimum wage.

Claim for Notice Pay

5 34. The claimant's terms and conditions of employment entitled him to one month's notice. He only received one week. He is therefore entitled to the remaining three weeks' notice pay. The claimant's basic weekly hours per his contract were 37.5. Thus, his gross weekly basic pay, corrected for the National Minimum Wage would have been $37.5 \times \pounds 7.05 = \pounds 264.38$ at the time
10 of termination of his employment. $\pounds 264.38 \times 3 = \pounds 793$, rounded to the nearest whole pound. As the payment is gross, the claimant is liable to account to HMRC for tax and National Insurance on this sum.

Claim for holiday pay

15 35. The respondent's holiday year ran from 1 January to December. The respondent closed for two weeks over Christmas and New Year and two weeks' holiday entitlement was taken by all staff at that time. The claimant's statutory holiday entitlement is 5.6 weeks per year. He left on 28 April 2017. His pro-rated entitlement for 2017 was $5.6 \times 4/12 = 1.87$ weeks or 9 days. He had received holiday in January as the respondent's staff returned to work in
20 the second week of January 2017 after the Christmas shut down. His final pay slip showed holiday pay of 41.25 hours, which is 5.5 days. I therefore concluded that the claimant had been paid all holiday pay to which he was entitled. This claim does not succeed and is dismissed.

25 Claim in respect of failure to provide a written statement of employment particulars

36. Under section 1 Employment Rights Act 1996 an employer is required to give an employee a written statement of employment particulars. I accepted Mrs Tumilty's evidence that this was provided to the claimant but that he did not

return the signed copy. It follows that this head of claim does not succeed and is dismissed.

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Employment Judge: Mary Kearns
Date of Judgment: 13 December 2017
Entered in register: 13 December 2017
10 and copied to parties

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