



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Elliott

**Respondent:** James Diffey  
Trading as Midlands Sports & Prestige

**Heard at:** Nottingham (By Cloud Video Platform)

**On:** Friday 15 January 2021

**Before:** Employment Judge P Britton (sitting alone)

**Representation**

**Claimant:** In person

**Respondent:** No appearance but written representations

***Covid-19 statement:***

***This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.***

## JUDGMENT

1. The correct identify of the Respondent is James Diffey trading as Midlands Sports & Prestige.
2. The claim for non-payment of wages succeeds. The Respondent will pay the Claimant compensation of £ 1836 gross (204 hours at £9 per hours).

## REASONS

1. The Claim (ET1) was presented to the Tribunal by the Claimant on 7 October 2020. The Respondent was stated to be Midlands Sports & Prestige with an address at Unit 6 Stanton Road, Burton upon Trent Staffs, DE15 9SQ. Set out was how the Claimant had been employed as a car transporter between 3 June and 26 August 2020. He claimed for his wages which had not been paid from 31 July to 26 August. This was 204 hours at £9 per hour. That of course is £1836.

2. The claim was served out by the Tribunal on 14 October 2020 with a deadline for filing a response of 11 November 2020. It was also listed for this hearing today.
3. A Response (ET3) was duly received. In summary, the Respondent defended on the basis that the Claimant had “stormed out “causing it expense. It did not appear to be disputed that he had worked the hours claimed and had not been paid.
4. Thus, at the direction of Employment Judge Camp on 26 November 2020, the Respondent was written to stating that this would not provide a defence and otherwise wanting clarification that the sum was not in dispute The Respondent was given a deadline to reply “within 10 days.”
5. On the 5 December a reply was received, the author of which was stated to be James. For reasons I shall come to, this was James Diffey. Reiterated was how the Claimant stormed out and the resultant disruption and cost to the business. Not disputed was the hours worked or the hourly rate. Stated was:  
  
*“I’m withholding the payment due to the costs I incurred due to him not working his notice and suddenly leaving. “*
6. I note the reference by James to his use of the word “I’m”.
7. The matter came before Employment Judge Clark who issued a document headed **Notice and Order, Employment Tribunal Rules of procedure 2013 Rule 28(1)<sup>1</sup> – Initial Consideration**. In summary, he correctly stated that as the claim was for unpaid wages only and the sum was not disputed, that the Tribunal had no jurisdiction to entertain a counter claim or set off based upon Breach of Contract. Thus, the Respondent would need to bring such a claim in the County Court. But it had no reasonable prospect of defending the claim for the wages before the Tribunal for the reasons now made clear.
8. Thus, he made an Unless Order to the effect that absent reasons being received from the Respondent to the contrary by **12 January 2021**, and in particular any written document authorising the withholding of the wages by the Claimant, the Response would be dismissed and judgment given for the Claimant.
9. Second, he stated at his Order 2 as follows  
  
***In addition,** by the same date of **12 January 2021,** the respondent must confirm to the tribunal in writing ( and copy to the claimant) the full name of the legal or natural person that actually employed the claimant (i.e a limited company, another type of corporation, a partnership or an individual). The reason for this order is because the respondent has accepted it employed the claimant but is presently identified by what appears to be a trading name only.*

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<sup>1</sup> The Rules.

10. The Respondent did not reply by the deadline on either front. Thus, on the 13 January at the direction of Employment Judge Adkinson, the parties were informed that the Response had been dismissed under Rule 38 of the Rules because of non-compliance with the Unless Order. Thus, he stated that the Respondent would only be *“entitled to participate in the hearing to the extent permitted by the Employment Judge*. He directed that today’s hearing remain listed and by a second letter of the same date directed that it be heard by CVP.
11. Not dealt with was the legal identity of the Respondent and thus implicitly it would be for me to determine today.
12. On 14 January, Croner Co UK e-mailed the Tribunal to the effect that they had been instructed by the Respondent. In summary set out was that the sum was admitted and thus the Respondent would not attend the hearing.
13. Still unaddressed was the legal identity of the Respondent. Thus, this Employment Judge asked via his clerk for that information today in the run up to the hearing scheduled to commence at 3pm.
14. Croner UK replied at 14.24 as follows:  
*“I have just spoken with my client and matters are not as straightforward as they might be.*  
  
*As of yesterday, the company went limited as Edward James Group Limited, with the trading name of Midlands Sports and Prestige.*  
  
*At the time of the Claimant leaving the business, it was a partnership of three partners trading as Midlands Sports and Prestige. One of those partners, James Diffey bought out the other two, and then took control of all assets and liabilities, incorporating them in to the new company Edward James Group the company number 13135393.*  
  
*For the sake of ease, if the Employment Judge hearing the case feels it necessary to change the name of the respondent, then please accept this email as an application to change the name of the respondent to Edward James group Ltd.”*
15. So, no details were given of the other two alleged partners. Second, I have checked on the Companies House web site and EJG was only incorporated yesterday. Thus, as a matter of law it cannot have been the employer at the effective date of termination namely 26 August 2020.
16. The Claimant has told me that he never received any pay slips or other written particulars as to the employment. He was interviewed for the job by three people, including James Diffey. He received instructions in the employment from one or other of them including Mr Diffey.
17. But there is one crucial piece of evidence that I am entitled to take into account as it is publicly available and that is the details of the business on the internet. Inter alia stated is:

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*“The particulars of ownership of Midlands Sports & Prestige as required by section 1204 of the companies act 2006, full name of owner James Diffey. Address at witch documents relating to the business may effectively be served- Midlands Sports & Prestige, unit 6, Stanton Road, Burton upon Trent, DE15 9SQ.”*

18. Finally, I then refer back to the reply to the Tribunal dated 5 December 2020 penned by “James” and the use of the word “I’m”.
19. The Respondent could have attended today if it wanted to provide any further information. It chose not to.
20. Accordingly, on the information available to me I find that the correct identity of the Respondent is James Diffey t/a Midlands Sports & Prestige.
19. Thus, as the sum is not in dispute, I order him to pay the sum due.

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Employment Judge P Britton

Date: 18 January 2021

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