



# EMPLOYMENT TRIBUNALS

## COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing which has been not objected to by the parties. The form of remote hearing was V (fully – all remote). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to comprised of the pleadings, a bundle of documents produced by the Claimant and correspondence between the Tribunal and the Respondent as detailed below.

### Claimant

Mr T Malins

### Respondent

PDA Enfield Ltd

v

**Heard at:** Watford (via CVP)

**On:** 22 February 2021

**Before:** Employment Judge Smeaton

### Appearances

**For the Claimant:** In-person

**For the Respondent:** Did not appear

## JUDGMENT

1. The Respondent has made an unauthorised deduction from the Claimant's wages contrary to Part II of the Employment Rights Act 1996 and is ordered to pay the Claimant the gross sum of £100.
2. The Respondent has failed to pay the Claimant his accrued holiday pay in breach of the Working Time Regulations 1998 and is ordered to pay the Claimant the gross sum of £2,763.46.
3. The Respondent failed to provide the Claimant with itemised payslips contrary to section 8 of the Employment Rights Act 1996.

## REASONS

1. The Claimant was employed by the Respondent as Education Programme Head Boys Coach and Club Head of Coaching under a fixed term contract from 23 September 2019 until 31 July 2020.
2. His contract, signed by the owner of the Respondent, Mr Sal Besim on 22 September 2019 set out the following key clauses:

**Pay and Expenses**

We will pay you £30,000.00 annually by monthly instalments in arrears. Payment will be by automated bank transfer. We will review your pay annually, in our sole discretion.

We can deduct any money that you may owe us from your pay or other payments due to you.

You are not entitled to reimbursement of expenses in connection with your duties under this Agreement unless we give advance written permission.

...

**Holiday**

Our holiday year runs from 1 August to 1 August. You are entitled to 28 days' holiday per holiday year at your normal basic pay. This entitlement includes the usual public holidays. In the holiday year(s) in which your employment starts and ends, one-twelfth of your annual holiday entitlement will accrue for each full month of employment.

You must take your holidays on dates that are convenient to us and that we agree in writing in advance. You should give us as much notice as you can of your wish to take holiday on a particular date giving notice of at least double the length of time you wish to take on holiday in one go. We may require you to take holiday on specific days as notified to you. You may take up to 2 week's holiday at any one time.

When your employment ends, we will pay you in lieu of any accrued but untaken holiday entitlement. You must take your outstanding holiday entitlement during any notice period, if we ask you to. If you have taken more holiday than you have accrued then you must repay us for the days you have not accrued. Payment by you or us under this clause will be at the rate of 1/260th of your annual salary (or, if you are part-time, at 1/260th of your full-time equivalent salary) for each day of holiday.

3. The Claimant encountered difficulties early on in his employment. The Respondent failed to provide him with itemised pay slips, made deductions from his wages and/or paid his wages late. Between August and December 2019 he received only one payslip. He did not receive any payslips for the period January to June 2019 until June 2019, after he had raised a grievance about the lack of payslips and after the commencement of this claim. When he did receive payslips they did not represent what he had been paid. Further,

the sums paid into his bank account varied significantly from month to month despite the Claimant being in salaried employment.

4. From the beginning of his employment, the Respondent made deductions from the Claimant's salary in respect of pension contributions. At the time of bringing this claim, none of those amounts had been paid by the Respondent into the Claimant's Nest pension.
5. On 16 March 2020, at the beginning of the first national lockdown due to the COVID-19 pandemic, the Claimant was placed on furlough leave. He continued to receive 80% of his salary until the expiry of his fixed-term contract in July 2020.
6. The Claimant commenced ACAS Early Conciliation on 27 March 2020. An ACAS Early Conciliation certificate was issued on 27 April 2020.
7. On 27 April 2020, whilst still employed, the Claimant brought a claim for unauthorised deductions from wages in respect of his salary (in the sum of £2,841.75) and missing pension contributions (in the sum of £715.71).
8. Section 13 of the Employment Rights Act 1996 provides, so far as is relevant:
  - (1) An employer shall not make a deduction from wages of a worker employed by him unless –
    - (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
    - (b) The worker has previously significant in writing his agreement or consent to the making of the deduction.
9. The Respondent did not submit a response and default judgment was entered against it.
10. Shortly after the claim form was lodged, the Respondent paid the Claimant his outstanding wages (in the sum of £2,841.75). Accordingly, there can be no financial award in respect of that amount. I am satisfied, however, that in failing to pay the Claimant his wages on time the Respondent did make an unauthorised deduction contrary to section 13 of the Employment Rights Act 1996 and I make a declaration accordingly.
11. The Respondent also paid, at some point after the commencement of this claim, pension contributions into the Claimant's pension fund for the period January 2020 to July 2020. Accordingly, the Claimant claims only those amounts referable to October-December 2019. He claims in the sum of £468.54.
12. The Tribunal does not have jurisdiction to order repayment of those amounts attributable to the Respondent's contributions. An employer's pension contributions do not form part of the wages properly payable to the Claimant (Somerset County Council v Chambers (Appeal no. UKEAT/0417/12/KN)). There is a distinction, however, between the employer's contributions and

amounts deducted from the Claimant's salary which are intended to be paid by the employer directly into the employee's pension fund. To the extent that any such deductions are made but then withheld by the employer, those deductions are unauthorised and fall within the Tribunal's jurisdiction.

13. Determining the amount deducted without authorisation by the Respondent in this case is difficult given that the Claimant was not given clear, itemised payslips for the entirety of his employment. However, the Claimant's evidence, which I accept, is that two sums of £50 were deducted from his pay in October and November 2019 in respect of pension contributions. The November 2019 payslip shows that £50 deduction and makes clear that the deductions to date total £100. That £100 (or two entries of £50) does not feature in the figures provided by the Claimant's pension provider. Those figures show only eight months' worth of contributions. There ought to be ten months' worth of contributions. I am satisfied therefore, that the Respondent made unauthorised deductions from wages from the Claimant in respect of two months of pension contributions, totalling £100 (the remaining amount having been repaid after the commencement of this claim).
14. On the expiry of his fixed-term contract, the Claimant sought to recover his outstanding holiday entitlement. On 29 September 2020, the Claimant applied to the Tribunal to add a claim for unpaid holiday pay. The Claimant also informed the Tribunal that part of his outstanding wages and pension contributions had been paid (as set out above). The claim was amended on 21 November 2020 by order of EJ Manley to include a claim for holiday pay.
15. Regulation 13 of the Working Time Regulations 1998 provides, so far as is relevant:
  - (1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year
  - (2) ...
  - (3) A worker's leave year, for the purposes of this regulation, begins –
    - (a) On such date during the calendar year as may be provided for in a relevant agreement; or
  - ...
  - (4) ...
  - (5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which his employment begins.
16. The Claimant raised his outstanding holiday entitlement with the Respondent on the expiry of his fixed-term contract. In response, Mr Besim sent the Claimant a contract in which clause 20 (above) was crossed out. He referred to clause 21 above, insinuating that the Claimant could not carry over holiday into the next leave year. Clearly, it is not possible for the Respondent to amend the Claimant's contract in this way thereby depriving him of his

contractual holiday entitlement. The reference to clause 21 does not answer the point.

17. The Respondent's holiday year runs from August to August. The Claimant was employed for ten months, all of which spanned one holiday year. He took no holiday during his employment. Accordingly, on the expiry of his contract he was owed 4.79 weeks' holiday. I am satisfied that the Respondent made an unlawful deduction from wages for this amount, totalling £2,763.46 gross.

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Employment Judge Smeaton

Date: 8 March 2021

Sent to the parties on: .17/03/2021....

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For the Tribunal Office

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