



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal  
7 and 8 October 2024 (video)

**Claimant:** Bashir Ahmed  
**Respondent:** Master Trade Network Ltd

## Full merits hearing

**Before:** Judge M Aspinall (sitting as an Employment Judge)  
Ms C Valentine  
Ms A Boyce

**Appearances:** Mr Z Khan, Solicitor for Claimant  
Ms A Acheampong, litigation consultant for Respondent

## JUDGMENT

The Tribunal found the claims of unlawful deduction from wages, lack of written statement of employment particulars, automatic unfair dismissal for asserting rights under the National Minimum Wage Act, and injury to feelings resulting from the dismissal to be well-founded. The claims succeeded and compensation has been awarded under each head, totalling **£23,026.05**.

**It is declared that** the respondent made unauthorised deduction from the claimant's wages, breached its duty to provide written terms, and dismissed the claimant automatically unfairly for asserting National Minimum Wage rights.

### Background

1. The Claimant, Mr Bashir Ahmed, was engaged by the Respondent, Master Trade Network Limited, as a barista from 10 July 2023 until 28 September 2023, a period of around 2 months. The Respondent operates a coffee shop in London.
2. Mr Ahmed applied for the barista role and was appointed by Mr Tauhidul Arefin, the branch manager. He subsequently commenced employment on 10 July 2023. His duties involved serving customers, preparing drinks and food orders, operating the till, and general cleaning duties.
3. On starting with the Respondent, Mr Ahmed states that he provided his bank details, proof of right to work, and other information. He contends that the Respondent told him he would be paid in cash. The Respondent asserts that Mr Ahmed had asked to be paid in cash.
4. During the course of his employment, Mr Ahmed worked variable hours determined by the roster schedule provided to him. His typical shift pattern was 3 days per week.
5. In mid-September 2023, Mr Ahmed went on a planned holiday to Bangladesh, having informed his manager Mr Tauhidul Arefin of this absence. On 28 September 2023, when he returned to work, Mr Arefin told Mr Ahmed he was dismissed and not to return to the coffee shop again. This prompted an exchange of messages between Mr Ahmed and the company director Mr Mathu Rajalingam about his dismissal and issues with his pay.

6. Mr Ahmed subsequently submitted a claim to the Employment Tribunal on 27 January 2024 after earlier commencing ACAS Early Conciliation on 24 November 2023. The Tribunal proceedings concern claims for unlawful deduction of wages, lack of written terms, detriment/dismissal related to NMW matters, and unpaid holiday pay.

### **The claims**

7. The unlawful deduction from wages claim relates to alleged underpayment of wages by the Respondent during the course of the Claimant's employment. He contends he was not paid the applicable National Minimum Wage rate for the hours worked.
8. The lack of written terms and conditions claim asserts the Respondent did not provide the Claimant with a written statement of the terms of employment as required by law.
9. The automatic unfair dismissal claim stems from the allegation the Claimant was dismissed for asserting his statutory rights concerning payment of the National Minimum Wage.
10. The Claimant argues he suffered detriments, including dismissal, for pursuing complaints about failure to pay the National Minimum Wage. This forms the basis for claims of automatic unfair dismissal and breach of statutory rights.
11. The unpaid holiday pay claim seeks recovery of accrued but untaken holiday the Claimant states he was entitled to on termination of employment.
12. Finally, the Claimant seeks compensation for injury to feelings resulting from the manner of his dismissal and events following termination of employment. He contends this caused financial hardship and impacts on his mental health.
13. In summary, the claims primarily relate to underpayment of wages, lack of required written particulars, the manner of dismissal, and consequences stemming from termination of employment with the Respondent. The Claimant is seeking both financial compensation and declaratory relief from the Tribunal.

### **The hearing**

14. On the first day, there were difficulties obtaining a Bengali interpreter previously ordered by the Tribunal. As a result, the hearing was adjourned and resumed the next day with an interpreter present by video to assist the Claimant.
15. The Claimant Mr Ahmed was present on both days and represented by Mr Z Khan, Solicitor. The Respondent Master Trade Network Limited was represented by Ms A Acheampong, Litigation Consultant.
16. At the outset, the Tribunal confirmed the parties had exchanged documents and were content to proceed based on the hearing bundle.
17. On the second day of the hearing, an interpreter was arranged to assist Mr Ahmed after difficulties obtaining one the previous day. The hearing proceeded by video conference.
18. Mr Ahmed as claimant was present along with his solicitor Mr Khan. The respondent company was represented by Ms Acheampong.
19. Mr Ahmed had provided a witness statement which stood as his evidence-in-chief.
20. The respondent had intended to call evidence from two managers, Mr Mathu Rajalingam and Mr Tauhidul Arefin. Their signed witness statements were provided but they did not actually give oral evidence or face cross-examination.
21. A key issue arose regarding the respondent seeking to argue the claimant was a 'worker'

when their response had denied he was a worker or employee. The Tribunal refused to allow the late change of position.

22. Following legal submissions, the Tribunal struck out the respondent's response for ambushing the claimant with an unpleaded case. As a result, under Rule 21 the respondent could not further participate.
23. With no extant response to the claim, the Tribunal proceeded to make a summary judgment after considering the available evidence including Mr Ahmed's statement. The claimant was awarded over £23,000 in compensation for unlawful deduction of wages, injury to feelings, and other heads of claim.
24. The Tribunal heavily criticized the respondent's conduct of the litigation at the hearing. In conclusion, the claimant succeeded in his claims without a response from the respondent.

### **Applications**

25. A key issue arose during the claimant's cross-examination when it became apparent the respondent was seeking to argue that Mr Ahmed was a 'worker'. However, the respondent's ET3 response had denied he was a worker or employee, asserting he was a 'trainee' with no contract.
26. This late change of position had not been formally applied for nor notified to the claimant in advance. The case had proceeded on the basis of the pleaded response, with disclosure and preparation done on that footing.
27. Mr Khan, for the claimant, objected to the respondent putting its case in a manner contrary to its filed response. He applied to have the response struck out as the respondent was no longer pursuing the pleaded defence.
28. Ms Acheampong for the respondent then made a late application to amend the response to say the claimant was a 'worker'. She submitted it was in the interests of justice to allow this amendment as the Tribunal would have had to consider his employment status in any event.
29. Mr Khan opposed the amendment given the late stage of proceedings. He argued it would prejudice the claimant who had prepared his case to answer the 'trainee' defence as originally pleaded.
30. During the respondent's submissions, one of the respondent's witnesses repeatedly interrupted. The judge made clear the advocates were the proper speakers.
31. In refusing the amendment application, the Tribunal noted the change of position had not been flagged in advance or put in writing. The claimant would face prejudice from having to deal with an unpleaded case. Proper case management required such changes far sooner.
32. Allowing a late unpleaded amendment would obstruct the overriding objective of dealing with cases fairly and justly. It would fundamentally change the response after the claimant had prepared his case accordingly.
33. The Tribunal heavily criticized the respondent's conduct of this litigation. The manner in which the defence to the claim was presented at the hearing was tantamount to an ambush on the claimant. The attempt to argue at the eleventh hour that Mr Ahmed was a worker flew in the face of the filed response, which had denied this.
34. Such game-playing with litigation is wholly contrary to the overriding objective of dealing with cases justly. The respondent's behaviour obstructed rather than furthered justice, wasting time and resources. Needless reversals of pleaded cases at the last minute will not be tolerated. This was unfair litigation strategy for which the respondent deserved strong

criticism in this instance.

35. The Tribunal struck out the response as no longer reflecting the respondent's position. This was the appropriate and proportionate step given the interests of justice.
36. The respondent was still entitled to attend but could not further participate without permission.

### **Evidence**

37. The Tribunal considered the witness statement of the Claimant, Mr Ahmed, dated 17 September 2024 (updated 30 September 2024). This set out his account of events in detailed chronological order. It was supported by exhibit documents including WhatsApp messages, work rotas, Universal Credit statements, and other communications.
38. Key documentary evidence included WhatsApp messages between Mr Ahmed and the manager Mr Arefin on 17 July 2023 (p.53) enquiring about his hourly pay rate; work rotas from July to September 2023 (pp.54-64) showing Mr Ahmed's shifts; and messages in September and October 2023 (pp.69-74) concerning dismissal and requesting his unpaid wages.
39. Further exhibits were Universal Credit statements for July and August 2023 (pp.65-66) showing £0 entitlement; messages to company director Mr Rajalingam (pp.77-83) raising grievances after dismissal; a homelessness outreach report for Mr Ahmed from 24 October 2023 (pp.84-85); and a letter from his psychotherapist (p.86) concerning his mental health issues following job loss.
40. The Tribunal was also referred to the Respondent's ET3 response dated 27 February 2024 denying Mr Ahmed was an employee or worker. The response asserted he was a 'trainee' not entitled to any contractual rights.
41. Additionally, the intended witness statements of Mr Mathu Rajalingam (02/10/2024) and Mr Tauhidul Arefin (02/10/2024) for the Respondent were provided but not actually taken as evidence.
42. These statements contradicted each other regarding Mr Ahmed's employment status. Neither accorded with the Respondent's pleaded response.
43. Having carefully evaluated all the documents and weighing them against the pleaded cases, the Tribunal preferred and accepted the evidence of Mr Ahmed which appeared consistent and credible throughout.
44. The Respondent's contradictory documents undermined its own credibility. Its late attempt to argue Mr Ahmed was a worker reinforced this view.
45. In conclusion, the contemporaneous documents clearly supported Mr Ahmed's account of events.

### **The law**

46. The Tribunal considered the relevant statutory provisions under the Employment Rights Act 1996 (ERA 1996) concerning the claimant's heads of claim.
47. Regarding the claim for unlawful deduction from wages, the Tribunal applied Section 13 ERA 1996. This states an employer "shall not make a deduction from wages of a worker employed by him unless...the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract."
48. The claim for lack of a written statement of employment particulars engaged Section 1 ERA 1996. This requires an employer to provide "a written statement of initial employment

particulars" within two months of employment starting.

49. For the claims concerning the National Minimum Wage (NMW), the Tribunal considered the provisions within Part 2 of the National Minimum Wage Act 1998. Namely, Section 17 on the right not to suffer unauthorised deductions and Section 18 on the right not to be subjected to a detriment for asserting NMW rights.
50. Section 104 ERA 1996 was also relevant, making dismissal automatically unfair if "the reason or principal reason for the dismissal is of a prescribed kind." Here, that prescribed kind was making a complaint related to NMW under Section 17 and Section 18 of the NMW Act 1998.
51. Regarding compensation for injury to feelings, Section 12 ERA 1996 was engaged. This allows the Tribunal to award such compensation where an employer has contravened the employee's rights under the ERA 1996.
52. The above key statutory provisions gave the framework through which the Tribunal assessed liability and remedies in relation to the claimant's particular complaints. The Tribunal was satisfied the relevant legislative requirements were met to uphold the claimant's case.

## **Findings and decision**

### *Unlawful Deduction from Wages*

53. The Tribunal found that the respondent deducted wages from the claimant's pay in a manner not authorised by statute or the claimant's contract, contrary to Section 13 of the Employment Rights Act 1996.
54. The claimant provided credible evidence that he was promised the National Minimum Wage (NMW) at his job interview with Mr Arefin. However, he was later told he would be paid a flat cash rate of £8 per hour, below the NMW. His contemporaneous messages to Mr Arefin enquiring about his pay rate supported his account.
55. No evidence was produced by the respondent of any contractual agreement for the claimant to be paid below the NMW. The Tribunal did not accept the bare assertion in Mr Arefin's witness statement that the claimant had asked to be paid cash-in-hand.
56. Applying the established principle that deductions from wages must be clearly authorised, and evidence ambiguities are resolved in the worker's favour, the Tribunal concluded the respondent made unauthorised deductions reducing the claimant's pay below his legal NMW entitlement.
57. The Tribunal found the respondent liable for unlawful deduction of wages in the amount of £497.32.

### *Lack of Written Statement of Employment Terms*

58. It was undisputed by the respondent that no written statement of employment terms was provided to the claimant as required by Section 1 of the Employment Rights Act 1996.
59. The Tribunal accepted the claimant's evidence that he requested written terms from Mr Arefin on multiple occasions but was ignored. The respondent provided no proof any written terms were furnished.
60. The Tribunal therefore concluded the respondent was in breach of its statutory duty to provide the claimant with a written statement of particulars within two months of employment starting.
61. The Tribunal found the respondent in breach of its duty to provide written terms.

### *Unfair Dismissal for Asserting NMW Rights*

62. The Tribunal accepted the claimant's clear evidence that he raised grievances with Mr Arefin

about being underpaid the NMW. The respondent provided no credible evidence to contradict this assertion.

63. Shortly after raising the grievance, on 28 September 2022 the claimant was summarily dismissed by Mr Arefin with no notice, procedure or right of appeal.
64. Given the close proximity between asserting his NMW rights and being dismissed, the Tribunal drew the inference that this was the reason or principal reason for dismissal. As such, applying Section 104 of the Employment Rights Act 1996, the dismissal amounted automatically to unfair dismissal.
65. The Tribunal found the respondent could not show any potentially fair reason existed for dismissal, notwithstanding the respondent was precluded from participating at this stage.
66. The Tribunal found the dismissal was automatically unfair.

#### *Injury to Feelings*

67. Pursuant to Section 12 of the Employment Rights Act 1996, the Tribunal awarded compensation for injury to feelings resulting from the unfair manner of the claimant's dismissal and its consequences.
68. The claimant provided strong medical evidence of the mental distress, anxiety and depression he suffered leading to a period of homelessness.
69. The Tribunal considered this significant impact together with the discriminatory manner of dismissal merited an award at the lower end of the middle Vento band of £11,200.
70. The Tribunal awarded compensation for injury to feelings in the sum of £11,200, being at the lower end of the middle Vento band.

#### *Losses to Date of Tribunal Hearing*

71. The Tribunal allowed:
  - a. £12,191.40 for 52 weeks' lost pay
  - b. £270 for job seeking costs
72. After deducting Universal Credit received of £2,295.03, the Tribunal awarded total net losses to date of £10,663.69.

#### *Notice Pay*

73. The Tribunal awarded £234.45 for notice pay.

#### *Interest*

74. Interest was awarded, on the injury to feelings award, at £2.45 per day for 378 days, equalling £927.91.

#### *Total Award*

75. In total, considering each head of claim, the Tribunal awarded the claimant £23,026.05
76. The above precisely reflects the Tribunal's determination of each element of the overall award as itemised. The claimant succeeded in full in relation to each aspect of his claims before the Tribunal.
77. In conclusion, the Tribunal made findings of fact based on the balance of probabilities and applied the relevant legal principles to determine the claims were well-founded. The claimant succeeded in all heads of claim before the Tribunal.

## Payment

78. The Tribunal ordered the above total award of **£23,026.05** to be paid by the respondent to the claimant forthwith.
79. The sum awarded is gross of any tax and National Insurance contributions. The claimant will be responsible for accounting to HM Revenue & Customs for any income tax and National Insurance properly payable on the sums received. The Tribunal makes no determination in relation to tax or National Insurance liability arising.

**Judge M Aspinall**  
**Tuesday, 8th October 2024**

### Public access to Employment Tribunal decisions and judgments

Judgments and reasons for judgments (except those given under Rule 52) of the Employment Tribunal are published in full. These can be found online at [www.gov.uk/employment-tribunal-decisions](https://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the parties in a case.

### Recording and transcription

Where a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will **not** include any oral judgment or reasons given at the hearing. The transcript will **not** be checked, approved, or verified by a judge. More information is available online at: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions> in the joint Presidential Practice Direction on the *Recording and Transcription of Hearings* and accompanying guidance.