



# EMPLOYMENT TRIBUNALS

**Claimants:** Miss H Blyszko and Mrs J Blyszko  
**Respondent:** Shax (UK) Limited

## AT A HEARING

**Heard at:** Leeds                      **On:** 12<sup>th</sup> October 2018  
**Before:** Employment Judge Lancaster

### Representation

**Claimants:** In person  
**Respondent:** Did not attend

## JUDGMENT

Holly Blyszko

1. The claims of unauthorised deductions from wages, breach of contract and failure to pay accrued holiday pay on termination succeed.
2. The Respondent is ordered to pay to the Claimant the outstanding balance due of £597.27 made up as follows:

Wages due for June 2018 @ £144.00 per week	£288.00 gross
Overtime due 4.25 hours @ £9.00 per hour	£37.35 gross
Arrears of wages	£160.00 gross
1 week's pay in lieu of notice	£144.00
Petrol expenses	£56.00
Laundry expenses allowance 7 weeks @ £5.00	£35.00
2.58 weeks accrued holiday pay @ £144.00 per week gross	<u>£371.52</u>
	£1091.87
Less Sum already paid	<u>£494.60</u>
	£597.27

Jackie Blyszko

3. The claims of unauthorised deductions from wages, breach of contract and failure to pay accrued holiday pay on termination succeed.

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- 4.. The Respondent is ordered to pay to the Claimant the outstanding balance due of £4777.72 made up as follows:

Wages due for June 2018 @ £144.00 per week	£288.00 gross
Arrears of wages	£160.00 gross
1 week's pay in lieu of notice	£144.00
1.93 weeks accrued holiday pay @ £144.00 per week gross	<u>£277.92</u>
	£869.92
Less Sum already paid	<u>£392.20</u>
	£477.72

## REASONS

1. The Respondent did not attend. The Tribunal clerk attempted unsuccessfully to make contact by telephone. The case therefore proceeded in the Respondent's absence pursuant to rule 47 of the Employment Tribunals Rules of Procedure 2013.
2. I find as a fact, having heard the sworn evidence of the Claimants that at the date of termination (17<sup>th</sup> June 2018) they each worked under a contract of employment of which written particulars had been given to them on 11<sup>th</sup> June 2018.
3. Under their contracts they were entitled to be paid £144.00 for a 16 hour week @ £9.00 per hour. I accept that they received payments calculated as a fixed weekly salary and payable on the 1<sup>st</sup> day of each month.
4. I have considered, and reject the Respondent's contention in the Response (ET3) that the applicable hourly rate was only £7.50. This would, after 1<sup>st</sup> April 2018 have been less than the National Minimum Wage. Immediately before the variation as from 11<sup>th</sup> June 2018 the applicable rate, as set out in letters from the Respondent in May 2018 had in fact been £10.00 per hour.
5. The Claimants were entitled to be paid £144.00 gross for the 3 days (Tuesday, Wednesday, Thursday) that they had each worked in the weeks commencing 4<sup>th</sup> and 11<sup>th</sup> June 2018.
6. I also accept Holly Blyzko's evidence that she had also worked a further 4 1/4 hours overtime. As there is no provision in the contract for overtime to be paid at higher than the hourly rate this is only claimed at £9.00 per hour (though at the time it was undertaken n the higher rate of £10.00 per hour may well have been applicable).
7. There is written acknowledgement from the Respondent that arrears of pay are due for an extra job undertaken at Wilsden Village Hall. Each Claimnt says that the agreed sum was £160.00, though the Respondent has in fact stated in a letter that Holly Blyzko is owed £174.72
8. Termination without notice was in breach of contract. I take the net pay for that week in lieu which is accordingly recoverable as damages to be the weekly pay of £144.00

9. The employee handbook expressly provides for laundry allowance to be paid at £5 per week for washing uniforms. I accept Holly Blyszko's evidence that she was owed this sum for 7 weeks.
10. There is no written provision entitling the Respondent to deduct any sums purportedly incurred in repairing or valeting Holly Blyszko's company car. The deduction made in this respect from the final salary are therefore unlawful under Part II of the Employment Rights Act 1996.
11. I accept the evidence that an allowance of £28.00 per week was agreed to be and was paid in expenses to cover the petrol which Holly Blyszko purchased for the company car and that this is owing for 2 weeks.
12. The car was insured by the Respondent but Holly Blyszko had agreed to pay the insurance premiums herself by direct debit as she also enjoyed personal use of the vehicle. There was no agreement that the Respondent reimburse this sum. When the car was repossessed this meant that she had paid for the full months' insurance cover. She seeks to recover the sums paid for the rest of the month and at some stage Mr Shackleton of the Respondent appears to have accepted that the company should pay. There was however no concluded agreement in existence at the date of termination that 2 weeks would in fact therefore be reimbursed to her.
13. I accept that neither Claimant had in fact taken any holiday in the current leave year, which started on 1<sup>st</sup> January 2018.
14. Holly Blyszko's accrued entitlement from 1<sup>st</sup> January to 17<sup>th</sup> June was therefore for 168 days of the holiday year. The statutory minimum holiday is 5.6 weeks per annum.  $168/365 \times 5.6$  gives a pro rata entitlement to 2.28 weeks. I take the weekly rate of pay at £144.00 as I do not have the information to calculate an average over the 12 weeks up to termination, even though the pay will have varied over this time. 2.58 weeks at £144.00 gives £371.52.
15. The similar calculation in the case of Jackie Blyszko from 12<sup>th</sup> February 2018 when she started work is  $126/365 \times 5.6 = 1.93$  which @ £144.00 per week gives £277.92.
16. Although the Respondent has intimated a possible employer's contract claim no such claim has yet in fact been made in the Tribunal. There are no particulars as to how any alleged breach of the implied term that contracts will be performed with reasonable care and skill may in fact be established nor how such a breach will actually be proved to have resulted in any loss of profit. If the Respondent believes that it does in fact have a viable breach of contract claim against either Claimant that may still be pursued in the County Court if it wishes.