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## EMPLOYMENT TRIBUNALS

**Claimant:** Mr Michael Porter  
**Respondent:** Acoustic Moveable Wall Solutions Limited  
**Heard at:** East London Hearing Centre  
**On:** 21 September 2018  
**Before:** Employment Judge Allen

### Representation

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

## JUDGMENT

The judgment of the tribunal is:

- 1 The Respondent must pay the Claimant £9,303.88 for unpaid wages.
- 2 The Respondent must pay the Claimant £9,899.27 for unpaid expenses.
- 3 The Respondent must pay to the Claimant 2 weeks wages (capped at £508 per week) totalling £1,016 for a failure to supply terms and conditions.
- 4 The total amount is £20,219.15.

## REASONS

1. By claim form presented on 1 May 2018, the Claimant brought a claim for unlawful deduction from wages and breach of contract against the Respondent, his former employer.
2. A hearing took place on 30 July 2018 before EJ Foxwell at which

Mr Lambert conceded on behalf of the Respondent that the Claimant was an employee at all material times until his resignation on 18 April 2018.

3. The matter was unable to proceed on 30 July 2018 because the Respondent had not prepared properly for that hearing. The matter was listed to be heard on 17 August 2018 and directions were made which the Claimant complied with and which the Respondent attempted to comply with. Unfortunately, that hearing had to be postponed because of a lack of judicial resources. Both parties were notified in writing of today's hearing date, by notice of hearing dated 24 August 2018. The Respondent did not attend. The Tribunal clerk contacted the Respondent to find out if anyone was intending to attend today. The clerk's note states "The lady I spoke to was not sure if someone is going to come for the hearing. She said she will call us back as soon as possible". No such call had been received by the time that I gave judgment at 12.30.
4. I took into account the documents supplied by the Respondent in response to the orders of EJ Foxwell and also 2 witness statements from Mr Nicky Lambert and from N Wagstaff. As neither of those individuals appeared to give evidence, I could only give limited weight to the content of their witness statements. The Claimant had also produced and exchanged a supplementary witness statement and accompanying documents and he gave evidence before me, confirming the truth of his witness statements and explaining how the various sums claimed were calculated and distinguishing between payments made to him and others which amounted to repayments of loans to the business and payments which might be characterised as wages or repayment of expenses.
5. The Claimant's evidence was that he had never been issued with terms and conditions of employment. I accepted his evidence, supported by payslips from the period up to March 2016 when he was incontrovertibly an employee, that his salary was £4,500 gross per month, £3,220.79 net per month. I rejected the Respondent's contention that the salary was or even could have workably been £3,000 net. I accepted the Claimant's evidence that he was exceptionally entitled to overtime from time to time and that overtime had been paid in the past as evidenced by his older bank statements. I accepted therefore that any recent payments of overtime (totalling £1,000 in the relevant period) should not be counted towards the payment of the Claimant's ordinary wages. I accepted that the Claimant was contractually entitled to be reimbursed by the Respondent for expenses and that he had been reimbursed in the past.
6. The Claimant explained and referenced unpaid expenses claims totalling £9,899.27. Where he could, he supplied receipts or invoices, otherwise he directed me to his bank statements showing where payments had been made and made reference to the Respondent's business account to explain where payments had been made by him to the business account which were immediately used in order to pay for his expenses. He was able to give explanations in his evidence as set out in his witness statement and I accepted his evidence in relation to all of the matters set out in paragraph 1 of his supplementary witness statement referring to the expenses claims which totalled £9,899.27.

7. The Claimant explained, with reference to his written statement, that the figures used by EJ Foxwell as to the total amount of pay due in the period since 1 May 2016 needed to be revised on the basis of the number of days that the Claimant had been entitled to be paid for the 18 April 2018. The revised figure which should have been paid to the Claimant during this period was £77,203.88. I accepted that evidence, supported as it was by documentary evidence.
8. The Claimant also explained with reference to the reference period from 1 May 2016 to 18 April 2018 that he had misreported a payment of £800 as being made for a period within the 2 year index period, whereas it related to a period prior to 1 May 2016. The revised figure for his receipts from the Respondent which could be attributed to wages during that period is £67,900. I accepted that evidence, supported as it was by documentary evidence.
9. The difference is £9,303.88 and I am satisfied that this amount is due to the Claimant and should have been paid by the Respondent.
10. The Claimant explained with reference to his witness statement why it was that other specific payments made to him and others during this period were repayments of loans made by him and others to the business and were not referable to wages. I accepted that evidence. However I have no jurisdiction in relation to the outstanding loan amounts themselves.
11. Pursuant to s38 Employment Act 2002, in any relevant case in which there has been a failure by an employer to issue terms and conditions as required by Part I of the Employment Rights Act 1996, a tribunal must order at least 2 weeks pay to be paid to the Claimant by the Respondent and I also make an order for 2 week's pay on the basis that no such terms and conditions were ever supplied. A week's pay is calculated according to the rubric in the Employment Rights Act 1996 and is capped at £508 per week.

Employment Judge Allen

24 September 2018