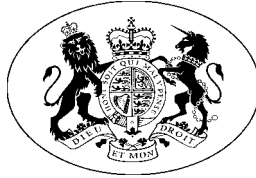


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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Zaman  
**Respondent:** Romford Mazda  
**Heard at:** East London Hearing Centre  
**On:** 1 October 2018  
**Before:** Employment Judge M Martin

**Representation:**

Claimant: In person  
Respondent: Mr D Bansil (Solicitor)

## RESERVED JUDGMENT

The judgment of the Tribunal is that the Claimant's complaint of unlawful deduction from wages is well-founded and the Claimant is awarded the sum of £599.59.

## REASONS

### Introduction

1 The Claimant gave evidence on his own behalf. Mr Shokar, principal of the Respondent dealership gave evidence on behalf of the Respondent. The Tribunal was provided with two bundles of documents at the outset, one from the Respondent and one from the Claimant. They were marked appendix 1 and 2. At the start of the hearing the Tribunal were then provided with a further bundle of documents from the Claimant which was incorporated into a bundle marked appendix 3. Further documents were then provided by the Respondent during the course of the hearing which were then incorporated into a further bundle marked appendix 4 and 5.

## **The Law**

2 The Tribunal considered Section 13(3) of the Employment Rights Act 1996:

“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on the occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”

## **Issues**

3 At the outset of the hearing it was unclear what the Claimant was claiming. During the course of the hearing he confirmed that he was now only claiming for wages that had not been paid to him during the course of his employment.

## **Findings of Fact**

4 The Claimant was employed by the Respondent as a parts supervisor. His employment commenced on Friday 11 May 2018.

5 The Respondent is a family run car dealership business.

6 The Claimant’s previous employer was relocating. The Claimant was given the opportunity to find alternative employment. He said that he could have stayed with his previous employer until the end of June and would have been entitled to a bonus of £1,500.

7 In the event, the Claimant was interviewed by the Respondent for a position with the Respondent. At his second interview on 7 May 2018, the Claimant was interviewed by Mr Shokar the principal of the dealership.

8 Mr Shokar has produced notes from that interview. He said the Claimant was offered a salary of £20,000 for the first three months which was to be on a probationary period. Mr Shokar said that the pay was then to be increased to £22,000. He said that initially he wanted to offer a bonus to the Claimant after the probationary period, but the Claimant wanted more money because he said he would struggle financially on the lesser amount. Mr Shokar said that, on that basis, he agreed to pay the Claimant £22,000 for the probationary period. He has produced notes from the interview which are in a bundle at appendix 5. In the template of the interview, he had made handwritten notes which indicate a sum of £20,000 and a pay increase probably up to £22,000. He had also made handwritten notes on that document, where he has noted £23,000 and £24,000. The handwritten notes then indicate that the salary was agreed at £22,000 with no bonus.

9 The Claimant says that the Respondent offered him £23,000. He says that was what was discussed and there was no reference to any probationary period.

10 In his ET1, the Claimant said that his gross pay was £1,986 a month and his net

pay was £1,586 a month. He indicated in his ET1 that he started work with the Respondent on 7 May 2018 and left on 25 May 2018. In evidence to the Tribunal the Claimant accepted that he was mistaken about the dates. He agreed with the dates stated by the Respondent in their ET3, namely that he was employed from 11 – 24 May.

11 The Claimant's hours of work were 8.00 – 6.00pm Monday to Friday with an hour for lunch and four hours every other Saturday.

12 The Claimant resigned from his employment on 24 May 2018.

13 He said that he went into work as usual at 8.00am on 24 May, but that an incident occurred when he ripped his trousers on some equipment. Mr Shokar said that he told the Claimant to go and get some new trousers and that he would pay for them. The Claimant said that the incident was dealt with by his manager, Mr Chris Willis. He said it took Mr Willis two hours to let him go home to change his trousers.

14 The Claimant did not return to work after that and left that day.

15 By the time the Claimant left his employment he had not received any wages.

16 The Respondent says that the Claimant did not get paid because he had not provided the Respondent with his personal details namely his passport; national insurance number; and bank details. The Claimant said he provided this information to Mr Shokar's wife, who works in the accounts department of the Respondents.

17 The Claimant texted Mr Willis to chase his outstanding wages at the end of May and then in early June, but did not receive any reply to those texts.

18 The Claimant said he sent an email to Mr Shokar on 4 and 6 June 2018, requesting his outstanding wages. In that email, he indicated that his gross income was £1917 and his net income was £1561. He said the Respondent owed him £1,170.75.

19 In the email and in evidence before the Tribunal, the Claimant stated that he had made a number of calls to the Respondent chasing for his outstanding wages.

20 Mr Shokar said that he only spoke to the Claimant once. He said this was just before the Claimant submitted his claim. He said that he told the Claimant that he would look into the matter and sort out payment.

21 Mr Shokar said that the delay in paying the Claimant was because the Claimant did not pass on his personal details, in particular his national insurance number, so he could do an online calculation, based on the Claimant's hours of work.

22 Mr Shokar said that, if he had the Claimant's national insurance number and other documents, he could have done the calculation through the company sage package which was much easier.

23 The Claimant said in evidence to the Tribunal that he had half a day off one day

during the second week. He was not sure which day. This was because his mother was ill.

24 The Claimant said there was no system for logging people into work. He acknowledged that it was occasionally not on time.

25 The Respondent said that they were a small business and did log people into work through the use of two excel spreadsheets. He said that one excel spreadsheet was operated by the sales admin clerk and one by another clerk. He said the sheets were then reconciled. He said that employees would be marked as present; either if the clerk was able to see them, or a telephone call would be made to check if someone was in work.

26 The Respondent has produced a spreadsheet from the consolidated excel spreadsheets. The Claimant's name is not on the top of that spreadsheet, but the Respondent says that the details show the Claimant's hours of work during his period of employment.. That sheet is at page 50 of appendix 1. It shows that the Claimant worked 9 hours on 11 May; 9 hours on 14, 15, 16, and 18 May, 4 hours on Saturday 19 May - employees worked every other Saturday. He is also noted as having worked 9 hours on 21, 22 and 23 May. On 17 May, the Claimant has noted as sick.

27 The Claimant says that he did not have any time off sick other than the half day when his mother was ill. The Respondent said if the Claimant was off for half a day, it would have been with an asterisk beside the S but it was not.

28 The Respondent has calculated that the Claimant worked 76 hours. The Respondent says that they worked out what the Claimant was due using an online calculator which is at appendix 4. They calculated that he was entitled to £84.62 gross a day, which equated to £70.54 net a day, based on the salary of £22,000. This is based on 8 days' pay plus half a day which equates to £9.40 per hour.

29 The Claimant issued proceedings to this Tribunal in July.

30 On 4 September 2018, the Respondent sent the Claimant a cheque for £595.64 by recorded delivery. It was returned to them. No explanation was given by the Respondent to the Claimant as to how they had calculated the Claimant's wages, nor did they produce any breakdown for the amount.

31 Furthermore, the Respondent provided no explanation for the delay in paying the Claimant's wages in that letter. Indeed in evidence before the Tribunal, the explanation given by the Respondent was that they had not got the Claimant's national insurance details or his passport. They did not ever actually tell the Claimant that this was the reason for the delay. It is therefore not surprising that the Claimant brought these proceedings.

32 In his claim form, the Claimant did not provide any particulars about the amount which he was claiming.

33 After the proceedings had been issued, orders were made for the Claimant to produce a statement of the amount which he was claiming.

34 No documents or information about the amounts which he was claiming were

provided by the Claimant until he attended at the Tribunal hearing this morning, with calculations and documents as referred to herein.

35 In evidence to this Tribunal the Claimant said that he was entitled to 11 days' pay at £88.46 per day amounted to £973.06. He has arrived at this figure using an online calculator based on the salary of £23,000 and has used his gross pay to calculate this amount. The details are set out in appendix 2.

36 In submissions the Claimant suggested that the right amount should be slightly lower, as he appeared to accept that he had only worked 9 ½ days rather than 11 days.

### **Submissions**

37 The Claimant submitted that he was due wages based on a salary of £23,000 and was seeking 9 ½ days wages.

38 The Respondent's representative submitted that the Claimant was not due any wages other than those that had already been paid (and returned) to him of £595.64.

### **Conclusions**

39 The Tribunal reminded itself that the burden of proof in this case is on the Claimant.

40 This Tribunal finds that the Claimant's gross salary was £22,000. The Tribunal accepts Mr Shokar's evidence, which is supported by his handwritten notes of his interview with the Claimant. The Claimant himself had indicated different sums as his gross salary in both his ET1 and the sums which he is now claiming before this Tribunal.

41 The Tribunal further finds that the Claimant worked 8½ days with the Respondent. In that regard, the Tribunal accepts the Respondent's evidence which is again supported by documentary evidence showing the days which the Claimant worked with the Respondent.

42 On that basis the Tribunal have calculated that the Claimant is entitled to the sum of 8.5 days based on a net salary of £70.54 which amounts to £599.59

Employment Judge Martin  
Dated: 17 October 2018