# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Bradshaw

**Respondent:** Cube HVAC-R Services Limited

**Heard at:** Bristol (by CVP) **On:** 11 February 2022

**Before:** Employment Judge Leverton

**Representation**

**Claimant:** In person
**Respondent:** Mr Jonathan Munro, Peninsula Business Services

# JUDGMENT

The claim for unlawful deduction from wages pursuant to the provisions of Part II Employment Rights Act 1996 is well-founded and the tribunal grants a declaration to that effect. The tribunal orders the respondent to pay the claimant the gross sum of £2,211.74 in respect of that claim, subject to deductions for tax and national insurance.

The claim for breach of contract pursuant to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 is also well-founded. The tribunal orders the respondent to pay the net sum of £1,271.60 in respect of that claim.

# REASONS

**Claims**

1. By a claim form presented on 22 November 2020, the claimant brought a claim for unpaid wages, holiday pay and other sums outstanding on the termination of his employment. The claims were as follows:

    a. unpaid wages under Part II of the Employment Rights Act 1996 (‘ERA’) (unauthorised deductions from wages)

b. unpaid holiday pay under Part II ERA

c. reimbursement under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 ('the 1994 Order') for the cost of tools stolen from the claimant's work van (breach of contract)

d. reimbursement under the 1994 Order for the cost of materials purchased by the claimant.

2. The claimant's schedule of loss referred to ongoing losses after termination of employment arising from the fact that he had taken a new job at a lower rate of pay. He also referred in his claim form to emotional stress, strain on his relationship and effects on his mental health. I indicated to him that it is not within the tribunal's power to make a financial award in respect of these matters in an unlawful deductions or breach of contract claim.

3. The claimant had originally sought reimbursement of expenses for his attendance as a witness at the hearing on 11 February 2022 and in respect of a previous hearing that was listed to take place on 13 August 2021. In the event, the earlier hearing was postponed on the respondent's application but the claimant had already booked time off work to attend. The claimant indicated that he no longer wished to recover expenses for attendance at those two hearings. He did, however, apply for a preparation time order and I deal with this below.

**Evidence, procedure and preliminary matters**

4. The claimant provided a witness statement and a schedule of loss, and I heard oral evidence from him. The respondent chose not to present any witness evidence but was represented at the hearing by Mr Munro of Peninsula Business Services. Mr Munro and the claimant both made closing submissions and I am grateful to them for their assistance.

5. I was provided with a 20-page agreed bundle of documents. It became apparent that certain documents on which the respondent sought to rely had been omitted from the final version of the bundle. These were a document headed 'Deductions from pay agreement' and a restrictive covenant. I allowed these documents (seven pages in total) to be submitted as late evidence, relying on the overriding objective of dealing with cases fairly and justly under rule 2 of the Employment Tribunals Rules of Procedure 2013. I took this course of action because the documents appeared potentially relevant to the respondent's defence, and the claimant had already seen them in the context of correspondence between the parties about the content of the bundle and therefore was not prejudiced by their late admission. In the event, Mr Munro made no submissions in relation to the restrictive covenant and relied only on the 'Deductions from pay agreement'.

6. I also allowed the claimant to submit late evidence, consisting of copies of receipts and bank statements in support of his claims for the cost of tools stolen from his van and materials purchased by him. These documents were highly relevant to the claim and the respondent had previously had

sight of them. By allowing them to be produced, I was giving effect to the overriding objective. They were copied to Mr Munro, who was permitted to question the claimant about them.

7. I dealt with a preliminary issue concerning the name of the respondent. The respondent was named in the claim form as 'Cube Hvac-Services Ltd'. Mr Munro and the claimant agreed that its correct title was 'Cube HVAC-R Services Limited', as stated in the response form. I have substituted the correct name of the employer in this judgment.

**Findings of fact**

8. I make the following findings on the balance of probabilities. The claimant was employed by the respondent as a heating engineer/plumber from 1 June 2020. His starting salary was £31,500. His contract specified a working day of 7.5 hours but in practice he usually worked an eight-hour day because he did not take a lunch break. He was entitled to 28 days' paid holiday per year, including eight days' public holidays, and his holiday year ran from 1 April.

9. The claimant's oral evidence, which I accept, was that the respondent asked him to provide his own tools. This was supported by a job offer letter from the respondent dated 19 May 2020, which stated: 'You will have access to specialist heating and cooling tools, including vacuum pump, reclaim rig, torr gauges and refrigerant gauges, all hand tools are to be supplied by yourself.'

10. The respondent provided the claimant with a company van. On 16 July 2020, the van was broken into in Milton Keynes and various items belonging to the respondent were stolen. Tools belonging to the claimant were also taken to the value of £1,200. This figure was supported by receipts for the purchase of the tools.

11. The respondent's Managing Director, Mr Adrian Shakespeare, indicated to the claimant that a claim for the damage to the van and the stolen items would be made under the respondent's insurance policy, and that the claimant would be reimbursed for the stolen tools that were his personal property. The claimant raised this on a number of occasions with Mr Shakespeare, who assured him that the insurance claim was in progress and that the cost of the claimant's tools would be refunded. At one point, the claimant telephoned the insurer himself and was told that a claim had been submitted by the respondent. His understanding, based on conversations with Mr Shakespeare, was that the total value of the insurance claim was around £7,500 or £8,000.

12. The claimant frequently had to pay for materials himself and seek reimbursement from the respondent. During the claimant's final few weeks with the company, while he was working at BodyWorld Gym in Plymouth, he submitted an expenses claim for £71.60 to cover materials that he had bought and used on site. That claim was never paid by the respondent. The original receipts were no longer in the claimant's possession by the date of the tribunal hearing because he had submitted them to the respondent with

his expenses claim, but he provided copies of his personal bank statements showing the amount that he had spent.

13. By letter dated 8 October 2020, the claimant resigned with immediate effect. He was contractually obliged to give a week's notice of termination; he did not do so. In his resignation letter, he stated that it was his understanding that his final salary would be paid on the company's usual pay day of 30 October 2020, together with his outstanding holiday pay and reimbursement for materials purchased and the items stolen from his van.

14. The claimant spoke to the respondent's Financial Director, Mr Neil Stevens, on 8 October and explained his reasons for leaving. Mr Stevens asked the claimant to send him a breakdown of the figures for pay, holiday, materials and stolen tools. He confirmed that the claimant would be paid these outstanding sums on 30 October 2020.

15. On 9 October 2020, the claimant duly sent an email to Mr Stevens attaching his timesheet and copies of receipts for the purchase of the stolen tools that were his personal property. He started a new job on a lower rate of pay on 12 October 2020.

16. The claimant sent a follow-up email to Mr Stevens on 29 October 2020 asking for an update about the outstanding payments. He set out the figures and asked Mr Stevens to confirm that he agreed with them. This email prompted a phone call from Mr Shakespeare, who told the claimant that he would not be paid because the respondent had not received payment for the work carried out at BodyWorld Gym.

17. In anticipation of these tribunal proceedings, the claimant obtained a signed letter dated 16 June 2021 from Mr Daryl James, the owner of BodyWorld Gym. Mr James was not called as a witness but I accept that the contents of the letter are a truthful account of matters from his perspective. Mr James's letter stated that he was dissatisfied with the overall standard of work provided by the respondent; that he believed Mr Shakespeare had instructed his staff to provide a substandard installation in order to save money; and that several members of the respondent's staff, including the claimant, had brought this to Mr James's attention at the time. Mr James added that BodyWorld Gym and members of the respondent's staff had been obliged to purchase materials that should have been supplied by the respondent. He considered that the claimant had been open with him about his concerns regarding the installation and had been treated poorly throughout the project by Mr Shakespeare.

18. On the basis of this letter, I am satisfied that Mr James attributed the alleged issues with the standard of the respondent's work at the gym to Mr Shakespeare. There is no indication that he considered the claimant to be at fault. I accept the claimant's evidence that he completed the duties that had been assigned to him at BodyWorld Gym before he left the respondent's employment, and that Mr James was satisfied that this element of the work had been completed to a satisfactory standard.

19. A payslip bearing the claimant's name for the month ending 30 October 2020 was included in the tribunal bundle. The claimant asserted, and I

accept, that he never received it. Under the heading 'Payments', the payslip gave figures of £1,203.18 for outstanding wages, £605.63 for five days' untaken holiday and £71.61 for reimbursement of the cost of materials bought by the claimant. The total sum owing to the claimant was shown as £1,880.42. Under a separate heading, 'Deductions', it was stated that a deduction of £1,808.81 (the amount representing wages and holidays) had been made from the claimant's final salary payment 'per separate correspondence'. Mr Munro did not indicate what this separate correspondence might have been. He argued that this was an authorised deduction from wages attributable to issues with the work that the claimant had carried out for BodyWorld Gym and/or the fact that the claimant had resigned without notice. I will return to this argument below.

20. The payslip indicated that the remainder of the sum shown on the payslip, £71.61 for materials purchased, was paid to the claimant by credit transfer on 30 October 2020. The claimant maintained that no such payment was ever made. He produced as evidence a copy of his bank statement, a print-out of his taxable income for the period June – October 2020 from the HMRC website, and a copy of his P45. I am satisfied on the basis of this evidence that none of the sums set out in the October 2020 payslip was ever paid to the claimant.

**Legal framework**

21. Section 13 of the Employment Rights Act 1996 (ERA) provides, in so far as material:

'*(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 signified in writing his agreement or consent to the making of the deduction.*

*(2) In this section 'relevant provision', in relation to a worker's contract, means a provision of the contract comprised –*

*(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*'

22. Section 23 ERA provides: '*(1) A worker may present a complaint to an [employment tribunal] – (a) that his employer has made a deduction from his wages in contravention of section 13…*'.

23. Section 24 ERA deals with remedies:

'*(1) Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer –*

*(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13…'*

24. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 ('the 1994 Order') allows employment tribunals to hear certain contractual claims brought by employees. Article 3 provides, in so far as material:

    '*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if –*

    *(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*

    *(b) the claim is not one to which article 5 applies; and*

    *(c) the claim arises or is outstanding on the termination of the employee's employment.*'

25. Case law has established that employers are under an implied duty to indemnify or reimburse employees in respect of costs and expenses necessarily incurred by them in carrying out their work – **Adamson v Jarvis 130 ER 693, Court of Common Pleas**; **Re Famatina Development Corporation Ltd 1914 2 Ch 271, CA**. I drew this principle to the parties' attention during our preliminary discussions at the outset of the hearing.

26. Rule 76 of the Employment Tribunals Rules of Procedure 2013 provides, in so far as material:

    '*(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that –*

    *(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted;*

    *(b) any claim or response had no reasonable prospect of success; or*

    *(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.*

    *(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.*'

## Discussion and conclusions

*Unpaid wages*

27. The claimant seeks payment of his salary for the period 28 September – 8 October 2020 inclusive (nine working days) under the provisions of Part II ERA. With reference to his timesheets for the relevant period, he calculates the outstanding sum on the basis of 68.95 hours x £16.15 (his gross hourly rate of pay), giving a figure of £1,113.54.

28. Mr Munro asserted that the respondent withheld the claimant's final salary payment for two reasons: (1) the claimant's work at BodyWorld Gym was substandard; (2) the claimant resigned without notice, resulting in the respondent incurring costs to ensure that the work at the gym was completed.

29. Mr Munro sought to rely on the 'Deductions from pay agreement' as authorisation for the deduction. That agreement bore a signature purporting to be the claimant's and was dated 28 May 2020. Mr Munro submitted that the claimant had thereby agreed in writing to the deduction for the purposes of section 13(1)(b) ERA. The claimant asserted that he had not signed the document on 28 May 2020 or at all, and that his signature had been forged by the respondent.

30. Clause 7 of the 'Deductions from pay agreement' stated: '*Any loss to us that is the result of your failure to observe rules, procedures or instruction[s], or is as a result of your negligent behaviour or your unsatisfactory standards of work, will render you liable to reimburse to us the full or part of the cost of the loss… Such cost will be deducted from your pay.*'

31. Clause 11 provided: '*If you terminate your employment without giving or working the required period of notice, as indicated in your individual statement of main terms of employment, you will have an amount equal to any additional cost of covering your duties during the notice period not worked deducted from any termination pay due to you.*'

32. I am satisfied that the respondent's failure to pay the claimant his salary for the period 28 September – 8 October 2020 was an unauthorised deduction from wages for the purposes of Part II ERA. It was not authorised by the 'Deductions from pay agreement'. Even on the assumption that the claimant had signed that agreement, which he disputes, the respondent has not produced any evidence to suggest that the claimant's work on the BodyWorld Gym contract was unsatisfactory or that additional costs were incurred as a result of the claimant resigning without notice. My finding, as set out above, is that the claimant had completed his allocated tasks under the BodyWorld contract to a satisfactory standard before he resigned. There was no need for the respondent to find anyone else at short notice to finish the work, because the work had been completed by the claimant to the client's satisfaction. It is therefore unnecessary for me to decide whether the claimant's signature on the agreement was a forgery.

*Holiday pay*

33. In his schedule of loss, the claimant sought ten days' pay for annual leave that was untaken at his termination date. He was entitled to payment in lieu of his untaken leave by virtue of Reg 14 of the Working Time Regulations 1998 SI 1998/1833. He had been employed by the respondent for 130 days, and he calculated his pro rata holiday entitlement for the period of his employment as 130/365 x 28 days = 10 days (rounded up to the nearest day).

34. During cross-examination by Mr Munro, the claimant accepted that he had resigned without notice. He said that he was willing for his holiday pay claim to be reduced by five days to reflect the week's contractual notice that he should have given. I do not consider it appropriate to reduce the claimant's entitlement to holiday pay on that basis. There was no evidence that the respondent had suffered any loss by reason of the claimant's failure to give notice, and the claimant did not seek to be paid beyond the date on which he resigned.

35. On further questioning by me, the claimant accepted that he had taken and been paid for the late August public holiday in 2020, and that he had also taken half a day's paid leave shortly before he resigned. This reduces his outstanding holiday entitlement on termination to 8.5 days' pay. He is therefore entitled to be paid £16.15 (his gross hourly rate) x 8 hours per day x 8.5 days = £1,098.20.

36. The respondent's failure to pay the claimant that sum was an unauthorised deduction from wages. For the reasons given above under the heading 'Unpaid wages', the deduction was not authorised by the terms of the 'Deductions from pay agreement'.

*Cost of tools*

37. The claimant also claims £1,200 for his personal items that were stolen from the company van.

38. Mr Munro suggested that there was no reason why the claimant should have been storing his own tools in the van and that the claimant could not reasonably expect the respondent to reimburse him for the cost of his personal belongings. I do not accept that argument. I am satisfied that there was every reason for the claimant to store his tools in the van, given that he had been expressly instructed to use them when carrying out his duties for the respondent.

39. On the basis of the evidence set out above, I conclude that Mr Shakespeare verbally agreed to refund the claimant for the cost of the stolen tools. The existence of an agreement to that effect is supported by Mr Stevens' request for the claimant to submit the relevant figures to him so that payment could be arranged. There was consideration for the agreement in the form of the claimant's continued employment and the fulfilment of his duties in connection with the BodyWorld Gym contract. The respondent was in breach of contract in withholding the sum of £1,200 from the claimant.

*Cost of materials*

40. The claimant also claims £71.60 for the cost of materials purchased during his final few weeks with the respondent. He bought those materials for use in connection with the BodyWorld Gym contract. In accordance with his usual practice, he submitted an expenses claim supported by receipts. That expenses claim was never paid by the respondent.

41. The respondent was under an implied contractual duty to indemnify or reimburse the claimant in respect of costs and expenses necessarily incurred by him in carrying out his work. By including a figure referable to the outstanding expenses claim on the claimant's final payslip, the respondent acknowledged that it was liable for the cost of the materials. I conclude that the respondent was in breach of contract in failing to pay the claimant £71.60 for the materials he had purchased.

*Remedy*

42. I grant a declaration that the claimant's complaint of unlawful deduction from wages is well-founded and order the respondent to pay the claimant the gross sum of £2,211.74, subject to deductions for tax and national insurance. As set out above, this figure comprises £1,113.54 for unpaid salary and £1,098.20 for holidays outstanding on termination of employment.

43. The claim for breach of contract is also well-founded. I order the respondent to pay the claimant the net sum of £1,271.60 for the contractual claim, comprising £1,200 for the stolen tools and £71.60 for materials purchased.

*Preparation time order*

44. The claimant sought a preparation time order in the sum of £5,412, consisting of 132 hours' work to prepare his claim at a fixed hourly rate of £41.

45. In his closing submissions, the claimant said the respondent had acted disruptively. The hearing had originally been listed to take place on 13 August 2021 but had been postponed on the respondent's application on the basis that Mr Shakespeare had to attend a doctor's appointment. The claimant contended that the doctor's note provided by Mr Shakespeare in support of the postponement was a forgery and that Mr Shakespeare had been fit to attend the hearing. As a further example of the respondent's unreasonable conduct, he relied on the fact that Mr Shakespeare had not attended the postponed hearing to give evidence.

46. Mr Munro submitted that the respondent had not behaved in a vexatious or unreasonable manner; it had simply chosen not to provide any witness evidence. According to Mr Munro, this was an option that was open to the respondent and the onus was on the claimant to prove his case.

47. From a tactical point of view, it may not have been in the respondent's best interests to decline to provide any witness evidence. I accept, however, that this was a course of action that was reasonably open to the respondent. I do not consider that its conduct of the proceedings could be characterised

as vexatious, abusive, disruptive or unreasonable, nor that its response had no reasonable prospect of success.

48. In the absence of clear evidence as to the legitimacy of the stated reason for the earlier postponement, I also decline to exercise my discretion to grant a preparation time order on the basis that the hearing was postponed on the respondent's application.

**Employment Judge Leverton**
Date: 22 February 2022

Judgment & reasons sent to parties: 28 February 2022

FOR THE TRIBUNAL OFFICE