



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Rueben Mason-Fooks

**Respondents:** (1) Mr Sean McNeill  
(2) Elven Energy Limited

**Heard at:** East London Employment Tribunal by telephone

**On:** 16 June 2022

**Before:** Tribunal Judge D Brannan, sitting as an Employment Judge

## Representation

Claimant: In person  
Respondent: Did not attend

# RESERVED JUDGMENT

1. The Claimant's claim against the First Respondent is dismissed on withdrawal.
2. The Claimant's claim of unlawful deduction from wages is upheld against the Second Respondent. The Second Respondent is ordered to pay the Claimant £6,042.14 gross in respect of this claim. The Claimant will be responsible for payment of tax and national insurance on this sum.

# REASONS

1. The Respondent has provided no response to this claim and did not attend the hearing. This is despite the Tribunal taking additional steps to ensure the Respondent was properly served with both the claim and notice of hearing.
2. Nobody from the Respondent attended the hearing and no explanation was offered for the failure to attend. The Respondent had provided no ET3 so there was no telephone number to allow enquiries to be made about the

non-attendance. I decided it was in the interests of justice to proceed with the hearing in the Respondent's absence in the circumstances.

### **Evidence**

3. The Claimant brought his claim claiming that the Second Respondent (hereinafter referred to as the "Respondent") employed him from 5 July to 10 September 2021 but that the Respondent failed to pay him.
4. Following orders of 21 February 2022 the Claimant provided evidence to the Tribunal as follows:
  - (a) His payslip dated 31 July 2021
  - (b) His contract of employment signed by him on 12 May 2021 (the "First Contract")
  - (c) His contract of employment signed by him on 17 August 2021 (the "Second Contract")
5. The Claimant was unable to say exactly what he was owed. This is understandable because the First Contract stated an annual salary of £30,000. However the payslip was based on an annual salary of £35,000. The figure on this was never paid. However the Claimant was subsequently issued with the Second Contract, which on its face is effective from the date of the latest signature and therefore 17 August 2021. In this his annual salary was stated to be £35,000. The Claimant was in fact never paid anything.

### **Law**

6. Section 13 of the Employment Rights Act 1996 provides:

**13 Right not to suffer unauthorised deductions.**

(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.

(3) 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 that 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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

### **Issues and findings**

7. I accept the Claimant's evidence that he was never paid the money he was entitled to during his employment. The question is how much he was entitled to.
8. In my view little weight can be placed on the salary used for the payslip because it not only uses a salary level different to that agreed in the contract, it is also based on a pay period beginning before the Claimant began employment. It does, however, contain an item labelled expense reimbursement of £42.20 which the Claimant claims was properly owing to him. This does not suffer from the same superficial deficiencies as the salary figures and I find the Claimant to be owed this sum.
9. The calculation of salary due is therefore based on the employment contracts.
10. I find that the Claimant was entitled to an annual salary of £30,000 for the 31 working days between 5 July and 16 August 2021. The rate per working day during that period was £115.38 (£30,000 / 260). The Claimant was therefore entitled to £3,576.78.

11. I find that the Claimant was entitled to an annual salary of £35,000 for the 18 working days between 17 August and 10 September 2021. The rate per working day during that period was £134.62 ( $\text{£}35,000 / 260$ ). The Claimant was therefore entitled to £2,423.16.
12. The total award is therefore £6,042.20.

**Tribunal Judge D Brannan sitting as,  
an Employment Judge  
Dated: 16 June 2022**