

JERSEY / JUDGMENT

# Liedson Pestana v One Motivation Limited

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL IN THE MATTER BETWEEN  
LIEDSON PESTANA CLAIMANT AND ONE MOTIVATION LIMITED RESPONDENT

## JUDGMENT

Reference: [2026] TRE 108 Date of Hearing: 17 August 2026 Before: Advocate Cyril Whelan MBE, deputy chair For the Claimant: In person DECISION The Claimant's claims for unpaid wages, accrued but unpaid holiday pay, failure to provide written terms of employment and failure to provide payslips succeed. The claim for automatic unfair dismissal is dismissed. The Respondent shall pay the Claimant £2,193.19.

## REASONS

### Introduction

1. On 24 April 2026 the Claimant presented a Claim Form to the Tribunal complaining that the Respondent had failed to pay wages and accrued holiday pay and had failed to provide written terms of employment and payslips. The Claim Form also included a claim of automatic unfair dismissal.
2. On 28 April 2026 the Tribunal wrote to the Respondent at the email address given in the Claim Form, enclosing a copy of the Claim Form and advising that a Response Form had to be filed by 19 May 2026, the date set under Article 8(1) of the Employment and Discrimination Tribunal (Procedure) (Jersey) Order 2016 ("the Procedure Order"). The email warned that a monetary judgment might be made if the Respondent failed to file a Response Form or filed it late.
3. No Response Form was received by 19 May 2026 or at any later date. The Tribunal subsequently informed the Respondent that it would need to apply for an extension of time, explaining why the Response Form had not been filed by the deadline. No such application was made.
4. So far as is relevant, Article 12 of the Procedure Order provides: "Effect of non-presentation or rejection of response, or case not contested"
  - (1) This Article applies if –
    - (a) no response has been presented on the expiry of the time limit in Article 8...

- (2) The Chairman or a Deputy Chairman must decide whether on the available material (which may include further information which the parties are required to provide), a determination can properly be made of the claim, or part of it and if so the Chairman or Deputy Chairman must issue a judgment accordingly; otherwise, a hearing must be fixed before a single tribunal member.
- (3) The respondent is entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, is entitled to participate in any hearing only to the extent permitted by the Chairman or Deputy Chairman.”
5. No response having been received by 19 May 2026, Article 12(1)(a) was satisfied. I nevertheless considered that further information was required before a proper determination could be made, particularly because the figures appearing in the Claim Form were not readily reconcilable and the basis of the automatic unfair dismissal claim was unclear. In accordance with Article 12(2), a hearing was therefore fixed for 17 August 2026 (“the Hearing”).
6. The Respondent was notified of the Hearing. It did not apply for permission to participate and did not attend. I proceeded to hear the Claimant’s evidence and determine the claims on the available material. The Claims
7. The Claimant gave evidence consistently with the account set out in his Claim Form. He said that he met ‘Florin’, on behalf of the Respondent, on 4 March 2026 and agreed to work as a receptionist under a zero-hours arrangement carrying a minimum of 16.5 hours per week. The agreed rate was £14 per hour during March 2026, rising to £15 per hour from April 2026. The employment began on 5 March 2026 and ended on 9 April 2026.
8. The Claimant kept a record of his shifts. During March he worked 47.5 hours, comprising 7.5 hours on 5 March, 7.5 hours on 6 March, 8.5 hours on 12 March, 4 hours on 21 March, 4 hours on 22 March, 7 hours on 28 March and 9 hours on 29 March. During April he worked a further 21 hours, comprising 8.5 hours on 2 April, 4 hours on 4 April and 8.5 hours on 9 April. In total he worked 68.5 hours.
9. The Claimant submitted his March hours to the Respondent on 29 March and asked for a copy of his contract so that he could review and sign it. When neither the contract nor his wages arrived, he followed the matter up on 31 March and again on 7 April. He supplied the personal, social security and tax information requested of him, but no wages were paid, no written terms were provided and no payslips were issued. It was apparent from the documentary evidence produced by the Claimant at the hearing that the company had made promises about these things at various times, but had not kept them.
10. I accepted the Claimant’s evidence. His account was clear, was supported by the detailed chronology in the Claim Form and by the testimony and documentary evidence produced by him at the hearing. It was not contradicted by any evidence from the Respondent. Unpaid Wages

11. The 47.5 hours worked in March at £14 per hour generated gross wages of £665.00. The 21 hours worked in April at £15 per hour generated a further £315.00. The total gross remuneration earned was therefore £980.00.
12. I have assessed the claim by applying the agreed hourly rates to the hours which I find were worked. On that basis, the gross sum due was £980.00. No part of it was paid and the claim for unpaid wages succeeds in that amount. Holiday Pay
13. The Claimant's employment lasted from 5 March to 9 April 2026, a period of 36 days. Under Article 11(1)(a) of the Employment (Jersey) Law 2003 ("the Law"), the statutory annual entitlement was three weeks' paid leave. The proportion accrued during 36 days of employment was 36/365 of three weeks, or 0.296 of a week.
14. The agreed minimum working week was 16.5 hours. The accrued entitlement was therefore  $0.296 \times 16.5$ , namely 4.88 hours. The Claimant earned £980.00 for 68.5 hours, giving an average hourly rate of £14.31. Valuing the 4.88 accrued hours at that rate produces holiday pay of £69.85. No holiday had been taken and no payment in lieu was made when the employment ended. The claim for accrued but unpaid holiday pay therefore succeeds in the sum of £69.85. Automatic Unfair Dismissal
15. The Claim Form included a complaint of automatic unfair dismissal. Although I accept that the employment ended on 9 April 2026, the Claimant remained required to establish facts bringing the termination within one of the statutory categories of automatic unfair dismissal.
16. The evidence established that wages were not paid and that basic employment documentation was not supplied. It did not, however, establish that the employment ended for a reason protected by the automatic unfair dismissal provisions of the Law. The claim is therefore not made out and is dismissed. As an aside, I noted that the Claimant did not have sufficient service otherwise to bring a claim of unfair dismissal but that save for that, a claim for constructive unfair dismissal would have fallen for consideration on these facts. A Week's Pay
17. The compensation for failure to provide written terms and payslips is assessed by reference to a week's pay calculated in accordance with Schedule 1 to the Law. The Claimant's hours and remuneration varied and his employment lasted only 36 days, so there was no longer earnings history from which a conventional 12-week average could be drawn. I have therefore used the remuneration earned throughout the available period of employment.
18. The 36-day period was equivalent to 5.143 weeks. Dividing the total remuneration of £980.00 by 5.143 produces average weekly remuneration of £190.56. I accordingly assess a week's pay at £190.56 for the purposes of the two statutory compensation awards which follow. Failure to Provide Written Terms of Employment

19. Article 3(1) of the Law requires an employer to provide a written statement of the terms of employment within four weeks of the employment beginning. By Article 3(7), the obligation applies even where the employment lasts for less than four weeks. I find that no statement was provided at any time, despite the Claimant specifically requesting a contract on 29 and 31 March 2026.
20. I have had regard to the Tribunal's Guidance Notes on Compensation for No Payslips and No Contract. This was not a case in which a statement was merely defective or provided a little late. There was complete non-compliance, the Claimant's requests were ignored and no explanation has been offered by the Respondent. The absence of written terms also left the Claimant without a reliable written record of his minimum hours, rate of pay or payment arrangements when he was seeking wages which had not been paid. Against those matters, I take account of the short duration of the employment and the limited period for which the breach continued. Nevertheless, the Respondent has acted as though the statutory requirements did not exist.
21. Balancing those factors, I consider an award of three weeks' pay to be just and equitable. At £190.56 per week, the award is £571.67. Failure to Provide Payslips
22. Article 51 of the Law requires an employer to provide a written itemised pay statement at or before the time at which any payment of wages is made. I accept that no payslips were provided. Although no wages were in fact paid, the Respondent cannot rely upon its own failure to pay in order to avoid the obligation to provide the Claimant with an itemised record of the wages due and any deductions.
23. Applying the same published guidance, I take account of the complete failure to provide any pay statement, the absence of any explanation or evidence of compliant procedures, and the practical difficulty caused to the Claimant in establishing precisely what was due. I also take account of the short employment and the limited number of pay occasions involved. Equally it is necessary to observe once again that the Respondent has proceeded just as though the statutory requirements did not exist.
24. In all the circumstances, I consider an award of three weeks' pay to be just and equitable. At £190.56 per week, the award is £571.67.

## Conclusion

25. The claims were uncontested and, having heard the Claimant's evidence, I had sufficient information to determine them. The claims for unpaid wages, accrued but unpaid holiday pay, failure to provide written terms of employment and failure to provide payslips succeed. The claim for automatic unfair dismissal is dismissed.
26. The Respondent shall therefore pay the Claimant £1,049.85 by way of damages for unpaid wages and holiday pay and £1,143.34 by way of compensation for the failures to provide written terms and payslips. The total sum payable is £2,193.19.

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27. The Claimant is responsible for accounting for any social security contributions or income tax properly due on the £1,049.85 awarded by way of damages for remuneration and holiday pay. Summary of Award Head of Award £ Unpaid wages 980.00 Holiday pay 69.85 Failure to provide written terms 571.67 Failure to provide payslips 571.67 Total sum payable by Respondent to Claimant 2,193.19 Advocate Cyril Whelan MBE, Deputy Chairman Dated: 18 August 2026
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