EMPLOYMENT TRIBUNALS

Claimant: **Miss Z Ashraf**

Respondent: **Mrs L Fehintola**

Heard at: **Leeds** **On:** **26 May 2017 and 23 June 2017**

Before: **Employment Judge Bright (sitting alone)**

Representation
Claimant: Mr Ashraf, non-legal representative
Respondent: In person

JUDGMENT

The respondent breached the claimant's contract of employment and will pay to the claimant damages of £3,294.6.

The claimant is entitled to a redundancy payment of £720, which the respondent has failed to pay.

REASONS

The claim

1. By a claim form submitted on 14 March 2017 the claimant claimed damages for breach of contract, unpaid wages, unpaid holiday pay and payment of a statutory redundancy payment.

The issues

2. At the outset of the hearing it was agreed that the issues to be decided in the claim were:
   2.1. Was the claimant dismissed and, if so, when?
   2.2. What payments was the claimant contractually entitled to and did she receive them?
   2.3. What statutory wages was the claimant entitled to and did she receive them?
   2.4. Was the claimant entitled to payment for accrued but untaken holiday on termination and, if so, how much and was she paid?
   2.5. Was there a redundancy situation and, if so, did the claimant receive the

correct statutory redundancy payment?

2.6. Are any of the claimant's claims out of time and, if so, should the time limit be extended?

Submissions

3. Mrs Fehintola made oral submissions which I have considered with care but do not rehearse here in full. In essence, in the course of the hearing, it was submitted that:
   3.1. Much of what the claimant complains of occurred years ago and has already been dealt with.
   3.2. The complaints are fiction.
   3.3. The business was very small, so the claimant was expected to pay for her own DBS/CRB checks, training and uniform.
   3.4. If there was any mistake it was not deliberate.

4. Mr Ashraf, the claimant's brother, made oral submissions for the claimant, which I have considered with equal care but do not rehearse here in full. In essence, it was submitted that:
   4.1. The claimant was not aware of the three month time limit for employment tribunal claims and has had a lot of personal difficulties over the last few years. She only learned she could claim in the employment tribunal from a friend.
   4.2. The respondent has not provided the claimant with proper contracts and did not follow what the contracts said. The claimant has not been paid sick pay and was told she was not entitled to holiday because she did not work enough hours. She has had to pay for courses, DBS/CRB checks and a uniform, although she was required to have them for the job. The respondent told her she was not entitled to a redundancy payment, although she dismissed the claimant.
   4.3. The respondent has not paid the claimant the national minimum wage and, also, has not paid the claimant what the claimant is shown as having received on her wage slips.

Evidence

5. The claimant gave evidence on her own behalf orally at the outset of the hearing. The respondent also gave evidence on her own behalf, both orally and by a written statement dated 22 May 2017.

6. The respondent also submitted a written statement from Joanne O'Connor, a former employee, dated 21 May 2017. I explained that, as Ms O'Connor was not present to have her evidence challenged in cross examination, I would attach such weight as I saw fit to that evidence.

7. The parties did not present an agreed file of documents. Rather, the claimant presented a numbered file, while the respondent's documents were loose-leaf and both parties produced further documents throughout the course of the hearing.

Facts

8. I made the following findings of fact on the evidence. Where there was a conflict of evidence I have resolved it, on the balance of probabilities, in

accordance with the following findings:

9. The claimant started working for the respondent on 20 August 2008 as a care assistant. The respondent ran a small nursing home which, by the end of the claimant's employment, cared for only two residents.

10. The claimant's claims are mainly to be determined, in part or in whole, by the contractual arrangement between her and the respondent. I found it extremely difficult to establish what the terms of the claimant's contract of employment were. As I explained to the parties, the terms of a contract of employment are not necessarily all written down, as some may be agreed verbally or implied.

11. The difficulty I encountered was mainly because the documents provided by the parties were few and sketchy. The documents purporting to set out the claimant's terms and conditions were brief, lacking in detail and omitted important information, including much of that required by section 1 of the Employment Rights Act 1996 ("ERA"). The contracts were also expressed to be for limited terms, so that the vast majority of the claimant's employment was not covered by a written document.

12. It is clear to me from all of the evidence that that fault lies with the respondent. The respondent apparently kept very little in the way of employment records and what was kept was poorly recorded, unclear and of very limited use. The claimant provided copies of such terms and conditions of employment as existed and another document purporting to be a contract. The claimant said that she had continued asking for contracts but did not receive them. Although the contractual documentation was for a fixed term, the claimant continued working long after the expiry of the fixed terms and throughout the period August 2008 to the commencement of her maternity leave in September 2016. I find in these circumstances that the claimant's employment continued throughout on the same terms as the fixed term contracts, except in respect of the fixed term.

13. I found the claimant to be a credible witness who, although she clearly knew that she had been underpaid more generally, was only seeking those items which she was able to remember or had records for. In addition, although she claimed some items on the assumption that an employer ought to pay for them, rather than in reliance on any express or implied contractual term, she readily accepted that she may have made errors in assessing what she was entitled to or what was owed in that regard.

14. I have made the following findings of fact with reference to the documentary evidence, where such existed. I have also taken account in particular of the claimant's bank statements, which I considered to be a more reliable record of the amounts received from the respondent than her payslips.

Contracted hours

15. I accepted the claimant's evidence, corroborated by her original terms and conditions of employment at page 8 of her file, that she started working 16 hours per week, but that this later reduced to 14 and from 2015 she did a basic 12.5 hours per week with some overtime. Mrs Fehintola did not appear to appreciate that a document entitled 'terms and conditions of employment'

could be treated as setting out the terms of a contract of employment. She asked me to refer, instead, to copies of rotas which she handed up on the second day of the hearing, which had not previously been seen by the claimant, which appeared to show different figures for the claimant's total hours. However, those documents did not tally with the terms and condition documents nor, indeed, did the figure totals written on the pages tally with the hours recorded on the rotas. Mr Ashraf submitted that the totals had been written in at a later date to support the respondent's case and, I find, that appears to have been the case given the inconsistencies and the fact that the break down of the hours on the rotas in fact accords with the claimant's evidence. I referred also to the 'staff record sheet' from 28 September 2015 (which Mrs Fehintola calls the 'contract'), which shows 10.5 hours per week and the contract at page 10 of the claimant's bundle, dated 16 May 2016, which records 10 ½ hours per week, with 1 week's holiday and 1 week's notice. However, I preferred the claimant's evidence, supported by the rotas and her own records, as to her real contracted hours during her employment and the hours she worked. That information is set out in the statement of loss sent to the tribunal on 8 June 2017.

16. Mrs Fehintola has included in her documents a letter from Account4it accountancy services, explaining that they have been the authorized agent for the respondent in respect of accountancy and bookkeeping since August 2013 and also provided the payroll service. That letter supports certain of the respondent's arguments. However, given the state of the respondent's record keeping, I cannot be confident that she provided Account4it with the correct information or records and no one from Account4it was present at the hearing to explain their conclusions and their letter was not put to the claimant or drawn to my attention during the hearing. I have discovered it only on re-reading the documents during my deliberations. I therefore do not consider it appropriate to attach much weight to that letter.

17. I also did not attach much weight to the written statement of Ms O'Connor dated 21 May 2017 as she was not present to have her evidence challenged on cross examination and it was not clear to me how Ms O'Connor would have had access to some of the facts she asserts regarding the claimant's contractual terms.

18. Aside from those generic conclusions, I make the following findings of fact in relation to each of the items the claimant claims:

Wages for time spent on staff training and in meetings

19. The claimant says she attended compulsory training and meetings over the course of January 2009 to July 2016 amounting to 22.5 hours. The respondent does not dispute that she did not pay the claimant wages for attending training and meetings, although she disputes that it was a term of the contract that the claimant would be paid and disputes the hours and amount. The respondent says there were very few meetings but, in the absence of any documentation from the respondent recording the training courses or meetings attended, I accepted the claimant's evidence as to the number of hours attended.

20. It was not disputed that the training and meetings were attended in the course of the claimant's work, took place around working hours and that she was

required to attend them. I have not seen any written term referring specifically to payment for those items, but I consider that the absence of any specific exclusion of payment for those items implies, in all the circumstances, that payment for attending training and meetings was a term of the contract of employment. I therefore conclude that the respondent has breached the claimant's contract of employment by failing to pay her wages for 22.5 hours' attendance at training and meetings. I accepted the claimant's evidence that the last occasion on which she was not paid was in around January 2016. In the absence of any alternative calculations or records from the respondent, I accepted the claimant's calculation that she would have received a total of £143.19 in wages for those meetings/training, based on the rate of the national minimum wage in force at the time the meetings/trainings occurred.

Training costs

21. It is agreed that the claimant paid her own course fees to attend mandatory training courses, including 'principles of care' and 'basic life support', which required renewal every year by law. I accepted the claimant's evidence that this amounted to £300. I accepted her evidence, which was not disputed, that she only attended in 2009 but did not attend thereafter because she could not afford to pay for the courses. The respondent did not dispute that the training was mandatory but I find, did not offer to pay for the training for the claimant or, apparently, have concerns that a staff member's training record was not compliant with the statutory requirements.

22. Although, as observed in the letter from Account4it, employers are under no automatic obligation to pay for training, in the circumstances, in particular the mandatory nature of this training, I consider that it was an implied term of the claimant's contract of employment that those fees would be paid or reimbursed by the respondent.

23. I find that the respondent breached the claimant's contract by failing to reimburse her £300 for course fees.

DBS/CRB checks

24. The claimant says the respondent required her to pay £50 on two occasions for DBS/CRB checks in 2009 and November 2015 without reimbursing her. Again, there was no written evidence as to the relevant contractual term. Although Ms O'Connor's statement refers to it being policy that employees pay and records that the claimant was told that at interview, Mrs Fehintola accepted that she gave the claimant some money towards the cost of the checks. I preferred the claimant's evidence that it was a term of the contract that the respondent pay. There was no other evidence of any policy to the contrary, no written document or other examples of employees paying for such checks and there were no notes of the interview or other record of the claimant having been told that she would be required to pay.

25. In addition, Mrs Fehintola was plainly quite confused about payment for DBS/CRB checks. At the hearing she relied on a website print out from a body called Health for All (Leeds). That document refers to fees for "paid members of staff" of £26 for a standard disclosure and no charge for volunteers. Mrs Fehintola appeared to be arguing that this meant that members of staff were required to pay their own DBS/CRB checks, while the

fees for a volunteer would be paid by the employer. I find that it is very clear from the plain meaning of that website however, that all it records is that the DBS/CRB fee for a check on an employee is £26, while there is no fee for a check on a volunteer. It does not say anything about who pays the fee.

26. I consider that, in a business where DBS/CRB checks are mandatory, it is normal practice for the employer to pay. I therefore conclude that it was an implied term of the contract that the respondent would pay for or reimburse the claimant for DBS/CRB checks. The failure to do so was therefore a breach of her contract of employment. The respondent does not dispute the cost of the checks.

Uniform

27. It was agreed that the claimant paid for her own uniform. I accepted her evidence that she purchased a uniform twice, once in 2009 and once in 2014 and that the total cost was £40.

28. Mrs Fehintola was adamant that the claimant was told at interview that she would be required to pay for her own uniform and that was supported, albeit with little weight, by the statement of Ms O'Connor. Given that employees are frequently required to purchase their own uniforms and, in the absence of evidence from the claimant that she was expressly told that the respondent would purchase the uniform or reimburse her, I find that the claimant has not shown that it was a term of her contract that the respondent would pay for or reimburse her for payment of the uniforms.

Overtime

29. The claimant says she was required to do overtime, which consisted of arriving at work 5 or 10 minutes before her contractual start time each day to get changed into her uniform and staying 15 or 20 minutes later than her contractual finish time of 7pm. She says she did not receive any wages for that overtime, but was entitled to do so. The respondent says that there was no compulsory overtime, but accepts that the claimant was asked to attend earlier in the morning in order to get changed into her uniform in time for the start of her shift.

30. On the basis of the evidence before me it was not clear whether the time spent at the start and end of the day was compulsory overtime or merely the claimant arriving in time for the start of her shift and leaving voluntarily some time after her shift had finished. I find that the claimant has not shown that it was a term of her contract of employment that she be paid for compulsory overtime of 2.5 hours per week.

Holiday

31. I accepted the claimant's evidence that the respondent told her at the outset that she was not working enough hours to be entitled to paid holiday and that her holiday entitlement would be one week per year. She accepted however that she was paid for around 6 weeks' holiday in the course of her employment, approximately one week's paid leave per year. In the absence of any proper records recording the claimant's holiday entitlement, holiday taken or what payment was made for holidays, I find I am unable to properly

calculate what the claimant's entitlement to paid holiday was in the years in question or whether or to what extent she was underpaid for that holiday. In those circumstances, I find that the claimant has not proved her claim for payment for holiday.

Sick pay

32. The claimant accepted that the respondent told her when she started work that she would not be entitled to any sick pay because she did not work enough hours. I find, on that basis, that there was no contractual entitlement to sick pay. See below for my conclusions in relation to statutory sick pay.

National minimum wage

33. I accepted the claimant's evidence that she was told she would be paid the national minimum wage and that, when she raised concerns with Mrs Fehintola about her pay, she was told that she was receiving the correct pay. Mrs Fehintola asserted at the hearing that the claimant did receive the correct national minimum wage for the hours she worked from 2008 to 2016. However, I accepted the claimant's evidence that, on subsequently discovering what the rate of the national minimum wage was in the years in question, she now realizes she was underpaid. I find, from the course of interaction between the parties, that there was an express agreement that she would be paid the national minimum wage.

34. The claimant was plainly entitled to receive the national minimum wage, in that she worked under a contract of employment and did not fall within any of the exceptions. Section 28 NMWA reverses the burden of proof, in that an employment tribunal must presume that a worker has been paid at a rate less than the NMW unless the employer can show otherwise. In this case the respondent's records are so hopelessly inadequate that her mere verbal assertion that the claimant was paid correctly does not, in my view, come close to contradicting the evidence of the claimant's bank statements and wage slips which, so far as I can see, support her assertion that she was not paid the correct rate of national minimum wage from 2009 to 2014.

35. In addition, the bank statements show that her payslips were not correct and that she was, in fact, in reality frequently paid less than she had been told she would be paid. The amounts paid into her bank account were frequently less than the net amount shown as paid on her payslips.

Statutory redundancy payment

36. The respondent's care home closed in December 2016. Mrs Fehintola insisted that she closed the home and that it was not 'closed down'. However, it was not disputed that the Care Quality Commission had found the home inadequate and that the respondent's license was to be revoked, resulting in the withdrawal of the two residents and closure of the home.

37. At the time of the closure, the claimant was on maternity leave. Mrs Fehintola asserted at the hearing that the claimant had left to have a baby and that she was not therefore redundant when the home closed and was not entitled to a redundancy payment. Mrs Fehintola appears to have been confused about the status of an employee on maternity leave. She also appears to have

relied on the fixed terms specified in the claimant's contracts when it suited her, but not relied on them at other times. I find from the history of the claimant's employment that she was employed without a break from 2008 to 2016 irrespective of the purported fixed terms set out in the sporadic written agreements. She was therefore a permanent member of staff. In particular, although her final contract dated 16 May 2016 purported to be for a fixed term of 12 weeks, it is clear that the claimant continued to work up to the commencement of her maternity leave on 2 September 2016. It is clear from the documentation available (in particular the respondent's letter dated 20 February 2017) and from the interaction between the claimant and respondent that the claimant did not resign her position and was still employed by the respondent at the time of the closure. The claimant asserts, and I accept, that her employment was terminated when Mrs Fehintola informed her of the closure of the home on 20 December 2016.

38. Despite writing to the respondent on 13 January 2017 requesting a redundancy payment, the claimant did not receive any redundancy payment. Mrs Fehintola appears, in her letter dated 20 February 2017, to have agreed to pay the claimant, although she did not concede that there was a redundancy. However, it was not disputed that the respondent has not made any payment to the claimant in respect of redundancy and told the claimant instead to contact the government's redundancy payment service.

Notice

39. When Mrs Fehintola informed the claimant that the home was closing on 20 December 2016 she did not give the claimant any notice of termination of her employment, nor was the claimant paid in lieu of any notice, as she was absent on maternity leave at the time of the closure.

Time limits

40. When questioned about the historic nature of some of her claims against the respondent the claimant explained, and I accepted, that she did not know she had any recourse for her issues with the respondent. The claimant presented as someone who was not assertive and relied on her brother for support. I accepted that she had endured a difficult set of family circumstances over recent years and did not understand her employment rights or that she could enforce them. It was only when she mentioned the closure of the home in December 2016 to a friend and they told her she should receive a redundancy payment that she contacted ACAS and learned that she had rights which could be enforced.

The law

41. I have relied mainly on the Employment Tribunals (Extension of Jurisdiction) Order 1994 in relation to the claimant's breach of contract claims.

42. I have also referred to the National Minimum Wage Act 1998 ("the NMWA") and Regulations 2015 ("the NMWR"), in particular section 17 of the NMWA for assistance in calculating the amount of arrears owed to the claimant.

43. In relation to the claim for a redundancy payment, I have relied on section 139 of the Employment Rights Act ("ERA") for the definition of a redundancy

situation: "an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) The fact that his employer has ceased or intends to cease –
(i) To carry on the business for the purposes of which the employee was employed by him…

44. I have also relied on section 135 ERA in relation to the right to a redundancy payment and section 162 ERA regarding the calculation of the amount of the redundancy payment.

45. I have also referred to the provisions on statutory sick pay and the Working Time Regulations 1998 in relation to the claims for sick pay and holiday.

46. I have, on occasion, fallen back on the general requirement that a claimant must prove their claim. With the exception of the provisions of the NMWA which require the respondent to prove it has paid the correct rate, it is for the employee bringing the claim to show that the money is owed.

Determination of the issues

47. Mrs Fehintola pleaded repeatedly that her objective in running the care home was to look after people. However, I find there was an abject failure to look after the employment rights of the claimant. Mrs Fehintola apparently did not know what was required by law of her as an employer and did not seek advice as to what was required. While she had attempted on occasion to draw up contractual terms, it was clear that they frequently did not reflect the reality of the claimant's employment, and Mrs Fehintola appears to have dictated the terms of that employment at will because the claimant was unable and unwilling, owing to her personal circumstances, to object.

48. I find it surprising that a person could become an employer with so little knowledge of or regard for the legal obligations inherent in that role. Mrs Fehintola offered a variety of excuses, including an unspecified health condition, forgetfulness, the size of the business, "brain fog" and that she had been "doing it like that for 24 years". I did not accept that those factors, if true, excused her failure to comply with employment law or to keep adequate records.

49. I accepted, in the main, the claimant's calculations set out in her schedule of loss sent to the tribunal on 8 June 2017. Where I have disagreed with those calculations, I set out my own calculations below.

Wages for time spent on staff training and in meetings

50. I find, above, that the claimant has shown that she was entitled to receive £143.19 for attending meetings and training as a term of her contract. The respondent breached her contract by failing to pay her those wages and that breach was outstanding at termination of her employment.

51. I therefore find that the respondent breached her contract and she is entitled to damages of **£143.19**.

Training costs

52. I find above that the claimant has shown that it was a term of her contract that the respondent would pay for or reimburse her for payment of fees for mandatory training courses amounting to £300 during her employment. I find that the respondent breached that term and that the breach was outstanding on termination of her employment. The claimant is therefore entitled to damages of **£300**.

CRB/DBS checks

53. I find above that it was a term of the claimant's contract of employment that the respondent would pay for or reimburse her for payment of fees for DBS/CRB checks amounting to £50. I find that the respondent breached that term and that the breach was outstanding on termination of her employment. The claimant is therefore entitled to damages of **£50**.

Uniform

54. I find that the claimant has not shown that it was a term of her contract that the respondent would pay for or reimburse her for payment of the uniforms. That part of her claim therefore fails.

Overtime

55. I find above, that the claimant's arrival at work before her shift and leaving after her shift did not constitute compulsory overtime and that she has not shown that she was entitled to payment for that time under her contract of employment. That part of her claim therefore fails.

Holiday

56. Unfortunately for the claimant, in the absence of any proper records recording the claimant's holiday entitlement, holiday taken or what payment was made for holidays, I find I am unable to properly calculate what the claimant's entitlement to paid holiday was in the years in question or whether or to what extent she was underpaid for that holiday. In those circumstances, the burden of proof being on the claimant to prove her claim, I find that the claimant has not proved her claim for holiday pay. That part of the claim therefore fails.

Sick pay

57. I find, from the documentation available, that there was no contractual entitlement to sick pay. Although there may have been an entitlement to statutory sick pay, if the claimant's average weekly earnings were not below the lower earnings limit for national insurance contributions, the employment tribunal does not have jurisdiction to consider a claim that non-payment of statutory sick pay amounts to an unlawful deduction from wages and any dispute over entitlement is to be adjudicated by the HMRC Statutory Payments Dispute Team. I do not therefore have the power to determine whether or not the claimant was underpaid statutory sick pay. That part of the claim fails.

National minimum wage

58. I accepted the claimant's evidence that she started working 16 hours per week, but that this later reduced to 14 and from 2015 she did a basic 12.5 hours per week with some overtime. I find above that it was an express term of the claimant's contract that she was entitled to the national minimum wage and that, for the period 2009 to 2014 she did not receive it. The claim form does not identify any claim for unauthorized deductions from wages, but does identify a claim for breach of contract. I therefore conclude that the claimant's claim for underpayment of the national minimum wage is brought as a claim for damages for breach of contract, although it is not specifically itemized as such in the ET1. It was identified in her original schedule of loss and, following no objection from the respondent, the claim was amended on the first day of the hearing to include that claim for breach of contract. That claim was outstanding on termination of employment and the claimant's claim was therefore brought in time.

59. A worker who has not been paid the national minimum wage will be deemed under her contract of employment to the higher of: the difference between what she is paid and the NMW or the NMW arrears adjusted to take account of any increase in the NMW rate at the time the arrears are determined.

60. I have referred to the claimant's records of her wages and hours set out in her statement of loss dated 8 June 2016, although her calculations of the amounts owed are not correct. I have applied the formula set out in Section 17 NMWA to the contracted hours she identifies. I have not included any calculation for the hours identified as 'compulsory hours', given my findings about overtime above.

61. Applying the formula in section 17 NMWA, I calculate that the arrears of pay should be adjusted to take account of the increase in the NMW rate at the time the arrears are determined (today). I have therefore divided the amount of the underpayment by the NMW rate applicable at the time of the underpayment. I have then multiplied this by the NMW rate applicable today.

62. Therefore:

    2009

    16 hours per week = 69 hours per month. The claimant was underpaid by £0.07 per hour x 69 = £4.83 underpaid per month. Divided by the NMW rate applicable in 2009 (£5.80 per hour) = 0.83 x NMW rate applicable today (£7.50 per hour) = £6.23 per month. £6.23 x 12 months = £74.76 underpaid for 2009.

    2010

    16 hours per week = 69 hours per month. The claimant was underpaid by £0.13 per hour x 69 = £8.97 underpaid per month. Divided by the NMW rate applicable in 2010 (£5.93 per hour) = 1.51 x NMW rate applicable today (£7.50 per hour) = £11.33 per month. £11.33 x 12 months = £135.96 underpaid for 2010.

    2011

14 hours per week = 60.67 hours per month. The claimant was underpaid by £0.14 per hour x 60.67 = £8.49 underpaid per month. Divided by the NMW rate applicable in 2011 (£6.08 per hour) = 1.40 x NMW rate applicable today (£7.50 per hour) = £10.50 per month. £10.50 x 12 months = £126.00 underpaid for 2010.

2012

14 hours per week = 60.67 hours per month. The claimant was underpaid by £0.26 per hour x 60.67 = £15.77 underpaid per month. Divided by the NMW rate applicable in 2012 (£6.19 per hour) = 2.55 x NMW rate applicable today (£7.50 per hour) = £19.13 per month. £19.13 x 12 months = £229.56 underpaid for 2012.

2013

14 hours per week = 60.67 hours per month. The claimant was underpaid by £0.38 per hour x 60.67 = £23.05 underpaid per month. Divided by the NMW rate applicable in 2013 (£6.31 per hour) = 3.65 x NMW rate applicable today (£7.50 per hour) = £27.38 per month. £27.38 x 12 months = £328.56 underpaid for 2013.

2014

14 hours per week = 60.67 hours per month. The claimant was underpaid by £0.57 per hour x 60.67 = £34.58 underpaid per month. Divided by the NMW rate applicable in 2014 (£6.50 per hour) = 5.32 x NMW rate applicable today (£7.50 per hour) = £39.90 per month. £39.90 x 12 months = £478.80 underpaid for 2014.

63. The total underpayment and therefore the amount of damages payable to the claimant is therefore: £74.76 + £135.96 + £126.00 + £229.56 + £328.56 + 478.80 = **£1,373.64**.

Short pay

64. I accepted the claimant's evidence that she was underpaid by the amounts shown in the schedule of loss, which was corroborated by a comparison of her wage slips and her bank statements. As above, in relation to payment of the national minimum wage, I accept that the claim for underpayment was made as a breach of contract claim, rather than unauthorized deduction from wages, and was therefore outstanding on termination of employment. I consider that it was an implied term of the claimant's contract that the respondent would pay into her bank account the net amounts shown on her wage slips. The respondent's failure to do so amounted to a breach of contract which was outstanding on termination of the claimant's employment and the claimant is therefore entitled to damages of **£707.77**.

Notice

65. The claimant did not receive any notice of termination or payment in lieu of notice. Although on maternity leave, she was entitled to payment for her notice at her normal rate of pay. Having worked for the respondent for 8 full years, she was entitled to 8 weeks' notice under section 86 ERA. Working

12.5 hours per week in 2016 she was therefore entitled to 8 x 12.5 x her hourly rate of £7.20 = £720. She did not pay tax or national insurance. The claimant is therefore entitled to damages for breach of contract in respect of notice of **£720**.

Redundancy payment

66. I find that there was a redundancy situation as defined in section 139 ERA, caused by the closure of the respondent's home. The claimant was therefore entitled to a redundancy payment under section 135 ERA.

67. The claimant was aged 37 at the time of her redundancy and had 8 years' continuous service. Her statutory redundancy entitlement was therefore, by section 162 ERA, £7.20 x 12.5 = £90 per week x 1 x 8 weeks = **£720**.

Employment Judge Bright

Date: 27 July 2017