THE EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr E Fernandes Guimaraes **v** **Bounce Back Foundation**

Heard at: London Central **On**: 6-8 November 2017

Before: Employment Judge Segal QC
Ms T Breslin
Ms G Tipton

Representation:

Claimant: In person
Respondents: Ms O Dobbie, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

1. The Claimant's claims of discrimination on grounds of race/nationality, and of breach of contract are dismissed.

2. The Claimant's claim for unpaid holiday pay is upheld in part. We make an award of £804.18 in this regard.

3. The Claimant's claim for unpaid wages is upheld. We make an award of £1,045.43 in this regard.

REASONS

1. The Claimant represented himself. The Respondent was represented by Ms Dobbie of Counsel. The Tribunal is grateful to both of them for their assistance throughout this hearing.

Evidence

2. The Tribunal heard evidence from the Claimant; and for the Respondent from (1) Ms Findlater, CEO; (2) Mrs Geddes, Treasurer and Trustee; and (3) Ms Stevens, a part-time contractor. The Tribunal had two bundles of documents of over 1,000 pages.

Issues

3. The issues were agreed at the outset, by reference to a Respondent's List of Issues (taken largely from a similar document prepared for an earlier PH) and to a document prepared by the Claimant for that PH. To some extent the discrimination issues were clarified during the hearing. What we set out here are the issues (on liability) in their final form, as summarised by us:

    a. Discrimination:

        i. Did the Respondent fail to employ (as an employee, on PAYE) the Claimant during the time he worked for it because of his nationality?

        ii. Did the Respondent, acting through Mrs Geddes and/or Ms Findlater, treat the Claimant less favourably because of his nationality on about 22 October 2014 when the Claimant made it clear he would press his entitlement to be employed on PAYE, by the way they responded orally to him, by berating him or offering to bribe him to be quiet or to leave quietly or by suggesting he give misleading information to HMRC?

        iii. Is the Claimant in time to complain about either of the 2 matters set out above?

        There was a specific complaint that the Claimant was not promoted by another organisation run by Ms Findlater in 2007. That cannot be a complaint against the Respondent in all events.

    b. Wages claim – Did the Respondent fail to pay the Claimant wages due for the period 20 October to 3 November 2014?

c. Holiday pay – Does the Respondent owe the Claimant for 2 weeks' untaken holiday, and if so in what amount?

d. Breach of contract – Is the Claimant entitled to a payment in lieu of notice?

The Facts

4. We start by mentioning the important feature of the background to this hearing: that this tribunal (EJ Glennie, sitting alone) has determined as a preliminary issue whether the Claimant had employed status enabling him to bring a claim of unfair dismissal. In rejecting his case that he was an employee, the tribunal, in two judgments (the matter having been remitted after an appeal to the EAT) made certain findings of fact by which we are bound.

5. EJ Glennie expressly limited his factual findings to those necessary to the determination of the issue before him, not wanting to bind the full merits tribunal more than was necessary. However, some of those findings are material to our determinations. They are (in brief summary):

   a. The Respondent (and Ms Findlater in previous years) believed throughout the time the Claimant worked for them, that he was not an employee in respect of whom they were required to pay tax and national insurance; that is why they did not make those deductions or pay such sums to HMRC.

   b. The Claimant first raised the issue of his "employment" status in February 2014.

   c. At the time of the Claimant's resignation on 3 November 2014, he was being paid £2,200 per month gross.

6. The Claimant made it clear, in respectful terms, that he considered that EJ Glennie had erred in reaching those conclusions; but he fairly accepted that we could not go behind them or re-litigate them. However, understandably, sometimes part of the evidence or argument advanced by the Claimant remained premised on facts which were contradicted by EJ Glennie's conclusions.

7. The Claimant is Brazilian (though also has Italian citizenship). In 2007 he was doing a masters degree which concluded in the summer of 2008 and which involved him writing a dissertation in his final year. He has higher-level educational and professional legal qualifications obtained in Sao Paolo, Brazil.

8. In June 2007 his CV was passed to Ms Findlater, who was looking for someone to take over some or all of the tasks performed by an employee of a design business owned by her, Ricochet. She offered him a flexible internship with "minimal commitment on either side"; to which the Claimant responded "perfect".

9. The Claimant invoiced Richochet monthly, starting his engagement on or about 20 June 2007. His duties were administrative and over the years included acting as a PA to Ms Findlater and dealing with payroll and payments to suppliers – generally involving more and more "bookkeeping".

10. The reason the Claimant was engaged as a contractor and not an employee in 2007 was that such an arrangement suited both parties; in particular, from the Claimant's perspective, it afforded the flexibility he needed whilst he completed his masters degree.

11. The Claimant, throughout the relevant period, did not pay tax or NI; and neither Ms Findlater, nor any company of hers including the Respondent did so on his behalf.

12. Not long after the Claimant began working, Ricochet took on Vicky Sumners as a client-facing Account Manager, after advertising for the position in the press. The Claimant did not apply for that position and did not have all the skills to fulfil it, in particular client-facing experience and graphic design skills. The reason the Claimant was not offered that role was because he did not have all the requisite skills and experience and because he did not apply for it.

13. Ms Findlater and the Claimant developed a good and friendly relationship over the years. Although the Claimant looks back on that relationship now believing that Ms Findlater's apparent affection was partly duplicitous, he acknowledged that if he had been asked during the period 2007-2011 he would have said that they were friends.

14. In 2011 the Respondent organisation was founded, as a charity, to train and employ ex-offenders. The transition, so far as the Claimant was concerned, was not instant or complete; he was, by the end of his time with the organisation, working most of his time for it, but he continued to do some work for Ms Findlater personally and for the successor organisation to Ricochet Ltd, Yellow Integrity Ltd

15. Over the years the Claimant's remuneration increased from £1,000 per month to £2,200 a month. EJ Glennie has found (and we would have reached the same conclusion) that, so far as the parties were concerned that was paid as a gross sum, without deductions for tax and national insurance.

16. By reason of their good relationship, the Claimant spent a long period staying rent-free at properties owned by Ms Findlater. The Claimant suggested

there was some benefit conferred by him in doing so in his written evidence (providing security), but in oral evidence seemed to accept that it was – at least in the main – a benefit conferred on himself, though commented that it was perhaps conferred in lieu of a greater level of remuneration.

17. As to that, by reference to what others engaged by the Respondent were earning (see below), by reference to our collective judicial knowledge of what those engaged by charitable organisations might earn, and in reliance on the Claimant's own evidence (in the context of his resigning when he had no alternative job to go to) that he had been earning a "good salary" even by London standards – we find at the rate of £2,200 gross a month (£26,400 gross p.a.), the Claimant was being paid a predictable remuneration and one in line with other staff, given his role as something akin to an office manager of a small organisation. We note that if the Claimant were to have been paid at that rate after deductions for tax and national insurance, his gross salary would equate to around over £36,000.

18. We record the details of other staff who worked for the Respondent:-

    a. V Roffey, white British, full-time COO: £35,000 p.a.

    b. J Parkes, white British, Case Manager: £27,000 p.a.

    c. Ian Dinning, white British, Trainer: £30,000 p.a.

    d. M Coyle, white British, Trainer: £30,000 p.a.

    e. W Ghebedhin, Eritrean, Trainer: £30,000 p.a.

    f. Seraphina Forbes, Pakistani/British, Commercial Director: £45,000 p.a.

    g. G Stevens, white British; engaged roughly one day a week and paid on presentation of invoices.

    h. C Pakey, white British – engaged part-time, initially as a contractor and then (via another charity's PAYE system) as an employee. She brought a claim, which was settled, against the Respondent, alleging (as does the Claimant) that she should have had tax and NI paid on her behalf by the Respondent during the first part of her engagement and that she was dismissed when she pressed that point.

19. The Trainers work was mainly based in the prison(s). The roles of Mr Roffey and Ms Forbes were much more senior to that of the Claimant. The role of Mr Parkes was perhaps a little more demanding in terms of responsibility, etc., but was somewhat similar in status to the role of the Claimant.

20. On 18 February 2014 the Claimant asked Ms Findlater if he could "standardise" his hours to align with those of other staff. He says he meant by that working a regular 40 hour week finishing at 5 or 5:30pm rather than a 42.5 hour week finishing at 6pm. Ms Findlater interpreted the request as being rather that he wanted to work regular 40 hour weeks as opposed to the more flexible hours he had been working to date (albeit equating to roughly that amount in total). She emailed him on 19/2/14 saying she was surprised at the request and disappointed he had made it at a difficult time for the Respondent (which was experiencing severe cashflow difficulties). She continued *"So, let's formalise it but on this basis we will also put you in line with number of holiday days .. we'll also have to talk about how you invoice us in the future and how we might standardise your tax."* She concluded that they would discuss with the company accountant *"the best way to go forward with invoicing"*. At the time (and for some time previously) the Claimant had stopped submitting invoices to the Respondent.

21. The Claimant responded shortly afterwards, complaining at the implication he worked other than long hours or that he took more holidays and without consent than other staff. He continued *"Do you want me to start invoicing now? I don't understand it. … I'm not self-employed, or a consultant."* He concluded *"I really like you Fran and respect you so much. I just wanted to be treated with a bit of consideration."*

22. The two met almost immediately afterwards. Ms Findlater began discussing the issues raised. After a short time, the Claimant, he accepts, became upset and the meeting was terminated. Ms Findlater, by that time, had some concerns about the Claimant's performance in the context of a fast-growing business; she had intended to raise those with him, having discussed that with Mrs Geddes; however, she did not do so on this occasion because of the Claimant's emotional state. Following the meeting she emailed Mrs Geddes *"Elvis wept, I gave in"* – to which the reply was *" … Don't worry. We just have to give him clear direction/less to do …"*.

23. At some points during 2014, the Claimant alleges that:

    a. Ms Stevens asked him *"Are you legal in this country?"*.

    The Claimant does not assert this was a discriminatory comment, but says it evidences the atmosphere of discrimination engendered by the Respondent treating him differently because of his nationality as regards his employment status. Ms Stevens denied making the comment in evidence and stated that she was not aware of the Claimant's employment status, which latter evidence we accept. We cannot be sure whether some comment or question was made, though we are rather doubtful; if it was, we are confident it was innocent and does not demonstrate what the Claimant contends.

b. Mr Dinning asked him *"Are you on the black market?"*. The Respondent tried to secure Mr Dinning's attendance to give evidence, but could not. We thus have the Claimant's unchallenged evidence, which was to the same effect as to its significance as with the alleged question of Ms Stevens. Assuming that some such comment was made, we again do not consider it demonstrates what the Claimant contends.

24. On 21 May 2014 a particular issue arose. The Claimant had been asked not to let staff know the details of remuneration paid to other staff and the Claimant had in error given one member of staff an invoice relating to another – this came to light and the Claimant was, that day *"lying down at home, incredibly stressed"*. Ms Findlater emailed Mrs Geddes: *"… this could be our exit strategy – in fact terrible though it is if we add up this with the other things he's done along these lines we have a good excuse"*. It is clear and Ms Findlater accepted that by this time the Respondent was looking to dispense with the Claimant's services if that could be achieved in a way acceptable to her. The Respondent did not in fact pursue that course. The Claimant says the email shows she and Mrs Geddes were plotting against him because by then they knew he might cause them a problem with HMRC if he raised the issue of his employment status with HMRC. The Respondent answers that it had cause to terminate his engagement, but that Ms Findlater could not bring herself to do that.

25. The Respondent's explanation seems more consistent with the facts. We repeat, 6 months went by and performance issues had not even been raised in any substantive way with the Claimant before he resigned. Also, EJ Glennie found that the Respondent did not believe it ought to have been treating the Claimant as an employee and, therefore, the premise that it had great concern about HMRC taking an interest in that issue is unsound.

26. The Claimant mounted, generally, an attack on Ms Findlater's credibility, and in particular as to her tendency, as he saw it, to discriminate against him on grounds of his nationality. We address the documents he relied on, some of which (where indicated) he only read after he had resigned, having emailed himself a number of emails, etc., which he read later.

a. On 14/3/08 a friend of Ms Findlater's noted that he had texted the Claimant about how long he would be staying at the property belonging to Ms Findlater where the Claimant was living; the Claimant was still unsure about the dates; Ms Findlater wrote to her friend *"He's Brazilian for god's sake!"*. This was an email the Claimant came across after resigning. We accept Ms Findlater's evidence that she was meaning no more than that her friend should have made his text clearer given that the Claimant was not a native English speaker and in 2008 was still not entirely fluent in English.

b. On 14/10/10 Ms Findlater told staff, once Ricochet had become insolvent and its business taken over substantially by Yellow

Integrity, to tell callers that Ricochet no longer operated from the address and that they *"don't know anything about them – I suggest you contact their accountants"* – the email subject header is *"IF THEY BELIEVE THIS THEY'LL BELIEVE ANYTHING!!"*. This was strictly to ask staff to dissemble and thus, applying a high moral standard, reprehensible. However, in the context and (we accept) acting in part on professional advice, we are not going to pretend to a greater distaste than we feel: it was inappropriate; it was (unfortunately) an all too common approach to adopt in the circumstances; it was not a dreadful act.

c. On 19/4/11 Ms Findlater wrote to her Bank Manager, another friend an email containing the line *"Hope you like my Brazilian manservant (he's not great at paperwork, but very charming!)"*. This was also an email the Claimant came across after resigning. We accept Ms Findlater's evidence that she was jokingly repeating back to her friend his own description of the Claimant which he had used to suggest humorously that she had the Claimant (and others) as her "toyboys" (the Claimant references the same joke in another context in a letter he wrote in March 2013). However, we comment that it was an inappropriate way to refer to the Claimant and that the sentence as a whole has a patronising tone to it which is unfortunate.

d. On 31/5/13, in an email asking the Claimant to deal with a work matter before he went on holiday, she wrote *"Or I stop you at customs …"*. Even absent Ms Findlater's explanation to this effect, we read this as a humorous suggestion which could have been made to a person of any race to reinforce the desire for the task to be done.

e. On 23/6/13, Ms Findlater sent the Claimant a long work email which inter alia told him that a set of accounts she approved needed to be signed and she was not in London; she asked him to "forge" her signature. The Claimant accepts he had an electronic signature for Ms Findlater he was authorised to use. Again perhaps this was inappropriate in the context of signing off accounts, but given she had approved them, it hardly demonstrates that Ms Findlater is a person who in general cannot be trusted.

f. On 15/7/13, in an email to colleagues about what to write to a person with whom her companies were in dispute, Ms Findlater concluded *"I have some guys who would very much like to come and break your legs … but in the meantime fuck off and die you bastard"*. The Claimant suggested that this showed she was prepared to threaten using ex-offenders she had met through the Respondent to intimidate that person. It is not suggested that threat was in fact communicated and we accept Ms Findlater's evidence that it was intended as a joke.

27. We find, as a whole, that Ms Findlater was given to express herself somewhat flamboyantly at times, was not averse to the odd white lie and could on occasion use inappropriate language. We do not find that these documents demonstrate that she is generally untruthful, still less that she has a discriminatory attitude to Brazilians or to ethnic minorities as a whole. In the latter context, we remind ourselves that a significant proportion of her staff and of the ex-offenders the Respondent was helping (she estimates 80%) were and are of ethnic minority backgrounds.

28. We also comment that if someone were to trawl through the contents of a person's private emails over a number of years, it would be a rare case where some of those emails would not cause the person to be embarrassed and/or regretful at certain comments made, particularly when attempting to be funny.

29. On 22 October 2014, Mrs Geddes asked the Claimant for some details to assist in his becoming an additional Respondent signatory for the bank. The Claimant raised the issue of his deserving to be given employment status and for the Respondent to pay tax and NI on his behalf. Mrs Geddes was pressed for time, but answered along the lines: We could put you on PAYE, but the deductions would come out of the money we pay you, so your take-home pay would reduce; or you could present invoices as a self-employed contractor. The Claimant says he concluded (rightly) that, at least by implication, the Respondent had no intention of paying the his back-taxes. Mrs Geddes concedes she was probably abrupt towards the end of this meeting. We find that this was because she was in a hurry and irritated by the Claimant's insistence on raising the question of his employment status at that time; it was not because of the Claimant's nationality; she would have been just as abrupt in materially similar circumstances had the Claimant been white, British.

30. The Claimant became upset. Mrs Geddes left. Ms Findlater met with the Claimant. The contents of what was said between them are disputed. They are not, in the end, of primary relevance to our determinations. The Claimant says that Ms Findlater was concerned at his suggestion that he would approach HMRC; she accepts he referred to that, but in the context of his own concern about having not paid tax in the past. The Claimant says he left under the clear impression that Ms Finldater would "resolve the situation" – by which he means, put him on PAYE and pay any back-taxes owed on his behalf; although he says that at the same time he understood her to say that she would not be paying his back-taxes.

31. At this last meeting the Claimant said that Ms Findlater tried to "bribe" him either not to approach HMRC and/or to leave his "employment" quietly. Ms Findlater denies this. We prefer Ms Findlater's evidence on this point. The Claimant was very vague when questioned by the tribunal on what he asserts was said; and at its highest we imagine that all he could be referring to is a generalised expression of wanting to assist the Claimant. In any event, it would be difficult to infer that any offer to reach a financial

settlement in order to avoid litigation or investigation by HMRC could be related to the Claimant's nationality.

32. In all events, by 29 October (Ms Findlater had been away from the office most of the interim), the Claimant realised, he says, that the Respondent was not going to address his employment and tax position in the way he considered was appropriate and required by law. He took 30 and 31 October off sick; the next two days were a weekend; on 3 November he resigned. His letter of resignation reads: *"As I made clear … over the last few months, I cannot continue to work for an employer that is asking me to invoice them for my services when it is clear that I have been employed by them for the past 7 years, and they are refusing to confirm my tax status as PAYE despite repeated requests"*. He had by then obtained some advice from a CAB. The letter does not state or imply any concern that he had been discriminated against because of his nationality.

33. The tribunal believes (though we accept this is not directly relevant to our determination) that the Claimant only came to feel – or at least only came to be so fixed in feeling – that he had been the victim of discrimination when he read some of the emails discussed above, after he had resigned. It seems unlikely, otherwise, that he would not have raised that with the Respondent in his resignation letter.

34. Ms Findlater sent an emotional and affectionate reply the next day; the contents do not advance matters materially in the context of these claims.

35. The Claimant's last payment was made on about 24 October.

Law

36. Direct discrimination occurs where *"because of a protected characteristic* [in this case, nationality] *A treats B less favourably than A treats or would treat others"* (s.13(1) Equality Act 2010 ("EqA"). The Claimant has dual Brazilian / Italian citizenship. He relies solely on his Brazilian nationality in these proceedings.

37. In respect of a claim under s.13 EqA, the Claimant must show that the Respondent treated him less favourably than it would or did treat others who are/were not Brazilian nationals. Further, there must be *"no material difference between the circumstances"* between the Claimant and the comparator (real or hypothetical, s.23(1) EqA).

38. In order to determine the issue of whether the discrimination claims are out of time, we have to consider whether the matters complained of amount to a continuing act of discrimination within the meaning elucidated at paragraph 48 of *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96, which stated that to succeed in such an argument:

"…the burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period". [emphasis added]

39. For us to have jurisdiction to consider the Claimant's breach of contract claim, he must be an "employee" for the purposes of the Extension of Jurisdiction Order 1994.

40. Neither party referred us to any other case law, accepting (rightly in our view) that these were claims which turned – as to their merits – very much on the facts.

Submissions

41. Ms Dobbie provided us with detailed written submissions on the discrimination claim. We read those. She supplemented them in clear oral submissions, during which the Judge explored carefully the case against the Respondent.

42. We do not intend to summarise those submissions, save as we refer to them in the following section of these Reasons. We have taken them into account.

43. The Claimant reminded us of his "story" – in essence, that he had been the victim of discrimination continuously from June 2007 to 3 November 2014; in that Ms Findlater, treating him as a "second class citizen" because of his Brazilian nationality (as was clear, he maintained, from the emails he later discovered referring to his nationality), and being in general a person not be trusted (as was clear, he said, from those other emails he relied on discussed above), did not offer him the PAYE employed status that she would have offered him had he been white British.

Discussion

44. In the end, we can deal with these claims fairly shortly, on the basis of the facts we have found (or which were earlier found by EJ Glennie).

Discrimination

45. The Claimant, albeit in retrospect, made his case by asserting that Ms Findlater had discriminated against him from June 2007 in not employing him on PAYE. However, as set out above, he was taken on at that time for good reasons as a contractor. We find that Ms Findlater would have proposed precisely the same arrangement had the Claimant been of white British ethnicity/nationality in the same circumstances.

46. We go on to ask ourselves (even though that is not the way the Claimant argued it) if the position changed at any point (perhaps once the Respondent was up and running, in say 2012), such that what had been a non-discriminatory approach to his employment status became a discriminatory one.

47. We are clear that was not what happened. We say so for these reasons:-

    a. The circumstantial evidence is strongly in favour of the Respondent:

        i. It had a multi-ethnic workforce, some of whom worked on PAYE and others as contractors – and in some cases, first as contractors and then on PAYE; and those ex-offenders it assisted were largely ethnic minority.

        ii. In particular, we note that a white British member of staff, Caragh Pakey, brought a complaint against the Respondent in 2012 that she had wrongly not been paid on PAYE in much the same terms as the Claimant presently complaints (albeit the Respondent did later, because of a unique sharing arrangement with another charity, move her to an employed status).

    b. We are bound by EJ Glennie's finding that the Respondent did not in fact give the issue of the Claimant's employment status any thought until February 2014 – in any event, we consider it very much more likely that the matter was simply not thought about in the context of a fast-growing new organisation under the leadership of a highly motivated but essentially creative person, where the matter (as EJ Glennie found) had <u>not been raised by the Claimant before that time</u>.

    c. In that context, it is almost impossible, even in theory, to infer an unconscious bias where all that happened is that the legitimate status quo was left undisturbed.

    d. We have rejected the Claimant's evidence that was supposed to support an inference of Ms Findlater's discriminatory attitude towards him in general. On the contrary, we find that she was both affectionate and generous towards him.

    e. Nor is it at all clear that the Claimant was treated "less favourably" in any event. He was paid an appropriate salary (assuming it to be gross – as a net sum it would have been, relatively, extravagant) and was given a benefit in kind of very significant value which other staff did not have (the long period of free accommodation in a central London location).

48. Finally, we ask ourselves whether the situation changed after February 2014, once the issue had been raised in some sense (EJ Glennie found it was the Respondent rather than the Claimant who raised it in February).

49. The short point is that the parties agree that once the issue was raised, the Respondent was in principle prepared for the Claimant to move to employed status on PAYE, provided his gross remuneration did not change and without taking on liability for payment of tax/NI already due. The Claimant did not pursue that option between February and October 2014 and thereafter seemed only prepared to do so if the Respondent would pay his back taxes. In effect, therefore, what the Claimant complains about in that last period is the refusal to rectify the effects of what he contends was 7 years' prior discrimination (which we have found did not occur), rather than that the Respondent adopted a discriminatory approach in respect of the last 8 months or so of his work there.

50. Again, in the material circumstances, we find that Ms Findlater and the Respondent would have treated the Claimant in the same way between 2011 and 2014 had he been of white British origin.

51. It is therefore not relevant, but we reject the Respondent's submission that the Claimant's discrimination claim is out of time because the last discriminatory act relied on took place a few days out of time on 22 October 2014. If the Claimant's case had been made out, that the Respondent had in effect a policy or practice of not offering employed PAYE status to someone of Brazilian nationality that it would have offered to a white British person in similar circumstances (which operated to the Claimant's disadvantage), then we would see that as a continuing act as defined in the statute, or, as it was put in *Hendricks*, *"a continuing discriminatory state of affairs"*.

<u>The claim for holiday pay</u>

52. The parties agree that this claim is made out in respect of 10 days' untaken holiday. The only issue is whether the calculation should be made on the basis of remuneration of £2,200 gross, or £2,200 net.

53. That issue was resolved in the Respondent's favour by EJ Glennie. The Respondent therefore owes the Claimant £804.18 in this regard. The Respondent has paid that sum to the Claimant very recently by bank transfer apparently.

<u>The claim for notice pay</u>

54. We have no jurisdiction to hear this claim. The Claimant was not an employee.

55. In any event, we find that the Respondent did not act so as to repudiate its contract with the Claimant, such that the Claimant was entitled to resign and claim payment for a reasonable period of notice.

The claim for unpaid wages

56. The evidence is scant and historic; but we see no reason to reject the Claimant's case that he was paid, month by month, the monthly sum owed, with effect from 20 June 2007 to each successive 20th of the month.

57. We reject the Respondent's submission that the Claimant was not entitled to be paid sick pay. On the contrary, the evidence is that, from 2013 at least, the Claimant was paid the same amount every month, regardless of whether he was off sick (as he was on at least one occasion as recorded above).

58. The Claimant is thus entitled to be paid for an additional 13 days. We calculate that sum to be £1,045.43.

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Employment Judge Segal on 9 November 2017