EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102370/17

Held in Glasgow on 6 November 2017

Employment Judge: Lucy Wiseman

Ms Julia Heyns	**Claimant** **In Person**
Abbeyfield Stirling Society	**Respondent** **Represented by:** **Mr I Maclean - Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is:

(i) the claimant was unfairly constructively dismissed by the respondent, and the respondent shall pay to the claimant compensation in the sum of £2,257;

(ii) the complaint in respect of unauthorised deduction of wages was well founded, and the respondent shall pay to the claimant wages in the sum of £1,000.50 and

(iii) the complaint in respect of holiday pay was conceded by the respondent and the respondent shall pay to the claimant the sum of £395.60 in respect of holidays accrued but not taken as at the end of the claimant's employment.

REASONS

E.T. Z4 (WR)

1. The claimant presented a claim to the Employment Tribunal on the 18 August 2017 alleging she had been unfairly (constructively) dismissed and that she was due to be paid in respect of wages and holiday pay.

2. The respondent entered a response denying the claim and asserting the respondent's conduct had not been such as to entitle the claimant to resign and claim constructive dismissal.

3. I heard evidence from the claimant and from Ms Elizabeth Findlay, Advocacy Worker who chaired a meeting with the claimant regarding a return to work. I was also referred to a number of documents. I, on the basis of the evidence before me, made the following material findings of fact.

Findings of fact

4. The respondent provides accommodation for elderly residents within the Stirling community.

5. The claimant commenced employment with the respondent on 9 November 2012. She was employed as a Cook and was contracted to work 23 hours per week (page 28).

6. The claimant earned £8.35 per hour, and was notified by letter of the 3rd January 2017 (page 65) that her rate had increased to £8.60 per hour.

7. The claimant sent a letter of grievance (page 66) to Ms Kirk, HR, and Ms Porteous, Chairperson, in November 2016, regarding the behaviour of Mrs Ferguson, her line manager.

8. The claimant had voluntarily increased her hours (to 30 hours per week) to cover for a period of sickness absence. The claimant was aggrieved that when a new member of staff was taken on her hours were reduced to 23

hours per week, when she had expected to share the hours equally with the new person. The claimant was also aggrieved that she had been removed from involvement in the planning of meals, shopping and handling cash; and, the new member of staff earned £9 per hour. The claimant was upset and hurt at Mrs Ferguson's attitude towards her; and further complained that on occasion when she assisted with care duties, she earned less than the other care workers.

9. A grievance hearing was arranged and took place on 25 January 2017. The respondent arranged for a Consultant from Peninsula, Ms Carmel Walberg, to chair the hearing, and the notes of the hearing were produced at page 76.

10. Ms Walberg investigated the points raised by the claimant and made various recommendations to the respondent (which the respondent may follow or not). The recommendations were (i) to dismiss all points raised in the grievance, with the exception of the complaints regarding the language used by Ms Ferguson; (ii) to note that whilst the grievance had not been upheld, it should be recognised that damage had been done to the employee/employer relationship and that it was causing disturbance to the work place, and to recommend that work place mediation be put in place to build a professional workable relationship between the parties and (iii) to carry out an investigation into the additional points raised by the claimant regarding the practices of Ms Ferguson.

11. The claimant was advised, on 30 January, that her grievance had not been upheld. The claimant was aware that Mrs Ferguson was given a verbal warning for her language.

12. The respondent carried out an investigation into the additional points raised by the claimant during the grievance hearing (that Mrs Ferguson had allowed non-qualified staff members to administer medication to residents, and that she had allowed staff to sign that medication had been administered later than carers work). The respondent wrote to the claimant on 2 February (page

89) to invite her to an investigation meeting regarding the allegations she had made regarding Mrs Ferguson. The letter warned that one possible outcome of the investigation could be formal disciplinary action.

13. The claimant was advised by letter of 15 February (page 117) that the allegations had not been supported and could not be upheld.

14. The claimant, by letter of 3 February (page 90) appealed against the grievance outcome decision.

15. The grievance appeal hearing took place on 10 February. The appeal hearing was chaired by Sharlene Hernandez, Consultant with Peninsula, and notes of the appeal hearing and reasons for the outcome on each point were produced at pages 98 – 113. The claimant's grievance appeal was not upheld.

16. The claimant was signed off sick from 3 February 2017 (page 118) until 13 March, with stress.

17. The claimant contacted Mrs Porteous on or about 24 February to discuss returning to work.

18. The respondent wrote to the claimant on 27 February (page 119) to invite her to attend a disciplinary hearing on 1 March because she had taken part in activities which had caused the company to lose faith in her integrity, namely she had willfully and maliciously damaged the reputation of the company and colleagues.

19. The respondent agreed to postpone the disciplinary hearing until 15 March.

20. The disciplinary hearing was chaired by Ms Porteous, Chairperson and Ms Baxter, Manager and a note of the hearing was produced at page 129.

21. The claimant was notified by letter of 15 March (page 131) that she had been dismissed with immediate effect because her conduct was considered to have irrevocably destroyed the trust and confidence necessary to continue the employment relationship.

22. The claimant appealed against the decision to dismiss her (page 132) and an appeal hearing, chaired by Kim Clarke, Consultant, took place on 3 April. The claimant did not attend the appeal hearing because she had been advised that the appeal should be heard by someone from the respondent's organisation rather than an external person. The claimant sent a document entitled "defence" to be considered at the appeal.

23. The appeal hearing was held in the claimant's absence, and a Report was prepared (pages 141 – 161) setting out the history of events and the issues. The report concluded with the recommendations which were (i) that the dismissal be rescinded; (ii) that the claimant be reinstated and paid wages/SSP from 15 March to date; (iii) the committee (or representative) meet with the claimant to discuss a potential return to work, the practicalities of this and the continuing relationship between the claimant, Mrs Ferguson, the committee and other staff; (iv) after meeting with the claimant and Mrs Ferguson and other staff, the committee consider whether there remained a salvageable relationship or whether the breakdown in trust and confidence was irretrievable and (v) to ensure communications with the claimant were clear and transparent.

24. The respondent accepted the main recommendation and reinstated the claimant. Ms Porteous wrote to the claimant on 3 May (page 164) to confirm the decision and inform the claimant a meeting would take place with Ms Joyce Kirk to discuss arrangements for a return to work.

25. The claimant responded to the letter (page 165) to confirm she did not wish to meet with Ms Kirk because she was a member of the executive committee which Peninsula's report had criticised.

26. The respondent asked Ms Elizabeth Findlay, Advocacy Worker, to meet with the claimant. The meeting took place on 23 May and the claimant was accompanied by Ms Bellers from the Citizens Advice Bureau. A note of the meeting was produced at page 170.

27. The purpose of the meeting was for Ms Findlay to discuss arrangements for a return to work with the claimant, and to this end Ms Findlay had been provided with a copy of the shift details.

28. The claimant told Ms Findlay that she would find it "extremely difficult" to return to work, and she felt she could not trust management after being dismissed for gross misconduct for raising a grievance. The claimant felt that the way in which her grievance had been dealt with left her with no option but to leave, because she no longer had trust and would feel unsafe to return to work. It was further noted that she and Ms Bellers had requested mediation at the start of the process, but Mrs Porteous had refused to do this. Ms Bellers noted the claimant had been offered a new job.

29. Ms Findlay quickly formed the view that the claimant was not going to return to work. The claimant, in response to being asked what she wanted to happen, explained she wished a settlement package, and she provided details of the sum she would accept.

30. Ms Findlay provided the respondent with a note of the meeting, and left it to them to decide how they wished to proceed.

31. The respondent wrote to the claimant on 31 May (page 173) to confirm they wished to put all of the events behind them and to move quickly to get the claimant back into work. They noted the claimant had been offered another job and they asked her to reconsider her position and let them know by 5pm on 5 June whether she intended to return to work.

32. The letter concluded by stating that under the respondent's obligations to the SSSC, they had disclosed that a former House Manager was alleged to have spat in a resident's meal. The respondent had commenced an investigation into this matter and they asked for the claimant's co-operation in attending an interview regarding this matter.

33. The respondent (Mrs Ferguson) sent a letter to the claimant on 6 June (page 175) noting the claimant had been absent from 27 April but there had been no communication from the claimant to explain the reasons for her absence. The letter noted the claimant had been given 5 days to contact the respondent or submit a medical certificate, otherwise her absence would be deemed to be unauthorised and disciplinary action would be commenced.

34. The claimant wrote to Mrs Porteous on 7 June (page 177) to confirm she had resigned with effect from 5 June. The claimant referred to the letters of 31 May (page 173) and 6 June (page 175) as pressurising her and threatening disciplinary action and leaving her with no option but to lodge a claim with the Employment Tribunal. The claimant further confirmed that she would not attend the investigatory interview.

35. The respondent replied on 8 June (page 178) to say they were surprised to receive the claimant's resignation. They believed this may have been sent in the heat of the moment, and they asked the claimant to reconsider. The letter concluded by stating that if the claimant retracted her resignation she would continue to be subject to formal procedures because it was the respondent's intention to address the outstanding investigation into matters which existed prior to the resignation.

36. The claimant responded to confirm she had no desire to retract her resignation and that the implied threat in the letter only served to reinforce her decision.

37. The respondent, by letter of 12 June (page 180) accepted the claimant's resignation. The letter clarified that the claimant had only been requested to attend an investigation meeting to discuss concerns that had been looked into by the SSSC. This did not necessarily mean the claimant would have been disciplined.

38. The claimant was contacted by the SSSC (page 188) noting they had been advised that the claimant had resigned prior to the conclusion of an investigation.

39. A subsequent letter from the SSSC (page 190) advised the claimant an investigation was being undertaken into a former manager of the respondent, and the SSSC wished to obtain a statement from the claimant.

40. The claimant requested further details of the information held by the SSSC regarding her, and this was provided to her in a letter dated 18 September (page 192). The information related to the respondent having had concerns regarding the claimant's conduct (it was alleged the claimant served a resident food after witnessing a colleague spit on it) and professional practice. The letter explained that social service employers had a duty to inform the SSSC about any social service worker who had been dismissed or who had resigned during a disciplinary process which may have led to their dismissal. As the claimant had resigned before the final outcome relating to this matter, the SSSC had to hold the information which had been provided to them.

41. The claimant responded to the letter to inform the SSSC of her side of the story and to confirm she believed the respondent had acted vindictively in accusing her of wrong-doing.

42. The SSSC acknowledged the information which had been provided and confirmed it would be held on record. The consequences of this are that if the claimant applies to be registered with the SSSC, an investigation into the matter on record will take place and may affect her registration.

43. The claimant commenced employment with Enable on 12 June as a Support Worker. She undertook some training days, and was put on the rota for work in July. The claimant worked approximately 20 hours per week during July and August, and was paid an hourly rate of £8.25. The claimant obtained a temporary contract (covering maternity leave) in October and is working an average of 30 hours per week, at an hourly rate of £8.48.

44. The claimant sought payment of wages for the period to the end of her employment, paid at the rate of £8.60 per hour. She also sought payment of holiday pay for the period January 2017 to the end of her employment.

Claimant's submissions

45. The claimant submitted she had enjoyed her job and had not ever had any disciplinary warnings. She had been dismissed for raising a grievance. The claimant had wanted mediation to repair the employment relationship but the respondent had refused.

46. The claimant felt she had been threatened with a formal procedure and disciplinary action. She had been unfairly dismissed in March 2017 and she believed the respondent was going to dismiss her again in June 2017.

47. The claimant sought an award from the tribunal and payment of wages at the correct rate of pay for the period of her employment to the date of resignation.

Respondent's submissions

48. Mr Maclean referred to the implied duty of trust and confidence and submitted the claimant must show the respondent acted so badly that she had no option but to resign: in this case the claimant had not shown this. The claimant repeatedly stated she had been dismissed for raising a grievance, but this was not correct. The claimant was dismissed for her conduct. In any event

the dismissal had been overturned on appeal and the claimant had been reinstated. The issue however is that the claimant would not return to work.

49. The notes of the meeting on 23 May set out the reasons given by the claimant to explain why she did not want to return to work.

50. The claimant relied on the two letters sent by the respondent after the meeting on 23 May. She told the tribunal she thought the respondent was going to dismiss her in June; however, there was no evidence to support this.

51. Mr Maclean submitted the letter at page 173 made clear that the allegation was against a former House Manager, and not against the claimant. The claimant had only been invited to attend for an interview. The letter at page 175 was a standard letter. The claimant had been reinstated with effect from 3 May, but she had not returned to work, and it had been her choice not to do so.

52. Mr Maclean submitted that in all the circumstances there had not been a breach of the implied duty of trust and confidence.

53. He further submitted, with regard to the claim for wages and holiday pay, that the reference in the letter to £8.60 per hour had been an error and the correct rate of £8.55 had been paid to the claimant. The claimant had not returned to work and accordingly the claim for wages for the period 3 May to 5 June should not be successful. Further, there had been no evidence regarding holidays.

54. Mr Maclean acknowledged there may be up to 4 days of holiday pay due to be paid to the claimant. He was without an instructing agent and undertook to clarify this and confirm to the tribunal by close of business tomorrow. (Mr Maclean subsequently confirmed that 5 days holiday pay was due to the claimant).

Discussion and Decision

Constructive Dismissal

55. The first issue for this tribunal to determine is the complaint of constructive dismissal. I had regard to the terms of section 95(1)(c) Employment Rights Act which provides that an employee is dismissed by his or her employer for the purposes of claiming unfair dismissal if the employee terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct. This is known as constructive dismissal.

56. I also had regard to the case of **Western Excavating Ltd v Sharp 1978 ICR 221** where it was stated that:-

> "*if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."*

57. An employee pursuing a claim of constructive dismissal must establish that:-

- there was a fundamental breach of contract on the part of the employer;
- the employer's breach caused the employee to resign and
- the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

58. The claimant asserted the employer had, by their actions, breached the implied duty of trust and confidence. This term is implied into all contracts of

employment, and means that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Courtaulds Northern Textiles Ltd v Andrew 1979 IRLR 84).**

59. In the case of **Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666** it was stated that *"to constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it".*

60. This was developed further in the case of **Malik v BCCI 1997 IRLR 462** where it was stated that *"in assessing whether or not there has been a breach of the implied obligation of mutual trust and confidence, it is the impact of the employer's behaviour on the employee that is significant – not the intentions of the employer. Moreover, the impact on the employee must be assessed objectively."*

61. The claimant argued that the respondent had breached the implied duty of trust and confidence when, following her dismissal and reinstatement, they wrote to her on 31 May and 6 June. I considered it appropriate to note that, prior to these letters being sent, there had been a considerable volume of dealings between the two parties: there had been a grievance hearing; a grievance appeal hearing; an investigation into allegations raised by the claimant; a disciplinary hearing; a dismissal; an appeal against dismissal and a meeting regarding the claimant returning to work.

62. The claimant, at the meeting on 24 May with Ms Findlay to discuss a return to work, made clear that she would find it extremely difficult to return to work because she did not trust management and nothing had taken place to resolve the issues she had raised or to mend the relationship between herself and the employer. The Consultants conducting the various meetings had

each made reference to the need to repair the relationship and had made mention of mediation. The respondent had not wanted to engage in mediation and had not offered this as a means of resolution.

63. The claimant had also raised with Ms Findlay the option of an exit package, and Ms Findlay took this back to the respondent to consider. The respondent's response to that proposal was the letter of 31 May. The respondent wished to "place all of this behind us" and asked the claimant to reconsider her position.

64. The respondent also, in the letter of 31 May, informed the claimant that they had disclosed to the SSSC that a former House Manager was alleged to have spat in a resident's meal. An investigation had commenced into this allegation, and the claimant was invited to attend an interview as part of the investigation.

65. The claimant was critical of the letter of 31 May because it made no reference to the proposal for an exit package, and made no proposals regarding repairing the employment relationship. The claimant considered the respondent simply wanted her to return to work after everything that had happened, without a discussion or mediation taking place. The claimant considered this failed, on the part of the respondent, to understand the impact on the claimant of the actions they had taken.

66. The claimant also received a letter from Ms Ferguson, Manager, on 6 June. The letter informed the claimant that as there had been no explanation for her absence, there had been no alternative but to conclude the claimant was absent without authorisation. The claimant was given 2 days to make contact, failing which disciplinary action would be commenced.

67. The claimant was critical of the letter from Ms Ferguson because the threat of disciplinary action was unnecessary and demonstrated to the claimant the approach the respondent intended to take if she did return. The claimant was

concerned that if she returned to work the respondent would simply dismiss her for something else.

68. I accepted the evidence of the claimant regarding these matters. I noted that one of the recommendations made by the HR Consultant, Ms Walberg, following the grievance hearing in January was ***"whilst I do not uphold the grievances made by the employee I do note that there is damage to employer/employee relationship and that this is causing disturbance to the work place and therefore would recommend that they consider work place mediation in order to build a professional workable relationship between both parties."*** This recommendation was repeated at the grievance appeal hearing.

69. The respondent either did not accept the recommendation or did not act on it. They took no action to address, remedy or resolve the working relationship with the claimant. Indeed, the respondent let the very Manager, Ms Ferguson, about whom the claimant had complained, write to the claimant on the 6th June to threaten disciplinary action.

70. I considered, with regard to the letter of 6 June, that it was, firstly, erroneous. The respondent knew exactly why the claimant had not yet returned to work. The meeting, which the respondent arranged, between Ms Findlay and the claimant on 24 May, was to discuss arrangements for returning to work. Ms Findlay attended that meeting with a shift pattern and rota for the following week. The claimant had put forward an alternative proposal at that meeting, and the respondent required to respond to this (which they did by letter of 31 May). That letter gave the claimant a deadline (5 June) for deciding whether she would return to work or resign.

71. Ms Ferguson stated, in the letter of 6 June, that the claimant had been absent since 27 April without explanation. I considered that an inaccurate exaggeration of the position: the respondent did know the reason for the claimant's absence.

72. Ms Ferguson stated the claimant had been given a period of 5 days to make contact or submit medical certificates to cover her absence. This is incorrect: the claimant had been given 5 days to decide whether to return to work or resign

73. I concluded, having had regard to the above points, that the letters of 31 May and 6 June, did, in the circumstances of this case, breach the implied duty of trust and confidence. The respondent had, by their earlier actions, fractured the employment relationship with the claimant and they had done nothing to try to repair it. The respondent simply wanted the claimant to put it all behind her and return to work, without understanding that the claimant had become deeply suspicious of her employer and feared they may try to dismiss her again.

74. I considered that against that background, the letters of 31 May and in particular the letter of 6 June, breached the implied duty of trust and confidence. The claimant, having regard to those letters, feared her employer intended to discipline again and find a way to dismiss her again. I acknowledged the respondent may not have intended any repudiation of contract, but my function is to look at the employer's conduct as a whole, and decide whether it was such that its effect judged reasonably and sensibly, was such that the employee cannot be expected to put up with it. I decided, judging the employer's conduct reasonably and sensibly, that the claimant could not reasonably be expected to put up with it: the employer had damaged the employment relationship between them; had done nothing to try to resolve and had threatened disciplinary action again.

75. The next issue I must decide is whether the breach of contract was fundamental. I decided the breach was a fundamental (or serious) breach of contract because the employer's had, by their actions destroyed the claimant's trust in them. They had an opportunity to resolve matters, but they

did not take it, and instead compounded the situation by threatening further disciplinary action. I was satisfied the breach was fundamental.

76. Finally I must ask whether the claimant resigned in response to the breach. The claimant made no secret of the fact that she had, prior to meeting with Ms Findlay on 24 May, attended for interview with another employer. The claimant had not decided, at that time, whether to take the offer because it was sessional work. The respondent asked the claimant to reconsider her position and return to work. The claimant, following receipt of the letter of 6 June, wrote to Mrs Porteous, to resign. The claimant, in her letter of resignation, referred to Ms Findlay having been very helpful at the meeting, and that she had hoped Mrs Porteous would also be helpful and understanding. Instead, the claimant described the letter of 31 May as largely ignoring the meeting with Ms Findlay, and the letter of 6 June, pressurising her and threatening disciplinary action. The claimant felt she had been "appallingly" treated by the respondent.

77. The claimant clearly hoped the respondent would make a financial offer following the discussion with Ms Findlay. The respondent would not do so and a stalemate was developing. I was satisfied that what caused the claimant to resign were the letters of 31 May and 6 June.

78. I decided the claimant was unfairly (constructively) dismissed by the respondent.

79. The claimant is entitled to an award of compensation in respect of the unfair dismissal. The claimant is entitled to a basic award of £791 (being 4 x a gross week's pay of £197.80).

80. The claimant has lost wages in the period from the date of dismissal to the date of this Hearing. I calculate this to be a period of five months. I calculate this to be a loss of £3,960 (being 20 weeks x £198. I calculated the claimant's earnings as 23 hours per week x £8.60 per hour).

81. The claimant started a new job the week following her dismissal. She attended for training days and then commenced on the rota in July. She worked 20 hours per week at a rate of £8.25 per hour during July, August and September. I calculate her weekly earnings to be £165 per week. The claimant then took on a temporary maternity cover contract in October in which she averages 30 hours per week at an hourly rate of £8.45 (giving £253.50 per week). The claimant will have earned £2,994 in the period to the date of the Hearing, and this amount must be taken into account to offset the claimant's loss of wages in the period to this Hearing.

82. I calculate the loss of wages in the period from the date of dismissal to the date of the Hearing to be £966.

83. The claimant will not have a future ongoing loss because she currently works 30 hours per week, with an opportunity of overtime.

84. The claimant has lost statutory employment rights, and I make an award of £500 to compensate for the fact the claimant will have to work for a period of two years before she secures further employment rights.

85. I award the claimant compensation of £2,257, (being a basic award of £791 plus a compensatory award of £1,466).

Wages

86. The claimant brought a claim that she had not been paid for certain periods, and that she had been paid the incorrect rate for other periods. A final payslip was produced on page 186, but there was no evidence from the respondent to explain the periods to which the payments related.

87. The respondent sought to argue that the letter dated 3 January 2017 (page 65) informing the claimant of a new rate of pay of £8.60 per hour was an error,

and it should have stated £8.55 (being the rate shown on the final pay slip). I noted there was no evidence to support this: for example, the respondent had not written to the claimant at any point since January to suggest an error had been made. The first mention of an error was in the response to the claim.

88. I could not accept the respondent's position when there was such a paucity of evidence before me. I saw no basis for concluding anything other than that the claimant was entitled to be paid the new rate of pay of £8.60 as per the letter from the respondent notifying her of this.

89. The dispute between the parties related to whether the claimant was entitled to be paid up until the date of resignation. The respondent agreed, in the letter of 31 May, to pay the claimant from the date of suspension (15 March) to the date of reinstatement. I acknowledged a date of reinstatement was not agreed, but I considered the respondent had, by the terms of the letter of 31 May, agreed the claimant would be paid for this period from the 15 March.

90. I was accordingly satisfied that there had been an unauthorised deduction from the claimant's wages in respect of this period, and in respect of the fact the hourly rate of pay to be used is £8.60 and not £8.55.

91. The claimant argued she should be paid for 30 hours per week on the basis that she had usually worked 30 hours per week notwithstanding she was contracted to work 23 hours per week. I noted the claimant did initially work 30 hours per week, but her hours had been reduced to 23 when the new member of staff started. The claimant is contracted to work 23 hours per week, and I considered the calculation of outstanding wages must be based on 23 hours per week.

92. I have adopted, but modified, the claimant's calculation (page 187A). The claimant was paid from 15 March to 27 April at the rate of 23 hours x £8.35. The rate should have been £8.60, and accordingly the sum of £5.75 is due to be paid.

93. The claimant was paid from 15 March to 27 April at the rate of 115 hours at £8.55. The rate should have been £8.60, and accordingly the sum of £5.75 is due to be paid.

94. The claimant was not paid wages in the period 27 April to 5 June at the rate of £197.80 per week. I calculate wages in the sum of £989 due to be paid to the claimant.

95. I found the claim in respect of an unauthorised deduction of wages to be well founded, and I calculate the deduction made from the claimant's wages was £1,000.50.

Holidays

96. The claimant acknowledged that she had been paid for 9.2 hours of holidays, but argued she was entitled to be paid for 72 hours at the rate of £8.60 per hour. The claimant did not explain how she had arrived at these figures, or why she thought 72 hours was the correct calculation.

97. I noted from the claimant's contract that the holiday year ran from the 1st January each year, and that the claimant was entitled to 5.6 weeks holiday.

98. The respondent's representative clarified (after the Hearing) that the claimant's annual entitlement was to 14 days holiday. The claimant had accrued 6 days holiday as at 5 June. Mr Maclean confirmed the claimant had been paid for one day's holiday, and accepted that five days holiday pay was due to the claimant.

99. I noted both parties accepted that one day's holiday (being 9.2 hours) had been paid. I was not satisfied the claimant had demonstrated an entitlement to 72 hours holiday. I therefore accepted the respondent's calculation that 5 days holiday pay was due to be paid. I calculated that 5 days holiday pay

amounts to 46 hours, to be paid at the rate of £8.60 per hour. I calculate the payment to be made to the claimant in respect of holiday pay to be £395.60.

100. I, in conclusion, decided:-

(i) the claimant was unfairly, constructively, dismissed by the respondent, and the respondent shall pay to the claimant compensation in the sum of £2,257;

(ii) the complaint of unauthorised deduction from wages is well founded, and the respondent shall pay to the claimant wages in the sum of £1,000.50 and

(iii) the complaint in respect of payment of holidays was conceded by the respondent and the respondent shall pay to the claimant the sum of £395.60 in respect of holidays accrued but not taken as at the end of her employment.

101. I should state that all calculations have been made using gross figures, and the claimant will require to account to the Inland Revenue for any tax due to be paid.

Employment Judge: Lucy Wiseman
Date of Judgment: 11 December 2017
Entered in register: 14 December 2017
and copied to parties