EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Mr R Hodge	Pryors Hayes Golf Club

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Manchester on 23 July 2018

EMPLOYMENT JUDGE Warren

Representation
Claimant: in person
Respondent: Mr P Cunningham, (HR)

RESERVED JUDGMENT

1.The judgement of the Tribunal is that the respondent dismissed the claimant in breach of contract.

2.The claimant was entitled to one week's notice.

3.The respondent is ordered to pay the claimant one week's pay in compensation being two hundred and forty pounds (£240.00).

4.The claims of unfair dismissal , unlawful deductions from wages (sick pay and bereavement pay)and compensation for untaken annual leave are all marked as dismissed on withdrawal by the claimant.

5.The remaining claim of unlawful deduction from wages is ill founded and is dismissed.

REASONS

1.Background and Issues

1.1 By an ET1 presented to the Tribunal on 20 February 2018, the claimant alleged that he had been unfairly dismissed, that the respondent was in breach of contract, that there had been unlawful deductions from his wages, and that on termination of his contract he had outstanding annual leave for which he was due compensation. The respondent denied all claims.

1.2 The claim for unfair dismissal was dismissed upon withdrawal as the claimant did not have 2 years qualifying service. Later in the day the claimant also withdrew his claims for the unlawful deduction from wages (sick pay and bereavement leave only), and accepted that he was only entitled (if he was entitled at all) to 1 week's notice pay rather than the month which he had claimed

2 The Evidence

2.1 The claimant gave evidence in his own regard and Mr R Barnes (director) and Ms J Quinn (office manager) for the respondent.

2.2 There was an agreed bundle of documents amounting to 129 pages. The claimant had received the bundle by email and read through it. He chose not to print it out, but said that he did not need a hard copy. Page references within this judgement refer to the bundle. The parties had made statements which were taken as read. The evidence was judged against the evidential test 'the balance of probabilities'.

3.The Facts

3.1 The respondent is a golf club. In order to increase income, it was decided to expand into events and weddings. On 24 April 2017 the claimant commenced work as Events and Operations manager for functions. He was paid £27,000 per annum for a 48 hour week. He did not have written terms and conditions. There was a staff handbook, which had been inherited by the owners of the club several years before. It became clear through the evidence that neither the director of the club, nor the claimant had looked at the handbook in any event.

3.2 On 22 August 2017 the claimant met with R Barnes, Director of the respondent. The claimant had become aware that his sister was gravely ill, and he agreed with Mr Barnes that he would move to being hourly paid to give him flexibility. He had been given time to consider the proposal, and notified Mr Barnes on his return from holiday. He accepted in evidence that he was probably happy to move onto an hourly rate but he could not remember what had been said in the meeting. He advised the staff that he was now on a zero hours

contract.

3.3 Following the death of his sister, the claimant alleged that his hours were reduced and that he had no say in his working hours. In fact he accepted in cross examination that he had a say in the preparation of the rota, and that he could not only tell his assistant manager A Geer what to put on the rota, but she would send it to him and he would distribute it. He accepted that his hours dropped because work dropped off over the winter. He made no complaint at all, either at the time his contract changed, nor over the following months.

3.4 In December 2017, the claimant alleged that he had booked leave on 20 January 2018. There was no formal booking process, he believed he had marked it in the diary. It was not a day he was generally rostered to work. In the mean time A Greer had arranged with R Barnes, that there would be an open day on the same day. It was left to A Greer to advise the claimant. R Barnes expected that the claimant would make himself available for the open day. In fact he kept himself off the roster.

3.5 R Barnes spotted this and investigated further. He found an email on the claimant's account which had been sent to the claimant's friend, which said 'really shouldn't be going though as they've put on an open day on the Saturday which I really should be at but f**k it.' And another :- 'open day but it's not a problem'.

3.6 R Barnes had access to the claimant's emails and read the above.

3.7 R Barnes called the claimant to a disciplinary hearing on 5 January 2018. The claimant immediately cancelled his plans for the open day weekend and made himself available to work.

3.8 However, he was dismissed for gross misconduct on 5 January, described as arranging to take unauthorised leave, not being available for the open day on 20 January 2018, and lack of care and commitment as evidenced by the emails.

3.9 The claimant asserted that as he was on a zero hours contract he was not required to work any particular hours in any event, and that the 20 January had been arranged between R Barnes and A Greer, without consulting him.

4.The Law

4.1 Section 86 (1) Employment Rights Act 1996

The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more-

(a) Is not less than one week's notice if his period of continuous employment is less than two years.

4.2 Unlawful deductions from wages

Determining what wages are properly payable will depend on what the worker is contractually entitled to receive by way of wages. If there is an agreed variation of a contract, the wages properly payable will be the reduced wages under the agreed variation:-
Greg May Carpet Fitters and Contractors) Limited v Dring 1990 ICR 188 EAT

5 Conclusions

5.1 The claimant was dismissed in breach of contract. The verbal contract under which he was employed contained only details of his pay and working hours. That had been varied to a zero hours contract, hourly paid, following agreement at the beginning of September 2017.

5.2 There must be implied into the contract that the respondent would be entitled to dismiss the claimant for either misconduct or gross misconduct. However in order to do so it is important that both parties understand what the respondent would consider to be misconduct. There would be no reason for the claimant to believe he must be in attendance at every event, or that he need do more than keep himself off the roster if he did not want to work. His unprofessional email to his friend suggested he was not happy at work, but he never, on his own admission, complained about his hours, or pay, or working conditions.

5.3 I do not consider that the respondent was entitled to dismiss for gross misconduct in the absence of any specific guidelines about the contents of private emails, or requirements for the claimant to work, set out in his contract of employment.

5.4 That said, the respondent could dismiss the claimant on notice, without having to justify the same, and should have done so if that was the desired outcome.

5.5 The claimant was entitled to one week's notice and to be compensated accordingly for the respondent's failure to give notice.

5.6 Whilst the claimant alleges that there have been unlawful deductions from his wages on an ongoing basis, as a result of his contract being varied to a zero hours contract, I do not consider there has been an unlawful deduction for the following reasons:- the claimant agreed the variation; he had responsibility for his own working hours; he accepted the new terms and worked to them; he never once complained to anyone at any time.

5.7 I conclude that he accepted the new contractual terms, and the reduction in hours and pay, and this was therefore an agreed variation of the terms of his contract. He was paid for all of the hours he worked and is not entitled to anything further.

REMEDY

8. The claimant was paid monthly. For the last 3 months of his employment he received £3120.35. When divided by 13, an average weekly wage is calculated to be £240.02 pence

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Employment Judge Warren

Signed on 20 August 2018

Judgment sent to Parties on

28th August 2018

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2403182/2018**

Name of case(s): **Mr R Hodge** v **Pryors Hayes Golf Club**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **28 August 2018**

"the calculation day" is: **29 August 2018**

"the stipulated rate of interest" is: **8%**

MR J HANSON
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.