



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr G Hadley, Miss L Spenceley, Miss L Hart, Miss L Smith, Miss E Bunfield, Mrs N Chisaramba, Mr L Winder, Miss S Minns, Miss C Platts, Miss L Beldon, Miss J Lynskey, Miss S Morton, Miss D Majama and Miss S Peel

**Respondents:** 1. Miss Emma Battersby t/a Flutterbies Nursery  
2. Flutterbies Childcare Solutions Ltd t/a Flutterbies Unity Nursery

**Heard at:** Sheffield **On:** 6 and 7 November 2018

**Before:** Employment Judge Brain

## REPRESENTATION:

**Claimants:** Mr G Hadley, Miss L Spenceley, Miss L Hart, Miss L Smith, Miss E Bunfield, Mrs N Chisaramba and Mr L Winder in person

No attendance or representation by Miss S Minns, Miss C Platts, Miss L Beldon, Miss J Lynskey, Miss S Morton and Miss D Majama

**Respondents:** Mr S Udawatte, Lay Representative

# JUDGMENT

The judgment of the Employment Tribunal is that:

1. Mr G Hadley
  - (1) The first respondent made an unlawful deduction from his wages and shall pay to Mr Hadley the sum of £1,956.95.
  - (2) The first respondent shall pay to Mr Hadley compensation for holiday accrued but untaken as at the effective date of termination of his contract of employment in the sum of £34.45.
  - (3) The total payable by the first respondent to Mr Hadley is in the sum of £1991.40.

2. Miss L Spenceley

Upon Miss Spenceley giving an undertaking to the Tribunal that she would return her uniform to the first respondent on or before Wednesday 14 November 2018 (so as to avoid a deduction from her wages to defray the cost of replacement of it):

- (1) The first respondent made an unlawful deduction from Miss Spenceley's wages and shall pay to her the sum of £1,573.63.
- (2) The first respondent shall pay to Miss Spenceley compensation for holiday accrued due to untaken at the effective date of termination in the sum of £5.71.

3. Miss L Hart

The complaint of Miss Hart is dismissed upon withdrawal.

4. Miss S Minns

- (1) The first respondent made an unlawful deduction from her wages and shall pay to her the sum of £946.92.
- (2) The first respondent shall pay compensation for holiday accrued due but untaken at the effective date of termination in the sum of £73.06.
- (3) Accordingly, the total payable by the first respondent to Miss Minns is in the sum of £1,019.98.

5. Miss L Smith

- (1) The first respondent made an unlawful deduction from her wages and shall pay to Miss Smith the sum of £951.02.
- (2) The first respondent is entitled to recover from Miss Smith the sum of £20.75 as the holiday undertaken by Miss Smith exceeded that accrued due to her at the effective date of termination of her contract of employment.
- (3) Accordingly, the total payable by the first respondent to Miss Smith is in the sum of £930.27.

6. Miss C Platts

The first respondent made an unlawful deduction from her wages and shall pay to Miss Platts the sum of £1,605.68.

7. Miss L Beldon

- (1) The first respondent made an unlawful deduction from wages and shall pay to Miss Beldon the sum of £362.38.

- (2) The holidays taken by Miss Beldon exceeded her entitlement as at the effect date of termination of her contract of employment. The first respondent is therefore entitled to credit in the sum of £2.22.
- (3) Accordingly, the first respondent shall pay Miss Beldon the sum of £360.16.

8. Miss S Peel

- (1) The first respondent made an unlawful deduction from her wages and shall pay to Miss Peel the sum of £1,012.10.
- (2) The first respondent shall pay compensation for holiday accrued due but untaken as at the effective date of termination of her contract of employment in the sum of £161.60.
- (3) Accordingly, the total payable by the first respondent to Miss Peel is in the sum of £1,173.70.

9. Miss J Lynskey

The complaint of Miss Lynskey is dismissed.

10. Miss E Bunfield

- (1) The first respondent made an unlawful deduction from her wages and shall pay to Miss Bunfield the sum of £2,050.28.
- (2) The amount of holiday taken by Miss Bunfield exceeded that accrued due as at the effective date of termination of the contract of employment. Accordingly, the respondent is entitled to credit in the sum of £4.43.
- (3) The total payable by the first respondent to Miss Bunfield is in the sum of £2,045.85.

11. Miss S Morton

Miss Morton's claim is dismissed.

12. Miss D Majama

Miss Majama's claim is dismissed.

13. Mrs N Chisaramba

- (1) Mrs Chisaramba remained employed by the first respondent until 24 September 2018.
- (2) Upon that date, the landlord of the first respondent forfeited the first respondent's lease. Accordingly, the first respondent ceased to carry on business in the place where Mrs Chisaramba was employed.
- (3) The contract of employment was accordingly frustrated but, as the frustrating event affected the first respondent, it is deemed to be a

dismissal of Mrs Chisaramba by the first respondent for the purposes of section 136(5) of the Employment Rights Act 1996.

- (4) Mrs Chisaramba's deemed dismissal was by reason of redundancy because the first respondent ceased to carry on business in the place where she was employed.
- (5) Mrs Chisaramba has permission to amend her complaint to include one for a redundancy payment.
- (6) As at 24 September 2018 Mrs Chisaramba was 56 years of age having been born on 29 March 1962. She had worked for the first respondent and the transferor of the first respondent's business to the first respondent for a period of 11 complete years. Her gross weekly wage was £117.45. Accordingly, she is entitled to be paid a redundancy payment in the sum of £1,937.93. That is a liability of the first respondent.
- (7) The first respondent made an unlawful deduction from Mrs Chisaramba's wages. The first respondent shall pay to her the sum of £3,737.70.
- (8) The first respondent shall pay compensation for holiday accrued due but untaken at the effective date of termination in the sum of £399.33.
- (9) The total payable to Mrs Chisaramba by the first respondent is in the sum of £6,074.96.

14. Mr L Winder

- (1) The first respondent made an unlawful deduction from Mr Winder's wages and shall pay to him the sum of £1,859.41.
- (2) The first respondent shall pay compensation for holiday accrued due but untaken at the effective date of termination in the sum of £344.
- (3) The total payable to Mr Winder by the first respondent is in the sum of £2,203.41.

15. All sums payable to the claimants by the first respondent pursuant to paragraphs 1 to 14 shall be paid within 14 days, that is to say on or before 22 November 2018.

16. All of the sums set out are gross figures.

**Note**

17. This claim arises out of the suspension by Ofsted of a regulatory licence held by the first respondent enabling her to carry on her business. The Tribunal was told by the first respondent's lay representative that the first respondent has intimated or may intimate a claim with her insurance company for losses caused by business interruption. The first respondent gave an undertaking to the Tribunal that upon receipt of the proceeds of any such claim she would disperse the monies received in order to satisfy the judgments given today in favour of the claimants.

Employment Judge Brain

Date: 23<sup>rd</sup> November 2018