



EMPLOYMENT TRIBUNALS

Claimant
Mrs L Davies

-v-

Respondent
Tailor Maid Care Solutions Ltd

JUDGMENT

Heard at: Nottingham **On:** 3 September 2018

Before: Employment Judge Evans (sitting alone)

Representation

For the Claimant: in person
For the Respondent: Mr B Hendley, consultant

JUDGMENT

1. The Claimant was unfairly dismissed. However, if the Claimant had not been unfairly dismissed when she was, there would have been a 75% chance that a fair procedure would have resulted in the Claimant either being fairly dismissed on two months' notice on 17 May 2018 or of her resigning on two months' notice by no later than that date. There would therefore have been a 75% chance of the Claimant's employment ending on 17 July 2018 and the Claimant's compensatory award will be reduced accordingly.
2. The amount of the Claimant's compensatory and basic awards will be determined at a remedy hearing on Monday 12 November 2018.
3. The Claimant was dismissed in breach of contract. The damages to be paid to the Claimant in respect of this breach of contract will be determined at the remedy hearing on Monday 12 November 2018.
4. The Respondent made unlawful deductions from the Claimant's wages and is ordered to pay the Claimant £550 (net).
5. The Respondent did not fail to pay the Claimant an amount in respect of accrued but untaken holiday pay and the Claimant's claim that it did fails and is dismissed.
6. The Respondent did not fail to provide the Claimant with itemised pay statements and the Claimant's claim that it did fails and is dismissed.

7. The claim for unlawful deductions brought on the basis that the Respondent failed to pay the Claimant the sick pay due to her is dismissed following its withdrawal by the Claimant.

REASONS

Preamble

1. The Claimant was summarily dismissed by the Respondent with effect from 12 January 2018. Following her dismissal she brought various claims. The hearing of those claims took place on 3 September 2018 in Nottingham (“the Hearing”).
2. The Claimant represented herself. The Respondent was represented by Mr Hendley. The Claimant gave evidence in support of her claims. Mr Jamie Dunbar and Mr John Lawlor who are both directors of the Respondent gave evidence on its behalf.

Hearing preparation matters dealt with at the beginning of the hearing

3. The Respondent had made an application for the claims to be stayed pending the completion of what it said was a related criminal investigation. That application was heard by Regional Employment Judge Swan on 10 August 2018. The Respondent did not attend and was not represented. REJ Swan refused the application. A subsequent adjournment application by the Respondent on the basis that it had very recently instructed legal representatives made on 30 August 2018 was refused on 31 August 2018.
4. Against this background, the Case Management Orders made at the outset of this matter by the Tribunal had not been complied with. The Respondent attended on the day of the Hearing with a bundle of documents running to 75 pages (plus a significant number of unpaginated payslips) and brief witness statements for Mr Dunbar and Mr Lawlor.
5. The Claimant objected to the lateness of the production of these documents. I indicated to the Claimant that she could if she wished make an application for an adjournment, which might well be successful, but that I would not make an order preventing the Respondent from relying on the documents or witness statements, not least because most of the documents were documents which she would self-evidently have seen previously.
6. The Claimant chose not to make an application for an adjournment. Further, all of the documents she had included in her bundle of documents were included in the bundle prepared by the Respondent. As such the Tribunal used the Respondent’s bundle during the Hearing.
7. The Claimant also brought along to the Hearing further documents which she said were relevant in light of the content of the Respondent’s witness statements, which she had received only shortly before the Hearing. The Respondent reviewed these and made no objection to the Claimant relying on them. They were therefore turned into a supplementary bundle running to 28 pages.
8. I should observe at this point that although the Respondent’s witnesses referred to the alleged related criminal investigation in their evidence, Mr Hendley did not make a further application for the claims to be stayed (and so the Hearing postponed) pending the resolution of that investigation.

The discussion at the beginning of the Hearing and the issues

9. The parties and Tribunal discussed the claims at the beginning of the Hearing and agreed that it would be necessary for me to determine the issues set out below in order to decide the claims.

Unfair dismissal

10. The parties agreed that the following issues arose:
1. What was the reason for dismissal and was it a potentially fair reason in accordance with section 98(1) and (2) of the 1996 Act?
 2. The Respondent conceded that the Claimant's dismissal was unfair because no fair procedure had been followed before dismissing the Claimant. However the following issues still arose in relation to the unfair dismissal claim:
 - a. Was the Claimant's employment due to end in any event on 15 January 2018 as a result of her resignation in November 2017?
 - b. What adjustment if any should be made to the compensatory award to reflect the possibility that the Claimant would have been dismissed fairly at a later date or if a proper procedure had been followed?
 - c. Would it be just and equitable to reduce the compensatory award because the Claimant caused or contributed to her dismissal?
 - d. Would it be just and equitable to reduce the amount of the basic award because of blameworthy or culpable conduct by the Claimant prior to her dismissal?

It was agreed that the amount of the compensatory award would be determined subsequently at a remedy hearing.

Wrongful dismissal (breach of contract)

11. The parties agreed that the Claimant's contractual notice period was 2 months and that she had been dismissed without notice. Accordingly the issue for me to determine was:
1. Had the Claimant committed an act of gross misconduct (i.e. a repudiatory breach of contract) such that the Respondent was entitled to dismiss her without notice?

It was agreed that the amount of any damages for breach of contract would be decided separately at a remedy hearing.

Unlawful deductions from wages (arrears of pay)

12. The Respondent accepted that the Claimant had not been paid for the week commencing 1 January 2018. The Respondent said that the Claimant had not worked that week and so was not entitled to be paid for it. The Respondent said that if the Claimant had worked that week then her net weekly pay for it would have been £550. Accordingly the issue for me to determine was:

1. Whether the Claimant had worked the week commencing 1 January 2018.

Holiday pay

13. The parties agreed that the Claimant had accrued 21 days' holiday in the holiday year in which her employment had terminated and that she would be due net holiday pay of £110 in respect of each untaken day (if any). The Claimant contended that she had taken only 14 days' holiday in her final holiday year. The Respondent contended that she had taken 22. Accordingly the issue for me to determine was:

1. How many days' holiday had the Claimant taken in the holiday year in which her employment terminated?

Wage slips

14. The Claimant said she had not been provided with itemised payslips; the Respondent contended that she had. The issue for me to determine was:

1. Did the Respondent fail to provide the Claimant with wageslips as required by the 1996 Act?

15. The Claimant had also brought a claim for unlawful deductions on the basis that the Respondent had not paid her the sick pay due to her for the period 8 to 12 January 2018. After some discussion at the beginning of the Hearing the Claimant accepted that she had only been entitled to statutory sick pay and that the Respondent had paid her the amount of statutory sick pay due on the morning of the Hearing. Accordingly she withdrew this claim.

16. Sorting out the bundle-related issues as set out above took some considerable time at the beginning of the Hearing, with both the Claimant and Respondent needing time to review documents produced at or just before the Hearing by the other. As a result of this the Tribunal did not begin to hear evidence until 1pm and consequently it was necessary for me to reserve my decision at the conclusion of the Hearing.

The Law

Unfair dismissal

17. Section 94 of the 1996 Act gives an employee the right not to be unfairly dismissed. In order to bring a claim of unfair dismissal, the employee must show that they have been dismissed. The circumstances in which an employee is dismissed are set out in section 95 of the 1996 Act. The burden of proof to show a dismissal has taken place is on the employee.

18. Section 98(1) of the 1996 Act provides that when a Tribunal has to determine whether a dismissal is fair or unfair it is for the employer to show the reason for the dismissal and that such reason is a potentially fair reason because it falls within section 98(1)(b) or section 98(2). The burden of proof to show the reason and that it was a potentially fair reason is on the employer.

19. A reason for dismissal is a set of facts known to, or beliefs held by, the employer which cause it to dismiss the employee.

20. If the Respondent persuades the Tribunal that the reason for dismissal was a potentially fair reason, the Tribunal must go on to consider whether the dismissal is fair or unfair within the meaning of section 98(4) of the 1996 Act. This requires the Tribunal to consider whether the decision to dismiss was within the band of reasonable responses.

21. Section 98(4) applies not only to the actual decision to dismiss but also to the procedure by which the decision is reached. The burden of proof is neutral under section 98(4).

22. In considering this question the Tribunal must not put itself in the position of the Respondent and consider what it would have done in the circumstances. That is to say it must not substitute its own judgment for that of the Respondent. Rather it must decide whether the decision to dismiss the Claimant fell within the band of reasonable responses which a reasonable employer might have adopted. A claim will not succeed just because the Tribunal takes the view that the decision to dismiss was harsh if it nonetheless fell within the range of reasonable responses.
23. When the reason for the dismissal is misconduct, the Tribunal should have regard to the three part test set out in **British Home Stores Limited v Burchell** [1980] ICR 303.
24. First, the employer must show that it believed the Claimant was guilty of misconduct. This is relevant to the employer establishing a potentially fair reason for the dismissal under section 98(1) and the burden of proof is on the employer.
25. Secondly, the Tribunal must consider whether the employer had reasonable grounds upon which to sustain its belief in the employee's guilt.
26. Thirdly, the Tribunal must consider whether at the stage at which that belief was formed on those grounds the employer had carried out as much investigation into the matter as was reasonable in the circumstances.
27. The second and third parts of the test are relevant to the question of reasonableness under section 98(4) and the burden of proof in relation to them is neutral.
28. Section 123 of the 1996 deals with the calculation of the compensatory award. Section 123(1) provides:

Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

29. I have therefore considered whether the compensatory award should be reduced to reflect the chance that the Claimant would have been dismissed fairly at a later date or if a proper procedure had been followed.
30. Section 123(6) of the 1996 Act requires the Tribunal to reduce the amount of the compensatory award by such amount as it considers just and equitable if it concludes that the Claimant caused or contributed to their dismissal. In addition, section 122(2) requires it to reduce the basic award if it considers that it would be just and equitable to do so in light of the conduct of the Claimant prior to dismissal.

Wrongful dismissal

31. At common the right of summary dismissal arises when the employee commits a repudiatory breach of contract. The employer has the option of waiving the breach or of treating the contract as discharged by the breach.
32. The key issue, therefore, in any claim of wrongful dismissal will often be whether the employee's breach of contract was repudiatory: whether it was sufficiently serious to justify dismissal. That depends on the circumstances. If not justified, the dismissal is wrongful, and the employer is liable in damages.

33. There are no hard and fast rules as to the degree of misconduct necessary for behaviour to amount to a repudiatory breach of contract, although dishonesty, serious negligence or wilfully disobeying lawful instructions will often justify summary dismissal at common law. The Tribunal will consider whether the misconduct has so undermined the trust and confidence inherent in the particular contract of employment that the employer should no longer be required to retain the employee in employment.

Unlawful deductions from wages

34. Section 13 of the 1996 Act provides that an employer may not make a deduction from wages of a worker unless the deduction is required or authorised by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.
35. Section 23 of the 1996 Act provides that an employee may complain to an Employment Tribunal that an employer has made deductions from their wages in breach of section 13.
36. Section 24 of the 1996 Act provides that where an Employment Tribunal finds a complaint under section 23 well founded it shall make a declaration to that effect and order the employer to pay the amount of any deduction made in contravention of section 13.

Payslips

37. Section 8 of the 1996 Act gives an employee the right to be given at or before the time at which any payment of wages is made to him or her a written itemised pay statement.

Findings of Fact

38. I am bound to be selective in my references to the evidence when explaining the reasons for my decision. However, I wish to emphasise that I considered all the evidence in the round when making my findings.

Background findings

39. The Claimant was employed by the Respondent from 20 July 2015 until 12 January 2018 when she was summarily dismissed. The Respondent's business is the provision of care services (in the shape of staff who carry out home visits) and the Claimant was recruited by the Respondent as someone with previous experience of, and connections relevant to, this area of business. The Claimant was employed as the Area Manager. She was also the "Nominated Individual" – this is a role required by the regulatory framework for care providers.
40. As the Area Manager and Nominated Individual the Claimant was the most senior employee of the Respondent involved in its day to day business. The Claimant accepted this expressly in her oral evidence.
41. On 13th November 2017 the Claimant resigned on two months' notice. She gave the reason for her resignation (letter, page 48) as being as follows:

I feel I built this company from nothing, but haven't gained any respect from doing this.

42. Her last day of employment was stated in the letter of resignation to be 15th January 2018. Mr Dunbar for the Respondent wrote to the Claimant on 14 November 2017 (letter, page 49) accepting the resignation.
43. On 12 January 2018 the Respondent summarily dismissed the Claimant (letter, page 52). The letter referred to an investigation:

... due to the major concerns regarding wage payments which has come to our attention over the last few months. I opened my investigation to help me understand why the wage payments for Tailor Maid Care was substantially higher than what it should have been.

During the investigation, numerous issue of a serious nature have been identified. These issues are those that could have been prevented, and should not have arisen, as the role of the responsible person is to prevent such issues from arising and to safe guard the business and its service users from risk.

With all the evidence, I have collated I have decided to take disciplinary Action. Due to the seriousness of this matter you are dismissed with immediate effect for gross misconduct.

You have been dismissed for gross misconduct for the following reasons:

- *Knowingly Authorizing and submitting fraudulent documentation leading to the financial detriment of the company.*
- *Gross Negligence.*
- *Failure to follow company policy and procedures.*

Having considered the above points and evidence I've collated, this has resulted in a fundamental Breach of your contractual terms that has destroyed the trust and confidence necessary to continue our employment relationship which constitutes gross misconduct which is why you are dismissed with immediate effect.

44. The Claimant wrote to the Respondent on 15 January 2018 (letter, page 53) stating that she had taken advice and that a fair procedure would have involved her being given details of the allegations against her and an opportunity to respond before any decision were taken about dismissing her. It also stated that she would like to appeal. The Respondent replied on the same date (letter, page 54). The letter quoted from the disciplinary procedure of the Respondent but gave no further details in relation to either the allegations or evidence beyond stating:

...we have evidence that proves you either directly or indirectly benefited from the signing off of fraudulent time sheets. A sample of the evidence was sent along with the dismissal letter.

45. The letter finished by stating that because the Claimant had “decided not to appeal” (which in fact was quite the opposite of what her own letter of 15 January said) “this will be my last correspondence on the subject”.
46. The Respondent was subjected to an Inspection Report (“the Report”) by the Care Quality Commission (“CQC”) on 25th and 29th January 2018, shortly after the Claimant’s dismissal. The CQC published its report on 17 April 2018 (partial extract of report, pages 70 to 73). The overall rating given was “inadequate”. Of the five criteria assessed three were assessed as “requiring improvement” and two as “inadequate”.

47. The Report’s contents included the following:

- 47.1. Concerns about the information and services provided to service users;
 - 47.2. Concerns about the time keeping of staff with visits to service users not being made at the scheduled times and/or lasting less time than they should have lasted. The Report noted that "little had been done to monitor these issues during the period";
 - 47.3. A note that the service is "currently suspended" with local authority commissioners;
 - 47.4. An observation that "Quality assurance processes were not effective in ensuring the risks to people's health, safety and welfare were addressed";
 - 47.5. An observation that "The service was managed by a well-meaning but inexperienced registered manager, who did not have the skills or experience to manage the service effectively";
 - 47.6. An observation that "The registered person had not always ensured that the CQC were notified of incidents that had or could have an impact on people's health and safety";
 - 47.7. An observation that "the overall rating for this service is "Inadequate" and the service therefore will be placed in 'special measures'";
 - 47.8. A finding that there was a "lack of clear management and overall planning of care provision";
 - 47.9. A finding that "there were widespread areas of concern that were having or could have a direct impact on the quality of the service people received";
 - 47.10. A finding that "quality assurance processes were ineffective in addressing any of the concerns identified during this inspection".
48. The contents of the Report were as such highly unsatisfactory. The matters referred to in it had also resulted in Nottingham City Council suspending its use of the Respondent's services.

The resignation

49. The Claimant's account was that it had been agreed at a meeting on 16 November 2017 that her resignation was retracted and that her employment would continue. The account of Mr Lawlor and Mr Dunbar who gave evidence at those meetings was that this had not happened. The resignation stood.
50. I concluded that there were issues which called the credibility of all the witnesses into account. I found that the Claimant was inclined to exaggerate (for example, the number of hours care being provided weekly by the Respondent as a result of her efforts) and that aspect of her evidence did not stand up to scrutiny (for example, her evidence about whether she was on holiday or not over the Christmas/New Year period 2017 to 2018). So far as Mr Lawlor was concerned, his evidence was at best confused. After he had given his oral evidence I was not at all convinced that he knew why exactly why he had dismissed the Claimant, so imprecise was his account of the relevant evidence and factors involved. Turning finally to Mr Dunbar, I felt his credibility was undermined to some extent by his vagueness about the evidence relied upon in reaching the decision to dismiss. For example, he believed that evidence supporting her dismissal had been sent to the Claimant with the letter of 12 January 2018 but he did not describe that evidence in his witness statement and it was not included in the bundle.
51. Against this background, I find that the Claimant did retract her resignation at the request (and so with the agreement) of the Respondent at the meeting on 16 November 2017 for the following reasons:
- 51.1. The Respondent did not refer to the Claimant's employment being due to terminate by virtue of her resignation on 15th January in the letter of dismissal on 12th January, in its response to her appeal on 15th January or in the Response

which it presented to the Tribunal. I find that if the Claimant's employment had been due to terminate just 3 days after her dismissal then it is highly likely that this fact would have been referred to by the Respondent in at least one of those documents;

51.2. The evidence of Mr Lawlor and Mr Dunbar (and, indeed, the Respondent's letters of 12th and 15th January 2018) suggested that they had no experience of how to dismiss an employee fairly. They appeared to be all at sea. In these circumstances, I find that it is highly unlikely that they would have dismissed the Claimant on 12th January if her employment was due to terminate just 3 days later in any event. I reject the suggestion that they decided to dismiss the Claimant in any event because Nottingham City Council was demanding action. I reject this suggestion for two reasons: (1) such a demand could have largely been answered by stating that the employee whom they regarded as responsible was leaving their employment very shortly; and (2) this was not in any event the consistent evidence of Mr Lawlor and Mr Dunbar. For example, in his written witness statement Mr Lawlor suggested (paragraph 4) that he dismissed the Claimant "due to pressure from our client and the potential fallout from our governing body if we didn't deal with the issues that had arisen" but then did not mention these factors when giving oral evidence in relation to this same issue.

52. I therefore conclude that the Claimant's employment was not due to terminate by resignation on 15th January 2018.

The dismissal

53. I find that the dismissal of the Claimant was due to an honest belief held by both Mr Lawlor and Mr Dunbar that the Claimant had been managing the business of the Respondent incompetently and, possibly, dishonestly.

54. I do not find, however, that as at the date of dismissal the Respondent had conducted a reasonable investigation into the possible incompetence or dishonesty of the Claimant or that it had reasonable grounds for its belief. This is for the following reasons (which take full account of the Respondent's suggestion that the police were involved in the matter and that it was accordingly inhibited in its ability to produce evidence to the Tribunal):

54.1. The Respondent did not include in the bundle any of the evidence that it said it had relied on in reaching its belief that the Claimant had acted incompetently and, possibly, dishonestly;

54.2. The Respondent was not even able to produce a copy of the evidence which it claimed it had sent to the Claimant with his letter of dismissal (and indeed I find that no such evidence was sent);

54.3. Neither Mr Lawlor nor Mr Dunbar were able and willing to coherently and comprehensively describe the evidence that they had relied on. For example, Mr Dunbar could not describe what the evidence which had allegedly been sent with the dismissal letter comprised. When asked about this by his own representative he said "I don't know without going through the file". At the end of the Hearing, it was not at all clear to me on what evidence the decision to dismiss in January 2018 had been based.

What would have happened if the Claimant had not been dismissed when she was

55. The Report was published on 17 April 2018. It is a damning report.

56. The Claimant was, as she accepted, the most senior employee involved in the day to day running of the Respondent's business. She had been employed because of her expertise in the care sector (having 17 years' experience). She was the Nominated Individual. Her son, the Registered Manager was, I find, in a more junior role.
57. I find that the failings as set out in the Report relate largely to the period prior to the Claimant's dismissal, albeit the inspection did not take place until late January 2018, after she had been dismissed. I find that the Respondent could reasonably and would after a reasonable investigation have taken the view that the Claimant should take responsibility for the failings set out in the Report because she was the most senior employee involved in the day to day management of the business. I find that the extent of the failings would have been likely to result in the Respondent losing all confidence in the Claimant's ability to manage its care business competently.
58. I find that a fair procedure would have begun shortly after the publication of the report on 17 April 2018 and would have taken one month. I find that there would have been a 75% chance of that procedure having resulted in the Claimant either being fairly dismissed on two months' notice on 17 May 2018 or of her resigning on two months' notice by no later than that date. As such I find that there would have been a 75% chance of the Claimant's employment ending on 17 July 2018. I make this finding in relation to the possible resignation of the Claimant in light of her previous resignation and the fact that relationships between her and Mr Lawlor and Mr Dunbar were clearly strained.

Contributory conduct

59. I have made the "Polkey" findings above essentially because I have taken the view that the Claimant would have "carried the can" for the failings identified in the Report. However there is insufficient evidence in the Report (or in the bundle) for me to find that the Claimant caused or contributed to her dismissal in January 2018 by culpable or blameworthy conduct. The fact that I have found that there is a 75% chance that the Claimant would have been dismissed or resigned following the publication of the Report does not in and of itself show that she was guilty of culpable or blameworthy conduct prior to her dismissal in January 2018.

Wrongful dismissal findings

60. It is for the Respondent to prove on the balance of probabilities that the Claimant committed a repudiatory breach of contract justifying her dismissal without notice in January 2018.
61. The Respondent has failed to prove this. In light of my findings above in relation to the evidence available to me, the Respondent has not proved that the Claimant committed a repudiatory breach of contract. For the avoidance of doubt, the Respondent has most certainly not proved that the Claimant acted dishonestly prior to her dismissal.

Unlawful deductions from wages

62. I accept as true the Claimant's account that she worked in the first week of January 2018. The Respondent's evidence that she had not largely comprised Mr Lawlor and Mr Dunbar saying that they had not seen her in the office. However there recollections in this regard did not appear precise to me and, in any event, the nature of the Claimant's role would have given her various reasons for being engaged in work out of the office.

Holiday pay

63. The dispute in relation to holiday pay related essentially to the period 22 December 2017 to 2 January 2018 (8 days). The Claimant's evidence was that she had not taken holiday during that period. The Respondent's evidence was that she had.
64. There was some evidence that the Claimant had done a very small amount of work on 22nd and 25 December 2017 in each case for just under or just over an hour (pages 1 and 2 of the supplementary bundle). However her workplace diary showed her as being on holiday throughout the period.
65. The Claimant's own evidence in relation to this issue unraveled to some degree when she gave oral evidence. It might reasonably be summarised as being that she worked on Friday 22nd, took some meals out to a couple of service users on Christmas day because she was "soft hearted" (not because it was required by the Respondent) and that she was "on call" for the rest of the time. She did not give any significant account of what work she had performed when "on call".
66. I conclude that the Claimant did work on 22nd December 2018 but not thereafter. I find that she may have done the odd work-related task during the Christmas and New Year period but that she was not "on call". There was no requirement imposed on her by the Respondent to work or be on call during this period. She was on holiday. I find that if she had not considered herself to be on holiday her workplace diary would not have shown that she was.
67. I therefore conclude that during the holiday year in which her employment terminated the Claimant took 21 days' leave: after some conclusion in her oral evidence she said she had taken 15 days not including any days at Christmas. In fact I find that she took 6 days at Christmas (25 December to 1 January) and so in total took 21 days.

Wage slips

68. The Respondent produced wage slips that it said had with the agreement of the Claimant been put in a folder with the wage slips of other employees for the Claimant to collect each week.
69. I accepted the evidence of Mr Dunbar and Mr Lawlor in this regard and preferred it to that of the Claimant because it was supported by the existence of the payslips contained in the Hearing bundle.

Conclusions

70. I reach the following conclusions in relation to the issues set out above.

Unfair dismissal

71. The reason for the dismissal of the Claimant was the belief of both Mr Lawlor and Mr Dunbar that the Claimant had been managing the business of the Respondent incompetently and, possibly, dishonestly.
72. As the Respondent sensibly conceded that dismissal was not fair – no procedure was followed before the Claimant was summarily dismissed. She was not given notice of the allegations against her or shown the evidence said to support them. In light of the lack of evidence in relation to such matters at the Hearing I further conclude that the Respondent had not carried out a reasonable investigation prior to dismissing the Claimant and that it had no reasonable grounds for its belief in her guilt.
73. I conclude in light of my findings of fact set out above that the Claimant's employment was not due to terminate by reason of her resignation on 15 January 2018.

74. I do, however, conclude in light of the Report that if the Claimant had not been unfairly dismissed when she was then there would have been a 75% chance that a fair procedure would have been followed following its publication resulting in the Claimant either being fairly dismissed on two months' notice on 17 May 2018 or of her resigning on two months' notice by no later than that date. As such I find that there would have been a 75% chance of the Claimant's employment ending on 17 July 2018.

75. Turning to the separate issue of reductions pursuant to section 123(6) and 122(2) of the 1996 Act, in light of my findings of facts above I do not consider that it would be just and equitable to reduce either the compensatory award or the basic award

Wrongful dismissal

76. In light of my findings of fact above I conclude that the Respondent has not proved that the Claimant was guilty of gross misconduct which justified its dismissal of her without notice. The Respondent has not proved that the Claimant committed a repudiatory breach of contract.

Unlawful deductions from wages

77. In light of my findings of fact above I conclude that the Respondent made unlawful deductions from the Claimant's wages for the period 1 to 5 January 2018 and accordingly I order the Respondent to pay the Claimant £550 (net).

Holiday pay

78. In light of my findings of fact above I conclude that the Claimant took all the holiday to which she was entitled in her final holiday year and that accordingly the Respondent did not make unlawful deductions from her wages and/or act in breach of contract and and/or fail to make a payment due to the Claimant on the termination of her employment pursuant to Regulation 14 of the Working Time Regulations 1998 by failing to make a payment in respect of accrued but untaken holiday. No such payment was due.

Pay slips

79. In light of my findings of fact above I conclude that the Respondent complied with its obligations under the 1996 Act to provide itemised pay statements.

Employment Judge Evans

Date: 17 September 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

FOR EMPLOYMENT TRIBUNALS