Case No: 2500258/2018

EMPLOYMENT TRIBUNALS

Claimant: **Mrs C Hall**

Respondent: **Prudhoe and Mickley Unionist Club**

Heard at: **North Shields Hearing Centre** **On: 18 July 2018**

Before: **Employment Judge J E Morris (sitting alone)**

Representation:
Claimant: In Person
Respondent: Mr P Maratos, Consultant

JUDGMENT

The judgment of the Tribunal is as follows:

1) The claimant's complaint that the respondent made unauthorised deductions from her wages contrary to Part II of the Employment Rights Act 1996 ("the 1996 Act") is well-founded in that it did not pay her at all during the period commencing week-ending 23 December 2017 to the date of the Hearing before this Tribunal on 18 July 2018.

2) As such, in accordance with section 24(1)(a) of the 1996 Act the Tribunal orders the respondent to pay to the claimant the sum of £4,766.03, being the amount of such deductions made in contravention of section 13 of that Act.

3) The respondent unreasonably failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) and, pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, it is just and equitable in all the circumstances to increase that award of £4,766.03 by 15% (£714.91), producing a sub-total of £5,480.94.

4) The respondent failed to issue a written statement of particulars of employment to the claimant in accordance with section 1 of the 1996 Act in respect of which, pursuant to section 38 of the Employment Act 2002, the above award is further increased by the "minimum amount" of two weeks' pay (£308.00).

5) Thus the total amount that the respondent is ordered to pay to the claimant is £5,788.94.

6) In the circumstances of the claimant's employment by respondent continuing, she is unable to bring a claim by reference to Regulation 14 of the Working Time Regulations 1998 for a compensatory payment in lieu of leave accrued but untaken and any such claim as may have been made by her is withdrawn and is dismissed.

REASONS

Procedural issue

1 At the commencement of the hearing, the respondent's representative explained that he had had difficulties in obtaining instructions from the respondent or securing the attendance of any witnesses on its behalf. He raised the possibility of an adjournment but indicated that, in his opinion, it would be possible to proceed with the hearing by oral evidence of the claimant, cross-examination and submissions.

2 The claimant was keen that the hearing should proceed.

3 I considered the overriding objective of dealing with cases fairly and justly, which is contained in Rule 2 of the Employment Tribunals Rules of Procedure 2013, including avoiding delay and saving expense. Given that the respondent's representative had indicated that the hearing could proceed and particularly that he had had difficulties in obtaining instructions or securing the attendance of any witnesses, I considered that no purpose would be served in adjourning the hearing; to do so would delay matters and incur expense and there was no indication that the respondent's representative would be able to obtain instructions or, importantly, that any witnesses would attend the adjourned hearing on behalf of the respondent.

4 I therefore determined that the hearing should proceed in line with the suggestion of the respondent's representative.

5 A separate matter related to the identity of and the correct name of the respondent. Attempts have been made with the parties, including at a hearing held on 30 August 2018, to gain more precision but to no avail; relevant issues having been drawn to the attention of the claimant in correspondence and in orders arising from that hearing. In an email to the Tribunal dated 16 September 2018 she stated, amongst other things, as follows, "In my original claim I did cite Prudhoe and Mickley Unionist Club not the Limited company, so I would like to continue the claim naming the Club and not the Limited company as my employer". The claimant has thus made her wishes clear and this judgement is promulgated on that basis.

Representation and Evidence

6 The respondent was represented by Mr P Maratos, consultant. As indicated above, no evidence was given by any witnesses on behalf of the respondent. The claimant appeared in person and gave oral evidence. Like the respondent she had failed to comply with the orders of the

Tribunal made at a Preliminary Hearing on 25 May 2018 that she should produce a witness statement and exchange it with the respondent. The claimant did produce a statement from Louise Carr, which I considered but to which I was unable to give particular weight given that she did not attend the Hearing to give evidence.

7 The Tribunal also had before it a small number of documents contained in two separate bundles produced by the respective parties neither of which had been disclosed to the other party as had been ordered at the Preliminary Hearing. Further, the claimant had only brought one to this Hearing, the copying of which caused delay and expense to the Tribunal. The bundle produced by the respondent comprised formal documents that had been submitted to Tribunal together with copies of a number of the claimant's pay slips; that produced by the claimant comprised prints from her mobile 'phone of text messages that she had sent to a number of people associated with the Club. In the Reasons below, the page number of documents in the respondent's bundle is preceded by a letter R; the page number of documents in the claimant's bundle is preceded by a letter C.

The Claimant's Complaint

8 The complaint that the claimant had presented to the Tribunal was that the respondent had made unauthorised deductions from her wages contrary to section 13 of the 1996 Act.

The Issues

Unauthorised deductions

9 The principal issues arising from the above claim that fell for determination by the Tribunal are as follows:

9.1 Was the claimant a worker who was employed by the respondent at the time she asserts the unauthorised deductions were made from her wages? In this regard, is she still employed by the respondent? If not, when did her employment end?

9.2 Did the respondent make any deductions from the wages due to the claimant?

9.3 If so, were any of the deductions required or authorised by a statutory provision or a relevant provision of the claimant's contract, or had she previously signified in writing her agreement or consent to the making of the deduction(s).

10 At the Preliminary Hearing in these proceedings on 25 May 2018 an issue of whether the claimant is entitled to any holiday pay had been identified but following the explanations I gave to the claimant at this Hearing, she accepted that she cannot bring such a claim in this Tribunal at this stage and withdrew any claim in that respect, which is dismissed. Nevertheless there are two further issues, which arise for consideration by the Tribunal as follows:

Acas Code of Practice

11 Did the claimant or the respondent unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015)?

12 If so, would it be just and equitable, in accordance with section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, to decrease or increase, respectively, any award made to the claimant; and, if so, by what percentage up to a maximum of 25%?

Particulars of Employment

13 Was the respondent required to issue written particulars of employment to the claimant in accordance with section 1 of the 1996 Act?

14 If so, did the respondent issues such particulars to the claimant?

15 If not, should the Tribunal exercise its powers under section 38 of the Employment Act 2002 and award either two weeks' of four weeks' pay to the claimant in addition to any outstanding wages?

Consideration and Findings of Fact

16 Having taken into consideration all the relevant evidence before the Tribunal, documentary and oral (such as it was) and the submissions made by the claimant and on behalf of the respondent and the relevant statutory and case law (notwithstanding the fact that in, in pursuit of conciseness, every aspect might not be specifically mentioned below), I record the following facts either as agreed between the parties or found by the Tribunal on the balance of probabilities.

16.1 The respondent is a relatively small social club. It appears that it is a limited company: No. 00089286. The claimant believes that to be the case and the respondent's representative that although he explained that he had no knowledge of it.

16.2 Prior to October 20127, the steward at the Club had been in the post for some 41 years; his wife had worked part-time as a bar person. On 21 October 2017 the claimant's husband took over as steward with his wife, the claimant, working part-time as a bar person. The claimant had other employment on a full-time basis of 37 hours per week in which she had the benefit of 'flexitime' working, which enabled her to work flexibly on a part-time basis for the respondent. After approximately three weeks, however, Mr Hall decided to leave the respondent's employment to return to his previous job, which he did. This left the respondent in something of a predicament and the claimant, who had considerable experience of bar work, offered to remain in post. That offer was accepted on behalf of the respondent by Mr David Westgarth, the company secretary. Thus the claimant's employment continued.

16.3 Neither at that time nor upon the commencement of her initial employment did the respondent issue the claimant with a contract of employment or statement of principal terms of employment under section 1 of the 1996 Act. In the absence of such a document this

case lacks a degree of certainty. On the basis of the evidence before me, however, I am satisfied that the claimant's employment was not tied to that of her husband with the effect than when his employment ended so did hers (as is sometimes seen in situations such as this); that much is obvious from the claimant continuing to work for the respondent until at least the end of December 2017.

16.4 Another lack of certainty relates to the claimant's contracted hours of work. Initially, it seemed to me that the claimant had no fixed hours of work as such. This appeared to be the case on the basis of the pay slips in the documents that were before me and the claimant's evidence in that respect, which was to the effect that she was willing to work flexibly and sometimes worked as little as 15 hours a week but sometimes far more than that, maybe 35 hours a week. The claimant's clear evidence, however, was that her contracted hours of work were 20 hours each week and I find that that is borne out in the formal Response submitted on behalf of the respondent (ET3) in which it is unequivocally stated, "The Claimants normal contractual hours were 20 hours per week."

16.5 Against that background I turn to the facts of the case.

16.6 The claimant was on a rota to work at the Club on Christmas Day 2017. She was, however, unwell that day and sent a text message to her fellow bar person, Paula, to tell her that she could not make it in that day but she would hopefully be okay for Wednesday 27 December (C1). That day, 27 December, Paula sent the claimant a text message that Mr Westgarth had asked her to tell the claimant not to go into work for the rest of that week. In response, the claimant sent a text message to Paula asking why that was so and she answered, again by text, that Mr Westgarth had simply said that (C2).

16.7 In these circumstances the claimant attended at the Club that afternoon, 27 December, with her friend Ms Louise Carr in attendance. Present in the Club were Mr Westgarth, the Club secretary, Mr George (referred to as Geordie) Rowell, the Club treasurer, and Mr Mark Miller, the Club chairman. The claimant asked to speak to them and they agreed. Mr Rowell then informed the claimant that money was missing from the Club and that the books had been altered and would have to go to the accountants. He said that he would let the claimant know.

16.8 Later that day the claimant wrote to Mr Westgarth (C13) recording, for example, that she was really upset following on from that morning's meeting, had not done anything wrong, had followed instructions in respect of how to fill in the takings book and commenting that she really hoped to be back soon. Mr Westgarth did not reply so the next morning, 28 December, the claimant sent a text message asking for a response and enquiring of what she had been accused (C16). Mr Westgarth replied that he was not at the Club that day, that no one was accused of anything, that things needed to be cleared up, and he would contact Mr Rowell (C16).

16.9 Also on 28 December the claimant sent a text message to Paula asking her to ask Mr Rowell if she was being paid for the time that she had lost that week and enquiring as to what holiday entitlements had accrued (C3). Paula simply replied that Mr Rowell had said that the claimant needed to work 13 weeks to get holiday pay. The text ended "ring dave w" (C4). The claimant asked Paula for Mr Rowell's telephone number but Paula replied that Mr Rowell had said it had nothing to do with him and to contact Mr Westgarth (C5). A short time later the claimant sent a text to Mr Westgarth asking that she and her husband should meet all the committee "to sort this out tomorrow" (C17). He replied that he would contact Mr Rowell "to sort this" (C18). At this time the claimant also forwarded to Mr Westgarth a text from Paula (indicating that she had made mistakes with the claimant's time sheets) with a covering message that he needed to get together with Mr Rowell to sort this out (C19).

16.10 At this stage the claimant had not received from the respondent any meaningful response to her approaches whether via Paula or direct to Mr Westgarth. As such she went again to the Club, once more with Ms Carr, on 29 December. Mr Westgarth and Mr Rowell were in the lounge and she asked them what was happening. Mr Rowell said that the books were with the accountants and would not be back until the New Year. In answer to a question from the claimant about when she could return to work, Mr Westgarth asked her when she would usually work and she said that night. He replied that she could come in that night but she answered that she could not as she had made other arrangements. Mr Westgarth then asked her about the following day, the Saturday, and the claimant said that she could come to work. Mr Rowell then intervened, however, to say that another member of staff was working that day and the claimant could not also come into work. He and Mr Westgarth then had a discussion, Mr Westgarth suggesting that the claimant and the other person could both work but Mr Rowell saying that that was not possible. The claimant concluded the discussion by saying that she would leave it to the two men to decide when she would return to work and that they should let her know.

16.11 Mr Westgarth followed the claimant out of the Club premises and spoke to her on the step. He told her that Paula did not want the claimant working at the Club and neither did some of the committee members. When asked why, he said he did not know. In these circumstances the claimant said she would give him back the keys that she had. These had actually been the keys the respondent had given to her husband when he commenced his employment, which he had passed on to the claimant when he resigned and she had retained. The claimant explained in evidence that she returned the keys to Mr Westgarth because she did not want to be accused of entering the premises to do anything. Mr Westgarth said that it was not necessary for the claimant to hand over her keys but she insisted saying that she would rather they be in his hands than in hers.

16.12 In the absence of any communication from the respondent, on 31 December 2017 the claimant wrote, by text message, to both Mr Westgarth and Mr Rowell asking why she had been told not to attend

work and objecting to the fact that Mr Rowell had been discussing publicly that she had been going into the office and altering the books, which she refuted, and that this was slanderous. She required a response within 14 days. The letter to Mr Rowell is at page C6, that to Mr Westgarth at page C20.

16.13 Still without a reply, on 4 January 2018 the claimant sent a text message to Mr Westgarth enquiring if there were any updates and he replied "not as yet". In her reply the claimant accepted that response but added "just I'd like to know when I can return" (C24). Still without reply, on 11 January 2018 the claimant wrote by text to Mr Rowell (C10) and Mr Westgarth (C13) noting that she had left a message with another bar person the previous day (Lucy) for Mr Rowell to contact her but he had not. She enquired why she was being treated this way and remarked that she had heard malicious rumours about her including that she had left. She noted "I haven't – I am suspended – I'm not aware of that – I am not allowed back in the Club – why not?" She concluded, "all I ask is for a response to my text request/letter and to date" (C12). That afternoon the claimant delivered to the Club letters two separate letters addressed to Mr Rowell and Mr Westgarth, which were in identical terms to the above text messages. She received no reply. The only response the claimant received was from Mr Westgarth that day asking for an e-mail address. The claimant did not receive an e-mail from him or any other person connected with the Club.

16.14 As indicated above, the claimant had worked for the respondent during the week ending 23 December 2017. In that respect she had received a pay slip indicating that gross pay of £115.50 (£91.58 net) was due to her (R30). She never received that pay.

16.15 Additionally, the claimant continued to receive pay slips until 10 March 2018 (R35). The pay slips for the week ending 30 December (R30) and for the weeks ending 6 January and 13 January 2018 (R31) show, respectively, 16 hours, 35 hours and 23.5 hours for each of those weeks. The claimant explained in evidence, which was not disputed on behalf of the respondent, that those were the hours that she had been shown on the respondent's rota as having been assigned to work albeit that she did not do so. Those pay slips show, respectively, gross pay of £120.00, £262.50 and £176.25 (£91.58, £195.14 and £137.30 net).

Submissions

17 After the evidence had been concluded, the respondent's representative and then the claimant made brief oral submissions. It is not necessary to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from the findings and conclusions below. Suffice it to say that I fully considered all the submissions made and the parties can be assured that they were all taken into account in coming to my decisions. That said, I record the key aspects of the submissions below.

18 The respondent's representative submissions included as follows:

18.1 The respondent's position was that the claimant's employment had been concluded, if not on 27 December 2017 then on 29 December when the keys to the Club were handed over. That was also in the mind of the claimant when she asked about her accrued holiday pay, which indicates a conclusion. At best, the claimant is maybe owed one week's notice pay.

18.2 The evidence does not point to a fixed 20 hours per week and the claimant's position was tied to the steward's job; in both the previous years and for the first three weeks of the claimant's employment. At the outset there had been no agreement then, three weeks later, there had been a renegotiation when the claimant offered to stay on and help out. It was not 20 hours but was fluid. The claimant did not object to dropping her hours to 15 or 16 hours per week. The pay slips (for example at page R31) suggest hours worked in accordance with the rota. That should be the conclusion. A rota was not in place because the respondent no longer needed the claimant or her employment had ended.

18.3 There was a dismissal either when the claimant was told not to come back to work or when she handed the keys back.

18.4 Entitlement to holiday pay is dependent upon the above. That said, the respondent did not suggest that the claimant had ever taken paid holiday from her employment.

18.5 The claimant's employment had concluded even if there was no resignation or dismissal. It had ended in another way.

19 The claimant submitted as follows:

19.1 She was technically still employed. She did not resign and was not dismissed. If she had resigned why was she still receiving pay slips?

19.2 It did not matter if she worked 15, 10, 23 or 35 hours a week – she was flexible.

19.3 When her husband had left the respondent's employment she had not intended to stay on but then Mr Westgarth and she had agreed that she would. After she had left two staff came in and the respondent could have paid her.

19.4 She had sent text messages to the officers of the respondent trying to get a response but they did not bother – they had their heads in the sand.

The law

20 The statutory provision that is relevant to the principal issue in this case is as follows:

<u>Protection of Wages - Part II of the Employment Rights Act 1996</u>

"13 Right not to suffer unauthorised deductions

An employee shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

21 The claimant has accepted that, at least at present, she is not entitled to pursue a claim for compensation related to her entitlement to paid holiday under Regulation 14 of the Working Time Regulations 1998 and it would be disproportionate to set out the detail of that Regulation or of the other two statutory provisions of relevance in this case, which are detailed and complex, but those provisions can be summarised as follows:

Failure to comply with a Code of Practice - Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992

21.1 If, in a case such as this, it appears to the Tribunal that either the respondent or the claimant, respectively, has failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) and that failure was unreasonable it may, if it considers just and equitable in all the circumstances to do so, increase or reduce (depending upon whether the failure was on the part of the respondent or the claimant) any award it makes to the claimant by no more than 25%.

Failure to give statement of employment particulars - Section 38 of the Employment Act 2002

21.2 If the respondent was required to issue a written statement of particulars of employment to the claimant in accordance with section 1 of the 1996 Act, did not do so and was in breach of that duty when the proceedings were begun, the Tribunal must, if it finds in favour of the claimant (other than in exceptional circumstances that would make any award unjust or inequitable), increase any award it makes to the claimant by the minimum amount of two weeks' pay and may increase the award by the higher amount of four weeks' pay.

Application of the facts and the law to determine the issues

22 The above are the salient facts and submissions relevant to and upon which the Tribunal based its Judgment having considered those facts and submissions in the light of the relevant law and the case precedents in this area of law.

23 There is no dispute between the parties, first, that a contract of employment was brought into existence between the respondent and the claimant or, secondly, that it ran from the 21 October 2017. A contract of employment cannot simply disappear as water might evaporate. It must be brought to an end. Most commonly that ending would be brought about by a dismissal by the employer or a resignation by the employee, albeit

that section 95(1)(c) of the 1996 Act provides that in certain circumstances a resignation can in fact amount to a dismissal. There is also the possibility of a contract being frustrated but the respondent has rightly not argued that that doctrine applies in this case.

24 As to the first of the common means of ending an employment relationship, dismissal, although the respondent's representative submitted that there was a dismissal either when the claimant was told not to come back to work or when she handed the keys back, that is not the position taken by the respondent in its formal Response (ET3) where it does not suggest that it dismissed the claimant and relies instead upon her resignation on 27 December 2017. The claimant accepts the respondent's position that it did not dismiss her but denies that she resigned from her employment on that date or any other time.

25 The respondent is hampered in this case (as I have been) by the fact no one has attended the hearing to give evidence on its behalf or complied with the orders of this Tribunal to produce a witness statement. Even in the absence of a witness from the respondent in person I could have given some weight to any such written statement produced on its behalf.

26 I do have, however, the formal Response (ET3) in which it is contended on behalf of the respondent at paragraph 5 as follows:

> "On 27th December 2017, the Claimant attended the Respondent's premises, however instead of conducting work, the Claimant informed Mr Dave Westgarth, Secretary of the Respondent's business, that she could no longer continue her employment and resigned with immediate effect."

27 The Response continues at paragraph 6 that the respondent "respected the Claimant's wishes and accepted the Claimant's resignation".

28 Those contentions in the formal Response are against the weight of the evidence before me. Although I have only heard oral evidence from the claimant and not on behalf of the respondent, her evidence is supported by the printed copies of the contemporaneous text messages that she produced at the Hearing. It is clear from the claimant's oral evidence and those text messages that after her supposed resignation on 27 December 2017 the claimant attempted to seek clarity as to her position both by text messages and letters sent to Mr Westgarth and Mr Rowell including, for example, the long texts referred to above on 31 December 2017 and 11 January 2018.

29 While there is thus corroborative evidence to support the claimant's claims there is, to the contrary, evidence that I consider to be inconsistent with the respondent's contention that the claimant resigned "with immediate effect" on 27 December 2017. Examples include as follows:

29.1 On 28 December 2017, Mr Westgarth sent a text message to the claimant that he would contact Mr Rowell "to sort this" (C18). I am satisfied that Mr Westgarth would not have sent a message to that effect if it was right that the claimant had resigned the previous day as there would have been little, if anything, to sort. Mr Westgarth could have simply said that - but he did not.

29.2 The claimant went to the Club premises on 29 December (after her supposed resignation on 27 December) to enquire what was happening. At the meeting that occurred then, Mr Westgarth suggested that she should work that night, which the claimant could not do but she offered to work the following day, the Saturday, which it appears Mr Westgarth accepted. For Mr Westgarth to have accepted the Claimant's proposal to work on Saturday 30 December is inconsistent with the employment having ended three days earlier.

29.3 At that same meeting on 29 December, Mr Rowell stated that the claimant could not work on that Saturday but only because another employee had been assigned to work that night; he did not say it was because the claimant had resigned. I am satisfied that had the claimant resigned, Mr Rowell would have explained that that was the reason that she could not work on the Saturday rather than the fact that another employee had already been allocated the work on that date. Clearly, for the claimant to have worked on 29 December or on Saturday 30 December is inconsistent with the respondent's contention that she had resigned on 27 December or, at the latest, on 29 December 2017.

29.4 I accept the claimant's evidence that it was she who concluded that meeting on 29 December by saying that she would leave it to the two men to decide when she would return to work and they should let her know. If the claimant had resigned two days earlier, Mr Westgarth or Mr Rowell could easily have said that, there and then, and that there was therefore nothing further about which to let her know - but they did not.

29.5 Not having heard further from anyone on behalf of the respondent the claimant wrote a text message to both Mr Westgarth and Mr Rowell on 31 December (C6/C20). Among other things, she asked why she had been told not to attend work and requested a response within 14 days. Neither man replied. It would have been a simple matter, if it were true, either to respond that she had not been told not to attend work, on the contrary, she had resigned on 27 December - but they did not.

29.6 In these circumstances, on 4 January 2018, the claimant sent a further text message to Mr Westgarth enquiring if there were any updates to which he replied "not as yet" (C24). If the respondent's contention is right, Mr Westgarth could simply have said that there were no updates and no need for any updates because the claimant had resigned - but he did not.

29.7 The above point is compounded by the fact that the claimant then replied to Mr Westgarth commenting that she just wanted to know "when I can return" (C24). Once more, Mr Westgarth could have clarified that the claimant would not be returning because she had resigned - but he did not.

29.8 I also note that in the messages and the hard copy letters, which I accept the claimant did send on 11 January 2018, the claimant specifically referred to the rumours that she had left and clearly

stated, "I haven't". Yet no one on behalf of the respondent countered that assertion that the claimant made on 11 January to say orally or in writing, for example, that she had left - she had resigned on 27 December or even on some other date. The respondent did not counter that assertion of the claimant that she had not left its employment then or subsequently including, I repeat, by not participating in these proceedings today.

29.9 The claimant's position is also supported by the fact that weekly pay slips were produced on behalf of the respondent, which were sent to her. The last pay slip that shows wages due to the claimant is dated 13 January 2018 (R31) but they then continue until 10 March 2018 (R35) albeit by then no pay is shown as being due to her. Producing and sending payslips to the claimant in this way is inconsistent with her having resigned on 27 December 2017. In its Response attached to the ET3, the respondent explains this in the following terms, "The Respondent was not aware that its accountants had failed to follow its instructions" and "the Respondent can only imagine that this was an administrative oversight". No evidence has been produced before me, however, that any such instructions were given, or that the accountants were guilty of such an oversight.

30 In his closing submissions, the respondent's representative introduced an alternative date of 29 December 2017 as the date upon which the employment of the claimant had been terminated by her resignation; that being the date upon which the keys to the Club were returned. There is no such suggestion in the respondent's Response that the termination date was 29 December. On the contrary, it is stated in the introductory paragraph, in the paragraph numbered 2 and in the paragraph numbered 5 that the claimant's employment ceased upon her resignation on 27 December 2017. Even with regard to that alternative date of 29 December 2017, however, the inconsistencies noted in paragraphs 28.5 to 28.9 inclusive apply equally.

31 In any event, I accept the claimant's evidence that she returned the keys to Mr Westgarth that day not as an indicator of her resignation but because he had told her that some connected with the Club did not want her working there and she did not want to be accused of entering the premises to do anything, and although Mr Westgarth had said that it was not necessary for her to hand over her keys, she had insisted. For Mr Westgarth to state that the claimant did not need to hand over her keys is similarly inconsistent with the respondent's contention that she had resigned from her employment on 27 December or, at the latest, on 29 December 2017.

32 For the above reasons, on the evidence before me, the claimant has discharged the burden of proof upon her to satisfy me, on the balance of probabilities, that her contract of employment has not been brought to an end and, indeed, is still continuing. As such, I am satisfied on the basis of the evidence before me that the claimant should have been paid in respect of the week ending 23 December 2017, when she did work (that much does not appear to be in dispute) and more than that, thereafter she should have been paid in accordance with her contract of employment until the date of this Hearing, 8 July 2018. That being so, I find the

claimant's complaint under section 23 of the 1996 Act that the respondent made deductions from her wages in contravention of section 13 of that Act to be well-found and, make a declaration to that effect under section 24(1) of that Act.

33 Also, under section 24(1)(a) of that Act, I order the respondent to pay to the claimant the amount of the deductions made, the calculation of which I now address.

34 I repeat the above point that I did consider whether, as the respondent's representative suggested, the claimant did not have any contractually fixed hours of work and did not work fixed hours but worked as and when necessary. The claimant's evidence and the formal Response on behalf of the respondent indicates, however, that this is not the case; indeed the respondent is clear that her "normal contractual hours were 20 hours per week". Thus the claimant is entitled to be paid for the week she actually worked and for the weeks she did not work, given that she was ready, willing and able to perform the obligations of her contract of employment but was prevented from working by the respondent.

35 As to the week the claimant actually worked ending 23 December 2017, there is at page R30 a pay slip indicating that the hours of work the claimant had worked that week were 15 hours producing a gross pay figure of £115.50. That amount is obviously due to the claimant if she worked that and I am satisfied that she did.

36 Also on page R30 is a pay slip for the week ending 30 December and on page R31 two pay slips for weeks ending 6 January and 13 January 2018. Those three pay slips show, respectively, 16 hours, 35 hours and 23.5 hours worked on each of those weeks. The claimant explained in evidence, in which she was not challenged on behalf of the respondent, that those were the hours that she had been shown on the respondent's rota as having been assigned to work albeit that she did not do so. Thus I am satisfied that she is entitled to be paid for the hours she had been assigned to work as shown on the rota because, I repeat, although she was ready, able and willing to work in accordance with that rota the respondent did not allow her to do so. Those pay slips show, respectively, gross pay of £120.00, £262.50 and £176.25; a total of £558.75.

37 Thus, in respect of the four pay slips referred to above it is clear that the gross pay that the claimant either earned during the week ending 23 December 2017, when she did work, or would have earned had she been permitted to be at work during the three following weeks totals £674.25.

38 Thus far I have been able to rely on the payslips. The position thereafter becomes more speculative. The claimant was not required to work at all by the respondent or, it appears, was placed on any rota that she should have worked. Importantly, however, the claimant was still ready, able and willing to work, it was just that the respondent did not ask her to. To use her term, they refused to let her work. Therefore, in the absence of any rota I have no option other than to fall back on the contracted hours as agreed by the parties of 20 hours each week.

39 From the last of those pay slips referred to above of week ending 13 January 2018 to the date of this Hearing amounts to a total of 26 weeks

and four days. That converts to 26.57 weeks, multiplied by 20 hours each week, multiplied by the minimum wage of £7.70 produces a total of £4,091.78 gross. To that is to be added the sum of £674.25 referred to above producing a grand total of £4,766.03. In this regard I record that the claimant has not suggested that she suffered any 'consequential loss' as a result of not having received a wage from the respondent such that an order pursuant to section 24(2) of the 1996 Act is required "to compensate the worker for any financial losses sustained by him which is attributable to the matter complained of."

40 In summary, therefore, the respondent is ordered to pay that amount of £4,766.03 (calculated gross) to the claimant subject to usual deductions, if any.

41 As indicated above, a separate issue relates to the compliance by the parties with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015). As the claimant was not dismissed, the respondent was not under any duty pursuant to the disciplinary aspects of that Code. The claimant was, however, under a duty to comply with the Code in the sense of raising a grievance. I am satisfied that in the context of this employment the text messages that the claimant sent to the respondent as represented by its secretary and treasurer, Mr Westgarth and Mr Rowell, (particularly those of 31 December 2017 and 11 January 2018) did amount to her raising a grievance. The claimant having raised her grievance, however, the respondent did not deal with it appropriately or, indeed, at all. For example, (to quote excerpts from the Code) it did not "arrange for a formal meeting to be held without unreasonable delay" and did not "decide on what action, if any, to take" or communicate its decision to the claimant, "in writing, without unreasonable delay".

42 In such circumstances, as indicated above, section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 empowers an employment tribunal (if it considers, first, that an employer's failure to comply with the Code was unreasonable and, secondly, that it is just and equitable in all the circumstances to do so) to increase any award it makes to the employee by no more than 25%.

43 In this regard, I have considered (by analogy given that a different regime of Disciplinary and Grievance Procedures was being referred to) the guidance given by Underhill J in the case of Lawless v Print Plus EAT 0333/09 indicated that relevant issue include whether the procedure was applied to some extent always ignored altogether; whether the failure to comply with the procedure was deliberate or inadvertent; whether there were circumstances that mitigated the blameworthiness of the failure to comply.

44 In this case the respondent ignored the grievance and did not follow the Acas code to any extent; in the absence of evidence I am unable to make a finding as to whether this was deliberate or inadvertent but suspect that it was probably a combination of both if one were to construe "inadvertent" as being the same as acting in ignorance; similarly I have no evidence that might have mitigated the blameworthiness of the respondent's failure to comply but I have brought into account the size and relatively informal structure of the respondent; but have set against that that the respondent

totally failed to respond in any way to the claimant's grievance despite her concerted efforts to elucidate a response from its company secretary, Mr Westgarth, and treasurer, Mr Rowell. I do consider that the respondent's failure to comply with the Code was unreasonable and, that it is just and equitable that the award that I have made to her above should be increased. In all the circumstances, I consider 15% to be an appropriate increase. Applying that increase (£714.91) to the award of £4,766.03 produces a total of £5,480.94.

45 Finally, there is the question of whether the respondent had issued the claimant with a contract of employment or a less formal written statement of particulars of employment under section 1 of the 1996 Act. There is no dispute that no such contract or statement was issued to the claimant. In these circumstances, pursuant to section 38 of the Employment Act 2002, a Tribunal "must" make an award to the employee unless it considers that there are exceptional circumstances which would make such an award unjust or inequitable. I do not find that there are any such exceptional circumstances in this case and, therefore, I am obliged to make an award to the claimant. Any such award can be what the Act refers to as the "minimum amount" of two weeks' pay or, if a Tribunal considers it just and equitable in all the circumstances, the "higher amount" of four weeks' pay. In this case I am satisfied that given the informal structure of the respondent referred to above, the minimum amount is appropriate. I therefore increase the award referred to above by two weeks' pay; ie £308.00.

46 Thus the total amount due to the claimant as indicated above comes to £5,788.94.

47 For completeness, I record that there remains from the issues identified at the preliminary hearing on 25 May 2018 questions of whether the claimant is entitled to any holiday pay but given that her employment is continuing she cannot bring such a claim in this Tribunal, which she accepted following the explanations I gave at the hearing. The position may change, of course, if the claimant's employment is brought to an end.

Employment Judge J E Morris

Date: 25 September 2018

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.