EMPLOYMENT TRIBUNALS

Claimant: **Ms K Asquith**

Respondent: **Renaissance Nurseries Leeds Ltd**

Heard at: **Leeds** **On:** **2 August 2019**

Before:
Employment Judge JM Wade

Representation
Claimant: Mr M Huffinley (lay representative)
Respondent: Miss A Clish (lay representative)

JUDGMENT

1 The claimant's complaint of a failure to pay holiday pay on the termination of her employment succeeds and the respondent shall pay to her the gross sum of £116.
2 The claimant's complaint that she was not provided with an itemised pay statement for payment on 11 January 2019 succeeds. I make no declaration as to its terms: it was provided today (save that it is inaccurate as to payment date).
3 The claimant's complaint concerning deductions in respect of training provided was not pursued and is dismissed, the relevant training evidence having been provided to the claimant today.

REASONS

1 The complaints were those set out above. There was a great deal that was not in dispute as follows. The claimant had accrued 14 hours and 30 minutes holiday pay, having started work for the respondent on 7 November 2018. She gave notice to terminate her contract of employment, and the last day worked was Thursday 20 December 2018. She was not rostered to work on 21 December 2018. The nursery was then closed for two weeks, reopening on 7 January 2019. The claimant had not had sight of a pay slip for December 2018.

2 The issues for me where largely factual: had the claimant been paid in respect of any accrued holiday on the termination of her employment? Had she been provided with a pay slip at the time the final payment was made? Had the employer incurred training cost such that it was entitled to deduct £30 for training provided on 14 December 2019.

4 I heard sworn oral evidence from the claimant and from Miss Clish who is the registered manager of the respondent's nurseries for inspection purposes. The

findings and conclusions I reach are as follows.

5 The date when the claimant emailed one week's notice to Miss Clish was 19 December 2018. Miss Clish may not have seen that email that day, but the notice was validly served. In addition the claimant told her local manager of her decision. The contract of employment provided for four weeks' notice to be given by the employee, and two weeks by the employer; the claimant had given one week, but she would not have been required to work in any event until the week commencing 7 January 2019 (more than two weeks later from the delivery of her notice).

6 All relevant employee matters are delivered electronically by the respondent: by this I mean timesheets and recordings of weekly hours, pay slips, holiday approvals and so on. The claimant could access the "portal" to see these records from her telephone while she was an employee. She told her local manager about her resignation and emailed Miss Clish. I accept her oral evidence that her portal access was removed that final week or shortly afterwards.

7 Her final pay slip was not therefore accessible to her. Payment was made on 11 January 2019 for December's pay (relying on the claimant's banking records). The sum paid was that recorded on a pay slip as being paid on 5 January 2019 (£564.96). Taking these documents into account I reject Miss Clish's evidence today that she did not action any matters concerning the claimant's leaving until she returned to work (the week commencing 7 January 2019); I also reject her contention that the claimant could have seen her pay slip before her access to the portal was removed. It is clear an adjustment was made to deduct £30 for training delivered on 14 December 2019 and this would not have been done if the claimant had not handed in her notice. This was included in the pay slip recording a date of payment of 5 January 2019 and is likely to have been actioned before that date.

8 Alternatively, for there is no explanation for why the claimant was paid late (on 11 January 2019), action was taken in the week commencing 7 January 2019 to adjust pay but the payment date was left inaccurately recording 5 January on the pay slip. In any event by 11 January the claimant certainly could not access a pay slip and was unable to find out the calculation underlying her net final pay. It is not in dispute that in the months prior to this hearing pay slips (in paper form) have been requested and have not been provided by the respondent. I am at a loss to understand why paper copies could not have been posted to the claimant to assist resolving this dispute and in circumstances where the claimant could not access them electronically.

9 The claimant tells me a P45 has also not been provided (and that is a matter to raise with HMRC). Taking all these matters into account, I do not accept Miss Clish' evidence that the holiday pay sum (or rather the lesser sum of pay for ten hours which it is accepted was granted as leave on 12 December) might be included in the 74.37 hours calculation. I do not accept this because it is highly unlikely: firstly the claimant has arrived at virtually the same hours calculation for her December work without holiday hours, from the respondent's portal hours records; secondly she tells me and I accept they are arrived at from electronic signing in and out; thirdly there is no reference to holiday pay on the pay slip; fourthly the respondent's evidence in this case suggests that it will do anything it can to avoid having to pay

to the claimant the sums to which she is owed. That complaints succeeds and the sum must be paid.

10 As to the remaining complaints, as the copy pay slip is now with the claimant and the underlying hours worked are not in dispute, there is no need to declare further details. As to the dispute about deductions for training costs, it is not in dispute that there was a signed agreement permitting such a deduction; nor that the claimant took part in the training; the only real dispute between the parties was the lack of evidence of training cost and on that matter I accept Miss Clish' oral evidence that there was a cost incurred. In any event the claimant now has written evidence of the provider and she does not pursue this complaint.

11 I also note that the respondent's choice to deliver documents by a portal means that if an employee does not print a copy, and subsequently loses access, there is no means to check the contractual provisions. In my judgment this is why the Employment Rights Act 1996 requires statements to be given in writing, for which there is good reason to conclude an electronic or paper copy must be delivered (rather than live access which can be removed); for my part had a written or electronic copy been given at the time, the parties may not have fallen into dispute in this case.

12 Finally I would add that there has been no evidence before me to suggest that the respondent was put to any extra cost (that is beyond the wages that would have been paid to the claimant) for the weeks commencing 7 and 14 January; even if such evidence was before me, there was no right to make such a deduction in "set off" without the claimant's written agreement.

Employment Judge JM Wade

2 August 2019