EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr J Watson	**v**	Oxford Virtual Markets Limited

Heard at: Reading **On:** 6 August 2019

Before: Employment Judge Hawksworth (sitting alone)

Appearances
For the Claimant: Mr J Howlett of Counsel
For the Respondent: No attendance or representation

JUDGMENT

1. The Claimant's complaint of constructive unfair dismissal succeeds. The Claimant is awarded:

Basic Award:	£4,311.00
Compensatory Award with uplift:	£38,653.75
Total unfair dismissal award	£42,964.75

2. The Claimant's complaint of unauthorised deduction from wages succeeds. The Claimant is awarded the sum of £21,277.00 in arrears of pay and tax/national insurance deductions.

3. The Claimant's complaint as to holiday pay succeeds. The Claimant is awarded the sum of £3,546.50 for 20.5 days' pay in lieu of untaken holiday.

4. The total award to the Claimant is **£67,788.25.**

REASONS

Claim

1. The Claimant worked for the Respondent as a Senior Developer from 14 December 2006 until 20 October 2016.

2. The Claimant's claim form was presented on 17 November 2016 after a period of ACAS early conciliation from 24 October 2016 to 9 November 2016.

3. The Respondent defended the claim. However, following the Respondent's failure to comply with an unless order dated 17 August 2018, the Respondent's response was dismissed on 10 October 2018. The effect of this (pursuant to Rules 38 and 21 of the Employment Tribunals Rules of Procedure) is that the Respondent is only entitled to participate in any hearing of this case to the extent permitted by the judge.

Procedural history

4. I set out here a summary of the procedural history because it is relevant to an application for postponement made by the Respondent, to which I return below.

5. There have been a number of postponements in this case. Originally, the full merits hearing was listed for one day on 7 March 2017. The hearing was postponed on the tribunal's initiative and re-listed for two days on 11 and 12 May 2017.

6. The Respondent's solicitors made an urgent application on 2 May 2017 to postpone the hearing because of the ill health of Mr Seifert, the Respondent's primary witness. Mr Seifert was in Vienna undergoing treatment. The application was supported by medical evidence. The Claimant did not make any objection to the application.

7. The Respondent's application for postponement was granted and postponement was ordered on 10 May 2017. The parties provided dates to avoid and the hearing was re-listed for 2 and 3 October 2017.

8. Unfortunately the hearing listed for 2 and 3 October 2017 was postponed by the tribunal on 29 September 2017 as it was unlikely that the case could have been heard on those dates.

9. The hearing was re-listed for 30 and 31 January 2018 after the parties provided dates to avoid.

10. The Respondent's solicitors wrote to the tribunal on 19 January 2018 to say that they were no longer instructed, and that correspondence should be sent to the Respondent direct, through its director Mr Seifert at the contact details set out on the ET3. The contact details given on the ET3 were an address in London, and an email address for Mr Seifert. The London address was the registered office of the Respondent.

11. Mr Seifert emailed the tribunal on 23 January 2018. He gave his contact details at the top of the email as the London address. He applied for a postponement of the hearing on medical grounds. The Claimant did not object to the Respondent's postponement application.

12. The postponement application was granted. The postponement order dated 29 January 2018 required the Respondent to confirm, within 14 days, when he expected to be fit enough to attend a hearing.

13. The Respondent did not comply with the order. The tribunal sent an email on 29 April 2018, requesting a response. The Respondent replied to the tribunal's email on 30 April 2018. His response was referred to the Regional Employment Judge who considered that it did not answer the question contained in the tribunal's letter of 29 January 2018, in that it did not say when he expected to be fit enough to attend a hearing.

14. The tribunal wrote to the Respondent on 3 June 2018 to say that if a reply to the question of when Mr Seifert expected to be fit to attend a hearing was not received by 22 June 2018, an unless order would be made, and that this could ultimately result in the Respondent being debarred from defending the proceedings. The letter was sent to Mr Seifert by email and post to the London address.

15. Mr Seifert failed to reply to the tribunal's letter of 3 June 2018. An unless order was made on 17 August 2018. It provided that unless the Respondent confirmed to the tribunal and the Claimant when Mr Seifert expected to be fit enough to attend a hearing, the response would be dismissed without further order. It was sent to Mr Seifert by post on 22 August 2018 to the London address.

16. There was no response to the unless order. Following an email enquiry from the Claimant's solicitor on 9 October 2018 which was copied to Mr Seifert, the tribunal wrote to the parties on 10 October 2018 to say that the response had been dismissed under Rule 38 and giving notice that the full merits hearing had been relisted for 6 August 2019. The notice was sent to Mr Seifert by post to the London address.

17. The Respondent did not make any application to have the order set aside in the interests of justice under Rule 38(2), or any other application in respect of the dismissal of the response.

The Respondent's application for postponement

18. In response to an email from the tribunal administration on 5 August 2019 (the day before this hearing) to check attendance, Mr Seifert on behalf of the Respondent made an application for postponement of the hearing. His application was sent at 19.40 on 5 August 2019.

19. In his application Mr Seifert said he had not received notification of the hearing and he had not heard from the tribunal since September 2018. He said that he was in hospital awaiting exploratory surgery in relation to a potentially life-threatening disease. He also said that he now lives in Austria and would therefore require additional notice to travel back to the UK.

20. Following the failure to comply with the unless order and the dismissal of the response, the Respondent is only permitted under Rule 21 to participate in any hearing in this case to the extent permitted by the judge. I decided that in these circumstances it would be in line with the overriding objective for me to consider the Respondent's postponement application.

21. The Claimant's representative said that the Claimant objected to the hearing being postponed and would like it to go ahead. The Claimant was present at the tribunal and the case was ready to proceed. He also pointed out that although Mr Seifert said in his application that he now lives in Austria, on 16 July 2019 Mr Seifert was appointed as a director to a newly incorporated company and that he has indicated on the Companies House register that his country of residence is the United Kingdom.

22. Rule 30A(2) of the Employment Tribunal Rules of Procedure provides:

> "*Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where –*
> *a) all other parties consent to the postponement and –*
> *i) it is practicable and appropriate for the purpose of giving the parties the opportunity to resolve their disputes by agreement; or*
> *ii) it is otherwise in accordance with the overriding objective;*
> *b) the application was necessitated by an act or omission of another party or the Tribunal; or*
> *c) there are exceptional circumstances."*

23. Rule 30A(3) of the Employment Tribunal Rules of Procedure provides:

> "*Where a Tribunal has ordered two or more postponements of a hearing in the same proceedings on the application of the same party and that party makes an application for a further postponement, the Tribunal may only order a postponement on that application where –*
> *a) all other parties consent to the postponement and –*
> *iii) it is practicable and appropriate for the purpose of giving the parties the opportunity to resolve their disputes by agreement; or*
> *iv) it is otherwise in accordance with the overriding objective;*
> *b) the application was necessitated by an act or omission of another party or the Tribunal; or*
> *c) there are exceptional circumstances."*

24. The Respondent's email request for the hearing not to proceed was made at 19.40 the evening before the hearing was due to start, less than seven days before the hearing. Further, the tribunal has previously ordered two

postponements of a hearing in this case on the application of the Respondent (on 10 May 2017 and 29 January 2018).

25. Both sub-paragraphs (2) and (3) of Rule 30A therefore apply. I may only order a postponement if one of the situations in sub-paragraphs (a) to (c) arises (the situations are the same under both sub-paragraphs).

26. As to (a), the Claimant does not consent to a postponement, so this sub-paragraph does not apply.

27. I have considered whether sub-paragraph (b) applies, that is whether the claimant's request for the hearing not to proceed was necessitated by an act or omission of another party or the Tribunal.

28. In this context, I considered the Respondent's submission that he has not received correspondence from the tribunal since September 2018. I note that the tribunal's correspondence requesting a reply from Mr Seifert about his fitness to attend a hearing was sent on 3 June 2018 and the unless order was sent to him on 22 August 2018, ie prior to September 2018 and it seems therefore that he received them. The Respondent has also been copied into email correspondence by the Claimant after September 2018.

29. I also note that all the tribunal's correspondence has been sent to the London address which was given by the Respondent on the ET3 and by Mr Seifert in his first correspondence with the tribunal in January 2018 after his solicitors ceased acting. This was the registered address of the Respondent. Mr Seifert says that he now lives in Austria, however he has not notified the tribunal of any change of postal address.

30. I conclude that it cannot be said that any act or omission of the tribunal or any other party has necessitated the Respondent's application. If Mr Seifert has not received the correspondence which was sent to the Respondent's address after September 2018, this is not because of any act or omission by the tribunal. Mr Seifert should have notified the tribunal of any change in the Respondent's postal address. Sub-paragraph (b) therefore does not apply.

31. This means that I can only order a postponement if sub-paragraph (c) applies, that is that there are exceptional circumstances which would permit an order to postpone the hearing. I also bear in mind the overriding objective to deal with cases fairly and justly, which includes, so far as practicable, avoiding delay so far as compatible with proper consideration of the issues.

32. In considering whether there are exceptional circumstances, I take into account what the Respondent says about his ill health, although he has not provided any medical evidence as to unfitness to attend the tribunal hearing. I note also that the two previous postponements at the Respondent's request have been because of Mr Seifert's ill health, and that he says he would need additional notice to travel to the UK.

33. I also take into account the history of postponements in this case, which has meant that the full merits hearing is taking place almost three years after the claimant's employment terminated.

34. I also take into account the fact that, as the response was dismissed for failure to comply with an unless order, the Respondent would only be able to participate in any postponed hearing to the extent permitted by the judge. There has been no application to set aside the unless order. The notice of dismissal of the response is an order of the tribunal, not a judgment, therefore it is not open to me to reconsider the dismissal of the response under the rules relating to reconsideration of judgments in Rules 70 to 73 of the employment tribunal rules.

35. Weighing up these factors, I have concluded that it is in accordance with the overriding objective and in particular the objective of avoiding delay, bearing in mind the procedural history, and the risk of prejudice to the Claimant from further delay, for the hearing to proceed, and that there are no exceptional circumstances that would permit postponement of this hearing under sub-paragraph 30A(2)(c) or 30A(3)(c) of the ET rules of procedure.

Evidence

36. At the hearing on 9 August 2019 I heard evidence from the Claimant. He had produced a written witness statement which I read, together with the documents referred to in that statement (cross-referenced to the bundle of 520 pages which the Claimant brought to the hearing).

The Issues

37. The issues for determination are as follows.

38. <u>Constructive unfair dismissal</u>

    38.1. Was there a repudiatory breach by the Respondent of any express and/or implied term of the Claimant's contract of employment? (The Claimant relies on a breach of the express term to pay him his correct pay, and on a breach of the implied term of trust and confidence.)
    38.2. If so, did the Claimant resign in response to any such breach of contract?
    38.3. If so, and the Claimant was constructively dismissed, was the dismissal unfair?
    38.4. If so, what award is the Claimant entitled to and should there be any uplift in accordance with s207A of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of any failure to follow the Acas Code on Disciplinary and Grievance Procedures.

39. Unauthorised deduction from wages

    39.1. Was there any deduction of wages which were properly payable to the Claimant during the period from November 2015 to 20 October 2016?

40. Holiday pay

    40.1. Was the Claimant entitled to pay in lieu of any untaken holiday on the termination of his employment?

Findings of fact

41. The Claimant began employment with the Respondent as a Senior Developer on 14 December 2006. The Respondent was a company which designed software.

42. The Claimant resigned with immediate effect on 20 October 2016 and claims constructive unfair dismissal (including notice pay), arrears of pay and holiday pay.

43. The Claimant's salary was £65,000.00 per year, his usual net monthly salary was £3,677.54. This equates to net weekly salary of £868 per week and net daily pay of £173. The Claimant's contract provided that he would be paid monthly in arrears on the final working day of each month.

44. From February 2015, the Claimant and his colleague who was the Respondent's office manager were the only employees of the Respondent. During the period from December 2015 until the end of the Claimant's employment, the Respondent, which was in financial difficulties, had difficulties paying his salary. There were significant delays and issues with payments to the Claimant from November 2015 until he left the Respondent's employment in October 2016.

45. The last payslip the Claimant received was on 27 November 2015. He was paid his net monthly salary of £3,677.54.

46. During the period from 2 January 2016 to 21 October 2016, the Claimant received irregular and inconsistent payments from the Respondent representing payment or part-payment of the salary due to him. These payments were made net to the Claimant and were not made via the Respondent's payroll, so no deductions were made from them for tax or national insurance or pension contributions. The Respondent did not make any payments to HMRC in respect of the salary paid to the Claimant during this period.

47. The Claimant was told by the Respondent's director Mr Seifert in January 2016 that the Respondent did not have enough money to pay his tax and national insurance at the time but they would be paid retrospectively when the Respondent was able to do so. The Claimant understood his tax and

national insurance payments would be brought up to date in a matter of weeks.

48. The Respondent has said in the Grounds of Resistance that the payments to the Claimant at this time were a loan and not salary, and that the Claimant's status changed from employment to self-employment at around this time. The Claimant says he did not agree to any change in his employment status and that he was not asked to agree to receive either net payments of salary or a loan. I accept the Claimant's evidence on this.

49. The Claimant's contract of employment signed on 2 May 2013 clearly records the Claimant's status as an employee. The Claimant did not at any stage agree with Mr Seifert to become self-employed. This is supported by Mr Seifert's account given in contemporaneous documentation. For example, in an email of 7 October 2016 to the Claimant Mr Seifert says:

> *"We never agreed either in writing or orally precisely how the payments to you which were irregular in time and in amounts were to be interpreted. We never sat down to explicitly vary your employment contract. It was not complied with by the company and you have had the right to complain and to force the company to comply with it to pay back salaries which should have been paid."*

50. On 28 March 2016, the Claimant received an email from Mr Seifert describing a payment to him as 'pseudo-salary'. The Claimant understood this to be referring to his salary payment but was concerned that tax and national insurance were still not being paid as it was now nearly the end of the tax year. Mr Seifert told the Claimant that the tax issues would be resolved. He said in an email to the Claimant on the same day:

> *"I realise that we need to transfer this and recent payments into salary and intend to do this as soon as further investments are received but cannot do it earlier. I have verified that this procedure is perfectly legal and in fact a frequent device employers use."*

51. On 4 May 2016, Mr Seifert emailed the Claimant to apologise for the stress and delays and to say:

> *"I am confident that the May payment will be made this week and hopefully salary resumed."*

52. By July 2016, the Claimant had received some payments but was owed over three months' salary. Tax and national insurance payments and payments to the Claimant's pension were outstanding on the payments he had received. He emailed Mr Seifert. On 15 July 2016, he received a payment of £3,000.00 towards his April salary.

53. On 30 August 2016, the Claimant's colleague sent an email to Mr Seifert setting out a breakdown of the salaries owed to them both. She also set out details of the outstanding national insurance and tax payments due

and said that both employees were increasingly worried about the unresolved tax issue.

54. On 2 September 2016, the Claimant received a letter from HMRC. It said that his income for the financial year 6 April 2015 to 6 April 2016 was £43,333.00, that £10,066.00 had been paid in tax and that he was entitled to a tax refund. The Claimant was extremely concerned about this because he was sure that he was not entitled to a tax refund. He has since been in contact with HMRC to explain this and has decided not to cash two cheques sent to him by HMRC in respect of this refund.

55. The Claimant emailed Mr Seifert on 5 September 2016 to explain his concerns and to ask for things to be sorted out. He referred to a number of concerns including whether he needed report matters to his mortgage company. In his response Mr Seifert suggested that the Claimant could tell his mortgage company that he had gone onto self-employment status. The Claimant replied to say: *"I have not gone onto self-employed status. I cannot tell my mortgage provider this."*

56. On 19 September 2016, the Claimant and his colleague sent a joint email to the Respondent stating that they had sought advice, they were concerned about tax evasion and had been advised to lodge a letter of grievance for unlawful deduction from wages.

57. After receiving the joint email from the Claimant and his colleague, Mr Seifert sought advice from his accountants on 23 September 2016. He forwarded the advice he received to the Claimant and his colleague. He had told the accountant that the Claimant and his colleague had both been receiving loans in lieu of salary by consent. He said that employee status would be reinstated as soon as financially possible.

58. The Claimant spoke to the Respondent's accountant on 15 September and explained that the reality of the situation was that he and his colleague were being paid net salary payments and were expecting the Respondent to make up the missing tax and national insurance payments retrospectively.

59. The Claimant sent his grievance letter on 3 October 2016. In a response dated 4 October 2016, Mr Seifert said: *"I confirm that you have been employed full time throughout the past few years."*

60. On the same day, the Claimant's colleague sent him a copy of an email exchange from earlier in the year between Mr Seifert and his payroll service provider. The payroll service provider had asked Mr Seifert whether the Respondent's payroll should be run for December, January and February 2016 and stated that HMRC would need to be informed for the year ended April 2016. The Respondent's director had replied on 3 May stating that the payroll run would have to wait until new funding was received.

61. The payroll provider had replied to say: *"Can you please confirm that the year to 5 April 2016 is to remain open until you have funding to pay salaries?"*. The Respondent's director replied: *"Yes I can confirm that hopefully soon."*

62. Other than sending an email response on 4 October 2016 to the points raised in the letter of grievance, the Respondent did not comply with the ACAS code on grievance and disciplinary matters. The Claimant was not offered a meeting to discuss his grievance, or provided with a written outcome or given any right of appeal.

63. On 6 October 2016, the Claimant received a P60 stating what he had earned for the tax year 2015/16. The figures were incorrect. He wrote to Mr Seifert advising that he had received the P60 but it was incorrect and that this had confirmed to him that despite being told that tax and national insurance and pension contributions would be paid in retrospect, this had not been done.

64. The Claimant was signed off sick on 10 October 2016 and informed the Respondent that he was not well enough to respond to correspondence during that time. Mr Seifert continued to text him and ask him to do work.

65. On 20 October 2016, the Claimant sent a letter to the Respondent's office and registered address resigning with immediate effect and indicating that he regarded himself as constructively dismissed.

66. The Claimant expressly set out in his resignation letter that he was resigning because the Respondent had breached his contract of employment by the continued failure to pay wages as well as tax, national insurance and pension contributions as confirmed by the P60, by breach of the implied term of trust and confidence arising from broken promises that the Claimant would be paid, and by the failure to deal properly with the grievance.

67. The Claimant provided an updated schedule of loss (pages 519 and 520 of the bundle). At the time of the termination of his employment, he was 39 years old. The outstanding salary due to the Claimant was £4,930. These salary payments were properly payable to the Claimant.

68. The outstanding tax and employee national insurance payments due to be paid to HMRC by the Respondent on behalf of the Claimant in respect of his tax and national insurance obligations were £15,900. As they were not paid to HMRC under the statutory PAYE scheme, they were properly payable to the Claimant.

69. At the time he left his employment the Claimant had 20.5 days outstanding annual leave.

70. The Claimant obtained new employment from 5 June 2017. This was paid at a net weekly rate of £694, which is £174 per week lower than his net

weekly rate of pay in his role with the Respondent. The Claimant has medical insurance cover with his new employment worth £211.

The Law

Constructive unfair dismissal

71. Section 95(1)(c) of the Employment Rights Act provides that there is a dismissal where the employee terminates the contract of employment in circumstances where they are entitled to terminate it without notice by reason of the employer's conduct. This is commonly referred to as constructive dismissal.

72. Weston Excavating v Sharpe sets out the elements which must be established by the employee in constructive dismissal cases. The employee must show:

    72.1. that there was a fundamental breach of contract on the part of the employer;
    72.2. that the employer's breach caused the employee to resign; and
    72.3. that the employee did not delay too long before resigning and thereby affirm the contract.

73. The breach may be of an express term or an implied term of the contract. The Claimant relies on the employer's express contractual obligation to pay him. He also relies on breach of the implied term of trust and confidence. This is a term implied into all contracts of employment that employers (and employees) will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.

74. In cases where a breach of the implied term is alleged, 'the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it' - Woods v WM Car Services (Peterborough) Ltd.

75. If a constructive dismissal is established, the tribunal must consider whether the reason for the dismissal is a potentially fair reason, and whether the dismissal is fair in all the circumstances, pursuant to section 98 of the Employment Rights Act 1996.

Unauthorised deduction from wages

76. Under section 13 of the Employment Rights Act 1996, a worker has the right not to suffer unauthorised deduction from their wages. Sub-section (3) provides:

> *"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of*

wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

77. Section 14 sets out deductions which are excepted from section 13 and which the employer is therefore permitted to make. It includes the following at sub-section (3):

"Section 13 shall not apply to a deduction from a worker's wages made by an employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority."

Pay in lieu of untaken holiday

78. Under Regulation 14 of the Working Time Regulations 1998, a worker who leaves employment mid-way through a leave year is entitled to be paid in lieu of untaken leave.

Conclusions

Unfair dismissal

79. I have found that from the end of November 2015 to the termination of the Claimant's employment there were significant delays in paying the Claimant his salary, and there was a significant shortfall in salary payments during this period. Further, no payments were made in respect of the Claimant's tax, employee national insurance deductions or employer's contribution to pension.

80. I conclude that this amounted to a fundamental breach of the Claimant's contract, specifically the express term that he would be paid monthly in arears on the final working day of each month. The obligation to pay an employee for the work they do goes to the heart of the contract of employment. In this case, the repeated delays and shortfalls and the failure to pay the Claimant's pension, tax and national insurance deductions amounted to a fundamental breach of contract by the Respondent.

81. I also conclude that the Respondent's actions amounted to a breach of the implied term of trust and confidence. In addition to the Respondent's delays, shortfalls, and the failure to make the required statutory deductions, the Claimant was faced with broken promises, an attempt to persuade him that what was happening was 'perfectly legal and a device employer's frequently use' and the suggestion that he had agreed to change his employment status when he had not. Looking at the

Respondent's conduct as a whole, the Claimant could not reasonably have been expected to put up with this treatment.

82. The Respondent's breaches caused the Claimant to resign. This was set out clearly in the Claimant's termination letter.

83. The Claimant did not delay too long before resigning and by doing so affirm the contract. He was patient with the Respondent but did not at any stage accept the Respondent's breaches of contract. He repeatedly made it clear to the Respondent that the situation and in particular the tax position must be sorted out. The receipt of his P60 and the Respondent's failure to give a proper response to his grievance which led the Claimant to realise that the tax issue would not be resolved, were the last straws for the Claimant.

84. I have concluded therefore that the Claimant was constructively dismissed. There was no potentially fair reason for his dismissal. Even if the Respondent sought to argue that there was a redundancy situation or some other substantial reason for the dismissal, there was no consultation with the Claimant about this and no fair procedure was carried out. I have concluded therefore that in all the circumstances of the case, the Claimant's dismissal was unfair.

85. I have next considered what compensation it would be just and equitable to award the Claimant in respect of the unfair dismissal.

86. He is entitled to a basic award of £479 (statutory maximum for a week's pay at the termination date) x 9 years service ie £4,311.

87. As to financial losses, the Claimant was out of work for 32 weeks after his employment ended (from 21 October 2016 to 5 June 2017). His losses during this period are 32 x £868 ie £27,776.

88. The Claimant claims for a period of 17 weeks for the period from 5 June 2017, after the Claimant started a new role. His losses for this period were £174 per week. Credit is to be given for the £211 medical cover. This equates to £174 x 17 - £211 = £2,747.

89. The Claimant claims £400 for loss of statutory rights.

90. I conclude that it would be just and equitable to award compensation for the Claimant's financial losses and statutory rights as set out above. This gives a total compensatory award of £30,923.

91. The Respondent failed to comply with the ACAS Code. It did not meet with the Claimant to address his grievance, provide a formal response, or offer an appeal. These failures came against a background of previous complaints by the Claimant about his pay which the Respondent had chosen not to treat as formal grievances.

92. In respect of these failures I award a 25% uplift on the compensatory award (no uplift can be made to the basic award under section 207A). This gives a total compensatory award of £38,653.75.

93. The compensatory award includes pay for the notice period and there is no separate claim made for that.

Unauthorised deductions from wages

94. I have found that there were shortfalls in the Claimant's salary, and that these were deductions from wages which were properly payable to the Claimant. The deductions were not authorised and do not fall within any permitted exception. These deductions amounted to £4,930.

95. Further, the Respondent made deductions from the Claimant's wages equivalent to sums for tax and national insurance payments but failed to pass these on to HMRC on the Claimant's behalf.

96. Section 14 of the Employment Rights Act 1998 provides that payments made under a statutory obligation do not amount to unauthorised deductions from wages. This means deductions for tax and national insurance payments are not unauthorised deductions, provided they are actually paid to HMRC in line with the statutory obligation under the PAYE scheme. If no payment is made to HMRC, then the permitted exemption set out in section 14 does not apply, and there is no exemption for the deduction.

97. In the Claimant's case, the deductions were not made 'in pursuance' of any statutory requirement or in accordance with any relevant determination of HMRC and the section 14 exception does not apply. They were unauthorised deductions from the Claimant's salary which amounted to £15,900.

98. The Claimant's complaint of unauthorised deduction from wages therefore succeeds. The Claimant is awarded the total sum of £21,277.00 which represents deductions from the Claimant's gross pay due to be paid to him and deductions from his gross pay due to be paid to HMRC by the Respondent in respect of the Claimant's tax and national insurance payments.

Pay in lieu of untaken holiday

99. At the termination of his employment, the Claimant had 20.5 days' holiday outstanding. The Claimant is entitled to pay in lieu of 20.5 untaken holiday.

100. The Claimant's daily rate of pay was £173, which gives a total award for holiday pay of £3,546.50. (This figure has been corrected very slightly from the figure given in the schedule of loss and at the hearing.)

101. The total award to the Claimant is **£67,788.25.**

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Employment Judge Hawksworth

Date: 27 August 2019

Judgment and Reasons

Sent to the parties on: .29.08.19.....

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For the Tribunal Office

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