Case Number: 2500544/2019

THE EMPLOYMENT TRIBUNALS

Claimant: **Miss Julia Russell**

Respondent: **Kidd and Spoor Solicitors Limited**

Heard at: **North Shields Hearing Centre** **On:** **30 September 2019**
1 October 2019

Before: **Employment Judge Arullendran**

Members: **Mrs C E Hunter**
Mr K A Smith

Representation:

Claimant: **Mr J McHugh (counsel)**
Respondent: **Mr D Bayne (counsel)**

RESERVED JUDGMENT

The unanimous Judgment of the Employment Tribunal is as follows:

1. The claimant's claim of constructive unfair dismissal, pursuant to section 98 of the Employment Rights Act 1996 is not well-founded and is dismissed.

2. The claimant's claim for the unauthorised deduction of wages, pursuant to section 13 of the Employment Rights Act 1996 is not well-founded and is dismissed.

3. The claimant's claim of sex discrimination, pursuant to section 13 of the Equality Act 2010, is dismissed upon withdrawal by the claimant.

REASONS

1. We heard witness evidence from the claimant, William Noel Dilks (director and shareholder) and Carol Ann Nattrass (practice manager and company secretary). We were provided with a joint bundle of documents consisting of 289 pages.

2. The issues to be determined by the Employment Tribunal were agreed between the parties as follows:

2.1 Was there a repudiatory breach of contract of employment by the respondent?

2.2 Was there a breach of the implied term of trust and confidence; and/or a breach of the term to provide a safe place of work?

2.3 Was there a continuing course of conduct, which culminated in a "final straw", which led the claimant to terminate her contract?

2.4 What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation?

2.5 Did the claimant resign in response to the alleged breach(s) of contract on the part of the respondent?

2.6 Did the claimant affirm the contract in the meantime?

2.7 If not, was the last act (or omission) by itself a repudiation breach of contract?

2.8 If so, did the claimant terminate the employment contract in circumstances in which she was entitled to terminate it without notice by reason of the respondent's conduct?

2.9 Did the employee resign in response (or partly in response) to that last alleged breach?

2.10 Was the claimant entitled to any bonus or profit share?

2.11 What were the terms of that payment and how was it calculated both whilst the claimant was a partner and a director?

2.12 Was the bonus scheme discretionary?

2.13 Was the respondent contractually entitled to exercise its discretion and refuse to pay the claimant's bonus pursuant to a service agreement?

2.14 Did the claimant, by signing a service agreement, agree to the making of the deductions?

2.15 Was it "custom and practice" to pay bonus if financial targets were met regardless of whether an employee was working his or her notice?

2.16 Did the claimant suffer an unauthorised deduction from wages and, if so, in what amounts?

<u>Preliminary Issue</u>

3. The respondent provided the Employment Tribunal with a document entitled "respondent's opening note" to which a neutral chronology was appended. At paragraph 6 of the opening note the respondent identifies that the matters set out at paragraph 5 of the opening note do not appear in the claimant's ET1 form and that no permission to amend had been sought from Tribunal. The claimant argued that, as she had been required to provide further and better particulars in respect of her claims and the respondent had the opportunity to reply to the further and better particulars, there was no requirement for her to make an application to amend the claims. However, Mr McHugh recognised that the matters the claimant complains of in her further and better particulars were not addressed in the claimant's witness statement which had been exchanged with the respondent and that permission would be required from the Employment Tribunal to adduce further evidence in chief.

4. After deliberations and having read all of the witness statements and accompanying documents in the Tribunal bundle, the unanimous decision of the Employment Tribunal was that the claimant was not required to make an application to amend her claim as the claims had been sufficiently covered in the further and better particulars, to which the respondent had filed a response, and therefore the respondent knew the case it had to meet. However, the unanimous Judgement of the Employment Tribunal was that the claimant would not be given permission to adduce any further evidence in chief, particularly as the parties have been informed on 8 June 2019 at paragraph 6.4 of Employment Judge Martin's case management order that:

> "Each witness statement must contain all of the evidence of the party or any other witness is to give at the hearing. Parties or other witnesses will generally not be permitted to add further evidence in chief (i.e. evidence other than questions by the other party or the tribunal) unless it is to deal with the evidence in the other party's witness statements."

5. The Employment Tribunal considered the prejudice to both sides in not allowing the claimant to adduce any further witness evidence before making the above decision and we considered the fact that the claimant is an experienced family and criminal solicitor. As no reasons were given by the claimant about why she has produced an inadequate statement for these proceedings or why she did not understand paragraph 6.4 of the case management order, we find that the prejudice to the respondent in allowing the claimant to adduce new evidence outside of her written statement at such a late stage in these proceedings is greater that the potential prejudice to the claimant in not allowing her to adduce further evidence.

6. On the morning of the second day of the hearing the claimant withdrew her claim of direct sex discrimination and asked that the claim be dismissed upon withdrawal.

The Facts

7. These findings of fact are made on the balance of probabilities.

8. The claimant began her period of continuous employment with the respondent on 14 May 2015. The respondent is a small firm of solicitors and the claimant was employed as a director and family solicitor. The claimant was based at the respondent's West Road office in Newcastle upon Tyne and the two directors who were also shareholders were based at the respondent Whitley Bay site. There was one other director who was not a shareholder, Cath Monteith, who was employed under similar terms and conditions as the claimant, who also left the respondent's business and was required to repay her bonus back to the respondent.

9. It is common ground that the claimant was the most senior solicitor at the West Road site and the claimant was the supervising solicitor for the purposes of the legal aid franchise for family law, however the claimant did not have line management responsibility for other solicitors or staff. It is common ground that the claimant began working for Kidd and Spoor solicitors on 25 September 2006 and she became a salaried partner on 10 May 2010, as set out at page 81 of the bundle. The claimant became a profit-sharing partner on 1 July 2011, as set out at page 104, and it is common ground that, as a profit-sharing partner, the claimant was self-employed and her continuity of service with Kidd and Spoor solicitors came to an end. The business of Kidd and Spoor solicitors transferred to Kidd & Spoor Solicitors Ltd on 14 May 2015 and it is common ground that the claimant became a director and an employee of the respondent and that her previous period of continuity of service did not count with the current respondent. It is common ground that the claimant was not a shareholder in the respondent business and the only shareholders were Noel Dilks and Nigel Miller. The claimant accepted in cross examination that the shareholders had previously been the senior partners in the firm before it became a limited company and that they were responsible for making policy decisions about the business.

10. It is common ground that the claimant was the only legal aid family practitioner within the respondent company and two other family solicitors, who were based at the Whitley Bay office, practiced private family law. The claimant also undertook some criminal work which she says amounted to approximately 30% of her practice; this included court appearances and attendance at the police station for interviews. It is common ground that the legal aid family and criminal practices were very busy and the claimant introduced two freelance solicitors to the respondent company, Carolanne Sneddon and Denise Jackman, in 2016 and 2018, respectively, and they regularly undertook case work in family law and criminal law, respectively. The claimant's evidence is that the two freelance solicitors were not taken on to help her, but rather to increase the profits of the respondent company. However, the claimant accepted in cross examination that if she was unable to complete a piece of work herself she could ask either Ms Sneddon or Ms Jackman to act on behalf of the client, with 50% of the fees being paid to the freelance solicitor, 35% of the fees being paid to the respondent and 15% of the fees being paid directly to the claimant.

11. It is common ground that the claimant signed a service agreement with the respondent company on 1 June 2015, at the time she began her employment as a director, and a copy of the agreement can be seen at pages 133 to154. The provisions relating to the bonus scheme, of which the claimant was a member,

are set out at paragraph 10 of the service agreement, which can be seen at page 140 of the bundle. Paragraph 10.4 of the service agreement provides:

> *"Notwithstanding clause 10.1, the employee shall in any event have no right to a bonus or a time apportioned bonus if:*
> *(a) she has not been employed throughout the whole of the relevant financial year of the company; or*
> (b) *her employment terminates for any reason or she is under notice of termination (whether given by the employee or the company) at or before the date when a bonus might otherwise have been payable."*

12. In addition to this agreement, the respondent wrote to the claimant advising her of any changes to her bonus target, as set out at pages 155, 156 and 159. The claimant says those letters amount to variations to her terms and conditions but the respondent's evidence is that those letters only amounted to a notification of the targets and the payments within any particular year. We prefer the evidence of the respondent as it is entirely consistent with clause 29 of the service agreement, which requires any variation to be signed by both parties for the change to be effective.

13. It is common ground that the claimant sent two emails to Paul Dodds solicitors on 6 June 2018, as set out at pages 240a and 240c of the bundle. The claimant sent these emails in reply to an email from Mr Dodds as a result of that firm not receiving a reply to their previous communication to the claimant's colleague in respect of one of their clients. The claimant accepted in cross-examination that she did not have knowledge of that particular case, that she did not discuss the matter with the fee earner before writing the emails and she did not look at the file before writing her emails. The respondent's undisputed evidence is that their client had specifically instructed the respondent not to reply to any further emails from Paul Dodds Solicitors and this was the reason why the previous communication had gone unanswered. The following morning the fee earner with conduct of the relevant matter complained about the claimant's conduct to Mr Dilks and it is common ground that the claimant was asked to apologise to the fee earner, which she did on 7 June 2018. However, the claimant maintained in cross-examination that she had not done anything wrong. It is common ground that Mr Dodds made a complaint to the solicitor's regulatory authority who investigated the incident and decided that no action was required to be taken against the respondent. The respondent's evidence is that the correct course of conduct for the claimant would have been to speak to the relevant fee earner in the morning rather than replying to the email during the evening, outside working hours, without having a proper understanding of all the issues involved. In the circumstances, Mr Dilks felt that it was reasonable to ask the claimant to apologise to the relevant fee earner.

14. On 7 November 2018 the claimant asked if she could be relieved from the obligation to provide free initial appointments because this was taking time which could have been spent on fee earning work. The claimant made her request to the respondent in an email as set out at page 281 and the claimant accepted in cross-examination that the respondent replied to the email straightaway advising her that the matter would be discussed by the shareholders, which it was. The

outcome of the discussion was that the claimant was given authority to suspend the free initial appointments. The claimant argues that she should have been allowed to make this decision herself, however she accepted in cross examination that the shareholders made all the policy decisions for the respondent company and that they dealt with the matter promptly.

15. The claimant's evidence is that she was aware that Ms Sneddon did not want to continue as the legal aid supervisor in family law with Singleton Winn Connell solicitors from around summer 2018 and, therefore, she knew that there was a potential job opportunity at that firm for a family solicitor. The claimant says she applied for that position in or around November 2018 and was verbally offered the role around mid-November 2018. She then asked for the offer to be made in writing and this can be seen in the letter dated 19 November 2018 at page 285 of the bundle. It is common ground that the offer from Singleton Winn Connell came with a salary of £45,000 and the claimant was earning £40,000 with the respondent company at the time.

16. The claimant attended an appraisal meeting with Mr Dilks on 21 November 2018 The claimant's evidence is that she already knew that she would be accepting the alternative job offer from Singleton Winn Connell at the time of her appraisal meeting with Mr Dilks. The claimant received her offer letter from Singleton Winn Connell on 21 November. It is common ground that the claimant did not raise any grievances at this appraisal or at any other time throughout her employment with the respondent and the respondent was pleased with the level of the claimant billing as it was well above target and there was a discussion about the claimant receiving an interim bonus payment with her December salary payment as a result. It is common ground that there was a disagreement between Ms Jackman and another colleague at the West Road office which had created a very unpleasant atmosphere at work and Mr Dilks asked the claimant during the appraisal to sort the matter out between the relevant parties, particularly given that Ms Jackman was friendly with the claimant, however the claimant said that she could not do this as she did not know how to deal with it and that she felt out of her depth. Mr Dilks then offered to come to the West Road office himself and deal with the issue. In cross-examination the claimant accepted that she agreed with Ms Jackman's position regarding the argument and that she felt out of her depth and unable to deal with the conflict.

17. The claimant's evidence is that she formally accepted the job offer from Singleton Winn Connell on 22 November 2018 and she wrote her letter of resignation that morning when she arrived at work and emailed it to the 2 shareholders at 12.21pm, as set out at page 161 of the bundle, giving 3 months' notice. This was the first time the respondent knew that the claimant was leaving the practice to work elsewhere. Mr Dilks met with the claimant on 13 December 2018 to discuss her reasons for leaving the firm and the difficulties the respondent was having in recruiting a replacement solicitor.

18. On 21 December 2018 the claimant telephoned Mr Dilks because her television had broken and she asked him about the interim bonus payment. Mr Dilks told the claimant he was not going to be able to pay the interim bonus in December because of cashflow problems due to a large bill he had received for fitting out

the attic at the Whitley Bay office and he would review the situation in January 2019. The reason why the respondent had to spend a large sum of money on the attic refurbishment at the Whitley Bay office was because the decision had been made to close the West Road office and, therefore, storage space was required for the files to be transferred to the Whitley Bay office.

19. Mr Dilks eventually looked at the claimant's service agreement on 25 January 2019, after a very busy period in December and January when the company had to decide to close the West Road office, hand back the legal aid contract, make 3 members of staff redundant and relocate 3 other members of staff. The company also had to make a decision about where to send its legal aid clients and write to all of the affected people. Mr Dilks found that clause 10.4 of the claimant's service contract did not require him to make any payment in respect of the bonus because the claimant was terminating her employment before the end of the financial year. Mr Dilks then asked Mrs Nattrass, as she was due to attend the West Road office, to speak to the claimant and inform her that she would not be receiving a bonus payment.

20. Mrs Nattrass spoke to the claimant by telephone as the claimant was not in the office when Mrs Nattrass went to the West Road office and she informed her that she was not going to be paid her bonus. When the claimant asked her why this was, Mrs Nattrass said that it was because of a large bill the company had received which meant that the respondent could not pay and that Mr Dilks would write to the claimant about it. Mr Dilks wrote to the claimant on 31 January 2019, as set out at page 163, stating that the claimant did not have the right to a bonus payment pursuant to clause 10.4 of the service agreement.

21. The claimant then instructed Collingwood Legal to send a letter before action to the respondent, which is dated 11 February 2019 and can be seen at page 166-7. It is common ground that this was the first time the claimant told the respondent that she may have a claim for constructive unfair dismissal and a claim for the non-payment of the bonus. The claimant continued working until 21 February 2019, which as the end of her notice period.

22. Both parties made closing submissions by reference to written skeleton arguments, the full contents of which are not reproduced here but have been considered in their entirety. The claimant withdrew her claim of direct sex discrimination and submits that the respondent had breached the implied term of trust and confidence over a long period of time culminating in the last straw when she was asked to sort out the dispute between Ms Jackman and another member of staff at the West Road office. The claimant submits that she was undermined and undervalued by the respondent over a long period of time and that collectively that conduct amounted to a breach of the implied term of trust and confidence which entitled her to resign.

23. In respect of the unpaid bonus, the claimant submits that the letters at pages 165, 166 and 169 of the bundle amounted to written agreements by the respondent to pay the bonus and that the bonus was payable because she had met the financial targets for the financial year 2018/19. Alternatively, the claimant submits that Mr Dilks made an oral agreement with her to pay her a bonus after

her resignation and cannot hide behind his purported ignorance the contractual terms. Further, or in the alternative, the claimant submits that the discretion to pay the bonus is required to be exercised genuinely and rationally and the claimant relies on the case of Horkulak v Cantor Fitzgerald International [2004] IRLR 942.

24. The respondent submits that in considering whether there has been a breach of the term of mutual trust and confidence, the claimant must establish conduct which, when viewed objectively, is so unfair that "it's effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it": Woods v WM Car Services as approved by the Court of Appeal in Lewis v Motorworld Garages Ltd [1986] ICR 157.

25. In respect of final straw cases, the respondent submits that the first question to ask is whether the final act which is set to trigger the claimant's resignation is capable of contributing something which was more than trivial to a course of repudiatory conduct and, if it is not capable of contributing to the earlier acts, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect: Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 978. The respondent submits that the request by Mr Dilks in the claimant's appraisal to resolve the staffing issue within the West Road office, which she managed, in an entirely innocuous act and cannot form the alleged last straw. Further, the respondent submits that the claimant had already made the decision to resign from her position with the respondent and therefore the claimant cannot establish that her resignation was triggered by the alleged last straw.

26. Respondent submits that the matters complained of by the claimant in her further and better particulars do not amount to a fundamental breach of contract as it was reasonable for the respondent to ask the claimant to apologise to her colleague on 7 June 2018 as the claimant had acted without consulting that colleague in respect of the email to Paul Dodds solicitors. The comment which the claimant alleges Mr Dilks made about cancer must have taken place in or about 2016 and has long been affirmed. The claimant presented no evidence about other members of staff being allowed to work from home, the junior staff being given preferential treatment or the claimant being required to be on standby when another fee earner was absent on sick leave. The claimant's own evidence is that she could have attended the family department meetings at Whitley Bay but she did not want to attend because it was a one hour round-trip (paragraph 22 of the claimant's witness statement). The claimant's own evidence is that she had control over her workload and could have refused to accept instructions, but she chose not to do so, and she had control over which work she outsourced to Ms Jackman and Ms Sneddon and that she herself chose to attend the police station appointments and magistrates court appointments because she received extra payment for these attendances. The issue relating to the setting up of a Facebook page for the company and of the staff posting messages about Kevin the Elf postdate the claimant's resignation and therefore could not have contributed to her decision to resign.

27. With regard to the claim of deduction from wages the respondent submits that they did not decline to pay the claimant in the exercise of the contractual discretion, but rather they relied upon the expressed term that she had no right to a bonus if the claimant had not been employed throughout the whole of the relevant financial year. Further, the letters from the respondent at pages 155, 156 and 159 of the bundle are plainly notification to the claimant of her discretionary bonus arrangement as required by clause 10.1 of her service agreement. The respondent submits that the conversations between the claimant and Mr Dilks after the claimant had handed in her resignation did not create a binding oral contract to the effect that the respondent would pay the claimant a bonus because Mr Dilks made it clear that the payment could not be made because of additional expenses and contractual intention was missing from both parties at the time of the discussions.

The Law

28. Section 95 of the Employment Rights Act 1996 provides that
"(1) for the purposes of this part an employee is dismissed by his employer if (and, subject to subsection (2) … , only if)-
…
(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

29. The Court of Appeal held in Lewis v Motorworld Garages Ltd [1986] ICR 157 that a course of conduct can cumulatively amounts to a fundamental breach of contract following a "last straw" incident, even though the last straw itself does not amounts to a breach of contract. It is immaterial that one of the events was serious enough in itself to amount to a repudiatory breach and the employee did not treat the breach as such by resigning.

30. The Court of Appeal held in Omilaju v Waltham Forest London Borough Council [2005] ICR 481 that the act constituting the last straw does not have to be of the same character as earlier acts, but it must contribute to the breach of the implied term of trust and confidence. The test of whether the employee's trust and confidence had been undermined is an objective test. It will be an unusual case where the conduct which is perfectly reasonable and justified satisfies the last straw test.

31. Section 13 of the Employment Rights Act 1996 provides:

"(1) an employer shall not make any deduction from wages of worker employed by him unless –
(a) the deduction is required or authorised to be made by virtue of a statutory provision 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
…
(3) the total amount of wages paid in 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."

Conclusions

32. Applying the relevant law to the facts we find that the claimant was employed as a director by the respondent company and she was the senior solicitor based at the West Road office. As such, the claimant was required to manage that office in the absence of the two shareholders who were based at Whitley Bay office. We accept that Mrs Nattrass was the line manager for the administrative staff in both offices and we find that the claimant did not have line management responsibilities for any of the staff or solicitors. However, as the most senior person at the West Road office, it was reasonable for the respondent to expect the claimant to manage that office on a day-to-day basis when Mrs Nattrass was away at the Whitley Bay office. We accept the respondent's uncontested evidence that the claimant told them on several occasions that she did not want to manage people and that she felt out of her depth when asked to deal with staff disputes. We also accept the respondent's evidence that Mrs Nattrass was often the person who resolved staff disputes and that all matters were reported back to Mr Dilks and Mr Miller, who would also speak to staff about issues from time to time.

33. The claimant's own evidence is that she knew there was a job vacancy for a legal aid family practitioner at Singleton Winn Connell solicitors from summer 2018 and that she applied for the position in or around November 2018. However, the claimant presented no evidence of any conduct on the part of the respondent between summer and November 2018 which led to her applying for this alternative position and it is clear from her own evidence that she applied for, and had made up her mind to accept, this position before attending the appraisal meeting with the respondent on 21 November 2018. Under the circumstances, it is difficult to accept the claimant's argument that the events at the appraisal meeting constituted a "last straw" entitling her to resign and claim constructive unfair dismissal.

34. However, even if we are wrong and the claimant's intention to resign did not crystallise until after her appraisal with Mr Dilks on 21 November 2018, we find that it was perfectly reasonable for Mr Dilks to ask the claimant to resolve the staff dispute at the West Road office between Ms Jackman and another member of staff. Much was made by Mr McHugh in cross-examination of the fact that Ms Jackman and the claimant were friendly and that the claimant agreed with Ms Jackman's position in the dispute, suggesting she was partisan, however we find Mrs Nattrass's evidence perfectly reasonable and compelling that friendships can develop in the workplace but those in a position of management are required to act professionally and this should not have prevented the claimant from being able to deal with the staff dispute and, therefore, it does not to make Mr Dilks's request unreasonable. The claimant's own evidence is that she felt out of her depth and Mr Dilks's uncontested evidence was that he was willing to attend the West Road office in order to resolve the dispute himself if the claimant was not able to do so. We find that this discussion, viewed objectively, was perfectly

reasonable given that this was an appraisal of the claimant's employment and we are satisfied that it was entirely innocuous. In the circumstances, we find that such an innocuous act cannot constitute a "last straw" and it did not contribute to the breach of the implied term of mutual trust and confidence on 21 November 2018.

35. In all the circumstances, we find that, as there was no "last straw", the claimant's claim for constructive unfair dismissal is not well-founded and is dismissed.

36. In light of the above findings, we are not required to make any findings on the remaining issues relating to the claim of constructive unfair dismissal. However, for completeness, we find that the majority of the complaints raised by the claimant in her further and better particulars are historic in nature and there is no evidence that the matters she complains of amounted to a breach of contract, let alone a fundamental breach of contract at the time. In any event, so much time has elapsed since the events she complains of and, given that there is no evidence that the claimant ever raised any grievances or complaints with the shareholders, we find that the claimant affirmed the contract and, as such, the claimant cannot rely upon those events as grounds for claiming constructive unfair dismissal.

37. It is clear to us from the evidence we have heard from both parties that neither side looked at the terms and conditions of the service agreement, which had been signed by both parties on 1 June 2015, at the time the claimant resigned. There is no evidence in front of us that the parties did not intend to create legal relations at the time they entered into the service agreement in June 2015 and there is no evidence that the parties did not understand the terms or that they did not intend to be bound by any of the terms at that time. The claimant appears to not have looked at the service agreement at all prior to her resignation, particularly as the agreements require the claimant to give six months' notice at paragraph 2.1 of the agreement, as opposed to the three months she actually gave on 22 November 2018. The terms of the bonus scheme are clearly set out at paragraph 10 of the service agreement and we accept the respondent's evidence that the letters appearing at pages 155, 156 and 159 of the bundle constitute the notices required to be given by the respondent company to the claimant under paragraph 10.1 of the service agreement. The claimant's assertion that these letters amounted to a variation of the terms of the service agreement is not supported by any objective evidence at all and the claimant has failed to understand the requirements to affect a valid variation of a contract of employment, particularly one which has been signed as a deed, as in this case.

38. We accept the respondent's evidence that the telephone conversation between Mr Dilks and the claimant regarding the delay of the interim payment was conducted in ignorance of the specific terms of the service agreement and in particular paragraph 10 of the agreement. Similarly, the telephone conversation between the claimant and Mrs Nattrass in January 2019 cannot and did not amount to an oral agreement that the claimant would be paid a bonus, particularly as Mrs Nattrass did not have the capacity to bind the respondent company in such an agreement and there was no finality to the discussions as

Mrs Nattrass told the claimant that Mr Dilks would be writing to her about the bonus.

39. Further, we accept Mr Bayne's submission that paragraph 29 of service agreement requires any variation to the terms conditions of the agreement to be effected in writing and signed by both parties before it is valid, which was clearly not done in this case.

40. In the circumstances, the provisions of the service agreement were binding on both parties throughout the claimant's employment with the respondent and we find that the claimant was not entitled to receive any bonus payment in accordance with paragraph 10.4 of the service agreement because she had not been employed throughout the whole of the financial year and her resignation took effect before the date the bonus might otherwise have been payable. Applying the wording of this express agreement between the parties to the facts in this case we find that the bonus was not properly payable to the claimant by the respondent, as required by section 13(3) of the Employment Rights Act 1996, and therefore there has not been an unauthorised deduction from the claimant's wages contrary to this provision.

41. In all the circumstances, the claimant's claim for the unauthorised deduction of wages contrary to section 13 of the Employment Rights Act 1996 is not well-founded and is dismissed.

42. The claimant's claim for sex discrimination is dismissed upon withdrawal by the claimant.

EMPLOYMENT JUDGE ARULLENDRAN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
.....22 October 2019….....