



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Walsh

**Respondent:** HKS Consultancy Group Ltd

**Heard at:** Manchester

**On:** 4 November 2019

**Before:** Employment Judge Franey  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mrs H Bano (Senior Manager)

# JUDGMENT

1. By consent the title of the respondent in these proceedings is amended to HKS Consultancy Group Ltd to reflect its proper corporate title.
2. The complaint of unlawful deductions from pay succeeds. The respondent is ordered to pay the claimant the gross sum of **£2,484.44** unlawfully deducted from her pay in the period prior to the termination of her employment on 19 April 2019.

# REASONS

## Introduction

1. By a claim form presented on 23 May 2019 the claimant complained that there had been an unlawful deduction from her pay in relation to the period between 27 February 2019, when she underwent surgery, and the termination of her

employment on 19 April 2019. She had not been allowed to return to work in that period.

2. The response form of 26 June 2019 defended the claim solely on the basis that the claimant had been dismissed on 26 February 2019.

3. I heard oral evidence on affirmation from the claimant and Mrs Bano, and each of them had an opportunity to question the other. Each of them answered questions from the Tribunal.

4. The respondent had provided a bundle of documents in October 2019. The relevant documents were copied for the claimant during the hearing because she had not received them. The claimant also provided a small number of documents (a fit note and three text message exchanges) which were copied for the respondent prior to the hearing.

5. During her evidence Mrs Bano said that she had other text messages on her telephone from the claimant, but these had not been disclosed to the claimant in accordance with Case Management Orders made Employment Judge Ross on 15 October 2019, and nor had any paper copies been brought to the hearing. I declined to allow that evidence to be introduced at so late a stage as it would have caused further delay to the hearing, and potentially jeopardised it being completed today. That was due in part to the fact that the hearing did not begin until some one hour and 20 minutes after the allocated start time due to Mrs Bano unfortunately having been delayed in traffic on her way to the Tribunal hearing.

6. I should also record that the hearing listed in August 2019 had been postponed at the request of the respondent because Kamran Tamseer Khaliq had been certified not fit for work. In the covering email seeking a postponement he was described as the person dealing with the case. That application was renewed in September 2019 for this hearing, but was refused by Employment Judge Ross in her letter of 15 October 2019. Employment Judge Ross commented that it was unclear why he was relevant to the case and why someone else could not attend in his place. There was no further application for a postponement in response to that letter.

### **Issues**

7. In the course of the claimant's oral evidence I went through the way in which she calculated the amount claimed, and during her subsequent oral evidence Mrs Bano said the respondent did not dispute those figures.

8. The whole case therefore turned on the question of whether the claimant was dismissed on 26 February 2019 or whether her employment continued until 19 April 2019.

### **Relevant Law**

9. A contract can be terminated by notifying the other party. Termination is not effective unless communicated.

10. Part II of the Employment Rights Act 1996 protects an employee against unlawful deductions from her pay. A deduction is defined in section 13 as amounting to any occasion on which the amount paid is less than the amount properly payable. There are certain exclusions and qualifications not relevant here.

11. Nor was there any issue as to time limits: the claimant initiated early conciliation on 2 May 2019, meaning that any unlawful deduction made on or before 3 February 2019 was within time.

### **Findings of Fact**

12. Having heard the evidence and considered the documents on both sides I made the following findings of fact on the balance of probabilities.

13. The respondent provides 24 hour healthcare to its clients. It has offices in Yorkshire (Bradford) and Lancashire (Nelson).

14. The claimant was employed as a Business Development Manager from November 2018. She worked in Nelson. There was a probationary period for three months. There was a dispute about whether her probationary period was successfully completed in early February 2019, as the claimant maintained, or whether it was extended by a letter of that date for a further month. It was not necessary for me to resolve that dispute. I noted, however, that the claimant signed her contract of employment on 7 February 2019. She worked Monday to Friday 9.00am to 5.00pm and her employment was terminable upon one week's notice (clause 12.1). It made provision for 24 days of holiday each year including public holidays (superseded by the Working Time Regulations 1998 minimum of 28 days)

15. The respondent had concerns about the claimant's timekeeping and absence. It produced a letter from "Cameron" (whom I understood to be Mr Khaliq) informing the claimant that she was being given notice of termination with effect from 26 February due to her lack of attendance. There was also a letter dated 26 February (marked "hand delivered") which confirmed that she was dismissed with immediate effect due to too much time off work, not performing her duties and not meeting her targets. Mrs Bano said that she had been informed by Cameron that these two letters were given to the claimant in person in the Nelson office, and that the claimant had not attended work after Friday 22 February 2019. She was not in a position to give first-hand evidence of that because she was based in the company's Bradford office. In contrast the claimant said that she had never been given either letter, and that her last day of work was Tuesday 26 February before her operation the following day. That was the dispute at the heart of this case and I will return to it in my conclusions.

16. The claimant said that before her operation she had agreed with Cameron that she could have eight days of holiday covering 27 February – 8 March. She anticipated returning to work on Monday 11 March. It was then agreed that she could have a further five days off for that week, meaning that her return to work was due on Monday 18 March 2019.

17. In the week leading up to that the claimant messaged Cameron asking about her return. Examples from 13 and 14 March were provided by the claimant. His reply came at 20:44 on Sunday 17 March. It said:

**“Hi Jessica. Sorry for the late reply. Have been really busy. I’ve made a lot of changes and by the sounds of it you’re still not better with your leg op. I’m away from work and back in two weeks April. I think if we meet up when I get back and it will give me a chance to work alongside you also it will also give you a good time to recover from the operation and ready to be back into work. Thanks.”**

18. The claimant responded (in a message I did not see) asking about holidays and sick pay. Cameron’s reply at 12:48 on 18 March said:

**“Hi Jess. Any holidays that you’re entitled or accrue to will be paid. Also anything owed too. In addition if you have a sick note we will honour that if there is a qualifying period. I will see you when I return. Thanks.”**

19. The claimant was aware that Cameron was due back in on 15 April 2019. In the week before that she had an exchange of messages with Mrs Bano. The claimant was asking about being paid for the leave she had been asked to take since 18 March. The reply from Mrs Bano said:

**“Hi Jess – I don’t know the situation as I have [not] spoken to Cam, I’m guessing he wanted to make sure you had enough rest before you return and plus you have had time off and Cam went away while you were off and [he] doesn’t want you to come back until he comes back as you would have no handover. In our company we are in need of a Business Development person – someone who is bringing on new clients in the healthcare sector, some cold calling, building new client business portfolio for Ashley to then go on and manage. As for your pay – I’m unsure what you are owed. But as for holiday pay – it is accrued and paid. And sickness is paid after two years’ service. As for the time off – there isn’t really any work in the Lancashire office for you to go back to until Cam does a handover to you.”**

20. The claimant met Cameron on Monday 15 April 2019. After the meeting she sent him a message in the following terms:

**“Thanks for seeing me. Just to clarify, please class this week as my notice period leaving the company fully on Friday 19 April. Please provide me with a copy of my P45 and ensure all holiday accrued from January until now is paid and my sick note gets witnessed up to the Friday 19 April – I hope to receive payment by Friday and I wish you all the best both as a person, I hope we are still friends, and as a company. Take care. If I’ve received no payment by Friday I’ll be in touch. I’m desperate. Jess.”**

21. On 25 April a P45 was issued which gave the claimant’s leaving date as 26 February 2019.

## **Submissions**

22. On behalf of the respondent Mrs Bano maintained that the claimant had been dismissed at the end of February and that the subsequent text messages about coming back to work were about the possibility of a return in a new job in a different role working alongside Cameron. She said that the company was considering this and engaging with the claimant because of a series of text messages which amounted to harassment after the claimant was dismissed. However, none of those

messages were produced as part of the evidence for this hearing. They may have been the messages that Mrs Bano had on her telephone but they were not admitted into evidence because they had not been disclosed at the proper time.

23. The claimant's case was that this was untrue and that she had not been dismissed at the end of February. She denied that she had been given either of the letters referring to termination of her employment. She maintained that the text messages showed that there had been no dismissal.

### **Discussion and Conclusions**

24. I had to decide this case on the information available to me during the hearing. I did not have the benefit of any direct evidence from "Cameron". It may be that he could have shed some light on the position as the respondent saw it. There was not even anything in writing from him to say that the claimant had been dismissed. I attached less weight to the evidence from Mrs Bano as it was hearsay evidence based upon what she had been told.

25. Having heard all the evidence I found on the balance of probabilities that there had been no dismissal at the end of February. My reasons for reaching that conclusion were broadly as follows.

26. Firstly, I was concerned about the two letters of dismissal. The claimant denied ever having seen them. The respondent had no direct evidence that either of the letters of 22 and 26 February had actually been given to the claimant. It was also curious that two letters were written which essentially said the same thing albeit in slightly different terms. The letter of 26 February 2019 appeared to have been written as though the letter of 22 February did not exist. The former letter used the claimant's former surname of Brown; the second letter used her current surname of Walsh. Both letters appeared to be signed by "Cameron", but I had no evidence from him about the circumstances in which these letters were given to the claimant. It was difficult to see how the second letter could have been given to the claimant in the office on 26 February (as Mrs Bano maintained) if the claimant was not in the office after 22 February.

27. Secondly, the text messages produced by the claimant from March and April 2019 quoted above were consistent with her being on some form of leave during that period and expected to return to work. The text messages sent by the claimant would have made no sense had she been dismissed. As for the replies, the references to the period "before you return" and to the discussions about holiday pay and sick pay would have been entirely inappropriate had the claimant been dismissed in February 2019.

28. Thirdly, there was an inherent implausibility in the respondent's case. Mrs Bano understandably emphasised how disruptive the claimant's attendance record had been, which she said explained the decision to extend her probationary period and then to dismiss her, but then suggested that the company was considering bringing her back. It seemed to me very surprising that a company would consider that step if the claimant had indeed been dismissed in the circumstances the respondent maintained.



29. Fourthly, the P45 was issued of April instead of late February or early March. That too was consistent with employment having continued.

30. For those reasons I found on the balance of probabilities that the claimant had not been dismissed and that she remained an employee of the respondent until her employment terminated by agreement on 19 April 2019. She remained entitled to be paid for the holidays she had agreed with Cameron and to be paid during periods when she was willing to attend work but was asked to stay at home.

### **Award**

31. In the absence of any challenge to the claimant's figures I made the following awards.

32. The claimant's gross annual salary taken from her January 2019 payslip was £17,000, which equated to £326.92 per week and £65.38 for each working day. I accepted her case that it had ultimately been agreed that she should have 13 days of holiday which at £65.38 per day made a total of £849.94.

33. I also accepted her evidence that she had been willing to return to work from 18 March 2019 for the 25 working days until her employment ended on 19 April 2019, which at the same daily rate is a total of £1,634.50 that the claimant should have been paid.

34. The total of these figures is £2,484.44.

35. Mrs Bano did not argue that any payments made to the claimant in September 2019 should be deducted from these amounts as it was unclear what those payments related to.

Employment Judge Franey

4 November 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
18 November 2019

FOR THE TRIBUNAL OFFICE

### **Public access to employment tribunal decisions**

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

## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2405836/2019**

Name of case:     **Mrs J Walsh**                     v             **Hks Consultancy Group Ltd**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 18 November 2019

"the calculation day" is: 19 November 2019

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL  
For the Employment Tribunal Office

## INTEREST ON TRIBUNAL AWARDS

### ***GUIDANCE NOTE***

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at [www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426](http://www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426)

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.