



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Jaroslava Mackenzie (Nee Sindelarova)

**Respondent:** Jazz Company (UK) Ltd

**Heard at:** London South Employment Tribunal by CVP

**On:** 18 August 2020

**Before:** Employment Judge Martin

**Representation**

**Claimant:** In person

**Respondent:** No appearance

## RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant was an employee of the Respondent
2. The Claimant was unfairly dismissed by the Respondent
3. The Respondent shall pay the Claimant a basic award of £900.00
4. The Respondent shall pay the Claimant £5,327.10 compensation for unfairly dismissing the Claimant (compensatory award)
5. The Respondent breached the Claimant's contract of employment and the Respondent shall pay to the Claimant £900 notice pay (5 weeks)
6. The Respondent shall pay the Claimant £2721.68 unpaid holiday accrued at termination of employment.

# REASONS

1. By a claim form presented on 26 July 2019 the Claimant made claims of unfair dismissal, redundancy pay, breach of contract, unpaid holiday discrimination on the grounds of pregnancy or maternity leave. At a preliminary hearing on 13 January 2020 the Claimants claim for discrimination on the grounds of pregnancy on maternity leave was dismissed. The Respondent presented in response on 1st October 2019 in which it denied the Claimant was an employee and denied dismissing the Claimant. The Respondents position as set out in its response, is that whilst the Claimant was an employee initially, she returned from a period of maternity leave asking to work on a self-employed basis. This is disputed by the Claimant.
2. Since presenting her claim the Claimant has married and her name in these proceedings is therefore amended as set out in the title above.
3. On 23 February 2020 solicitors acting for the Respondent wrote to the Tribunal to say that they were no longer instructed asking for correspondence to be sent to Tasc, Chartered Accountants. The address for Tasc is the same as the registered office address for the Respondent. The Tribunal received a letter from Tasc advising the Tribunal that the Respondent ceased to trade on 10 May 2019 and that the company was in the process of being struck off the company register at Companies House and was no longer solvent. A Companies House search just before this hearing showed that compulsory strike off action had been suspended on 15 April 2020 and the company is described as "active". I asked the Claimant if she knew whether the Respondent was still trading, and she told me that it was. Mr Bates also confirmed it was trading.
4. Correspondence from the Tribunal continued to be sent to the Respondent's registered office address, including the case management order which gave notice of this hearing and correspondence regarding the CVP hearing. I am satisfied that the Respondent is an active company which is still trading and that the Respondent had received the order of Employment Judge Cheetham which set out the date of this hearing and subsequent correspondence from the Tribunal about arrangements for this CVP hearing.
5. The hearing could not proceed on the first day allocated (17 August 2020) as although the Claimant said she had sent a bundle to the Tribunal in early July, this could not be located. The Claimant prepared an electronic bundle which was sent to the Tribunal in time for this hearing. In the bundle were witness statements from Mr McKenzie (the Claimant's husband) and Mr Robin Bates. Both of these witness statements describe how they were clients of the Claimant's at the hairdressers, and that payment they made for their haircuts were put straight into the till with no separation from other funds received from other clients with other stylists. I had no questions to ask them about their statements.
6. The Claimant's witness statement describes how she started working for Respondent in 2013, that she took holidays but was never paid for

them, that she received some payslips and was paid in cash. She went on maternity leave in November 2017 and received statutory maternity pay through the payroll. From the response, the Respondent accepts that the Claimant was an employee for the first five years of her employment.

7. The Claimant returned to work in September 2018. The Claimant's statement says that there were discussions about changes being made in the company, but she was never told what those changes were. The Claimant was asked to work at different sites (the Respondent operated several) and was told where to work quite often at the last moment. The Claimant was still paid in cash weekly with a wage slip issued monthly.
8. In March 2018, the Claimant became pregnant with her second child and was told that her maternity pay would be paid in the same way as it had been paid before.
9. The owner of the company Mr Rajwani died on 10 May 2019 however the company continued trading. In June 2019, the Claimant was told that her employment had ended in August 2018 and that she was self employed. The Claimant said that she did not receive notification of termination of employment until 19 June 2019 and up until that point had assumed that her tax and NI would be paid as it had before. On 19 June 2019 the Respondent told her that it could not re-employ her. The Claimant was shocked about this and immediately resigned as she considered that her trust in the Respondent had gone.
10. The Claimant's evidence which I accept, is that her employment relationship with the Respondent did not change from when she started in 2013 to when her employment ended. My finding is that the effective date of termination was 19 June 2019.
11. I put to the Claimant the points the Respondent raised in its response to substantiate its argument that the Claimant was not an employee. I have cross referred the paragraph numbers in the response.

11.1 The Respondent says the Claimant exercised complete control over her work and was not obliged to work and the Respondent was not obliged to offer her work. The Claimant said that prior to her period of maternity leave (at a time the Respondent accepts she was an employee) she did ask to change her days of work but that since having a baby she has not done this as her days of work are fixed to the days she has a nursery space for her child. (24.1)

11.2 The Respondent said the Claimant would frequently contact Mr Rajwani by text to provide dates she could not work. The Claimant said this did not happen after her baby was born as her working days were arranged around her childcare. (24.2)

11.3 The Respondent says the Claimant would inform Mr Rajwani of the dates she wanted for holiday as opposed to submitting a request and waiting for approval. The Claimant

says that she did request holiday and it had to be approved. She said there were times when holiday was refused as there was not enough cover in the shop. (24.3)

11.4 The Respondent says the Claimant would frequently contact Mr Rajwani to see if work was available the day before she was due to work and would sometimes say she was unavailable work at the last moment. The Claimant accepted that this may have happened prior to her period of maternity leave but that after she had her baby her days were fixed around childcare. (24.4)

11.5 The Respondent says the Claimant selected where she worked based on which salon was the most profitable. The Claimant said that when she returned from maternity leave, the person covering her maternity leave remained in employment and that sometimes therefore there were too many staff at a particular salon and she was moved to another site. She says that she requested that this did not happen as it made it difficult to build up a client base. (24.5)

11.6 The Claimant accepts she used her own tools and told me that this is common in the barber/hairdressing industry. (24.6)

11.7 The Respondent says that the Claimant was responsible for payment of her tax and NI contributions. The Claimant says that she was not responsible and had assumed that the Respondent were dealing with this in the way they dealt with her tax and NI before she went on maternity leave. (24.7)

12. I am satisfied that the Claimant was an employee after she returned from maternity leave and that she was constructively and unfairly dismissed by the Respondent. The Respondent breached the implied term of trust and confidence by not paying her tax and national insurance. The Claimant was unaware of this until 19 June 2019 and acted promptly in leaving the Respondent. She did not affirm the Respondent's breach of the implied term of trust and confidence and the reason she left was because of this.

13. The Claimant was continuously employed for five years at a weekly salary of £180. She was between the ages of 21 and 41 throughout her employment and is therefore entitled to 5 weeks basic award of £900.

14. The Claimant is entitled to 5 weeks' notice of £900 (the statutory minimum period of notice).

15. The Claimant is entitled to a compensatory award for unfair dismissal which is limited to the amount of maternity pay she expected to receive. The Claimant had a baby in December 2019. She has calculated this on the basis of the pay she received previously of £5327.10. I find this is a reasonable way to assess her loss and award £5327.10.

16. The Claimant is entitled to pay for holidays and taken. The Claimant is entitled to claim the period of two years before her claim was presented. This was not what was discussed at the hearing however on reflection I realise this is the and have adjusted this part of the award accordingly. The Claimant's claim presented on 26 July 2019 and therefore holiday can be awarded up to 25 July 2017. I have taken this as three complete years. I have therefore apportioned the amount I had awarded for five years (£4536.13) to cover a three-year period. This amounts to £2721.68.

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Employment Judge Martin  
Date 18 August 2020