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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Nasir Omer  
**Respondent:** V-Care Homes (UK) Limited  
**Heard at:** East London Hearing Centre  
**On:** 20 October 2020  
**Before:** Employment Judge Jones

**Representation**  
Claimant: In person  
Respondent: Mr R. Sereavanan, Solicitor with CEO, Mr S. Subramani

## JUDGMENT

1. *The Respondent has unlawfully deducted the Claimant's wages.*
2. *The Respondent has wrongfully dismissed the Claimant.*
3. *The Respondent failed to pay the Claimant for accrued but untaken annual leave.*

### *Remedy*

4. *The Claimant is entitled the following remedy:*  
*£35,107.56 as outstanding wages*  
*£672 as one week's notice pay (42hours x £16 per hour)*  
*£1270.08 as outstanding holiday pay.*
5. *The Respondent is ordered to pay the Claimant a total of £37,049.64 as his remedy for his successful complaints.*

## REASONS

1. This was the Claimant's complaint of unlawful deduction of wages and a failure to pay holiday pay. A complaint of unfair dismissal was withdrawn at the preliminary hearing and was later dismissed. Also at the start of this hearing, the

Respondent accepted the Claimant's complaint of a failure to pay holiday pay. The amount of £1,270.08 was accepted as the amount due to the Claimant as holiday pay.

2. The Claimant issued his claim in the employment tribunal on 12 February 2020, after a conciliation process which began on 7 January 2020 and ended with the issue of the certificate on 8 January 2020. The Respondent resisted the claim. In its response, the Respondent's defence was that the Claimant resigned without giving the required notice and that no money was due to him for holiday pay or outstanding wages.

3. The matter came before employment Judge Tobin on 6 July 2020 as a preliminary hearing. The issues to be determined were agreed as follows:

Outstanding wages

- a. Is there a shortfall in respect of the wages the Claimant was entitled to be paid?
- b. If so, how much is he owed?

Notice pay i.e. breach of contract or wrongful dismissal

- c. Did the Claimant resign as a result of the Respondent's breach of the so-called "trust and confidence term" i.e. did the Claimant's employer, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant? The conduct the Claimant contends that breached the trust and confidence term is:
  - Refusing to pay the Claimant his agreed contractual rate of pay.
  - Reducing the Claimant's hours in response to his complaints about the shortfall in the wages owed
- d. If so, did the Claimant resign in response to the Respondent's conduct (i.e. was it a reason for the Claimant's resignation - it need not be the reason for resignation)?
- e. If the Claimant was dismissed (as opposed to resigning), he will necessarily have been wrongfully dismissed because he has not been paid his notice period.
- f. If the Claimant had been dismissed in breach of contract/wrongfully dismissed, then how much notice is he entitled to (either under the contract of employment or under section 86 Employment Rights Act 1996).

Unpaid annual leave

- g. How much paid leave was the Claimant entitled to at the termination of his employment (either under his contract or under Regulation 14 of the Working Time Regulations 1998)?
- h. How many days has Claimant been paid for?
- i. Is there pay outstanding for accrued and untaken annual leave entitlement? If so, how much?

4. At the preliminary hearing there was discussion between the Claimant and the Judge as to whether he would require a Sudanese interpreter at the hearing. At today's hearing, Claimant attended alone and was content to proceed without a Sudanese interpreter.

#### *Evidence*

5. At the hearing, the Tribunal heard from the Claimant in evidence and from Mr Subramani, company director on behalf of the Respondent. The Tribunal had a witness statement from Mr Subramani and a transcript of a conversation between him and Claimant, which the Claimant produced. The Respondent objected to the Tribunal relying on that document as it was incomplete. The Respondent submitted additional documents in the days leading up to the hearing.

6. Initially, it was thought that Mr Subramani would not be able to attend the hearing as he had symptoms of Coronavirus and the Respondent applied to have the hearing postponed. The Tribunal refused the application for postponement. On the morning of the hearing, Mr Subramani received a negative Covid-19 test and was advised that he no longer needed to self-isolate. He was therefore able to attend the hearing along with his legal representative.

7. The hearing on 20 October was disrupted by a fire alarm at the East London Hearing Centre at Import House. The Tribunal had heard all the evidence. All that remained to do was to hear the parties' submissions and to give a judgment. It was not possible to reconvene the hearing as we were not allowed to re-enter the building until 5pm. In accordance with the overriding objective, the Tribunal released both parties and invited them to make written submissions rather than reconvene an in-person hearing.

8. From the evidence, the Tribunal made the following findings of fact. The Tribunal has only make findings of fact relevant to the issues listed above.

#### Findings of fact

9. The Claimant and Mr Subramani are both qualified social workers. The Claimant qualified as a social worker in the Netherlands and moved to the UK in or around 2014. At the time of his employment, the Claimant had not yet registered as a social worker in the UK.

10. Mr Subramani set up the Respondent company in 2017 to provide residential services for young people leaving care on contract on behalf of local authorities. He is the sole director of the company.

11. The Respondent opened its first residential facility with the first placement of a young person from Bexley Children Services Department. Mr Subramani contacted friends to see if anyone knew someone who could work for the Respondent as a support worker. At the time, the Claimant was doing an MA at University of East London. One of his classmates, call Sharon put him in touch with Mr Subramani as someone who could be a support worker and was available to work immediately. They spoke on the phone on 7 August 2018. They had a brief general discussion about the job.

12. On 10 August 2018, the Claimant went to 4 Latham Road to meet Mr Subramani. This was the residential setting in which he was going to work. They had a brief chat and Mr Subramani offered him the job. The terms agreed between the parties at that meeting are in dispute. The Tribunal finds that as a qualified social worker, the Claimant was unlikely to have agreed to work on a zero hours contract for £8 an hour in a residential facility where he would be expected to work and did work, on average, 16 hours per day. Also, at the time, the Claimant was working as a catering assistant for Interserve at a rate of £10 per hour. It is highly unlikely that he would have left that job to work the Respondent at a more difficult job, at a rate of £8 per hour. It is more likely that the contract at page 74 of the bundle of documents contains the terms that were agreed between the parties on 10 August.

13. Mr Subramani asked the Claimant how much he was paid at his present job and the Claimant told him that he was earning £10per hour (ph) with Interserve. Mr Subramani told him that because he had experience and qualifications, he could be paid at £16 per hour. They made an agreement and the Claimant began working for the Respondent that day. Mr Subramani told the Claimant not to worry about the written contract and that they could sort that out soon. He took copies of the Claimant's passport and other documents and gave him back the originals. Mr Subramani showed the Claimant around the property. The parties agreed that the Claimant would stay in the placement as it would be difficult to travel from North London to Bexleyheath at the start and end of his shift. A room in the property was designated for his use. The Claimant stayed there on the first night.

14. About four weeks later, the Claimant had to apply to the Home Office for leave to remain in the UK. He needed confirmation of his employment and asked Mr Subramani to give him a written contract. This was on 9 September. It was then that Mr Subramani came to 4 Latham Road with the document entitled "*principal statement of terms and conditions*" at pages 74 – 76 of the bundle.

15. That document records the terms and conditions agreed between the parties on 10 August, which were that the Claimant would be working 42 hours per week, at the hourly rate of £16 per hour and that he would be based at 4 Latham Road, Bexleyheath London. Also, that he would be entitled to 4 weeks or 20 days annual leave per year, including bank and other public holidays. The Claimant was employed as a support worker. The notice provision at paragraph 14 of the document stated that that the Claimant would be obliged to give the Respondent one months' notice to terminate contract, whereas the Respondent

would be obliged to give him the statutory minimum amount notice before terminating the contract.

16. Mr Subramani came to the property with two copies of the contract which they both signed and backdated to 10 August. Mr Subramani retained one original and left the Claimant with the other. The signatures are shown at page 76. The Claimant retained his original document and produced it as part of disclosure in this case.

17. The Claimant's job was to support and supervise young people who were placed with the Respondent, having left the care of the local authority. While employed by the Respondent, the Claimant signed his emails as 'social worker/support staff'.

18. An application form for employment with the Respondent, which the Claimant completed a few months later was in the bundle of documents, on pages 50 – 58. Although this was dated 1 August 2018, it was not completed until February 2019 after the first inspection visit by the regulators from the local authority. The Respondent needed to get its paperwork in order and this was done as part of that process.

19. Over the period that the Claimant worked for Respondent, there were four young people living at 4 Latham House. At the start of the Claimant's employment, there were two young people there, one male and the other female.

20. The Tribunal finds it likely that Mr Subramani explained to the Claimant that this was a new company, a start-up and that the agreement to pay him £16 per hour was between them and not a matter for discussion with other employees as they would be paid at a lower hourly rate and were on zero hours contracts. Mr Subramani struck the Claimant as a kind man and he trusted him.

21. The tribunal finds it extremely unlikely that Mr Subramani returned to the property at 4 Latham Road later on 9 September, with a contract as set out at pages 77 to 79, for the Claimant to sign. It is also extremely unlikely that the Respondent gave him the letter at page 73 which referred to some "*errors in the contract that was provided to you earlier*", on 10 August as the Claimant had not been given a written contract on 10 August.

22. The Claimant was Respondent's first employee. The bundle contained a letter from the Respondent's accountant which confirmed it has never paid its support workers more than a maximum hourly rate of £10 per hour. The Claimant produced a copy of an advert from Hayes Staff Recruitment in 2020 which advertised Residential Support Worker positions at the rate of between £11.92 and £16.94 an hour.

23. The Claimant usually worked at 4 Latham Road. He usually completed a daily log for the young person and timesheets showing how he had spent his time. The Claimant submitted his timesheets to the Respondent and was paid accordingly. The Tribunal had copies of the rotas for September 2018 to September 2019 in the bundle, which showed that the Claimant worked an average of 16 hours per day unless he was on leave. Occasionally, he worked for less hours. The corresponding payslips at pages 105 – 118, show the hourly rate

as £8 per hour, and each confirmed the relevant pay period, pay type, deductions, holiday pay and total net payment.

24. The tribunal finds that whenever they spoke on the telephone, the Claimant frequently asked Mr Subramani about the rate at which he was being paid and reminded him that he expected to be paid £16 per hour in accordance with their agreement. Mr Subramani asked him to be patient as this was a new business which they were building. He referred to them both starting at the same time. He told him that there were cash flow issues and that he would pay him what was owed in a lump sum at some point in the future. He did not give the Claimant a date when he could expect payment but the Tribunal finds that the Claimant was led to expect payment at some point in the future when the Respondent became more financially viable. He referred to it as a gentleman's agreement.

25. The Claimant remembers another support worker who was employed by the Respondent at the start of his employment. This was Addie. He left shortly after the Claimant started and the Claimant believes that this was due to a conflict with the Respondent over money.

26. Each local authority who placed a young person with the Respondent would also arrange for their young person's pocket money to be paid to Respondent who would be responsible for distributing it to them on a weekly basis. That frequently did not happen. The Claimant found that he sometimes had to give the young people their allowance from his wages and seek reimbursement from Mr Subramani. The Claimant also had to take out a contract for the telephone in the office in his name and seek reimbursement from Mr Subramani to cover the costs.

27. There were copies of the Claimant's bank statements in his bundle of documents. Payments entitled '*wk allowance*' could be seen at various places in his bank statement which the Tribunal finds are reimbursements of weekly allowances the Claimant paid to the young people on behalf the Respondent for which he was subsequently reimbursed by the Respondent. The bank statement shows that each weekly allowance payment from the Respondent included the name of the young person. The Claimant's wages were paid into his account on either the 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> or 18<sup>th</sup> of each month.

28. The Claimant did not see Mr Subramani on a regular basis as he was based at 4 Latham Road while Mr Subramani was based in the office in Ilford. Most of their communication took place by email and on the telephone. The Claimant raised the issue of his pay with Mr Subramani whenever he visited the property at 4 Latham Road. Mr Subramani would promise to pay him. He told the Claimant that he had to be patient as the business had just started. He also told him that the rate of £16 per hour was not for anyone else to know about. It is likely that the Claimant trusted Mr Subramani and placed a lot of faith in him keeping his word. The Claimant relied on Mr Subramani to make up the shortfall as promised, as soon as he was able to do so. The Claimant thought that this would help him to save as he would get the balance of his wages as a net lump sum payment.

29. The Claimant introduced someone called Gailey to Mr Subramani as a potential support worker. Gailey began working for the Respondent as a support worker in or around May 2019 as the Claimant was about to go on holiday to Sudan. By the time the Claimant stopped working for the Respondent, it had employed approximately seven or eight other support workers to work with the Claimant at 4 Latham Road and in its other settings.

30. In June 2019, the Claimant went to Sudan as his mother was ill. While he was there, there was some political disturbances which made it difficult for him to return to the UK within the arranged time. It was a period of four weeks before the Claimant could return the UK as the airport had been closed. The Claimant believes that it was because of his extended leave that Mr Subramani decided to reduce his hours.

31. The Respondent confirmed that from May 2019 the system at Latham Road changed as it introduced a rota system and provided shifts to those who worked there. It also stated that in June 2019 during a local authority children's services quality assurance visit, it was advised that one person should not continuously work on long shifts. The local authority considered that it would improve the quality of the services to the young person in the placement if they had more employees working on a shift basis. As a result, shifts were provided to other employees in the placement which had an impact on the Claimant's hours. Looking at the table produced on pages 43 and 44 of the bundle, between August 2018 and May 2019 the Claimant worked over 450 hours per month with August 2018 and May 2019 been the lowest at 317 hours and 346 hours. In contrast, in June 2019 he worked hundred 92 hours which may partly be due to his trip abroad. In August 2019 he worked 272 hours in October 2019 he worked 118 hours. The hours in July 2019 were nearer the amounts he had previously worked as it was a total of 439 hours.

32. Between August 2018 and April 2019, the Claimant was paid at an hourly rate of £8 per hour. From May 2019 the hourly rate was changed and he was paid at an hourly rate of £8.21. The first email in the bundle from the Claimant to the Respondent in which pay was mentioned was an email dated 14 July 2019. In this email, the Claimant referred to it being his third email on the matter. It is therefore likely that there are other emails about pay which the Respondent did not disclose. In this email, the Claimant queried why he has not been paid for the total number of hours claimed on his timesheet. He stated that he worked a total of 399 hours and had only been paid for 346 hours, leaving a difference of 53 hours which he requested to be paid. In the emails the Claimant did not refer to the difference in the hourly rate that he been paid in contrast to what he expected. It is likely that he chose not to do so because he was keeping the agreed hourly rate in confidence between him and Mr Subramani, as he had been asked to do.

33. The Claimant worked full-time for the Respondent while studying for his MA, which included writing a dissertation. On 29 September 2019, in another email to Mr Subramani, the Claimant once again queried the number of hours that he had been paid, which was 272 as opposed to the time recorded in his timesheet which was 314 hours. Mr Subramani replied to confirm that he would do a reconciliation and include any money owed in the Claimant's next month's pay. The Claimant replied that he understood.

34. In an email to Princess Sarumi, home manager, on 5 October, the Claimant asked her whether she recalled that in their last meeting in June 2019, he told her that he was supposed to be paid a wage of £16 per hour and that she referred him to Mr Subramani to discuss the matter. Princess replied that she was not aware of this.

35. In an email is the Claimant dated 12 November 2019, Mr Subramani informed the Claimant that in relation to his annual leave, since March 2019 the Claimant had been '*brought under the same category as all other support staff with an annual leave entitlement of 11.5 days*'. The Claimant was advised that he needed to accumulate annual leave over a three-month period and that he should take his leave before the end of the fourth month of that entitlement. The Tribunal was no shown any evidence of any notification to the Claimant in writing of his annual leave entitlement been changed or any evidence of any agreement between them to do so.

36. On 3 December 2019, the Claimant wrote the Respondent to state that he was resisting the Respondent's decision to reduce his hours as he considered he was entitled to a 42 hour week. He referred to the hourly rate in his contract which was £16 per hour and indicated that he did not want changes location without consultation. He asked to be paid his unpaid holidays as well. The Claimant stated that since August 2018 he has been working with 'pleasure and loyalty to the company' and with an excellent relationship with the young people at the placement and his colleagues.

37. On the same day, Princess Sarumi wrote to the Claimant by email and informed him that she had been trying to contact him to discuss the changes in his placement in terms of location and hours. As stated above, there is a dispute between the parties as to why it was necessary to do so.

38. On 3 December, the Claimant indicated his willingness to sit down and have a discussion with the Respondent about the changes that it was proposing to make as he did not consider it a suitable matter for discussion by text message or email. The Respondent agreed to meet with him. The Claimant suggested bringing an observer with him to that meeting but the Respondent stated that it was not appropriate the Claimant to be accompanied.

39. The parties had a meeting on 11 December, in Ilford. Neither party produced any notes from that meeting. It is likely that the parties discussed the proposed reduction in hours and the reduction in the Claimant's holiday entitlement as well as his insistence on being paid £16 per hour in accordance with the agreement that the parties made in August 2018. The Claimant asked the Respondent's permission to record the conversation and the Respondent agreed. However, the transcript the Claimant provided to the Tribunal was a partial transcript and did not assist the Tribunal in dealing with this matter.

40. It is unlikely that the parties reached any agreement at that meeting about the proposed reduction in the Claimant hours, change in location or holiday entitlement. The Tribunal was told about any agreement or resolution.



41. On the following day, 12 December, the parties had an email exchange about the Claimant's payslips. For the first time in writing, the Claimant asked Mr Subramani to be paid the full wages of £16ph backdated to his start date. In his email in response, Mr Subramani stated that he had already informed the Claimant that the contract which the Claimant was referred to had been cancelled during the first week of employment and that the Claimant knew that his hourly rate was £8 per hour and that it was totally unacceptable for him to produce or use a cancelled contract to make a claim. Mr Subramani stated that if the Claimant was unhappy with the £8ph he should have stopped working or brought the issue to the Respondent attention sometime before. He stated that the Claimant failed to do so because he was well aware that he was being paid the agreed amount. The Respondent stated that since the Claimant had failed to respond to the rota sent to him at the end of November and since he still had not confirmed that he was available to work -

*"Therefore we will take it as your two weeks notice and relive you from our company.*

*Thanks for all your support and service that you have rendered to our company and you will receive your pay for this month along with any pending news holidays till October 2019. We will also request for your P45 from HMRC and send it to you by post. Since you have not provided your current address, could I ask you to provide me your home address to send the P45 via post pls.*

*I also suggest you to change the address for all your correspondence to your new address and not the placement address pls. Any post that come in your name to 4 Latham Road will be return back to the sender and this is for your information."*

42. Later, on 30 December 2019, Mr Subramani wrote to the Claimant asking for a copy of the contract that he was relying on as he wished to investigate the Claimant's complaint. The Claimant sent him a copy of the contract he relied on which the tribunal finds appears at pages 74 – 76 of the agreed bundle.

43. On 2 January 2020, Mr Subramani wrote to the Claimant by email to attach the document which appears at pages 77 to 79 and stated that this was the amended contract that had been provided to and accepted by the Claimant. Page 79 had the Claimant's signature on it. The Claimant is adamant that he never signed this document or any document that recorded his wage as £8 per hour or a zero hours contract. Mr Subramani claimed that the contract the Claimant relied on had previously been cancelled and that the Claimant was seeking to misuse it. The Claimant was outraged by the document on page 77. He was appalled at what the Respondent was seeking to do. On 4 January 2020 he wrote to Mr Subramani, threatened court action and accused him of forgery of this contract. He informed Mr Subramani that he had committed a criminal offence which was punishable by imprisonment.

44. The Respondent sent the Claimant his P45 which had a leaving date of 1 December 2019. The Claimant was paid in December 2019 and it is likely that this was for work done in November 2019. There was a payslip dated December

2019 in the bundle. The Respondent confirmed in the hearing that 1 the date of termination of the Claimant's employment was 1 December 2019.

45. After the end of his employment with the Respondent, the Claimant began to suffer from depression. Since November 2019 he has been in receipt of counselling and prescribed 15 mg of an antidepressant called Mirtazapine. He described it as having gone to '*a dark place*' because of what happened with the Respondent especially having been treated in this way by someone he trusted. At the time of the hearing the Claimant had not yet found alternative employment.

46. The Claimant provided a schedule of hours worked from August 2018 to 2019 which was a page pages 43 and 44 of the bundle. In its counter schedule on page 45 of the bundle, the Respondent did not dispute the number of hours worked although the calculations of the shortfall between the amount paid and the amount of the Claimant claims due to him is different because whereas the Claimant complained that he is owed a total of £32,454.99, the Respondent stated on page 45 that the amount due to the Claimant would be £36,597.31, if his claim to be paid £16 per hour was successful. The Claimant's calculation of the shortfall of his holiday pay is set out on page 44 and amounts to a total of £1270.08p. The Respondent conceded the holiday pay claim at the start of this hearing.

47. Both parties agree that the Claimant worked 317 hours in August 2018 over a period of 20 days, 449 hours in September 2018 over a period of 28 days, 453.5 hours over 30 days in October 2018 and 435 hours over 27 days in November 2018. The figures continue in a similar way until June 2019 during which the Claimant worked 192 hours over 12 days, which the tribunal finds happened because he was on leave during that month. In August 2019 the Claimant worked 272 hours over 17 days. The same number of hours was worked in September 2019 over a period of 20 days and 118 hours in October 201 over a period of 7 days. The tribunal finds over the course of his employment, the Claimant worked well in excess of 42 hours per week.

48. The Respondent produced two adverts for full-time senior support workers in Ilford in October 2020 for £10 per hour.

### Law

49. Section 13 of the Employment Rights Act 1996 (ERA) stipulates that an employer shall not make a deduction from wages of all workers employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. Subsection 2 states that that a relevant provision in relation to a worker's contract, means a provision of the contract comprised in one or more written terms of the contract of which the employer has given the worker a copy on occasion prior to the employer making the deduction in question.

50. Subsection 13(3) states that 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 the 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.

51. Section 23 of the ERA gives the employee the right to bring a complaint about this to the employment tribunal as long as he does so within three months of the last deduction. Section 24 states that where tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer to pay the worker the amount of any deduction made in contravention of section 13.

52. Complaints of breach of contract are governed by the Extension of Jurisdiction (England and Wales) Order 1994.

53. An employee's right to paid leave set out in Regulation 14 of the Working Time Regulations 1998. In addition, the Claimant's contract, set out at page 73 of the agreed bundle, gives the Claimant the right to 20 days holiday per annum, calculated on a pro rata basis.

*Applying the law to facts*

54. The Tribunal had a direct conflict of evidence between the parties as to the terms agreed between them on 10 August 2018. There are two signed contracts. One sets out the rate of pay as £16 per hour, with the Claimant working 42 hours per week and giving him 20 days per year as annual leave. The other contract sets out the rate of pay as £8 per hour, with the Claimant having a zero hours contract and an entitlement to 20 days holiday per year calculated on a pro rata basis. The question for the Tribunal was which of these was the contract governing the relationship between the parties from 10 August 2018?

55. The Tribunal considered that at the time that he went to see the Respondent on 10<sup>th</sup> August, the Claimant was working and been paid £10 per hour by Interserve. There will be no incentive to him to leave that job to take up an offer of employment with the Respondent for a lower wage of \$8 per hour.

56. In addition, in this Tribunal's judgment it is highly unlikely that Mr Subramani would present the Claimant with a contract for signing with significant incorrect information in it relating to his rate of pay and the hours that he would be expected to work. It is more likely that the document presented to him in or around 9 September reflected the agreement that the parties made on 10 August.

57. There was a discussion on 10 August in which Mr Subramani told the Claimant that given his qualifications and experience, he could get £16 per hour. This was the basis on which the Claimant agreed to leave his job as a catering assistant at the rate of £10 per hour and immediately begin working for the Respondent. This discussion was then put into written form which both parties signed 9 September. There was no evidence of that contract been rescinded.

58. The fact is that the Claimant worked well in excess of 42 hours during his employment with the Respondent up until October 2019 when the Respondent sought to reduce his hours and change his location.

59. Even if the market rate for a senior support worker was less than £16 per hour it was open to the parties to make an agreement for the Claimant to be paid that amount, especially if the Respondent considered that he needed the Claimant and his qualifications and experience in order to get the business off the ground. Both parties have produced evidence showing the rates at which support workers can be paid in the local area. There are jobs at which a senior support worker can be paid £16 per hour and there are other jobs at which the rate is £10 per hour.

60. The Tribunal considered that the payslips stated an hourly rate of £8 per hour and that the Claimant was only ever paid £8 per hour throughout his employment with the Respondent. If he had agreed a rate of £16ph why would he continue to work for less? In this Tribunal's judgment, the Claimant relied on the relationship of trust and confidence that he had established with Mr Subramani from their first meeting on 10 August 2018. The Claimant depended on Mr Subramani's many verbal assurances that he would be paid according to their agreement which he had also asked him to keep confidential between them. The Tribunal accepted the Claimant's evidence on this and that when it became clear that those assurances were false and that the Respondent never intended to pay the Claimant as promised, it took a toll on his mental health, so that it has resulted in him being prescribed antidepressants.

61. Taking into account those factors and the facts found above, it is this Tribunal's judgment that the parties made an oral agreement on 10 August 2018 that the Claimant would be employed as a support worker, to be based at 4 Latham Road, Bexleyheath, London and paid £16ph, working at least 42 hours per week. This agreement was turned into the written agreement which appears at pages 74 to 76 of the bundle of documents.

62. The Tribunal will now set out its judgment in relation to each of the issues in the list of issues set out above and in the preliminary hearing conducted by EJ Tobin.

63. The Tribunal's judgment on the issues are as follows:

Outstanding wages

64. It is this Tribunal's judgement that the Claimant was paid £8 per hour during his employment with the Respondent, from August 2018 to December 2019. In accordance with the agreement he made and the contract that he signed with the Respondent, the Claimant was entitled to be paid £16 per hour. The Claimant is owed £35,107.56 which is the correct total of the amounts set out on page 43 of the bundle of documents.

Notice pay i.e. breach of contract or wrongful dismissal

65. In its email to the Claimant dated 12 December 2019, the Claimant was informed that as he was insisting on being paid the amounts agreed between himself and Mr Subramani, his contract of employment would be immediately terminated.

66. It is this Tribunal's judgement that the Claimant did not resign. The Claimant was dismissed by Mr Subramani's email dated 12 December 2019. Although the email is dated 12 December, the Respondent's case at the hearing was that the Claimant's termination was 1 December 2019.

67. The meeting on 11 December was not a disciplinary meeting. It was a meeting the Claimant had asked for, to try and reach agreement with the Respondent on the changes the Respondent was proposing to make to his contract. He also wanted to resolve the issues around his pay. Those issues were not resolved at the meeting.

68. The Respondent gave no reason in the email for the Claimant's dismissal. No reasons for dismissal was given in the Respondent's response to the claim, in Mr Subramani's witness statement, or in the Respondent's submissions.

69. The contents of the email demonstrate that at the time of this email, Mr Subramani had in his mind the Claimant's repeated request to be paid in accordance with the verbal agreement made between the parties on 10 August and confirmed in writing 9 September. The Claimant was insisting on being paid in accordance with the contract that he signed with the Respondent. That is the only reason given for the dismissal in the email.

70. The Respondent's response to the Claimant attempts to raise the issue of his pay and to query the Respondent's right to change the terms of his contract was to terminate the Claimant contract, with immediate effect.

71. The Claimant withdrew the complaint of unfair dismissal at the preliminary hearing as the Tribunal had no jurisdiction to hear it given that the Claimant had not been employed for a period of more than 2 years.

72. In this Tribunal's judgment, the Claimant was dismissed in breach of contract as Respondent had no reason to dismiss him in breach of clause 14 of the statement of terms and conditions signed between the parties on 9 September 2018. In accordance with Section 86 of the Employment Rights Act 1996 (ERA), the Claimant was entitled to one week's notice of termination of his employment. Clause 14 of the contract confirmed that the Respondent is only obliged to give statutory notice.

73. It is this Tribunal's judgment that the Claimant was wrongfully dismissed. The Claimant is entitled to 1 week's' notice pay as remedy for breach of contract.

#### Unpaid annual leave

74. The tribunal heard no evidence on the holiday pay claim because the Respondent conceded the claim in open correspondence with the Claimant, which was copied to the Tribunal.

75. The Respondent also stated in open court that it accepted the Claimant's holiday pay claim.

76. It is therefore the Tribunal's judgment that the Respondent is to pay the Claimant the sum of £1,270.08 as his outstanding holiday pay.

***Judgment***

- 77. The Respondent unlawfully deducted the Claimant's wages.
- 78. The Respondent wrongfully dismissed the Claimant.
- 79. The Respondent failed to pay him his annual leave entitlement.

**Remedy**

- 80. The Respondent is ordered to pay the Claimant the following sums:
  - £35,107.56 as outstanding wages
  - £672 as one week's notice pay (42hours x £16 per hour)
  - £1270.08 as outstanding holiday pay.
- 81. The Respondent is ordered to pay the Claimant a total of £37,049.64 as his remedy for his successful complaints.

**Employment Judge Jones**

**10 February 2021**