



EMPLOYMENT TRIBUNALS

Claimant: Mrs Miles

Respondent: GS & LT Hesp t/a The Great Western Hotel

Heard at: Cardiff (via video) **On:** 18th & 19th February 2021 and
5th March 2021

Before: Employment Judge Howden-Evans
Tribunal Member W Morgan
Tribunal Member C Stephenson

Representation

Claimant: Mr Leong, Solicitor, Newport CAB

Respondent: Mr G Hine, Solicitor

Judgment on Liability

The Tribunal's unanimous decision is:

1. The claimant's complaint that there were unauthorised deductions from her wages is well founded, in that she had not been paid the national minimum wage.
2. The constructive unfair dismissal complaint is well founded; the respondent has unfairly dismissed the claimant by breaching the implied term of trust and confidence.
3. Contrary to s40(1)a and s26 of Equality Act 2010 the respondent has harassed the claimant by unwanted conduct of a sexual nature.
4. The claimant's complaint under Regulation 30 Working Time Regulations 1998, that the respondent has refused to permit the claimant to exercise her rights under Regulation 13 and 13A Working Time Regulations 1998 is well founded.
5. The tribunal did not have jurisdiction to consider the claimant's claim of age discrimination, it having been presented outside the time limits in s123 Equality Act 2010.

The Remedy Hearing is listed for **21st April 2021** and will be conducted wholly remotely by video. It has a time estimate of 1 day.

Note of Key Findings to assist parties to prepare for the Remedy Hearing

1. The Tribunal accepted the claimant had not been paid the national minimum wage throughout her employment (ie since 5th January 2015) but, was only eligible to claim for the period 24th October 2016 to 20th May 2018 (because of s23(4A) Employment Rights Act 1996). We found that throughout this relevant period the claimant was working 60 hours per week on average; 52 weeks of the year.
2. Whilst the respondent has deducted £80 per week for accommodation from the claimant's wages, throughout the relevant period, the Tribunal noted that the claimant was only provided with a bedroom from May 2017 and had been sleeping in the laundry room in the cellar prior to this date – the tribunal notes that one issue that will need to be determined at the remedy hearing is whether the allowance that can be offset for providing accommodation (when calculating the national minimum wage) is applicable in these circumstances.
3. The Tribunal accepted the claimant had received unwanted conduct of a sexual nature on 3 occasions, as alleged in the claimant's further information.
4. The Tribunal accepted, as parties agree, that the claimant had not taken a single day of holiday leave, since her employment commenced on 5th January 2015. We found the respondent had refused to permit the claimant to exercise her right to take paid annual leave – the claimant had requested time off and had been told "*We can't spare you. You worked last year without a day off – you can do it again*". We accepted that the appropriate approach to the claimant's holiday entitlement was to make an award of compensation under Regulation 30 (3) & (4) Working Time Regulations 1998 as suggested by the EAT in *Sash Window Workshop Limited and King* and expanded by the Court of Appeal and ECJ in that case. In light of the ECJ's decision in *Max-Planck-Gesellschaft zur Forderung der Wissenschaften e V v Shimizu* [2019] 1 CMLR 1233, the Tribunal accept it is just and equitable in all the circumstances for the claimant to be compensated for 84 days holiday in the holiday years 2015, 2016 and 2017.
5. The claimant's holiday pay outstanding for the holiday year 2018 will be determined at the remedy hearing.

Employment Judge L Howden-Evans

Dated: 6th March 2021

JUDGMENT SENT TO THE PARTIES ON 8 March 2020

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Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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