



Claimants: 1) Miss A Gallagher
2) Miss N Denniss
3) Miss I Ahmad

Respondents: 1) Operations One Ltd (dissolved on 21 February 2020)
2) Mr Simon Peter Hayes
3) Mrs Lisa Jane Hayes

Heard at: Leeds (by CVP) **On:** 9 March 2021

Before: Employment Judge Parkin

Representation

Claimants: All in person
Respondents: Mr S Hayes in person

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

- 1) The claimant's employers at the date of termination of their employment were the second and third respondents, Mr Simon Peter Hayes and Mrs Lisa Jane Hayes; the claimants' employment continued with these respondents after their original employer, Operations One Ltd, was dissolved on 21 February 2020.
- 2) The claimants' contracts of employment were each terminated by dismissal by the second and third respondents on 21 August 2020.
- 3) Miss Amy Gallagher was unfairly dismissed by the second and third respondents. The second and third respondents are ordered to pay her a Basic Award of £866.76 and a Compensatory Award of £500.00 for loss of statutory rights. The Employment Protection (Recoupment of Benefit) Regulations 1996 do not apply to this award.

- 4) The second and third respondents wrongfully dismissed Miss Gallagher in breach of contract by failing to give her notice of termination of her employment and are ordered to pay her damages in the sum of £866.76 gross.
- 5) The second and third respondents made unlawful deductions from the wages of Miss Gallagher in the sum of £4,613.00 plus NEST pension deductions of £234.81, a total of £4,847.81 net, and the respondents are ordered to pay her this total sum.
- 6) Pursuant to regulation 14 of the Working Time Regulations 1998, the second and third respondents. are ordered to pay Miss Gallagher the sum of £769.25 gross compensation for accrued paid annual leave outstanding at the date of termination of employment.
- 7) Miss Denniss was unfairly dismissed by the second and third respondents. The respondents are ordered to pay her a Basic Award of £2,210.75 and a Compensatory Award of £750.00 for loss of statutory rights. The Employment Protection (Recoupment of Benefit) Regulations 1996 do not apply to this award.
- 8) The second and third respondents wrongfully dismissed Miss Denniss in breach of contract by failing to give her notice of termination of her employment and are ordered to pay her damages in the sum of £2,210.75 gross.
- 9) The second and third respondents made unlawful deductions from the wages of Miss Denniss in the sum of £7,922.50 plus NEST pension deductions of £314.01, a total of £8,236.51 net, and the respondents are ordered to pay her this total sum.
- 10) Pursuant to regulation 14 of the Working Time Regulations 1998, the second and third respondents are ordered to pay Miss Denniss the sum of £1,569.63 gross compensation for accrued paid annual leave outstanding at the date of termination of employment.
- 11) The second and third respondents wrongfully dismissed Miss Ahmad in breach of contract by failing to give her notice of termination of her employment and are ordered to pay her damages in the sum of £114.80 gross.
- 12) The second and third respondents made unlawful deductions from the wages of Miss Ahmad in the total sum of £1,976.40 gross and the second and third respondents are ordered to pay her this sum.
- 13) Pursuant to regulation 14 of the Working Time Regulations 1998, the second and third respondents are ordered to pay Miss Ahmad the sum of £407.54 gross compensation for accrued paid annual leave outstanding at the date of termination of employment.

REASONS

1 The claims

- 1.1 The first 2 claimants, Miss Gallagher and Miss Dennis, presented their claims together by ET1 claim form on 30 June 2020 originally claiming arrears of pay, i.e. shortfall in payments made and outstanding wages for the period April to July 2020 in respect of their employment at the Energie Fitness for Women gym in Huddersfield. They named their employer at box 2.1 as Simon Hayes and set out that they had not received any outstanding holiday pay or redundancy pay or P45 in respect of an apparent earlier termination of their employment on 5 June 2019 which HMRC had notified to them.
- 1.2 The third claimant, Miss Ahmad, presented her ET1 claim on 11 August 2020, again claiming arrears of pay and likewise naming Simon Hayes, setting out a shortage of pay in April 2020 followed by no wages for May, June and July with another pay date on 7 August 2020 having passed without further payment.
- 1.3 All three claimants provided Mr Hayes' address in Cambridgeshire at box 2.2 and the Huddersfield address at which they worked at box 5.1 and each indicated that their employment was still continuing when the claim was presented.
- 1.4 No response was presented to any of the claims by Simon Hayes nor by the limited company, Operations One Ltd (the limited company), which he and his wife Lisa Jane Hayes had been the directors of. The limited company became the named respondent by direction of the Tribunal. However, as identified by Employment Judge Shore at the Case Management Preliminary Hearing on 4 January 2021, the limited company had in fact been dissolved and thus totally ceased to exist on 21 February 2020.

2 The case management hearing on 4 January 2021 and the claims and issues

- 2.1 Since the claimants had remained at work until the gym closed around the national lockdown, on about 21 or 23 March 2020 and indeed received some pay for March 2020 in April, the question arose who carried on employing the claimants after the dissolution of the limited company. At the case management hearing, with no attendance or representation from the respondents, Judge Shore combined all three claims for hearing together and ordered that the individual respondents, Simon Peter Hayes (already named by each of the claimants in their ET1 claim forms) and Lisa Jane Hayes be joined as second and third respondents respectively to the claims, such that either the second or the third respondent or both together might be found to be the employers of the three claimants in succession to the limited company and until the termination of their employment. Since the second respondent had already been served with the notices of claim, he directed that the third respondent be served individually and ordered the claimants to comply with standard directions to disclose documents, with a file of documents and witness statements to be provided.

2.2 By 4 January 2021, the claimants knew that the gym had been repossessed and fully accepted that their employment had by then ended, although they had had received no formal confirmation of this from their employer. Judge Shore permitted the claimants to amend and widen their claims to claim unfair dismissal or alternatively redundancy payments; wrongful dismissal/notice pay; outstanding holiday pay/compensation for accrued paid annual leave as well as their original arrears of pay/unauthorised deduction from wages. He identified the issues fully at paragraph 40 of the Case Management Orders and Summary.

3 The respondents and applications to postpone

3.1 There was no engagement by the respondents until shortly before the hearing. Miss Dennis first wrote to the tribunal out of concern that the second respondent had contacted her immediately after she had provided her supporting documents in complying with the case management order ahead of the hearing, to tell her that his solicitor would be in touch with her. Then, on 8 March 2020, the day before the hearing, the second respondent wrote to the Tribunal asking to postpone the hearing “as I've received important communication as late as last week from the claimants in relation to the case and therefore need more time to prepare”. The application was refused by Employment Judge Maidment as being too vague to consider as an application for postponement particularly at that late stage.

3.2 At the start of the hearing on 9 March 2020, which was listed for 3 hours as a virtual hearing by CVP (as signified by Code V above), the second respondent renewed his application for a postponement indicating that he did wish to participate in the proceedings. He explained that, after his worst year in business, he was on the verge of bankruptcy and had “buried his head in the sand” about the business and the proceedings. He felt recent communications from the claimants had been coordinated and he had been unable to open the attachments to Miss Gallagher's communications at first. He believed he needed about a week to review what he had been sent in the past two weeks. Each claimant vigorously resisted any further application to postpone.

3.3 The Judge refused the application noting that the respondents strictly had no standing by reason of their failure to present a response to the claims save to the extent that the Tribunal permitted them to participate in the hearing (in accordance with Rule 21 of the Employment Tribunal Rules of Procedure 2013). The application to postpone was made exceptionally late in proceedings which had been commenced at the end of June 2020 and, in Miss Ahmad's case, in the middle of August 2020, such that the second respondent had known of the proceedings for several months. The Judge directed that he would permit the second respondent to participate in the proceedings on his own behalf and that of the third respondent and even to cross-examine the claimants and give evidence in person, considering this to be in accordance with the overriding objective at Rule 2 and Rule 21(3), whereas it was not in accordance with the overriding objective to delay the proceedings further.

4 Witnesses and credibility

Each of the claimants had made careful preparation for their hearing and gave their evidence moderately and carefully. Whilst the Tribunal was grateful to Mr Hayes for his participation at the hearing at this very late stage in the proceedings, it could not accept his evidence in its entirety and in particular preferred Nicola Denniss's account where the two versions differed, for instance as to what she knew about the dissolution or intended closure of the limited company Operations One Ltd or whether he had informed her that the gym was to close for good, even before lockdown.

5 The Facts

From the oral and documentary evidence the Tribunal made the following findings of primary fact and drew the following inferences on the balance of probabilities. As previous Judges had done, the Judge consulted the Companies House Register online to confirm details of the dates of dissolution of the various companies and of the directors.

- 5.1 The Energie Fitness for Women gym in Huddersfield was operated as a franchise from Energie. From late 2006, Operations One Ltd (the limited company), which was run by the second and third respondents, became the franchisees. The business had previously been loss-making and accordingly they purchased for £1.00 but inherited existing debts of the business to the extent of £97,000.
- 5.2 Nicola Dennis, whose date of birth is 1 January 1979, was employed as Centre Manager from 23 May 2015.
- 5.3 Amy Gallagher, whose date of birth is 16 December 1983, was employed as a receptionist from 14 January 2016.
- 5.4 Iqra Ahmad, whose date of birth is 18 June 1998, was employed as a part-time receptionist from 3 October 2018.
- 5.5 The gym business was small with very few employees and was largely run at arms length since the respondents lived in Cambridgeshire and relied heavily upon Miss Denniss, especially to communicate with the other employees.
- 5.6 Even before the pandemic, the respondents were concerned about the viability of the business and had decided to wind down the limited company in order to lose their indebtedness. Whilst they had brought in insolvency practitioners to close the limited company, they were also looking at alternatives. Mr and Mrs Hayes had hoped to carry on operating the Huddersfield gym under another limited company as franchisee such as Operations Huddersfield Ltd or Global Sports Solutions Ltd. In the event, neither of those two companies ever operated the gym and Operations Huddersfield Ltd itself was dissolved on 7 April 2020.

- 5.7 The other possibility was to transfer the franchise, especially once it became clear that Energie would not permit Mr Hayes to carry on running the franchise since he was by then employed in a competitor business. Mr Hayes had the prospect of a purchaser who had previously run an Energie gym in Eastbourne and there was interest shown from a local prospective purchaser, SB. In oral evidence, Mr Hayes said: "I kept the gym going as long as I could in the hope of finding a buyer... Operations One Ltd the named franchisee was dissolved on 21 February 2020. We literally carried on for four to five weeks then lockdown came and the business was haemorrhaging. I tried to find a buyer. I couldn't. I had to let it go".
- 5.8 The limited company's payroll recording and reporting was lax. No pay slips were provided to any of the claimants after April 2019, and no P60 or tax statement at the end of the tax year were provided to them. Indeed Miss Denniss and Miss Gallagher experienced difficulties with HMRC and upon their enquiry were notified that their employment had been terminated on 5 June 2019. It appeared that tax and national insurance deductions taken from their wages had not been accounted for and their employee NEST pension contributions were deducted but not paid on to the pension scheme. Mr Hayes was wholly unable to explain this, giving evidence that any notification by the limited company that their employment had ended in June 2019 must have been by mistake.
- 5.9 The employees experienced frequent late payments and payment in stages of their wages, although they were supposed to be paid on the 7th of each month for the wages earned the previous month.
- 5.10 Operations One Ltd, the limited company, was dissolved on 21 February 2020. This company was the claimants' formal employer although Miss Gallagher and Miss Ahmed in particular considered themselves employed by Mr and Mrs Hayes throughout.
- 5.11 No notification whatsoever was made to the claimants of the dissolution of their employer. However, the gym continued to trade and the claimants continued to work there. They were paid wages in arrears for the previous month in both March 2020 and April 2020.
- 5.12 Miss Gallagher was paid her February pay in cash (via Miss Denniss) in March. Her normal monthly pay was £939.00 gross (basic pay before bonus), £910.00 net and she was paid £800.00 leaving a shortfall of £110.00
- 5.13 Miss Ahmad was paid at national minimum wage for her 14 hours per week, with monthly hours varying between 56 and 64. She too was paid in cash in March for her February wages in full.
- 5.14 On 20 March 2020, Miss Denniss was paid £1300.00 direct to her bank account by transfer from Simon Hayes' account. That was a shortfall of £250.00 net from her normal monthly wages.

- 5.15 On about 21 or 23 March 2020, the gym closed to members and staff but Miss Dennis continued the operation of the gym for some time online, carrying out video exercise classes, holding quizzes for members and communicating by email with them and even initially receiving members subscriptions.
- 5.16 Soon after that, Mr Hayes told Nicola Dennis that it was the intention to continue to employ the claimants under the Coronavirus Job Retention Scheme (furlough scheme) and to pay them the 80% wages claimed from the Government. In the event, the second respondent never completed an application under the furlough scheme and no payments of wages were made to the claimant subsequent to the April 2020 reduced rate payments made by the respondents in respect of March wages.
- 5.17 In April, after much chasing by Nicola Dennis, each claimant received payment into the bank from Lisa Hayes' account at 80% of wages due. On 14 April, there was a text message from the second respondent to Miss Dennis: "...I should have the money to pay everyone tomorrow and then it will be furlough...". On 15 April Miss Dennis enquired: "...have you started furlough?". She had been asking Mr Hayes to forward any emails about furlough so she could read up and understand what was going on. Mr Hayes replied: "Working on it, delays in the scheme and it's pissing me off ...will keep you posted". That day he also confirmed: "...Payments will start hitting accounts in the next 15 mins, had to pay 80% as that's all I can muster up, I will top up as I can, I'm getting paid in drips and drabs here."
- 5.18 Accordingly, Amy Gallagher was paid £775; Nicola Dennis £1240 and Iqra Ahmad £346.00, all on 15 April 2020 from Mrs Hayes' account.
- 5.19 As the year progressed, the respondents were being chased by both the franchisor Energie and the gym landlords. Despite the major problems they faced, the respondents failed to communicate regularly and meaningfully to the claimants and in particular failed to tell them that they had not applied to the Treasury under the furlough scheme.
- 5.20 As the local Centre Manager, Miss Dennis was something of a go-between for the possible purchaser or transferee of the franchise, SB. As at 22 May 2020, Mr Hayes was still in text communication with Miss Dennis, hoping possibly to transfer the franchise and premises to SB and promising payments of wages to the claimants: "...I will 100% pay you when I get it together ...but looking like next week ...I am waiting on 45k so we will be OK".
- 5.21 Thereafter although Miss Dennis continued to press him for information about wages and furlough, Mr Hayes ceased responding. Neither Miss Gallagher nor Miss Ahmad received any response to their own communications. He still never told the employees that he was not proceeding with a furlough application or that he was unable to achieve a transfer of the franchise or premises; however, during lockdown, any such transfer was very much less likely.

- 5.22 The claimants received no further communication from Mr Hayes and no further payment of wages after April. None of the claimants was ever formally told that their employment had been terminated, thus no notice of termination of employment was given. No payments of wages in lieu of notice, redundancy payments or accrued holiday pay were made to them; their leave year matched the calendar year.
- 5.23 On 21 August 2020, following lack of contact by the respondents and with mounting rent arrears, the landlords of the gym premises repossessed them and commenced forfeiture proceedings. By that stage, it appears that the tenant was Global Sports Solutions Ltd, another limited company which the second and third respondents were directors of but which was soon to be dissolved on 17 November 2020.

6. Individual claimants

- 6.1 Amy Gallagher, whose date of birth is 16 December 1983, worked as a receptionist from 14 January 2016, earning £939.00 gross (plus opportunity to earn bonus) per month, £910.00 net. Her week's pay was £216.69. She had 4 years' continuous employment by 14 January 2020. 4 weeks' pay was £866.76. She was paid £800.00 in March 2020 (for February), a shortfall of £110.00 net; £775.00 in April (for March), a shortfall of £135.00 net. Ordinary pay in May (for April), June (for May), July (for June) and August (for July) would have been £910.00 net each month if the employment was continuing and in September, £682.50 net (for 3 weeks in August to 21 August 2020). She had NEST pension deductions normally at £26.09 taken off in months from July 2019 to March 2020. As at 21 August, 2020, she had accrued but not taken 3.55 weeks paid leave. In general, Nicola Dennis, with whom she had worked a long time, communicated messages to her from the respondents, particularly Mr Hayes.
- 6.2 Nicola Dennis, whose date of birth is 1 January 1979 was the Centre Manager from 23 May 2015 and was paid £1916.00 gross and £1550.net per month. She had five years continuous employment as at 23 May 2020, when aged over 22 years. Her week's pay was £442.15. 5 weeks' pay is £2210.75. In March 2020 (for February) she was paid £1300.00, a shortfall of £250.00 net; in April (for March), she was paid £1240, a shortfall of £310.00 net. Ordinary pay in May (for April), June (for May), July (for June) and August (for July) would have been £1550.00 net each month if the employment was continuing and in September, £1162.50 net (for 3 weeks in August to 21 August 2020). She had NEST pension deductions normally at £34.89 taken off in months from July 2019 to March 2020. As at 21 August, 2020, she had accrued but not taken 3.55 weeks paid leave.
- 6.3 Iqra Ahmad, whose date of birth is 18 June 1998 (and was 21 on 18 June 2019) commenced employment as a receptionist on 3 October 2019; she normally worked about 14 hours each week; three hours each on Mondays, Tuesdays and Fridays and 5 hours on Sundays. Initially wages were paid by Operations One Ltd, but soon after she started were paid from Lisa Hayes' bank account. She only recollects receiving one pay

slip. Her wages were often paid late or in stages, much later than the 7th of each month for the month before. She was paid at the applicable National Minimum Wage rate. After lockdown was announced on 23 March 2020 and the gym was closed, she expected to be put on furlough as a result of her conversation with Nicola Dennis. She had no NEST pension arrangements. Mostly Nicola Dennis communicated messages to her from the respondents; despite her own efforts to contact them when no payments were made after April 2020, she was unable to do so, later learning from Nicola Dennis that the gym had been repossessed.

6.4 Miss Ahmad received £546.65 by bank transfer on 7 February, then received full payment in cash in March (for February), paid to her by Nicola Dennis. On 17 April, she received £346.00 by bank transfer (for March), instead of £492.80, a shortfall of £146.80. Her pay would have increased to the National Minimum Wage for 21-24 year olds from 1 April of £8.20 per hour. Looking at the individual hours worked each month, she would normally have earned in May (for April, 56 hours) £459.20, June (for May, 62 hours) £508.40, July (for June, 62 hours) £508.40 and August (for July, 59 hours) £483.80 if the employment was continuing and in September, £319.80 (for 3 weeks in August to 21 August 2020, 39 hours). Weekly pay should therefore have been 14 hours at £8.20 per hour, £114.80. As at 21 August, 2020, she had accrued but not taken 3.55 weeks paid leave.

7. Closing statements/submissions

7.1 In evidence, the second respondent contended that the claimants' employment came to an end when the respondents made the final payments to them in April 2020 with the gym closed in lockdown. In his closing statement on behalf of himself and the third respondents, he apologised to the three claimants who were dedicated employees and acknowledged his failure to communicate with them.

7.2 Miss Ahmed summarised her claim based upon 20 weeks' pay at £114.80 up to 21 August 2020, the date of repossession of the gym. Miss Gallagher did not make a closing statement. Miss Dennis asked for the conclusion of the proceedings with an outcome in the claimants' favour after it had been going on for 12 months.

8 The Law

8.1 The statutory provisions the Tribunal considered and applied were in relation to Unfair Dismissal at part X of the Employment Rights Act 1996, especially sections 95 and 98, redundancy payments at part XI of the 1996 Act, notice pay at section 86 of the 1996 Act read with the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994, holiday pay/compensation for accrued paid annual leave at regulations 13 to 14 of the Working Time Regulations 1998 and arrears of pay/unlawful deductions from wages/arrears of pay at Part II of the 1996 Act. The continuous employment provisions are at part XIV of the 1996 Act, particularly sections 211, 212 and 218.

- 8.2 Strictly, the government's Coronavirus Job Retention Scheme introduced in March 2020 did not affect the contract of employment between the employer and the employee. Where an employer reached agreement with their employee that the employee would be placed on furlough, the employer claimed a payment from the Treasury equal to 80% of the employee's basic salary (with a capped maximum) on the basis under the original rules of the scheme that the employee would carry out no work for the employer; it was a matter for each employer whether it made up the missing 20% to full basic salary. Although many employees may have felt they had little choice in the matter, as a matter of contract of employment this was to be an agreed variation whereby the employee would generally receive only 80% wages and would wait for the employer to recall them back to active employment at a later date. The arrangements for payment by the Treasury to the employer were separate from that the agreed variation of the contract of employment.
- 8.3 In relation to remedy, the Tribunal considered the application of the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015),

9 Conclusions

- 9.1 Prior to the commencement of these proceedings, the claimants were unaware that their original employer, the limited company Operations One Ltd, had been dissolved or that their employment had transferred on a continuous basis to a new employer. Moreover, they were given no formal confirmation of termination of employment with P45s and notice payments or, where applicable, redundancy payments.
- 9.2 Applying the continuous employment and change of employer provisions, the Tribunal had no doubt whatsoever that Mr Simon Peter Hayes and Mrs Lisa Jane Hayes became the employers of each claimant when Operations One Ltd was dissolved on 21 February 2020, although they failed to notify this change to the claimants. The gym continued to operate and they carried on paying the claimants in March and in April 2020, even after the lockdown closure, intending to continue to run the business under a different company vehicle such as Operations Huddersfield Ltd or Global Sports Solutions Ltd or at least to transfer the franchise and/or the gym premises lease to a new operator, SB.
- 9.3 Much the most difficult determination for the Tribunal was when the claimants' employment actually terminated and what brought that termination about. The last active communication from Mr Hayes in late May was with Nicola Denniss, when she was urging him to make contact with SB as a possible transferee and asking about payment of the claimants' wages, in circumstances where a month previously she had understood (and conveyed to her fellow claimants) that their employment would continue under the furlough scheme. That remained the claimants' understanding even when they presented their claims, because Mr Hayes never told them otherwise but left them hanging on for further payments of wages and the resumption of their active employment. The Tribunal therefore searched for some decisive action or event which

brought the employment to an end. Contrary to Mr Hayes' version, payment to each claimant in April 2020 of some of their March pay did not do so. Far from unequivocally terminating the employment at that stage, Mr Hayes was still in contact with Miss Dennis over a month later in late May 2020, actively making enquiries of her as to the level of interest SB was showing in a possible transfer.

- 9.4 The second respondent's comment that he buried his head in the sand could not be more true. Unfortunately, this meant that he and his wife completely ignored their responsibilities as employers first as directors to tell the claimants of the dissolution of the limited company, next to tell them that they had taken over as employers, then to keep the claimants informed about any application to join the furlough scheme or the subsequent decision not to apply, then to be straightforward about the payment of wages or to pay their employees for holding on and being ready to operate the gym as and when the respondents or a transferee were able to open it up again or finally to have the decency to notify them that their employment had effectively come to an end. Whilst the Tribunal was wholly satisfied that the respondents were facing massive financial difficulties, which were clearly still continuing at the time of hearing, that provided no excuse for such a wholesale and continued failure to communicate with their employees and in particular to tell them their employment was being terminated and they should be searching for alternative employment and/or claiming state benefits.
- 9.5 Even when Miss Gallagher's and Miss Dennis's claim was first served on the second respondent, he brought no clarity to the situation. Ultimately, therefore, the Tribunal was unable to identify any point prior to the repossession of the gym premises by the landlords on 21 August 2020 which effectively terminated the claimants' employment, even though the gym had not operated normally by then for five months. For the purposes of the unfair dismissal, redundancy payment, notice and holiday pay and unlawful deduction claims, that was the effective date of termination of each claimant's employment. That event was brought about by the actions of the respondents in the sense of failure to pay rent and communicate with the landlord and the Tribunal construes it to be termination by the respondent without notice under section 95(1)(a) rather than, for instance, frustration of contract (i.e. circumstances where there had been some supervening event bringing the contract of employment to an end but with no fault by either party). In these highly unusual circumstances therefore, the Tribunal concluded that the contracts of employment of each of the three claimants continued until 21 August 2020, which date governs all their statutory claims in these proceedings.
- 9.6 The reason for dismissal was plainly the claimants' redundancy within section 98(1) and (2) in accordance with the definition at section 139, but the respondent quite obviously acted unfairly towards the claimants in dismissing for that reason. In the circumstances, Miss Gallagher and Miss Dennis were unfairly dismissed for the potentially fair reason of their redundancy since the business came to an end and there was no employment for them. They are entitled to a basic award (equivalent to a redundancy payment) and to an award of compensation for loss of statutory rights but no ongoing loss of earnings since dismissal was absolutely inevitable. Miss Ahmad had less than two years'

continuous employment and thus is not entitled to claim unfair dismissal or a redundancy payment.

- 9.7 Each claimant was wrongfully dismissed in breach of contract in not being provided with proper notice of termination. They are each entitled to damages for breach of contract representing four weeks' pay for four years' service in Miss Gallagher's case, five weeks' pay for five years' service in Miss Dennis's case and one week's pay for Miss Ahmad who was short of two years' service.
- 9.8 Since the respondents never applied for and never got the Government furlough scheme running for their employees, the Tribunal concluded that the claimants could not have validly agreed any variation of contract of employment to accept reduced 80% wages in consequence. In those circumstances, the respondents made unlawful deductions from the wages of each claimant in respect of shortfall sums and then at their full basic rate of pay, through until 21 August 2020. In the cases of Miss Gallagher and Miss Dennis, the respondents and their predecessor also made unlawful deductions from wages for the 9 months from July 2019 to March 2020 representing their personal NEST pension contributions which the respondents failed to account for to HMRC to be paid into the pension scheme. The outstanding wages in each case are as follows:

Miss Gallagher

March pay (for February) shortfall	£110.00 net
April (for March) shortfall	£135.00 net
May (for April)	£910.00 net
June (for May)	£910.00 net
July (for June)	£910.00 net
August (for July)	£910.00 net
September (3 weeks to 21 August)	£728.00 net
Total	£4,613.00 net

NEST pension contributions

£26.09 per month x 9 months = £234.81

Miss Dennis

March pay (for February) shortfall	£250.00 net
April (for March) shortfall	£310.00 net
May (for April)	£1550.00 net
June (for May)	£1550.00 net
July for June	£1550.00 net
August (for July)	£1550.00 net
September (3 weeks to 21 August)	£1162.50 net
Total	£7922.50 net

NEST pension contributions

£34.89 per month x 9 months £314.01

Miss Ahmad	
April (for March) shortfall	£146.80
May (for April)	£459.20
June (for May)	£508.40
July for June	£508.40
August (for July)	£483.80
September (3 weeks to 21 August)	£319.80
Total	£1,976.40

9.9 Each claimant is entitled to holiday pay or compensation for paid annual leave accrued but not taken prior to termination of employment as at 21 August 2020. The leave year was the calendar year 2020. The annual entitlement is 5.6 weeks', and the entitlement was 3.55 weeks to 21 August 2020, with no evidence of paid holiday taken by any claimant in the leave year.

9.10 Although the respondents did not act in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015), that code does not apply to redundancy dismissals which these were or should have been and the Tribunal does not order any uplift of compensation in the circumstances here.

SCHEDULE OF AWARDS

Miss Gallagher. Week's pay £216.69. 4 years continuous employment, when aged over 22 years.

Unfair Dismissal: Basic Award £866.76. Loss of Statutory Rights £500.00.

Wrongful dismissal/Notice pay: 4 weeks' pay £866.76 gross.

Unlawful deduction of wages and NEST pension contributions:

£4,613.00 + £234.81 = £4,847.81 net.

Holiday pay/Regulation 14 compensation: 3.55 x £216.69 = £769.25 gross.

Miss Denniss. Week's pay £442.15. 5 years continuous employment, when aged over 22 years.

Unfair dismissal: Basic Award £2,210.75. Loss of statutory rights £750.00.

Wrongful dismissal/Notice pay: £2210.75 gross.

Unlawful deduction of wages and NEST pension contributions:

£7922.50 + £314.01 = £8236.51 net.

Holiday pay/Regulation 14 compensation: 3.55 x £442.15 = £1,569.63

Miss Ahmad. Week's pay £114.80.

Wrongful dismissal/Notice pay. One week £114.20 gross.

Unlawful deduction of wages: £1976.40 gross.

Holiday pay/Regulation 14 compensation: 3.55 x £114.80 = £407.54 gross.

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1803638/2020
Code V

The Tribunal has made some awards on a gross basis (before deduction of tax and national insurance) and some awards net after such deductions. In particular, damages for breach of contract have been assessed on the basis of the claimant's gross pay for the notice period. Once the respondents pay that amount to the claimant, HMRC is likely to require the claimant to pay tax and national insurance on it as "Post-Employment Notice Pay".

Employment Judge Parkin

Date: 19 March 2021

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