



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112278/2019

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Held remotely via CVP on 2 & 3 November 2020

**Employment Judge Neil Buzzard
Tribunal Member G Powell
Tribunal Member J Smillie**

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Mr Mohcene Remmouche

**Claimant
In Person**

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Profile Security Services Limited

**Respondent
Represented by:
Mr Grant-Hutchison –
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The claimant is not found to have been dismissed, accordingly his claim of unfair dismissal cannot succeed and is dismissed
2. The claimant's claims of discrimination are not well founded and are dismissed.
3. The claimant's claim that he was owed accrued holiday pay on termination of his employment that was unlawfully not paid to him is not well founded and is dismissed.
4. The claimant's claims that the respondent made unlawful deductions from his wages in relation to the repayment of a loan are not well founded and are dismissed

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REASONS

1. **What did the Claimant claim?**

1.1. When the claimant submitted his claim form he identified a number of potential claims. He ticked the following claims:

1.1.1. Unfair dismissal;

5 1.1.2. Age discrimination;

1.1.3. Marriage or civil partnership discrimination; and

1.1.4. A claim for accrued Holiday pay

10 1.2. In addition to ticking to indicate these claims, the claimant provided a narrative description of the events about which he complained. This narrative description referred to a loan from the respondent to the claimant. The claimant stated that repayments of that loan were deducted from his pay without his consent.

15 1.3. At a preliminary hearing before Employment Judge J Porter on 13 March 2020 the claimant's claims were discussed. The claimant was ordered to provide more details of what exactly he was claiming. The claimant sought to comply with this order, and a further preliminary hearing before Employment Judge M A Macleod took place on 1 June 2020. At this preliminary hearing the claimant had the benefit of an Arabic interpreter.

20 1.4. A note of the 1 June 2020 hearing was produced by Employment Judge Macleod and sent to the parties on 2 June 2020. Judge Macleod stated in this note, at paragraph 7 the following:

25 *"7. The claimant confirmed that the two claims made, that he was treated less favourably on the grounds of age and marital status, relating to the number of hours he was given by the respondent, are the only claims he seeks to make."*

1.5. Judge Macleod then goes on to describe how the claimant, after confirming this, raised a question over a claim arising from the loan repayments, and to refer to a holiday pay claim.

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1.6. Judge Macleod ordered the claimant to provide details of all the losses he claims.

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1.7. At the outset of the final hearing, the Tribunal discussed with the parties the claims made. This was done to ensure that the parties and Tribunal were all clear on the disputes that needed to be resolved. This was in part because a draft list of issues had been produced that went further than the claims identified at the preliminary hearings.

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1.8. During this discussion the identity of the comparators the claimant sought to rely on is his discrimination claims were highlighted. The comparators identified by the claimant were both stated to be single. One of the comparators was slightly younger than the claimant, the other was slightly older. The claimant was asked to confirm if he sought to rely on these comparators for his age discrimination claim, given their ages suggested they would not help the tribunal in determining if the less favourable treatment the claimant complains about was because of his age. During this discussion the claimant confirmed that he did not seek to argue that he was discriminated against on the basis of his age. After exploring this with the claimant to ensure he fully understood what he was saying, the claimant's age discrimination claims were dismissed as withdrawn.

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1.9. The claimant indicated to the Tribunal that he had not been dismissed, but had resigned. It was clear to the Tribunal that the claimant did not understand that a resignation could also be a constructive dismissal, and accordingly the Tribunal proceeded to consider his unfair dismissal claim as one of constructive unfair dismissal.

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1.10. The Tribunal considered the list of issues that had been produced following the last preliminary hearing. This was sent by the respondent to the claimant and the claimant ordered to confirm if these issues

were agreed. In the correspondence relating to this the claimant referred to a potential claim of harassment, apparently related to his marital status.

5 1.11. Taking into account the discussions with the parties at the outset of the hearing, evidence was only heard in relation to the following claims:

1.11.1. Constructive unfair dismissal;

1.11.2. Marriage and Civil Partnership Direct discrimination;

1.11.3. Marriage and Civil Partnership Harassment;

10 1.11.4. Unpaid accrued Holiday Pay on termination of employment; and

1.11.5. Unlawful Deduction of wages – relating to the deductions for loan repayments.

2. **What Issues did the claimant raise in each claim?**

15 2.1. *Constructive unfair dismissal*

2.1.1. The claimant confirmed that he resigned in response the actions of the respondent. This could potentially make the claimant's resignation a dismissal. The respondent disputed that their actions were sufficient to make the claimant's resignation a dismissal, and in any event that the claimant had resigned after securing a better paid job elsewhere.

2.2. *Marriage and Civil Partnership Direct discrimination*

25 2.2.1. The claimant relied on a single act of less favourable treatment for this claim. That act was an alleged reduction in his working hours. The respondent denied there had been a reduction, and even if there was a reduction denied that anything they had done in relation to the claimant, including any alleged reduction, was on the basis of his marital status.

2.3. *Marriage and Civil Partnership Harassment*

2.3.1. The claimant sought to rely on the same treatment as with his Direct Discrimination claim for this claim. As explained below, the law as it stands in the UK does not directly protect employees against harassment related to their marital status.

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2.4. *Unpaid accrued Holiday Pay on termination of employment*

2.4.1. The claimant stated that he was owed holiday pay that had not been paid to him in full on termination of his employment. The claimant was unable to identify how much holiday he had taken, how much he had accrued or how much he alleged was unpaid. The claimant could do no more than provide what appeared to be a guess of 10 days unpaid holiday pay being owed. The respondent's position was that the claimant was paid in full for all holiday accrued, and that nothing further is owed.

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2.5. *Deduction of wages – relating to the deductions for loan repayments*

2.5.1. The parties were agreed that the respondent had made deductions from the claimant's pay, by way of loan repayment. The parties were agreed that the loan was repayable.

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2.5.2. The claimant argued that he had not given consent to the recovery of the loan in three consecutive instalments from his monthly pay. The claimant claimed that without his consent the repayments were not lawful.

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2.5.3. The respondent's position is that the claimant had signed a document given sufficient authority for the repayments to be deducted from the claimant's pay. The respondent further argued that, given the claimant agrees that he owed the loan repayments to the respondent, it would not be appropriate or just and equitable to order they be returned to the claimant.

3. What Does the Law require for these claims?

3.1. *Unfair Dismissal*

5 3.1.1. To make a claim of unfair dismissal the claimant has to show that he was dismissed. The claimant in this claim resigned from his employment. A resignation can, however, in some circumstances for the purposes of unfair dismissal rights amount to a dismissal.

10 3.1.2. The relevant statutory provision that can make a resignation a dismissal at law is s95(1)(c) of the Employment Rights Act 1996. This states that:

(1) For the purposes of this Part an employee is dismissed by his employer if

15 *(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*

20 3.1.3. Therefore, the claimant may be able to bring an unfair dismissal claim based on his own resignation, a situation which is commonly known as constructive dismissal. To do this he has to show that his resignation met the requirements of s95(1)(c) of the Employment Rights Act 1996.

25 3.1.4. To establish this there are three tests to apply, following the guidance of **Western Excavating (ECC) Ltd v Sharp** [1978] IRLR 27, as follows:

3.1.4.1. Firstly the claimant must show that his contract of employment was breached in a fundamental way by the respondent;

3.1.4.2. Secondly the claimant must show that he resigned as a reaction to that breach;

3.1.4.3. Thirdly the claimant must not have, after that breach, confirmed by words or actions that he agreed to continue his contract of employment despite the breach.

5 3.1.5. A fundamental breach can be of an express or implied term. The claimant in his claim form stated that he resigned his employment in response to three actions:

3.1.5.1. *“unlawfully cutting my hours”*;

3.1.5.2. *“changing my pay date”*; and

10 3.1.5.3. *“deducting wages without agreement”*.

3.1.6. These are all allegations of breaches of what are called express contract terms. To succeed the claimant must show, on the balance of probabilities, that these acts occurred as alleged and that they were in breach of his contract of employment.

15 3.1.7. In relation to the first of these the respondent denied the claimant’s hours had been cut. In relation to the second and third issue, the respondent agreed they had occurred, namely his pay date had been changed and deductions had been made. The respondent denied these things were a breach of contract or that they were a sufficient basis for a constructive dismissal claim.

20 3.1.8. The claimant, in addition to these alleged breaches of contract appeared to rely on a breach of the implied contract term of mutual trust and confidence. This is a contractual term implied into every employment contract, and is a fundamental term, which means that a breach of the term will always be fundamental.

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3.1.9. Guidance from case law, specifically **Malik v. BCCI** [1997] IRLR 462 helps Tribunals determine whether this implied term has been breached or not. The guidance is that the Tribunal must ask the following questions:

5 3.1.9.1. Did the conduct alleged to have breached trust and confidence occur?

3.1.9.2. If it did, did the employer have reasonable and proper cause for acting in the way they did?

10 3.1.9.3. If not, were the employer's actions calculated and likely to destroy or seriously damage the employer-employee relationship of trust and confidence?

15 3.1.9.4. This was further restated in **Buckland v. Bournemouth University Higher Education Corporation** [2010] CA which affirmed the **Malik** guidance, in particular overruling a previous case which has suggested the range of reasonable responses test (borrowed from unfair dismissal) would apply to the employer's conduct. The Court of Appeal also reminded Courts that it was open to
20 the employer to show that a constructive dismissal was for a potentially fair reason and that such a dismissal fell within the range of reasonable responses.

25 3.1.10. In **Claridge v Daler Rowney Ltd** [2008] IRLR 672 EAT, further guidance was given making it clear that an employer's unreasonable conduct must amount to a breach of contract fundamentally undermining the employment relationship for there to be a constructive dismissal. Unreasonable conduct by itself is not sufficient.

5 3.1.11. If the claimant succeeds in a constructive dismissal case it is open to the respondent to establish that it was still a fair dismissal within the meaning of Section 98(4) Employment Rights Act 1996. The respondent in this case did argue that if they were found to have dismissed the claimant, then that dismissal was fair in any event. In the event. As matters transpired the claimant was not found to have been dismissed.

3.2. *Unlawful Deduction Claim*

10 3.2.1. Under s13 of the Employment Rights Act 1996 the respondent cannot lawfully deduct anything from the claimant's pay unless:

15 (a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

(b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

20 3.2.2. The respondent concedes that deductions were made. The respondent seeks to argue that the deductions were lawful as a consequence of a document signed by the claimant, some months prior to the first deduction being made.

25 3.2.3. The claimant accepted that he had signed the document in question (the document was shown to the Tribunal). Whether that document met the requirements for s13(b) is a question for the Tribunal to determine

3.3. *Holiday Pay Claim*

3.3.1. It was agreed between the parties that the claimant, along with all workers in the UK, is entitled to paid holiday pay. There was

no dispute that this was on the statutory basis as set out in the Working Time Regulations 1998 (as amended).

5 3.3.2. Under the Working Time Regulations the claimant is entitled to 5.6 weeks holiday per year. If, as in this case, the claimant's employment ends part way through a year, the claimant is entitled to be paid for any holiday he had accrued but not taken prior to his employment ending. Whether the claimant was paid for any outstanding holiday when his employment ended is a question of fact to be determined by the Tribunal.

10 3.3.3. This determination has to be based on the evidence presented, and is on the balance of probabilities.

15 3.3.4. The claimant has the burden of proving holiday pay is owed. Although this burden should not be applied in a strict or onerous way, the claimant does need to produce some credible evidence that holiday pay is owed. A mere assertion that he believes this to be the case, without more, cannot be enough.

3.4. *Discrimination Claims*

20 3.4.1. Part 5 of the Equality Act 2010 applies to employees prohibits discrimination and against and harassment of employees in the workplace.

3.4.2. In relation to discrimination s39 states:

“39 Employees and applicants

.....

25 (2) *An employer (A) must not discriminate against an employee of A's (B)—*

(a) *as to B's terms of employment;*

(b) *in the way A affords B access, or by not affording access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*

5 (c) *by dismissing B;*

(d) *by subjecting B to any other detriment.*

3.4.3. This prohibits discrimination in the terms of employment, in the way access to training or other benefits is given, by dismissal or by subjecting an employee to any other detriment.

10 3.4.4. In relation to harassment s40 states:

“40 Employees and applicants: harassment

(1) *An employer (A) must not, in relation to employment by A, harass a person (B)—*

(a) *who is an employee of A's;*

15 3.4.5. The right to make a claim in an Employment Tribunal in relation to a breach of these provisions of Part 5 comes from Chapter 3 of Part 8 of the Equality Act 2010. Specifically s120 states:

“120(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—

20 (a) *a contravention of Part 5 (work);.....”*

3.4.6. Under this a Tribunal has the jurisdiction to determine if prohibited discrimination and / or harassment has occurred.

25 3.4.7. The definition of discrimination and harassment comes from Part 2 of the Equality Act. This firstly creates the concept of protected characteristics, the relevant one here being marital status. Part 2 Chapter 2 goes on to define what discrimination and harassment are.

3.5. Direct Discrimination

5 3.5.1. There is more than one form of discrimination based on marital status. The relevant form of discrimination to this claim is Direct Discrimination. This is defined by s13 of the Equality Act as when:

13(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

10 3.5.2. Direct discrimination therefore requires the claimant to identify a comparator. The claimant identified two potential comparators. These will only be valid comparators if the only material difference between them and the claimant is that the claimant is married whilst they are not. If they are not found to be valid comparators, it is clear from the wording of the section, '*or would treat others*' that a hypothetical comparator can be used.

15 3.5.3. The claimant must still show that he has been treated less favourably than any comparator he uses. Less favourable treatment is not defined in the statute. The question of whether treatment is capable of amounting to less favourable treatment is a question for a Tribunal to decide, not the claimant. The EAT in **Burrett v West Birmingham Health Authority**[1994] IRLR 7 made it clear that the mere fact that a claimant thinks they are being treated less favourably does not mean that they are. However the House of Lords in **R v Birmingham City Council ex parte Equal Opportunities Commission**[1989] AC 1155, [\[1989\] IRLR 173](#), gave guidance that the test for less favourable treatment must not be onerous, and whilst not determined by the claimant the Tribunal must not disregard the perception of the claimant. Ultimately the decision of whether treatment is less

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favourable is for the Tribunal to make, accounting for the perceptions of the claimant.

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3.5.4. The claimant in this case relies on the alleged reduction of his working hours as being the less favourable treatment for the purposes of his direct discrimination claim.

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3.5.5. Establishing less favourable treatment is not however sufficient: for the claim of direct discrimination to be made out, the conduct complained of must be also be '*because of* the claimant's marital status, in essence because he was married.

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3.5.6. The Court of Appeal established in **Owen and Briggs v James** [1982] IRLR 502 that the protected characteristic, in this case marital status, does not have to be the only reason for the less favourable treatment. The question is whether it was an effective cause of the treatment. The motive for the treatment is not determinative. It may be because of the claimant's marital status even if it was not actually intended to be.

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3.5.7. In this case the claimant argued that his hours were reduced by offering him shifts he could not work due to childcare commitments.

3.6. *Harassment*

3.6.1. Harassment is defined by s26 of the Equality Act as:

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(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

3.6.2. The “*relevant characteristics*” for the purpose of s26 (Harassment) are listed in s26(5) of the Equality Act 2010. This states:

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(5) The relevant protected characteristics are:

Age;

Disability;

Gender reassignment;

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Race;

Religion or belief;

Sex;

Sexual orientation.

3.6.3. The characteristic of marital status is not one of those listed in s26(5). This means that there is no protection in the Equality Act 2010 against harassment which is based marital status. For this reason he claimant’s claim of marital status harassment cannot succeed.

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3.7. *The Burden of Proof*

3.7.1. Considering the claimant’s claims for discrimination the burden of proof is determined by s136 of the Equality Act. The relevant parts of this section state:

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(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

5 3.7.2. This in effect reverses the traditional burden of proof so that the claimant does not have to prove discrimination has occurred which can be very difficult. Section 136(1) expressly provides that this reversal of the burden applies to *'any proceedings relating to a contravention of this [Equality] Act'*.

10 3.7.3. This is commonly referred to as the reversed burden of proof, and has 2 parts.

15 3.7.4. Firstly, has the claimant proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination? This is more than simply showing the respondent could have committed an act of discrimination, or that the claimant has a protected characteristic.

20 3.7.5. If the claimant passes the first stage then the respondent has to show that they have not discriminated against the claimant on the basis of his marital status. This is often by explanation of the reason for any conduct alleged to be discriminatory, and showing that the reason is not connected to the claimant's marital status. If the respondent fails to establish this then the Tribunal must find in favour of the claimant. With reference to the respondent's explanation, the Tribunal can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case.

30 3.7.6. It is not necessary for the Tribunal to approach these two elements of the burden of proof as distinct stages. The court of Appeal in **Madarassy v Nomura International plc** [2007] EWCA Civ 33 gave useful guidance that despite the

two parts of the test all evidence should be heard at once before a two part analysis of that is applied.

4. What evidence did the Tribunal see and hear?

5 4.1. The claimant presented evidence on his own behalf. For the respondent evidence was presented by a Mr Roger Riach, a regional manager. In addition to this the Tribunal had the benefit of the sight of a substantial bundle of documents. Throughout the hearing the claimant had the benefit of an Arabic interpreter.

5. Based on the evidence, what did the Tribunal find

10 5.1. A substantial part of the relevant factual position was agreed between the parties. Wherever there was a material dispute over a relevant finding of fact the reasons for the finding made by the Tribunal regarding that fact are explained. Where no explanation is given, the fact was either not in dispute or not a material fact taken into account by the Tribunal in reaching a decision in relation to any of the claimant's claims.

15 5.2. The claimant was employed by the respondent as a security office from 1 July 2017 up to his resignation on 18 August 2019. For the period to 26 November 2018 the claimant was employed by '*Safe hands Security Services Ltd*'. The claimant's employment transferred to the respondent with the protections of the Transfer of Undertakings (Protection of Employment) Regulations.

20 5.3. The claimant signed a contract of employment with Safe Hands Security Services Ltd on 6 June 2017. This contract continued post transfer, with the only change on transfer being the name of the claimant's employer.

25 A copy of the claimant's contract of employment was shown to the Tribunal. This contract had a section headed '*Working Hours*' which states:

Your working hours will be a minimum of 24 per week. The company may require you to vary the pattern of your working hours if required on a temporary or permanent basis should the needs of the post require this.

5 5.4. The claimant did not allege that his hours had ever been reduced to below 24.

5.5. Two days after the transfer the claimant signed a document titled "*Company Deductions from Pay*". This document stated in the first paragraph:

10 *The Company may at any time during your employment and/or on or after the termination date deduct from your salary or any other monies due to you from the Company in appropriate circumstances including those set out as below.*

15 5.6. The evidence of the claimant was that he did not believe this agreement was intended to cover anything other than the circumstances set out expressly in the document. The claimant could not point to anything in support of this assertion. The document clearly stated that it only "*including those set out*".

20 5.7. Soon after the transfer the respondent informed the claimant of the intention to transition the claimant from weekly pay to monthly pay. This was applied to all the transferred employees, with the aim of aligning their pay interval with the respondent's other pre-existing employees.

25 5.8. The claimant raised concerns about being able to cope financially during the transition to monthly pay. After a period of around five months the respondent offered the claimant an interest free loan of one month's pay to assist him with the transition. The terms of the loan were discussed with the claimant. The claimant asserted that in those discussions he was told he would have to repay a percentage of the loan each month, either 5% or 10%. This was denied by Mr Riach, who stated that there was never any discussion of percentages with the claimant, and further
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that he had not known when meeting the claimant what the exact repayment terms would be applied. The evidence of the respondent, recorded in contemporaneous emails to the claimant, was that the normal approach to such loans would be to require repayment in one lump sum, rather than permitting repayment in instalments.

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5.9. The Tribunal find that it is unlikely that it was suggested to the claimant that repayment of the loan could be over ten or more months. Whilst the evidence of the claimant and Mr Riach are contradictory on this point, the fact that it would be so far outside the normal approach of the respondent persuades the Tribunal that it is not likely it was ever considered by the respondent or suggested to the claimant.

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5.10. Following these meetings the loan was agreed and advanced to the claimant. The evidence was that the loan was advanced to the claimant in early June 2019, although the exact date was not clear. This loan had the specific purpose of persuading the claimant to agree to the transition to monthly pay intervals.

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5.11. A document setting out the terms of what was called a "*Temporary Loan Arrangement*" was sent to the claimant. This detailed that the loan would be recovered from the claimant through three instalments taken from the claimant's monthly pay over consecutive months, the first instalment to be collected from his pay on or around 8 July 2019.

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5.12. The respondent's evidence was that it was explained to the claimant at the time that with this loan, and taking into account the deductions for repayment, there would not be any point in time when had been paid less money by the respondent (including the loan) than he would have been paid at that point in time had they continued to pay him weekly

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5.13. The claimant was invited to sign this letter. The evidence showed he did not. The evidence suggested that the loan was advanced to the claimant prior to his receipt of this letter.

5.14. Prior to this loan, the claimant had raised concerns that his working hours had been reduced. The claimant asserted that his weekly working hours were, prior to the transfer, normally 48 hours per week. The claimant worked 12 hour shifts. The respondent accepted that for a limited period prior to the transfer the claimant had been working four shifts a week, but maintained that they believed this to have been a temporary situation covering a staff shortage.

5.15. The claimant stated that after the transfer his normal weekly working hours were 36 per week. This consisted of three twelve hour shifts. There appeared to be no dispute about this. The claimant, however, stated in evidence that this had then reduced to two twelve hour shifts. In cross examination it became clear that the claimant accepted he had always been offered at least three twelve hour shifts, but that latterly one of those shifts had regularly been on a Tuesday. The claimant's oral evidence was that he could not work on a Tuesday as he had childcare responsibilities, as a consequence of the fact his wife (the other carer) worked on a Tuesday. The claimant's evidence was that the respondent was aware of this. The claimant went on to assert that the respondent had instructed other employees that they should not swap shifts with the claimant, thus preventing him from being able to work more than two of the available shifts.

5.16. The claimant was not able to produce evidence to corroborate this allegation that colleagues had been instructed not to swap shifts. The respondent denied this, and produced an email chain dated 23 April 2019. In this a number of relevant exchanges occurred. A summary of the points in that exchange considered by the Tribunal to be relevant is as follows:

5.16.1. Mr Riach specifically denied that the claimant's shifts had been changed.

5.16.2. The claimant responded stating:

5 *“I just want to add another information to you Friday shift it’s my shift and you can ask anyone who was working on Friday they tell you but when you put Tuesday I don’t want to change the rota because my mother in law she was here with us I can leave my son with her but now she left and my wife she’s working this day it’s mean I need my shift back.”*

10 This suggests, despite the clear difficulty that the claimant has with English, that the claimant wanted to change his shifts back to a pattern that did not include Tuesdays.

5.16.3. Mr Riach then specifically denied that he had ever told *“anyone to not swap shifts with you”*.

5.16.4. Apparently following Mr Riach visiting the claimant’s place of work he stated:

15 *“Whilst there I spoke to your colleagues regarding your request to change days to a Sunday, Monday and Friday. I am afraid that your colleagues were reluctant to change their days off to accommodate, which was a little disappointing...”*

20 5.17. The evidence was that, on a temporary basis whilst another employee was absent, the claimant’s shifts were altered to accommodate him. This was specifically stated to be temporary, to the end of June 2019, and this was confirmed in a letter to the claimant of 13 June 2019.

25 5.18. On balance the tribunal does not find the evidence presented supports the claimant’s allegation that the respondent told his colleagues not to swap shifts with him. Further, the evidence does not support the claimant’s assertions that his shifts were changed by the respondent as alleged. The evidence suggests that the claimant’s concern was that they were not changed back to a pattern from the past after his personal
30 circumstances changed.

- 5.19. The claimant accepted that prior to his resignation he had applied for and secured another position. This was similar work, on a higher hourly rate and with more hours per week. The claimant started this new job within a few days of his resignation.
- 5 5.20. The claimant subsequently resigned from this new job after only a short time. The claimant informed his new employers that his resignation was a result of the new job requiring him to be on his feet (presumably rather than seated) for long periods which he could not manage. The claimant's evidence to the Tribunal was that the upset and damage to his mental health caused by the respondent's treatment of him was such that he could not cope with working as a security officer. On balance the Tribunal did not find this assertion to be credible.
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Based on the above findings, what conclusions did the Tribunal reach?

6. *Equality Act claims*

- 15 6.1. The claimant's claims under the Equality Act 2010 were all argued to relate to the protected characteristic of '*marriage and civil partnership*'. There was no dispute or confusion over this.
- 6.2. Applying the law of harassment, a claim relying on marital status cannot succeed. For this reason his claim of harassment is dismissed.
- 20 6.3. The claimant's evidence was that his hours were in effect reduced by the respondent offering him shifts on Tuesdays, which for childcare reasons he could not do. This is not related to his marital status. It does not matter that the other person with whom he shared childcare responsibilities was his wife. He was clear in his evidence that he could not work Tuesdays due to the demands of childcare, which is related to his status as a parent not as a spouse.
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- 6.4. The claimant produced no evidence, and did not appear to even assert in the hearing, that it was related specifically to the fact he was married. At its highest his claim appeared to be that his shifts were reduced and he was married.
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6.5. Based on these conclusions, the Tribunal finds that the claimant has failed to produce any evidence to discharge the initial burden of proof. Accordingly, his direct discrimination claims are dismissed.

7. *Holiday Pay Claim*

5 7.1. The claimant was not able to produce any credible evidence that he was owed holiday pay. He was unable to say when he had taken holiday. He had not produced in advance of the hearing a calculation of the holiday pay he stated he was owed, as he was ordered to do. Had he attempted to do this, he would not doubt have been in a better
10 position to try to explain why he believed he was owed holiday pay.

7.2. The claimant initially stated he had taken about 18 days holiday, before changing his evidence (when it was explained to him that this equated to his accrued holiday given the date his employment ended) to say he had only taken 12 days holiday. He was unable to give even a rough
15 indication of what dates he had taken as holiday.

7.3. The evidence from the respondent was that the claimant was paid his full holiday pay entitlement. There was no credible challenge to this in the claimant's cross examination of the respondent's witness.

7.4. The respondent's evidence was clear. The claimant's assertion he was owed more was somewhat vague and appeared to lack any firm basis
20 in fact. On balance the Tribunal find that the claimant has not produced evidence that suggests he was not paid the holiday pay he was owed. For this reason the claimant's holiday pay claim is dismissed.

8. *Unlawful Deductions Claim (relating to loan repayments)*

25 8.1. The parties were agreed that the claimant signed a form headed "Company Deductions from Pay". The claimant's signature was dated 28 November 2018. It was agreed that the deductions the claimant complains of all occurred in 2019.

8.2. The Tribunal had the benefit of the sight of this document. It states that the company may “*at any time during your employment*”, make deductions in “*appropriate circumstances*”. The form goes on to identify a number of matters that would be included in “*appropriate circumstances*”. That list of circumstances is, on any sensible construction of the document, not an exhaustive list. This is made clear by the use of the word “*including*” in the document when referring to the listed circumstances.

8.3. Accordingly, the question is if the loan repayments fell within ‘*appropriate circumstances*’. The parties were agreed that the loan was repayable. The loan was to assist the claimant with the transition from weekly to monthly pay. The loan was a full months’ pay. It was explained to the claimant at the time that the loan meant he should not be any worse off during the transition.

8.4. For these reasons the Tribunal finds that the loan repayment was clearly an appropriate circumstance, and accordingly the deduction was within the authority of the signed form. Given this, the deductions are found to have been lawful.

9. *Unfair Constructive Dismissal*

9.1. The claimant argues that three express breaches of contract occurred. These are initially discussed individually below.

9.1.1. The claimant alleges that the respondent “*unlawfully cutting my hours*”

9.1.1.1. It was an accepted fact that the claimant’s contract stated his hours were a minimum of 24 per week. It was also an agreed fact that the claimant had at all times worked at least 24 hours per week. For this reason it is clear that the claimant always worked hours that were consistent with his contract of employment.

5 9.1.1.2. It has not been found that any change occurred to the claimant's hours. The claimant wanted a change to his shifts, which could not be accommodated. This was because his mother in law would no longer be available to provide childcare on a Tuesday.

9.1.1.3. Based on the above, it is not found that at any point the claimant's hours were unlawfully cut.

9.1.2. *The respondent alleges that the respondent "changing my pay date"*

10 9.1.2.1. This change occurred. The claimant agreed to the change, accepting an interest free loan to assist him with the transition. Given the claimant agreed to the change, albeit only after the loan was offered, it cannot be a breach of his contract to make the change.

15 9.1.2.2. In any event, the change is one that had a clear and legitimate purpose. It was done with many months of notice. The respondent gave the claimant an interest free loan to assist him with any temporary hardship the change might cause. In these circumstances the tribunal
20 find that the change had a proper cause, and was made in a reasonable way.

9.1.3. *The claimant alleges that the respondent was "deducting wages without agreement" in the months immediately prior to his resignation.*

25 9.1.4. The respondent had authority that has been found to have been sufficient, rendering these deductions lawful. The claimant accepts that he had to repay the interest free loan. The fact that the loan had to be repaid was discussed with the claimant. Accordingly, these deductions are found to have been made lawfully, for a
30 proper purpose and in a reasonable way.

9.2. The tribunal does not accept that the claimant has produced evidence that an unreasonable approach, acted unlawfully or pursued anything other than proper purposes when dealing with the claimant. Accordingly, either individually or taken together, the complaints the claimant has raised in this claim are not found to amount to a fundamental breach of his contract of employment. For this reason the claimant is not found to have been dismissed. The claimant's unfair dismissal claim must therefore fail.

10. For the above reasons all the claimant's claims are dismissed.

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Employment Judge: Neil Buzzard
Date of Judgment: 27 November 2020
Entered in register: 03 December 2020
and copied to parties

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