Case Number 2501042/20

THE EMPLOYMENT TRIBUNALS

Claimant Ms Donna Thomas

Respondent Hartlepool United Football Club Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NEWCASTLE (by CVP) On 19 August 2021

EMPLOYMENT JUDGE GARNON (sitting alone)

For Claimant: in person
For Respondent: Mr J Spooner Solicitor

JUDGMENT

The Judgment of the Tribunal is the claims are struck out on the grounds in paragraphs (b) (c) and (d) of Rule 37 of the Employment Tribunal Rules of Procedure 2013 (the Rules)

REASONS (bold print is my emphasis and italics are quotations)

1 The Procedural Law

1.1. Rule 2 provides the overriding objective of the Rules is to enable Tribunals to deal with **cases** fairly and justly which includes, in so far as practicable (a) ensuring the parties are on an equal footing (b) avoiding delay and(c) saving expense. Parties and representatives must assist the Tribunal to further the overriding objective and in particular co-operate generally with each other and with the Tribunal.

1.2. My reason for emboldening the word "cases" is that it is not only this case the Tribunal has to deal with. The overriding objective was created in civil procedure under the direction of Lord Woolf in the early 1990s. His Lordship emphasised in a number of cases, eg Beachley Properties-v-Edgar, the concept of ensuring just handling of cases was not confined to the case in question. Other litigants' access to justice must not be disrupted.

1.3. Rule 37 includes
(1) *At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim .. on any of the following grounds—*
(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant .. has been.., unreasonable …;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;
(d) that it has not been actively pursued
(2) A claim … may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

1.4. Bolch-v-Chipman.2004 IRLR 140 held strike out should only be ordered where a fair trial is no longer possible.In Blockbuster Entertainment-v-James2006 IRLR 630, a Court of Appeal appeared to agree. In Essombe-v-Nando's Chickenland a stricter line was taken where there was persistent failure without reasonable cause to comply with Orders. H.H. Judge Clark said; *"We also accept the public policy argument ... Tribunal orders are there to be obeyed; otherwise cases cannot be properly case-managed and fairness achieved between the parties*". That approach was approved by the Court of Appeal in Governors of St Albans Girls School-v-Neary 2010 ICR 473.

1.5. Article 6 of the European Convention on Human Rights provides everyone is entitled to a fair and public hearing **within a reasonable time**. In Riley-v-The Crown Prosecution Service 2013 IRLR 966 the Court of Appeal emphasised that is an entitlement of **both parties** to litigation and of other litigants not to have to wait for justice more than a reasonable time. The claimant in that case was not deliberately in breach of orders. She issued Tribunal proceedings in September 2009 and further proceedings in 2010 A four week hearing was scheduled to begin in May 2011 but she asked for it to be postponed on grounds she was mentally and physically unfit to attend. Having considered medical evidence an Employment Judge struck out the claims That was upheld by the Court of Appeal. Lord Justice Longmore said : *"It would in my Judgment be wrong to expect tribunals to adjourn heavy cases which are fixed for a substantial amount of court time many months before they are due to start ..."*

2 The Law Relevant to the Claims

2.1. The claim, presented on 3 June 2020, is of unlawful deduction of wages contrary to the Employment Rights Act 1996 (the Act), notice pay at common law and compensation for untaken annual leave under the Working Time Regulations 1998 (WTR). The claimant was employed by the respondent initially as a Bar Manager from 18 July 2018 until about 24 March 2020. The Act provides, subject to exceptions in s 108(3) none of which appear to apply, an employee with less than 2 years continuous employment does not have the right to claim unfair dismissal.

2.2. Section 13 of the Act includes

(*1) An employer shall not make a deduction from wages of a worker employed by him*

(3) 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.

2.3. Section 23 says a worker may present a complaint to a tribunal that her employer has made a deduction from his wages in contravention of section 13 and s 24 adds where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer *(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of* ***any deduction*** *made in contravention of section 13,*

2.4. Regulation 14 of the WTR says where a worker's employment is terminated during the course of his leave year, and on the date on which the termination takes effect the proportion she has

taken of the leave to which she is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired her employer shall make her a payment in lieu in accordance with paragraph(3) which provides a formula for calculation **(AxB)-C** where **A** is the period of leave to which the worker is entitled ; **B** is the proportion of the worker's leave year which expired before the termination date, and **C** is the period of leave taken by the worker between the start of the leave year and the termination date.

2.5. The phrase “properly payable” in section 13 means properly payable under her contract. The Court of Appeal in Agarwal-v-Cardiff University held the tribunal does have jurisdiction to construe a contract. An employer cannot unilaterally alter existing terms and conditions to less favourable ones, but it may terminate one contract and offer another. The termination will amount to dismissal by the employer but, provided notice is given the dismissal will not be a breach of contract. Provided termination is communicated to the claimant, it is effective to terminate the first contract even if a second one comes into being. Notice may be given orally but it must unambiguously say the contract is being terminated at a certain date. On the claimant’s version that never happened**. The law requires a tribunal to find how much the claimant is owed for wages , notice and holiday pay . It is not enough to say her pay is “short” , she must show what she was due, what she received and then the Tribunal may award any shortfall**

3 The History, Facts and the Issue(s)

3.1 The claimant has at all times represented herself. Her claim form said she noticed her pay being nearly half of normal on 31 January. Her manager Mr Mark Maguire insisted this would be put right. Her next pay was correct but no repayment made of any outstanding wage. She spoke to Andy Johnson in accounting who said Mr Maguire had changed her contract. She says Mr Maguire told her he **wanted to** change her to a zero hour contract but he had not found the time to talk to her, was going to send a letter out but forgot. The claimant said she would not accept a zero hour contract so Mr Maguire said to leave it with him and used the words “*promise*” and “*trust me*” numerous times so she did. Then in March she received a call saying she was not to go to work because of the Coronavirus, was no longer needed and had to be let go. She begged to be furloughed but was not. Her pay slip came and was “short” plus no holiday pay, lieu days or bonus. She emailed Mr Maguire and Mr Johnson yet got no reply.

3.2. The response said her initial contract of employment was terminated by letter of 18 December 2019 bringing it to an end on 15 January 2020. She continued on a zero hours casual contract until that contract was brought to an end by letter dated 24 March 2020. Her last day at work was 19 March 2020. She worked variable hours with an average number over a four week period of 18.5 at £10 per hour. She was paid her last full wage on 31 March. The respondent did not believe she was due any further payment including for lieu days, holiday pay and bonuses.

3.3. On 19 August 2020 Employment Judge (EJ) Sweeney made the following orders

By 11 September 2020 the Claimant must write to the Tribunal and copy in the Respondent answering the following questions:

How much is she claiming for unpaid wages (arrears of pay)?

How has she calculated this figure?

How many hours did she work which she says she was not paid for?

When did she work those hours?

When should the Respondent have paid her in respect of those hours?

How much is she claiming for outstanding holiday pay on termination of her employment and how does she calculate the figure?

How many days or hours holiday did she take in the last holiday year?

How many had accrued to her but were not taken at the date of termination of her employment?

What is the Claimant claiming in respect of notice pay?

Also by 11 September 2020 the Claimant must send to the Respondent a copy of any documents relevant to her claims;

By 25 September 2020 the Respondent must write to the Tribunal and the Claimant setting out its response to the above information provided by the Claimant;

By 2 October 2020, the Respondent must send to the Claimant any documents relevant to the claims;

By 16 October 2020, the Respondent must send to the Tribunal an indexed, paginated file containing the documents relevant to the claims (that includes its documents and any which it has received from the Claimant).

By 23 October 2020, the Claimant and the Respondent must send to the Tribunal and to each other a copy of any witness statement of any witness who will give evidence at the hearing. ***As the Claimant will be a witness, she must set out her evidence in a witness statement.*** *The statement should be typed and contain paragraph numbers and page numbers.*

3.4. These orders spelled out in terms any unrepresented party could follow exactly what the claimant needed to do .The hearing was to be before an EJ electronically by CVP.

3.5. On 25 September Mr Spooner wrote to the claimant :
In accordance with the Order of 19 August I enclose the documents to which we will refer at the hearing on 26 October. The documents are:
1 Letter 18 December 2019 HUFCL to you.
2 Letter 24 March 2020 HUFCL to you.
3 Your claim form
4 Our response
5 Early Conciliation Certificate.
I shall be obliged if you will acknowledge safe receipt. An email to me will suffice.
I see that you have still not complied with the first of the Orders of the Tribunal made on 19 August requiring you to answer certain queries.
Do you intend to pursue this claim or not? Please let me know if you are withdrawing your claim.

3.6. On 6 October a letter sent to the parties from the Tribunal included :
Employment Judge Aspden directs that the hearing due to take place by video on 26 October 2020 is converted to a hearing by telephone for case management with a time estimate of one hour. The details of how to dial in to the hearing are attached.

The reasons given by the Judge are as follows:

'The claimant has not provided all of the information about her claims that Employment Judge Sweeney directed her to provide by 11 September. Without that information the respondent cannot prepare properly for the hearing. I doubt that this case will be ready for the final hearing on 26 October. In any event, the case is currently due to take place over the internet by video. As EJ Sweeney explained in his Orders, to participate in a video hearing the parties need access to a computer screen. The claimant has not said that she cannot get access to a computer screen for the hearing. She has, however, said she does not have a computer of her own. I am, therefore, concerned that, even if the case could be ready in time for a hearing on 26 October, the claimant may struggle to participate effectively in the hearing. We are not able to hold the hearing in person at our Middlesbrough hearing centre on that date due to limits on the space available for hearings at the venue, having regard to distancing measures required to ensure public safety. Therefore, i have decided to postpone the final hearing and instead hold a short hearing by telephone on 26 October to discuss the case, the steps the parties need to take to get it ready for a final hearing and to fix a date for that hearing.

Before the hearing on 26 October, the claimant must clarify her claims by answering the questions asked by EJ Sweeney in his Case Management Order as best she can. The claimant must send this information to the Tribunal and Mr Spooner by 16 October. It is the claimant's responsibility to provide information when asked by a Judge. The claimant seems to be under the impression that the Tribunal could investigate her claim by contacting people who may have information. That is a misunderstanding of the Tribunal's role. I can see the claimant has tried to provide some information but the claim is still not completely clear. I suggest the claimant writes out each of EJ Sweeney's questions in an email and adds her answers underneath each of the questions.'
Again, these orders spelled out in terms an unrepresented party could follow exactly what the claimant needed to do and a Private Preliminary Hearing (PrPH) was to take place

3.7. On 14 October the claimant emailed:
*I was only paid £550 on 31 January I should have for which I have no precise figures but it was at least been paid £996.67 salary, also **overtime of around 45 hours** as the schedule was extremely busy with football matches band nights and Christmas parties.*
*I also **had a day's holiday in plus with me working a New Year's Day I got a day in lieu**. I honestly have no idea how much you get for holiday pay or lieu days.*
*Also March I was only paid £740 and it should of been £996.67 **with overtime of 24 hours** as we had 2 band nights on straight after the football match*
*Also I think I'm entitled to **a month's notice of £996.67 as I was given no notice at all.***
The stress I have been under and the hardship I have been through for doing a job I loved then treated like dirt I can't put an amount on that. I think maybe that should be discussed. I am also sending you 2 pay slips a year apart doing exact same job and you can see a massive difference in the 2 of them.

3.8. On 26 October 2020, I conducted the PrPH, quoted the overriding objective and expressed a view of how points of law were likely to be approached. I set out relevant law at some length. I identified the main issue from which everything else flowed. The claim form said Mr Maguire told the claimant *he was going to send a letter out but he forgot.* The claimant says all letters posted by the Club are recorded in a post book which shows none sent to her on 18 December and what Mr Spooner sent her on 25 September was a standard template letter. If a Tribunal found the letter dated 18 December 2019 was not received, whether because Mr Maguire forgot to send it or it went astray in the post, it is ineffective to end her first contract which was for a minimum 23 hours per week at £10 per hour and any overtime at that rate. It also had an express term she would be given four weeks notice of termination. If the first contract was effectively ended, an

argument she did not "deserve" to be put onto a zero hours contract and should still have the more beneficial terms she enjoyed before would not work. She would still be entitled to £10 for every hour she worked after 15 January. She had to answer *How many hours did she work which she says she was not paid for? When did she work those hours?* **Her right to notice of termination of her zero hours contract if there was one would be only one week**.

3.9. The parties appeared to agree that under the new and old contracts the leave year is 1 January to 31 December. A major source of confusion was "lieu days". Many contracts provide a person who works certain days, usually in the licensed trade Bank Holidays, is entitled to be paid their normal rate for that day **and** have an extra day off. The parties appeared to be in agreement this applied only to Boxing Day, New Year's Day and Good Friday. She needed to answer fully the question *How many days or hours holiday did she take in the last holiday year?* and say which days they were, for which she was paid and how much. From what she said at the PrPH, I thought she worked 1 January 2020, and had two days paid leave before her employment ended. One would be the lieu day so she had only one day of paid annual leave. She could not tell me how many days she worked per week because it varied. If an EJ knew how many hours she was paid for the leave she took , he could calculate how many hours she had left to take up to the date of lawful termination **if he knew what that date was**. That brought us back full circle to whether she received the letter dated 18 December and to what date in March she was paid. I wrote her argument she did not receive the letter dated 18 December had a reasonable prospect of success. Mistakes happen. I could see an EJ accepting, Mr McGuire made one.

3.10. I went on to say if the claimant's case was accepted from 16 January to 22 April 14 weeks, she would have been paid 23x £10 x14 = £3220 gross. From that must be deducted what she was paid which appears to be £1120 in February and £740 in March totalling £1860. Her wages claim and her notice pay claim together would be about £1360 **at best** . If the respondent's case was accepted she would be owed little or nothing. From 1 January to 22 April is 113 days. Her annual leave entitlement would be 5.6 x 23 =128.8 hours @ £10 + £ 1288. Divided by 366 (it was a leap year) x 113 = £398.75. I could not see her holiday pay exceeding £ 400 even if her termination date was in April. I ordered her to send to the Tribunal, with a copy to the respondent, as much information as she could about the hours she had (a) worked (b) been paid for since 1 January 2020 and the holidays she had taken and been paid for in the same period. The respondent had leave to reply.

3.11. In October I wrote
"*I understand the emotional and financial impact on the claimant of what was done but the law does not permit her to be compensated for that (unless perhaps she incurred bank charges). A Tribunal must decide the case on the legal basis set out above. .. Rightly or wrongly if the claimant was told her old contract was ended and she worked after that It is only payment on the terms of the new one she can claim. She would still be entitled to £10 for every hour she worked after 15 January* ***but only she can say how many she worked and when****. If she answers fully the top two questions I have emboldened in paragraph 5 above the Tribunal and the respondent will be able to see what she is claiming.*
Also she argues she should have been furloughed. There is no obligation on an employer to use the Coronovirus Job Retention Scheme. Many sports clubs and licensed premises faced with lockdown closure did not but made their workforce redundant. Without two years continuous employment an employee does not have the right to a redundancy payment either.

3.12 I set out Rule 37. Mr Spooner confirmed he was not making a strike out application but I warned the claimant she had to do as ordered and listed another PrPH notice of which was sent

to the parties on 10 November 2020. This was the respondent's reply to the claimant's email of 24 November 2020 with her narrative in italics and the replies in bold:

I hope you are well, I have ***some information*** *about my outstanding pay and holiday pay. My salary is £ 996.67 a month*

Agreed this was basic salary when she was on her permanent contract of 23 hours / week

January I was paid £550, now please take into account we had 2 Christmas parties in plus 3 games and 3 band nights my overtime was 51 hours. So that's a difference of £446.67 plus £510. Which I was reassured that would be sorted out and that it had been an error
It is confirmed she was paid £550. This was made up as £460 salary (for the 2 weeks 1 January to 14 January) plus 9 hours overtime at £10 ph

Her overtime hours are calculated based on the weekly time sheets she submitted for period 23 December to 18 January. Note due to payroll cut off approx. 21st of each month, overtime is processed monthly following — hence the last week of December being included in January.
W/E 28 December — 30 hours worked per Donna's timesheet — 7 hours overtime due
W/E 4 January — 3 days worked per Donna's timesheet with 23 hours claimed no overtime due
W/E 11 January — 25 hours worked per Donna's timesheet— 2 hours overtime

W/E 18 January — This is the week her contract terminated. The 14th was the Tuesday. She was therefore allocated 8 hours of contracted weekly hours to the 13th & 14th (23 hours / 6 days [ex Sunday] x 2). Her timesheet shows she worked 4 hours that week plus claimed for 3 days holiday.

Her 2019 holiday entitlement had been fully utilised as at 31 December. She therefore had only accrued 1/2 day holiday entitlement between 1 January and 14 January so could not be paid 3 days holiday (for salaried staff we always round entitlement to nearest half day). The result is she was 4 hours underworked on her contracted hours, but we made this up using her half day holiday.

Therefore for this week there was no overtime or additional holiday pay to pay

February I was paid £1120

Agreed - 112 hours @ £10

We had 2 games in February so my overtime would have been 24 hours but I got paid for most of it please remember we also had 2 bands on. I am only owed 12 hours for Feb £120.00

Not agreed
Our position is that by this point she was on casual contract. Donna submitted timesheets as follows;
W/E 26 January — 33 hours
W/E 9 February — 33 hours
W/E 16 February --15 hours
W/E 22 February —31 hours

Therefore she was paid for every hour she submitted on her timesheets

March I Was only paid £740.00

Agreed. Hours paid were as follows; w/E 29 February - 13 w/E 7 March 30 w/E 14 March - 19 w/E 21 March - 12

Also I am entitled to a day in lieu I did a 13 hour shift on new years day without extra pay.

Not agreed. She was paid for the hours claimed on W/E 4 January timesheet as per above. She was not entitled to any enhancement for working on new years day

Holiday pay

We note that she has again failed to provide information about how her proposed holiday pay. We believe she would be owed 12.07% holiday pay on casual hours worked which is shown on her February and March payslips. Therefore £1,120 + £740 x 12.07% = £225

My notice is a month on my contract so I would like my notice to be paid.

Our position is her previous contract was terminated and her new casual working arrangement did not entitle her to notice. Given how the above clearly demonstrates her lack of understanding around what she has worked / been paid for, we need to make the point she has clearly misunderstood the position around her contract being terminated.

3.12. The claimant replied on 17 December

I have my pay slips showing that I was ***not paid properly*** *that my wage was kept from me, I have deleted the last email by mistake off Mr Spooner but I can say I honestly was not given a different contract also why would they do that at one of the busiest times of the year when the Centenary lounge was booked out for Christmas parties football matches and band nights.*

My cut off day for what you work is 17th of the month so Mr Spooner saying I got paid ***is a lie****.*

All I want is what is owed to me for how hard I worked for the football club I worked non stop over Christmas and new year and got £550 for a months work , now even I don't have to be a expert to see a bar manager working all the hours God sends for the football clubs gain making thousands and thousands of pounds for the club for them to turn around and treat me this way and the lies that are being told are outstanding.

Look in the post book, it's a legal document you will not see my name on it.

Also one of the letters they tried to say they sent had my old address on that I haven't lived at in over 2 and a half years so how on earth did I get that.

I may not have a legal background but I know when someone is trying to pull the wool over people's eyes. Mark Maguire said to me it would all be sorted out. ***Speak to the members of staff they all knew something was underhanded and one of them went and spoke to Mr Maguire about what was going on and he said he was sorting it out,*** *I spoke to Mr Maguire a few times and he never once said my contract had been changed he said he was in talks with the club solicitor into how we could come up with a different contract for out of season, but I never got to speak to Ian Scobie about it.*

3.13. On 27 January 2021, I conducted the PrPH by telephone to which the claimant did not connect .I sent out thorough written notes and orders. On 6 October EJ Aspden had written " *The claimant seems to be under the impression that the Tribunal could investigate her claim by contacting people who may have information. That is a misunderstanding of the Tribunal's role."* The words I have emboldened in the last paragraph suggest the claimant had not understood that and she must. Also the claimant had written *My cut off day for what you work is 17th of the month so Mr Spooner saying I got paid is a lie* . What Mr Spooner actually wrote was cut off day was *approx. 21st* so no lie was being told by anyone. In her claim form the claimant said employees she named were also making claims. I found two: Ms Barnfather 2500962/20 and Mr Simpson 2501075/20 and I understood both settled

3.14.The main issue from which everything else flowed remained If an EJ found the letter dated 18 December 2019 was not received her claims could succeed. If it was , the respondent's calculations were fairly accurate. Again, these orders spelled out in terms an unrepresented party could follow exactly what the claimant needed to do . **However, only she could do it.** I ordered the final hearing to take place by CVP over a period of one day but **i**f the claimant could not partake in a CVP hearing she was to inform the Tribunal immediately. I ordered document exchange , the claimant and the respondent to agree and the respondent to prepare a file of documents and, vitally, both parties to prepare witness statements containing everything relevant the witness can tell the Tribunal then send each other copies of all their witness statements **within 21 days after the file is prepared which would have been before the end of April 2021.** The respondent was even if the hearing is not by video, to **send them** in Word or other editable format at least five days in advance of the hearing to the Tribunal with a request they be forwarded to the Judge assigned to conduct it .

3.15. On 27 March the hearing was listed by CVP for today The Tribunal heard nothing from either party until on 9 August Mr Spooner emailed attaching the trial bundle and saying he was still waiting for the claimant to confirm she was ready to exchange statements

3.16. On 18 August at 15.37 the tribunal emailed the parties the CVP link and a reminder we still did not have the witness statements. Immediately a postponement request was received from the claimant:
I am unfortunately not able to attend on the 19th as I cannot get the day off, my parents got covid and I had to go into isolation for 10 days, I had a holiday in at work but they have had to take it back to use next month as we are so short staffed due to isolation or contracting covid.
I am really sorry but its out of my control so can we reschedule please.
Kind regards
Donna

3.17. At 16.39, despite having not received one from the claimant Mr Spooner sent this witness statement
I Andy Johnson of the Prestige Group Roseville Court, Blair Avenue, Ingleby Barwick, Stockton-on- Tees TS17 5BL will say:

1 I have worked with the Prestige Group (Prestige), of which Hartlepool United Football Club Limited (HUFC) is part, since 2009. I am a chartered accountant (17 years post qualified experience) and in my current role within Prestige I oversee the finance and HR functions for both Prestige and HUFC.

2 It was during November / December 2019 when Mark Maguire (MM), the then CEO of HUFC, and I were instructed by the Chairman to seek immediate reductions on the non-playing staff payroll costs. This resulted in one member of staff being made redundant (commercial team) and 3 other employees (Donna Thomas (DT), the scout and the full time kit man) having their contracts terminated following service of notice due to length of service being less than 2 years.

3 Along with external HR advisors and MM I was involved with the production of the 18 December 2019 letter (page 41) that MM told me he issued to DT following an initial consultation with her.

4 I am also aware that similar letters were issued to both the scout and kit man. Both were subsequently processed as leavers without any query and there was no dispute about their roles being terminated or suggestion that they did not receive their letters.

5 I recall a meeting that took place between DT and MM which I believe took place during late December 2019 / early January 2020. This resulted from Donna querying with me how her hours would work, and she clearly had some confusion about this, also saying that she was not aware of having her employment terminated. I therefore took Donna through to MM's office so any confusion could be clarified. I asked MM, in front of DT, whether he issued the 18 December 2019 letter to DT. He then addressed DT to explain how they had held a meeting to discuss the financial position of the club and the requirement to reduce the hours of the bar manager, hence the reason DT's contract had been terminated but with the view to moving onto casual terms. MM went on to say to DT he had handed her a copy of the letter during their previous consultation meeting. DT remained confused by it and MM repeated that going forward he basically had to manage her hours week to week, on an as needed basis, hence the change in contract status.

6 I am therefore satisfied that notice was served upon DT on 18 December 2019 bring her permanent employment to an end, and the same letter makes it clear that any future work at the club will be subject to a casual contract. MM states "I….wish to offer you the chance of reengagement on a casual contract in the New Year which I will forward to you separately." He later puts: "As discussed the need for bars cover will continue…. but we will work together to carefully manage the hours you work." There was clearly an intention that DT would remain an employee but on a casual basis which fitted in with the Chairman's need to minimise staffing costs. That intention was put to DT and it was my understanding that she appreciated what was being offered and what would change. If she was unsure, any uncertainty would have been cleared up at the meeting I refer to above in paragraph 5.

7 Part of my role at HUFC involves me preparing the monthly payroll. I can categorically state that there is no underpayment on DT's wages and she can been paid for every hour work from both her time as permanent staff and from when she moved onto casual contract terms. Her hourly rate remained unchanged. All timesheets as submitted by DT have been processed.

8 I also managed the holiday records and can categorically state that DT had no outstanding accrual from year end 31 December 2019 as claimed.

9 In respect of the claim for underpaid wages and holiday pay it is apparent to me that DT is simply confused and does not understand how her hours and holiday is calculated.

10 It is denied that DT's permanent contract remained in place beyond the termination date of 15 January 2020. But even in the hypothetical scenario that it had remained in place (as I believe DT is claiming) the employee would have been under an obligation to work the contracted hours as a

minimum and in the event that contracted hours were underworked, a salary deduction would have been made. Therefore, whichever I have looked at this I have entirely satisfied myself that DT has been paid for every hour as submitted on her timesheets.

11 I have advised the club to fully defend the claim brought by DT on the basis I am satisfied her permanent contract was terminated, she moved onto casual terms, there was no underpayment of wages and the issue at heart is DT's general confusion and misunderstandings – as evidenced by her repeated failures throughout this process to factually substantiate her claims.

3.18. The postponement request was referred to Employment Judge Sweeney who refused it and at 16.42 the Tribunal emailed *The Judge's reasons for refusing the request are that the Claimant has had almost 5 months' notice of the Hearing and the Employment Tribunal was only asked about a postponement when it sent details for the CVP Hearing today. Claimant has provided no evidence in support of her application. It is a matter for her whether she wishes to renew her application tomorrow morning before the Judge allocated to the Hearing. If so, she should provide evidence in support of the application*

3.19. This morning I and Mr Spooner connected at 9.45 . I had noticed an earlier order said the hearing would start at 11 am so, as the claimant had not connected, I said we should re-connect then. Mr Spooner left the CVP. By about 10 am the Tribunal Clerk noticed the claimant had connected so, on my instruction, telephoned Mr Spooner to get him the re-connect which he did .

3.20. The claimant was using a device which meant I could not see or hear her , so I telephoned her mobile phone from my office landline. I could then hear her and she me, but Mr Spooner could not hear her without me relaying what she was saying I asked where her witness statement was and she claimed to have sent it "*a few weeks ago*" to the Tribunal and Mr Spooner, but neither had received it. I asked if she had Mr Johnson's statement which she did not. Though it had been copied to her, she said she had to be near an internet " hot spot" to have opened it. Mr Spooner had sent her a reminder about exchange which she denied receiving.

3.21. I told her she had been given many chances to put her case in order , had not done so , and a trial today would be impossible. She asked for another chance but I explained why I would not grant that. I gave her an opportunity to say why her case should not be struck out and her only reply was it was not fair. I said I would strike it out and send written reasons . Her response was I should not bother because she knew all along the EJ would take the respondent's side I and EJs Sweeney and Aspden have bent over backwards to explain to her on several occasions what she had to do and how to do it. She appears to have taken no heed of that advice. It would not be in accordance with justice or the overriding objective to permit the claimant any further chances and prejudice not only the respondent but other litigants if I did so.

EMPLOYMENT JUDGE T M GARNON
JUDGMENT AUTHORISED BY THE EMPLOYMENT JUDGE ON 19 AUGUST 2021