



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss N Davies

**Respondent:** Tregno Resourcing Limited

**Heard at:** Cardiff (via CVP)

**On:** 12 August 2021

**Before:** Employment Judge G Cawthray

## Representation

Claimant: In person

Respondent: Mrs. J Brockley, Director of the Respondent

# RESERVED JUDGMENT

1. The Respondent made an unlawful deduction from the Claimant's wages. A remedy hearing will be listed to determine the shortfall in the wages payable between April and November 2019 and the amount due in relation to payment owed for days in lieu not given.
2. The Respondent has made an unlawful deduction of wages in relation to holiday pay. The Respondent is ordered to pay to the Claimant the gross sum of £2,405.90 in respect of accrued holiday pay.
3. The Respondent has breached the contract of employment by dismissing the Claimant without the full notice period. The Respondent is ordered to pay to the Claimant the gross sum of £1,911.00 for damages for the breach of contract.
4. The Claimant is entitled to a statutory redundancy payment from the Respondent. The Respondent is ordered to pay the gross sum of £2,209.50 as redundancy payment.
5. The Respondent's breach of contract counter claim fails.

# REASONS

## Issues

1. The Claimant brings claims for a statutory redundancy payment, notice pay, unlawful deduction of wages and holiday pay.
2. The Respondent brings a counter claim.
3. I discussed and clarified the issues to be determined with the parties in detail at the outset of the hearing. In particular, I sought clarification of the Respondent's counter claim. Mrs. Brockley explained the breach of contract counter claim related to the following alleged breaches:
  - a breach of the implied term of trust and confidence by the Claimant saying she was competent to discharge duties as a book keeper when she was not;
  - a breach of the implied term of trust and confidence by not undertaking her duties in a timely manner;
  - a breach of the implied term of trust and confidence by stealing money from the Respondent on 26 July 2019 in the sums of £600 and £400 as she took the sums from the company account and sent them to herself and another person.The Respondent argues that the losses sustained as a result of the Claimant's alleged breaches were additional accountancy fees, lost time, financial penalties, interest, lost policies and the monies allegedly stolen. The Respondent was not able to attribute a value to the alleged losses.
4. The issues to be decided are set out below.
5. **Unlawful deduction from wages**
  - a. Is the claim in time?
  - b. Is the Claimant a worker?
  - c. Is the claim in respect of wages? The Claimant argues that she is owed the following:
    - basic pay for from April to 15 November 2019 when the Claimant alleges, she received less than her full wages;
    - payment for 67 days worked at weekends when she was on call;
    - holiday pay for accrued but unused holiday in 2019.
  - d. Has the employer made a deduction? Was the deduction authorised by statutory provision or relevant contractual provision or agreed to in writing by the Claimant before deduction.

- e. Was it an exempt deduction?

**6. Breach of contract**

- a. What was the Claimant's notice period?
- b. If the Claimant was dismissed, was she given the notice/notice pay she was entitled to? If constructively dismissed she will still be entitled to notice pay.
- c. Was the Respondent entitled to dismiss her without notice i.e., was the Claimant guilty of gross misconduct?

**7. Statutory Redundancy Payment**

- a. When did the Claimant's employment end?
- b. What was the reason for the Claimant's dismissal?
- c. Was she entitled to a statutory redundancy payment?

**8. Breach of contract – Employer's Counter Claim**

- a. Was there a repudiatory breach of contract by Claimant? What and when?
- b. Did the Respondent affirm contract and continue with relationship or accept breach and summarily dismiss?
- c. How much, if anything, should the Respondent be awarded as damages?

**Evidence**

- 9. The Claimant provided a written witness statement and a number documents (provided by way of numbered zip files).
- 10. The Respondent did not submit any witness statements. The Respondent also failed to provide any documents to either the Claimant or the Tribunal, despite the parties having been provided with clear directions.
- 11. The Claimant gave evidence, having affirmed, during the course of the hearing and was questioned by Mrs. Brockley.
- 12. Mrs. Brockley stated she wished to rely on the contents of the ET3 as her witness evidence, and affirmed the contents as being true and accurate. I gave Mrs. Brockley the opportunity to make any further comment by way of evidence, and she stated there was nothing further to what was written in the ET3. Mrs. Brockley was questioned by the Claimant.
- 13. Both parties summarized the claims and their position in oral submissions after all evidence had been heard.

**Facts**

14. The Claimant was employed by the Respondent as an Office Manager. As part of her role she undertook some bookkeeping duties.
15. The Respondent provided support and care workers to third party clients.
16. On 8 November 2016, prior to commencing employment, Mrs. Brockley emailed the Claimant with a copy of the contract of employment but also set out some additional information within the email, which was not set out in the contract of employment. The key information being as follows: *“As I mentioned, we rota the weekend On Call responsibilities so that we each do one in four. The On Call payment is £50.00 plus £2.50 for each shift filled and a day off in lieu during the week. Currently, I do all the evening/night On Call duties, but in due course this is something that I’m looking to distribute more equitably. The rate for nights is £10.00 plus £2.5 for each shift filled.”*
17. The Claimant had a contract of employment dated 8 November 2016, noting however that the employer’s name was recorded as being Circle Support Ltd but it was agreed that the Respondent was the employer. The Respondent claimed a job description was appended to the contract but this had not been provided to the Tribunal and I am unable to make any findings on whether there was an appended job description. The contract stated the Claimant was to be paid £9.00 per hour payable by direct bank transfer at weekly intervals on the Friday of each week and her working hours were 9.00 to 5.00 Monday to Friday, with one hour for lunch. The contract does not set out whether or not the lunch break is paid or not. The contract also sets out her holiday entitlement, being 20 days plus Bank Holidays, and the leave year runs from January. The contract does not specify when the holiday year runs from. I note that the contract states that *“a day’s holiday pay for the purpose of this clause is £12.50.”*
18. Clause 8 of the contract of employment set out the notice period: *“Your employment may be terminated at any time (and for any reason) by either party giving to the other one week’s notice in writing of termination of employment during the first two months, and one month’s notice thereafter.”*
19. The Claimant commenced employment at the Respondent on 14 November 2016.
20. The Respondent offered a 24/7 helpline to customers. Prior to October 2018 the telephone was held on a rota basis, between the Claimant and the Operations Manager. Following the departure of the Operations Manager in October 2018 the Claimant, as the only employee, held the helpline phone at all times, and was therefore effectively on call each and every weekend.
21. On 29 March 2019 the Claimant exchanged messages with Nigel Brockley regarding reports up to February 2019, the Claimant explained she would need some time to catch up and referenced her workload and being the only member of staff.

22. On 3 April 2019 Nigel Brockley emailed the Claimant asking for turnover figures to be provided that day. The Claimant responded on the same day, and the following day Mr. Brockley replied with thanks and saying he would keep her updated in relation to HMRC.
23. On 11 June 2019 Mrs. Brockley text the Claimant asking for login details and within the text said *“Also, just curious to know how the dreaded VAT returns are progressing.”*
24. On 16 June 2019 Mrs. Brockley and the Claimant engaged in text messages regarding statements and returns, in which the Claimant was asking for some information and statements in order to complete VAT returns. On 25 June 2019 Mrs. Brockley messaged the Claimant asking for her address in order for her to send statements by way of next day delivery. The Claimant messaged Mrs. Brockley on 29 June 2019 confirming she had sent the VAT returns to Mrs. Brockley and requesting sums in order to pay wages. There was no communication from Mrs. Brockley setting out any concern and she responded thanking the Claimant and *“I’ve know you need paying and will hopefully be able to action that night”*.
25. On 12 July 2019 the Claimant emailed Mrs. Brockley and requested payment of outstanding wages. Within the email the Claimant informed Mrs. Brockley that she was working 7 days and 24 hours on call and that she had not had a day off since 10 August 2018. The email set out the payments that had been made to her and the amounts she considered to be owed between April and July 2019. In short, the Claimant set out the following information: April 2019 – should have been paid £1,360.00, paid £1020.00, owed £340.00 – May 2018 should have been paid £1,700, paid £1,720 – June should have been paid £1,360.00, paid £600, owed £760. The Claimant stated she was owed wages of £1,780.00 at 14 July 2019.
26. At 06.44am on 13 July 2019 date Mrs. Brockley text the Claimant:
- “Hi Nic, Just picked up your text. It’s little comfort, but this isn’t a position that I wanted you to be. I’ll see what I can do in the short term this weekend, but I’ve decided to close the business. I think we both need to be free of it and I’m simply unable to fund it out of my own pocket indefinitely. You have been a stalwart throughout, and we had a good thing for a while, but we were dealt some real body blows (Tony, Simplicity, the muppets in Manchester, Simply Care), and they did of us. How many forward shifts do we have booked? How many staff need to be informed? What’s the liability in terms of holiday pay? We’ll need to produce a set of year end accounts and year to date accounts? How long do you think that will take? How much do OC owe Simplicity? Jx”*
27. The Claimant replied stating she would look at figures over the weekend and that it would be good if she could be paid this week.
28. On 15 July 2019 the Claimant text Mrs. Brockley on 15 July 2019 asking for her wages to be forwarded.

29. Following this email, and due to less assignments being undertaken, the Claimant's workload reduced but she continued to attend the workplace each day, albeit for less hours, usually between 10.00am and 4.00pm but she continued to hold the helpline telephone at all times. The Claimant was still processing staff wages and working on accounts.
30. The Claimant paid herself and other staff wages. However, she only paid herself when there was money in the company account, and therefore there were some periods when she did not receive full pay. The Claimant was not required to obtain approval from Mrs. Brockley, or any other person, in order to pay wages.
31. On 26 July 2019 the Claimant paid wages of £400 to Christopher Brown. The Claimant provided a copy of Christopher Brown's timesheet. Although it is difficult to read it appears to show the hours worked. The Claimant also paid herself the sum of £600.
32. Mrs. Brockley had full and complete access to the Respondent's bank accounts. Mrs. Brockley told us that she became aware of the fact the Claimant had transferred the sum of £400 to Christopher Brown from the Respondent's bank account at the end of July or early August 2019. Mrs. Brockley was not aware of the identity of Christopher Brown at the time but made no enquiry with the Claimant as to the nature of the payment made and did not raise any concerns at all about the payment being made until these proceedings. During the hearing Mrs. Brockley accepted the Claimant had not stolen the £400 paid to Christopher Brown, as had been alleged in the ET3 and the counter claim.
33. Mrs. Brockley took no active steps to close the business or manage the cessation of the Claimant's employment.
34. On 10 November 2019 the Claimant emailed Mrs. Brockley with the accounts and also setting out other actions required including cancellation of phone lines and internet and collection of papers. The Claimant also referenced her wages and termination of employment.
35. On 12 November 2019 Mrs. Brockley engaged in text messages with the Claimant regarding the accounts and other work matters. Within the message chain the Claimant explained to Mrs. Brockley that she was at the office most days and there were lots of boxes for collection. In response to questioning about the fact that Mrs. Brockley has left a number of the Respondent's documents and files within the Claimant's possession Mrs. Brockley stated she did so because the Claimant assured her the documents were safe and she could trust the Claimant.
36. The Respondent did not raise any performance concerns with the Claimant at any time. The Respondent did not initiate or undertake a performance management process with the Claimant at any time.
37. The Claimant worked until 15 November 2019.

38. The Claimant and the Respondent gave conflicting evidence about the Claimant's rate of pay. Mrs. Brockley stated the Claimant was paid a basic weekly pay of £350 per week with the sum of £50 being for both days at the weekend. The Claimant stated her basic wage was £315 per week with two on call payments per week - £40 Monday to Thursday and £50 Friday to Saturday with a day in lieu. I was not directed to any evidence setting out the basis of the rate of pay other than the contract and the email dated 8 November 2016. No pay slips or bank statements were provided.
39. I find that the Claimant's daily rate of pay, 7 hours at £9.00 per hour was £63.00 per day. This amounts to gross weekly pay of £441.00 (5 days x £63.00).
40. I find that the Claimant should have been paid £50 for an on-call weekend shift and was also due to receive a day in lieu for working an on-call weekend shift, as set out in the email dated 8 November 2016.
41. The Claimant set out the sums that she considers she had been paid and not been paid since April 2019, the Respondent did not contest the sums. However, no pay slips were provided or referenced and therefore I was not able to verify if the sums cited by the Claimant are gross or net sums. I set out below the sums the Claimant says she was paid, and not paid and in square brackets I set out below what I find the gross payments to the Claimant per week should have been, based on the principle that wages were due to be paid every Friday.

**April 2019** – 5th £340, 12th £0, 23rd £340, 26th £340. Total received = **£1,020.00.**

[Total gross sum due to be paid 5<sup>th</sup> £441, 12<sup>th</sup> £441, 19<sup>th</sup> £441, 26<sup>th</sup> £441 = **£1,764.00** plus 4 x £50 for Saturday on call = **£200** and 4 days in lieu owed for Sunday on call x £63 = **£252.00.**]

**May 2019** – 3rd £340, 13th £680, 17th £100, 28th £200, 31st £400. Total received = **£1,720.00**

[Total gross sum due to be paid 3<sup>rd</sup> £441, 10<sup>th</sup> £441, 17<sup>th</sup> £441, 24<sup>th</sup> £441, 31<sup>st</sup> £441 = **£2,205.00** plus 4 x £50 for Saturday on call = **£200.00** and 4 x days in lieu owed for Sunday on call x £63 = **£252.00.**]

**June 2019** – 7th £100, 14th £150, 26th £350, 28th £0. Total received = **£600.00**

[Total gross sum due to be paid 7<sup>th</sup> £441, 14<sup>th</sup> £441, 21<sup>st</sup> £441, 28<sup>th</sup> £441 = **£1,764.00** plus 5 x £50 for Saturday on call = **£250.00** and 5 x days in lieu owed for Sunday on call x £63 = **£315.00.**]

**July 2019** – 4th £350, 12th £0, 19th £0, 26th £600. Total received = £950.

[Total gross sum due to be paid 5<sup>th</sup> £441, 12<sup>th</sup> £441, 19<sup>th</sup> £441, 26<sup>th</sup> £441 = **£1,764.00** plus 4 x £50 for Saturday on call = **£200.00** and 4 x days in lieu owed for Sunday on call x £63 = **£252.00.**]

**August** 2019 – 5th £500, 9th £0, 21st £500, 23rd £0 30th £0  
[2<sup>nd</sup> £441, 9<sup>th</sup>, £441, 16<sup>th</sup> £441, 23<sup>rd</sup> £441, 30<sup>th</sup> £441 = **£2,205.00** plus 5 x £50 for Saturday on call = **£250.00** and 4 x days in lieu owed for Sunday on call x £63 = **£252.00.**]

**September** 2019 - 6th £300, 13th £0, 20th £60, 27th £0  
[6<sup>th</sup> £441, 13<sup>th</sup> £441, 29<sup>th</sup> £441, 27<sup>th</sup> £441 = **£1,764.00** plus 4 x £50 for Saturday on call = **£200.00** and 4 x days in lieu owed for Sunday on call x £63 = **£315.00.**]

**October** 2019 – 4th £0, 11th £0, 18th £0, 25th £0  
[4<sup>th</sup> £441, 11<sup>th</sup> £441, 18<sup>th</sup> £441 25<sup>th</sup> £441 = **£1,764.00** plus 4 x £50 for Saturday on call = **£200.00** and 5 x days in lieu owed for Sunday on call x £63 = **£252.00.**]

**November** 2019 - 1st £0, 8th £0, 15th £0  
[1<sup>st</sup> £441, 8<sup>th</sup> £441, 15<sup>th</sup> £441 = **£1,323.00** plus 2 x £50 for Saturday on call = **£100.00** and 2 x days in lieu owed for Sunday on call x £63 = **£126.00.**]

42. From 1 January 2019 the Claimant did not take any annual leave. Prior to the Operations Manager leaving the Respondent in October 2019 the Claimant would agree periods of annual leave with the Operations Manager. Following his departure Claimant felt there was no ability for her to take annual leave due to the need to be available to answer the emergency phone line. The Respondent took no steps to encourage or manage the use of the Claimant's annual leave.
43. The Claimant contacted ACAS on 23 January 2019 (Day A) for the purpose of commencing early conciliation and early conciliation ended on 23 February 2020 (Day B). The Claimant presented the ET1 on 3 March 2020.

## Law

### Date of dismissal

44. Under section 95(1) Employment Rights Act 1996 an employee is dismissed by her employer if:
  - (a) The contract under which he is employed is terminated by the employer (whether with or without notice),
  - [(b) he is employed under a limited-term contract and that contract terminate by virtue of the limiting event without being renewed under the same contract, or]
  - (c) the employee terminates the contract under which he is employer (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
45. Section 97 of the Employment Rights Act 1996 sets out how to determine the effective date of termination.



## Redundancy

46. Under section 139 Employment Rights Act 1996 an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:
- a. The fact the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was so employed; or
  - b. The fact the employer has ceased or intends to cease to carry on the business in the place where the employee was so employed; or
  - c. The fact that the requirements of the business for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.
47. Sections 145 and 162 of the Employment Rights Act set out how to calculate statutory redundancy payments.

## Unlawful deduction of wages

48. Section 13(1) of the Employment Rights Act 1996 (ERA) provides an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction.
49. An employee has the right to complain to an Employment Tribunal of an unauthorised deduction from wages pursuant to section 23 ERA. The definition of "wages" in section 27 ERA includes holiday pay.
50. A claim about an unauthorised deduction from wages must be presented to an Employment Tribunal within three months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.
51. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum, although a contract of employment can provide more. The leave year begins on the start date of the Claimant's employment in the first year and, in subsequent years, on the anniversary of the start of the Claimant's employment, unless a written relevant agreement between the employee and the employer provides for a different leave year. There will be an unauthorised deduction from wages if the employer fails to pay the Claimant on termination of employment in lieu of any accrued but untaken leave.

52. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 of ERA, with some modifications.

### Breach of contract

53. Under rule 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if –
- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine,
  - (b) the claim is not one to which article 5 applies and,
  - (c) the claim arises or is outstanding on the termination of the employee's employment.
54. Rule 4 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 states that proceedings may be brought before an [employment tribunal] in respect of a claim of an employer for recovery of damages or any sum (other than a claim for damages, or for sum due, in respect of personal injuries) if –
- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine,
  - (b) the claim is not one to which article 5 applies and,
  - (c) the claim arises with outstanding on the termination of the employment of the employee against whom it is made; and
  - (d) proceedings in respect of that employee have been brought before an [employment tribunal] by virtue of this Order.
55. A court or tribunal must be satisfied, on the balance of probabilities, that there was an *actual* repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct. T

## **Conclusions**

### Ending of employment – statutory redundancy payment

56. I find that the Claimant's employment ended on 15 November 2019. Although the Respondent took no active steps to manage the ending the employment relationship and closing of the business, I accept that the Claimant continued to be available for and attend work, undertaking duties (albeit there was less work to be done) until 15 November 2019.

57. During the hearing Mrs. Brockley stated the reason why the Claimant's employment ended was because the business was not turning over. I find that the reason for the Claimant's dismissal was redundancy. As per the definition in section 139 Employment Rights Act 1996, the Respondent intended to cease to carry on the business. The redundancy situation arose because the business was not financially viable.

58. I conclude that the redundancy payment due to the Claimant is the statutory sum of £2,209.50 (4.5 weeks pay due to being 41 years or older for all 3 years' service at the weekly rate of pay of £491.00 (£441.00 + £50.00).

### Unlawful deductions from wages

#### Basic weekly wages

59. In relation to wages, I have set out in paragraph 41 above what I consider the Claimant should have been paid on a weekly basis, and noted what the Claimant says she received in relation to wages due between April and November 2019. I conclude that there was a series of underpayments and the claim was in time.

60. However, I have been unable to find if the sums that have been received by the Claimant are the net or gross amounts, and therefore I am presently unable to calculate the sums due to the Claimant.

61. Accordingly, it will be necessary for a remedy hearing to take place to determine the precise amount due to the Claimant. In order to undertake the calculations, the Tribunal will need certain information, which will be set out in a separate order.

#### Days in lieu owed

62. In relation to the days owed in lieu of a weekend/Sunday worked on call I found that between April and November 2019 the Claimant worked 32 Sundays and was not given time off in lieu, as set out in the email dated 8 November 2016. No argument was put forward by the Respondent asserting that the Claimant was not on call during weekends and although Mrs. Brockley stated that the £50.00 on call payment was for the weekend, the contents of the email dated 8 November 2016 state: "*The On Call payment is £50.00 plus £2.50 for each shift filled and a day off in lieu during the week*". I consider this to mean a sum of £50.00 is paid (which I have notionally taken as being the Saturdays on call) and a day off in lieu should be given (which I have notionally taken as being the Sundays on call). The Claimant confirmed she was not seeking payment of the £2.50 sum referenced in the email dated 8 November 2016.

63. The Claimant was not given the days off in lieu. The Claimant was not paid for the days in lieu. The Claimant continued to work Sundays throughout April to

November 2019, thus being a series of deductions that continued to the end of employment and is therefore in time.

64. I conclude that the Respondent made an unlawful deduction of wages by not paying her for the days in lieu.
65. I have found that the Claimant was entitled to be paid £9.00 per hour, resulting in a daily rate of pay of £63.00, therefore I conclude that in relation to unpaid days in lieu owed the Claimant is owed the sum of £2,016.00 (32 days x £63.00).
66. However, I have not made an order that the sums be paid as the total sum for all deductions must be considered and ordered at the remedy hearing.

#### Holiday pay

67. With regards to holiday pay, the Claimant confirmed that she is only seeking payment for holiday pay accrued in 2019.
68. The Claimant took no annual leave in 2019. The Claimant was entitled to 28 days holiday, 5.6 weeks' leave per year. The Claimant worked until 15 November 2019, and therefore her accrued holiday between January 2019 and 15 November 2019 amounted to 24.5 days holiday, which is 4.9 weeks.
69. I conclude that the Claimant was entitled to be paid in lieu of the 24.5 days holiday.
70. The Claimant was not made any payment for holiday pay. I conclude that the Respondent made an unauthorised deduction from wages by not paying her in lieu of this leave.
71. I calculate the amount of payment on a gross basis, but the Respondent is entitled to make any deductions which are due for tax and national insurance contributions before payment is made to the Claimant.
72. The Claimant's gross weekly pay was £491.00 (£441.00 + £50.00). £491.00 x 4.9 weeks = £2,405.90.

#### Breach of contract

73. During the course of the final hearing Mrs. Brockley admitted that the Claimant should have been provided with notice but was not. In addition, and for completeness, I conclude that there no basis for the Respondent dismissing the Claimant without notice. As set out in the facts above, the Respondent had not raised any concerns with the Claimant regarding her performance or conduct, and there were no grounds for a finding of gross misconduct. Accordingly, I

conclude that the Respondent failed to provide the Claimant with any notice and I conclude that the Claimant is entitled to damages for breach of contract.

74. The purpose of damages is to put the Claimant in the position they would have been in, had both parties performed their obligations according to the contract.
75. The Claimant's contract of employment set out the terms of the notice period. The Claimant was entitled to a notice period of one month.
76. Although damages are calculated on a net basis, since the Claimant will be liable for tax on the element of the notice pay, I use the gross figure in the calculation/
77. Accordingly, I conclude that the Respondent breached the terms of the contract of employment and the Claimant is owed one months' notice pay. The Claimant's basic gross weekly pay was £441.00 ( $£441.00 \times 52 = £22,932.00$ .  $£22,932.00 / 12 = £1,911.00$ . Accordingly, I order the Respondent to pay the gross sum as damaged for breach of contract of £1,911.00.

#### Employer's Counter claim

78. The Respondent provided no evidence of any repudiatory breach of contract by the Claimant.
79. Dealing together with the claims that the Claimant had said she was competent bookkeeper but was not and that the Claimant did not undertake her duties in a timely manner.
80. I found that bookkeeping formed part of the Claimant's duties as office manager and there was no evidence of any false representation put forward by the Claimant. The Respondent asked the Claimant for assistance in various book keeping matters, namely completion of accounts and VAT returns, and the Claimant engaged with the requests.
81. At no time did the Respondent raise any concerns with the Claimant. No performance management process, either formal or informal took place.
82. It is common place to see concerns being raised and addressed where there are real and significant concerns about performance, particularly if there are important and cost related consequences. There is no evidence to suggest there were any genuine concerns.
83. In relation to the allegation of stealing, Mrs. Brockley in oral evidence said she was aware that the monies had left the account around the end of July/early August 2019 but she did not query the payments with the Claimant. Indeed, she did not raise the issue until the commencement of proceedings. Had Mrs. Brockley had a genuine belief that the Claimant had stolen from her, given she became aware of the payment in late July or August 2019, I would have expected her to have addressed such a serious matter promptly. She did not

raise any concerns and left the Claimant to continue to work alone. Indeed, during the course of the hearing in relation to being questioned about the fact Mrs. Brockley has left the Respondent's paperwork in the Claimant's possession Mrs. Brockley stated she did so because she trusted the Claimant. The Respondent has made serious allegations against the Claimant, and such allegations are unsubstantiated and without merit and such allegations have caused significant upset to the Claimant.

84. Accordingly, I conclude that there was no repudiatory breach of contract by the Claimant. The Respondent's counter claim fails.

Employment Judge G Cawthray

Date: 4 October 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 5 October 2021

FOR EMPLOYMENT TRIBUNALS Mr N Roche