



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Miss J Rendle

AND

**Respondent**

ABC Hair Company Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY**

**ON**

6 September 2021

**By Video Hearing service**

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person

**For the Respondent:** Mr M Brown, Owner

### JUDGMENT

**The judgment of the tribunal is that the claimant succeeds in her claim for unlawful deduction from wages and the respondent is ordered to pay the claimant the gross sum of £189.80.**

### RESERVED REASONS

1. In this case the claimant Miss Jessica Rendle brings a monetary claim for unlawful deduction from wages including for accrued holiday pay against her ex-employer ABC Hair Company Limited. The respondent denies the claims.
2. I have heard from the claimant. I have heard from Mr M Brown on behalf of the respondent.
3. This matter came before Employment Judge Reed for hearing on 16 July 2021. It was clear that the parties had not complied with earlier case management directions which had been made by the Tribunal, and with some exasperation he adjourned the hearing and made further case management directions in an Order dated 16 July 2021. Unfortunately, the parties have still failed to comply with these orders. Although they had each sent copies of documents upon which they intended to rely to the Tribunal office, despite these clear orders they had failed to agree a common paginated and indexed bundle of documents, and they had not adduced witness statements of their evidence. I decided in the interests of justice and to avoid further delay that I should proceed with the hearing on this basis.

4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the evidence before me, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The claimant's remaining claims, as set out in the Order of Employment Judge Reed, are for payment of 30 hours work undertaken in July 2020 (she was paid for 64.5 hours and says that she worked for 94.5 hours), and for holiday pay which she says was accrued but untaken. These claims arise against the following background.
6. The claimant was the manager of the respondent's hair salon and she resigned her employment on 21 July 2020. The salon had been closed as a result of the covid-19 pandemic, and it had reopened on 4 July 2020. The claimant had signed a written contract of employment. Clause 6.11 provided that if the claimant had taken more holiday than her accrued entitlement as at the date of the termination of her employment then the respondent was entitled to deduct the excess from any payments otherwise due. Similarly, clause 13.7 allowed the respondent to deduct costs incurred in respect of training, but the provision also stated: "Such costs will be limited to those incurred in the three months prior to termination for which receipts are available ..."
7. The contract of employment also included certain restrictive covenants in the respondent has accused claimant of being in breach of these. The claimant's departure became acrimonious. The claimant's final payslip was dated 5 August 2020 and was in respect of the period from 1 July 2020 to 21 July 2020. The claimant was paid her basic pay for 64.50 hours at £10.40 (£670.80), and (in respect of the period from 1 July 2020 to 4 July 2020 before the salon reopened) furlough pay of 15.20 hours at £10.40 (£158.08). However, from this starting position the respondent deducted 65.45 overtaken holiday hours (at a value of £680.68) and "training allowance" of £395.20. This meant that the gross pay was a minus figure, namely minus £247.00, and the claimant accordingly received no pay for July 2020.
8. Against this background I was able to persuade the parties to reach agreement as to the following matters, which I also find as facts on the balance of probabilities.
9. Immediately before the pandemic the claimant's normal working week consisted of three shifts in the week of 9 ½ hours each and an eight hour shift on the Saturday. This was 36.5 hours per week paid at £10.40 per hour which is £379.60 per week. Over 12 months the claimant's normal monthly pay was therefore £1,645.00 gross.
10. In early May 2020 the respondent notified the claimant and all other employees that they were required to take their annual holiday during June 2020. The claimant accepts that she had one week's paid holiday in March 2020, and that she had four weeks' paid holiday during June 2020. The claimant accepts that as at the date of termination of her employment and on a pro rata basis she had been overpaid 2½ weeks of her annual holiday entitlement which at £379.60 per week equates to £949.00.
11. With regard to training, the claimant had earlier received some management training which had been paid for by the respondent. I have seen the respondent's interim accounts for April 2020 and May 2020 which include entries of £250 for each of these two months for "Management Training (Coach)". However, the claimant disputes that she receive this training in the last three months of her employment, and there is no specific receipt for the same. Similarly, in June 2020 there is an entry in the respondent's interim accounts for £585 for: "Staff Training (all)". Again, there is no separate breakdown or receipt in respect of training said to have been given specifically to the claimant.
12. Having established the above facts, I now apply the law.
13. The claimant brings a claim in respect of deductions from wages which she alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
14. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of her leave year, and as at the date of termination of employment the amount of leave which she has taken is different from the amount of leave to which he is entitled in that leave year.

15. The starting point for the disputed final payslip is the amount of hours which the claimant worked and should have been paid for during July 2020. She was paid for 64.5 hours but says that she worked for 94.5 hours. In support of that claim the claimant had adduced copies of car tracker records from her car insurers which she says prove when she drove to the office. These did not appear to be clear to me, and in any event did not themselves prove what hours were being worked. The respondent asserts that it has records proving that the claimant only worked 64.5 hours, but these were not included in the documents before me despite the previous case management orders.
16. I therefore decided to take as a starting point the claimant's pre-pandemic average. The parties agree that this was £379.60 per week gross, and that given that the disputed period in question is exactly three weeks, this is a starting point of £1,138.80. I therefore decided, and based on the information before me in the absence of full compliance by the parties of previous case management orders, that the claimant was due £1,138.80 gross for the hours worked between 1 and 21 July 2020.
17. I find that the respondent is entitled to deduct from this sum any overpaid annual holiday pay in accordance with clause 6.11 of the claimant's contract of employment. The parties have agreed that this was 2 ½ weeks, the value of which is £949.00 gross. This leaves a balance due to the claimant of £189.80 gross.
18. The respondent then seeks to deduct its training costs from this sum otherwise due to the claimant, reliant upon clause 13.7 of the contract of employment. However, I have not seen any specific receipt which explains the cost of training provided to the claimant personally within the last three months of her employment, and I find that the sum of £395.20 which was deducted from the claimant's final payslip was therefore unlawfully deducted.
19. The balance due to the claimant is therefore £189.80 gross, and the respondent is ordered to pay this sum to the claimant.

Employment Judge N J Roper  
Dated: 6 September 2021

Judgment sent to Parties: 8 October 2021

FOR THE TRIBUNAL OFFICE