EMPLOYMENT TRIBUNALS

Claimant: **Miss Maninder Kaur**

Respondent: **Shape & Shine Ltd**

Heard at: **Via Cloud Video Platform (Midlands East Region)**

On: **5th October 2021**

Before: **Employment Judge Heap**

Representation
Claimant: **In person**
Respondent: **Ms. C Joshi - Director**

COVID-19 Statement

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V – fully remote via CVP. A face to face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

1. The complaint of unauthorised deductions from wages/breach of contract is well founded and succeeds and the Respondent is Ordered to pay to the Claimant the following sums:

(a) The net sum of **£367.20** in respect of monies unlawfully deducted from her wages due for August 2020;

(b) The gross sum of **£244.00** in respect of monies unlawfully deducted from her wages due for September 2020. The Respondent must account to Her Majesty's Revenue & Customs for any tax due on that sum; and

(c) The gross sum of **£440.00** in respect of monies unlawfully deducted from her wages due for October 2020. The Respondent must account to Her Majesty's Revenue & Customs for any tax due on that sum.

2. The complaint of a failure to pay accrued but untaken holiday pay upon termination of employment is well founded and succeeds and the Respondent is Ordered to pay to the Claimant the gross sum of **£2,164.80**. The Respondent must account to Her Majesty's Revenue & Customs for any tax due on that sum.

3. The complaint for notice pay is well founded and succeeds and the Respondent is Ordered to pay to the Claimant the gross sum of **£198.00**.

REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Miss Maninder Kaur ("The Claimant") against her now former employer, Shape & Shine Ltd ("The Respondent") presented by way of a Claim Form received by the Employment Tribunal on 5th February 2021. The claim is one of breach of contract in respect of a period of notice; unauthorised deductions from wages/breach of contract in respect of unpaid wages and for unpaid holiday pay. Originally there was also a complaint of constructive unfair dismissal but that was struck out by Employment Judge Broughton on 23rd March 2021 on the basis that the Claimant did not have the requisite qualifying service to bring it.

2. Both the Claimant and Respondent were originally legally represented. However, the Claimant and her solicitors parted ways before the hearing. Ms. Joshi attended to represent the Respondent at the hearing today but all steps leading up to it had been undertaken by their solicitors.

3. At the outset of the hearing I clarified with the parties their respective positions. The Claimant's position on notice was that she had handed in her resignation on 5th October 2020. Her position in her schedule of loss was that she was entitled to one weeks' statutory notice. She contends that she was working her notice when the Respondent told her that with effect from 9th October 2020 she should no longer open the salon where she worked and told security staff in the shopping centre where the salon was based that she should not be allowed to enter the Respondent's premises.

4. The Respondent's position on that claim is that it had been agreed with the Claimant that she would work two weeks' notice until 17th October 2020 but that she then disagreed with that and refused to work the agreed notice period out.

5. There is also a complaint about unpaid wages. The first of those relates to a period in August 2020 when the Claimant was furloughed. The Claimant says that she was entitled to her usual wages which she contends amounted to £1,433.60 net per month but that she was only paid £1,066.40. The payment of £1,066.40 is not in dispute. She contends that those wages were paid at an hourly rate for a set number of hours per week. She says that she was told by the Respondent that they had decided not to claim a grant under the furlough scheme for August 2020 and so she would not be getting paid the full amount.

6. The Respondent accepts that the Claimant was previously furloughed and that they had decided not to claim a furlough grant for August because it would have required them to make payment of national insurance contributions but that they were not obliged to pay the Claimant anything before she returned to work from furlough because she was self-employed. I shall come to how the Respondent decided to make a claim under the furlough scheme for someone that they contend at all material times to have been self employed. It is said that the

Claimant was therefore only paid for the hours that she had worked and that they were not obliged to pay her any other sums. Particularly, it is denied that the Claimant was ever paid set wages and it is said that she was free to come and go as she pleased and was paid only for the hours worked.

7. There is a further complaint about unpaid wages relating to October 2020. It is common ground that the Claimant's wages were reduced in September 2020 from £11.00 per hour to £9.00 per hour. The Claimant says that that was done unilaterally by the Respondent and that she did not agree to it. The Respondent contends that the Claimant specifically agreed to the variation and therefore was only entitled to be paid £9.00 per hour which she was duly paid for the hours that she worked.

8. However, it is common ground that the Claimant has in fact not been paid anything in regard to work that it is accepted was undertaken in October 2020 despite the Respondent accepting that, even on their own case, they owe her £414.00.

9. Although it remains somewhat unclear why monies that it is accepted are owed remain unpaid over 12 months later, Ms. Joshi also sought to develop an argument at the hearing that the monies that it is admitted are due to the Claimant should be reduced because she had previously had overpayments made to her. Whilst there is a defence to a complaint of unauthorised deductions from wages if those deductions are to offset a previous overpayment of wages[1] that was not something that was pleaded in the Respondent's ET3 Response.

10. Whilst Ms. Joshi was at pains to point out that it was referred to in her witness statement and in some documents exhibited to it, that is not the same as it being part of the Respondent's actual defence to the claim. That point was not pleaded in the ET3 Response and that was of course prepared by solicitors on the instructions of the Respondent. Moreover, no actual evidence of the claimed overpayments were before me. I therefore made it plain that I would not be reducing any sums owed by way of any alleged previous overpayments and that the calculation of what was due was now a matter for me and not the Respondent. They have had ample time to do that calculation and pay the Claimant her outstanding wages but have completely failed to do so.

11. Finally, there is a complaint of a failure to pay holiday pay. The Claimant contends that during the course of her employment with the Respondent she was not paid any holiday pay at all. She was not able to say what she believed that she was entitled to because she says that the Respondent never told her about that, but when she asked about a payment in lieu after her resignation none was forthcoming.

12. Despite the content of paragraph 17 of the ET3 Response and paragraph 17 of her own witness statement which acknowledged that the Claimant was owed holiday pay and that that was in the process of being calculated, Ms. Joshi denied that that was the case because she says that the Claimant was at all times self-employed and that she had very clearly told her that the Respondent did not pay holiday pay. There was no explanation forthcoming about that considerable change in position in respect of this aspect of the claim.

[1] See Section 14 Employment Rights Act 1996.

THE HEARING

13. The claim was listed for three hours of hearing time and was conducted remotely via Cloud Video Platform ("CVP").

14. It is fair to say that there were a considerable number of technical issues arising during the course of the hearing which required both parties – and the Claimant particularly – to have to disconnect and reconnect into the virtual hearing room.

15. I am satisfied that those were overcome and that they did not affect either the evidence or the fairness of the hearing. However, those difficulties did mean that after conclusion of the evidence and submissions there was insufficient time for me to consider my decision and give an oral Judgment. Moreover, even had that not been the case I could not be satisfied that it could be effectively delivered and without disruption over CVP in view of the ongoing technical issues. I therefore notified the parties that I would reserve my decision.

16. I should also observe that a more significant difficulty arose from the Claimant and Ms. Joshi continually talking over each other, often with raised voices, and without giving the other the opportunity to finish answering questions that had been asked. That occurred to the extent that it was necessary for me to warn both of them that any continuation of that would result in the hearing being adjourned and them being required to attend in person on a future date.

17. Equally, for the most part both the Claimant and Ms. Joshi in their cross examination of the other did not focus on asking questions but instead in giving their own often evidence.

18. This led to lengthy and often confusing statements such that it was necessary to clarify with them what it was they wanted to ask the other about and then put that position for them. I do not intend that as unfair criticism of either the Claimant or Ms. Joshi but merely to record that the evidence and cross examination was at times very difficult to follow and elongated the hearing considerably.

WITNESSES

19. During the course of hearing, I heard evidence from the Claimant on her own behalf. On behalf of the Respondent I heard evidence from Ms. Joshi who is a director of the Respondent company.

20. In addition to the witness evidence that I have heard, I have also paid reference to the documentation included in the hearing bundle and also to the brief oral submissions made by Ms. Joshi and by the Claimant.

21. One of the matters that has informed the findings of fact that I have made is the credibility of the witnesses from whom I have heard evidence. Of the two of them I found the Claimant to be the more credible witness. There were a number of areas which affected the credibility of Ms. Joshi's evidence which I have dealt with further in my findings of fact below but those included the unexplained change of stance in respect of holiday pay to which I have already referred; the assertion that the Claimant had been placed on payroll to allow her to obtain a mortgage which would appear to be mortgage fraud and the claiming of a grant

under the Coronavirus Job Retention Scheme for someone who was said to have been at all times self employed and again which would have amounted to fraud.

22. Therefore, unless I have indicated otherwise, I have preferred the account given by the Claimant to that of Ms. Joshi.

THE LAW

23. Before turning to my findings of fact, I remind myself of the law which I am required to apply to those facts as I have found them to be.

Unauthorised deductions from wages – Section 13 Employment Rights Act 1996

24. Section 13 Employment Rights Act 1996 provides for protection of the wages of a worker as follows:

> ***"Right not to suffer unauthorised deductions.***
>
> *(1)An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> *(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.*
>
> *(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*
>
> *(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
>
> *(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*
>
> *(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.*
>
> *(4)Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*
>
> *(5)For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*
>
> *(6)For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of*

any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7)This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

Annual leave – Regulation 14 Working Time Regulations 1998

25. Compensation for periods of untaken annual leave upon termination of employment is dealt with by Regulation 14 Working Time Regulations 1998 which provide as follows:

"14.—*(1) This regulation applies where—*

(a) a worker's employment is terminated during the course of his leave year, and

(b)on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a)such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b)where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

(A x B) - C
where—

***A** is the period of leave to which the worker is entitled under regulation 13(1);*

***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.*

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has

expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise."

Notice pay

26. Employment Tribunal is seized of jurisdiction to consider claims for breach of contract, including for notice pay, under the provisions of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.

FINDINGS OF FACT

27. I ask the parties to note that I have only made findings of fact where those are required for the proper determination of the issues in this claim. I have therefore not made findings on each and every area where the parties are in dispute with each other – and there are a significant number of them - where that is not necessary for the proper determination of the complaints before me.

28. Particularly, as I observed to the parties at the time the question of whether Ms. Joshi's husband was on one occasion rude to the Claimant and whether she had paid Ms. Joshi rent for a private dwelling house or been furnished with paperwork to further her own husband's visa application were not relevant to the matters that I was required to determine.

29. The relevant findings of fact that I have made against that background are set out below. References to pages in the hearing bundle are to those in the bundle before me.

The Respondent and the Claimant's employment

30. The Respondent owns and operates a beauty salon which is contained within a kiosk based in a shopping centre in Skegness. The Claimant applied for a post as a Beauty Therapist which had been advertised by the Respondent. She was successful in her application and relocated from her then home in London to run the salon.

31. She started work with the Respondent on 7th August 2019. She was the only person working at the salon and took her instructions from Ms. Joshi and her husband. Ms. Joshi was not often physically present in the salon because she is based in London but both she and her husband would travel up to Skegness if the need arose. Ms. Joshi and the Claimant were also in touch via the WhatsApp messaging service.

32. Whilst, until towards the end of the working relationship when things had soured considerably, the Claimant and Ms. Joshi got on with each other I do not accept that there was a particularly close friendship as Ms. Joshi contends. I prefer the evidence of the Claimant on that point.

The Claimant's employment status

33. The evidence of Ms. Joshi was that it had been agreed that the Claimant would be engaged on a self-employed basis from the outset. The Claimant denied that that was the case and contended that she had been taken on as an employee. The original advertisement that the Claimant had answered was not in the

hearing bundle nor were the terms of the initial offer made and so those documents could not assist.

34. Ultimately, other than evidence which I have rejected that the Claimant kept her own hours I was not taken to anything that demonstrated the hallmarks of a self employed arrangement. I did not accept that the Claimant could pick and choose her own hours as Ms. Joshi contended, she did not raise invoices, she was plainly not running a business for her own account, no suggestion was made that she was required to provide her own materials or other tools of the trade or that the Respondent was not required to provide her with work.

35. I did not accept that the Claimant would choose not to open the salon if she had other things to do and that she could simply elect to do that with or without informing the Respondent. Whilst the evidence of Ms. Joshi was that the business had dwindled as a result of the Claimant's actions to around 20 percent of what it had previously been, I did not accept that as it is inconceivable that the Respondent would have not dispensed with the Claimant's services had that happened. I did not accept Ms. Joshi's evidence that that was because they had a close friendship.

36. That does not make commercial sense nor does engaging the services of someone to run a salon that would be, partially at least, reliant on passing trade from the footfall of the shopping centre, when that person had no obligation to open up the salon if they did not feel like it. The salon had regular opening hours as I shall come to further below and again it does not make any commercial sense to engage the services of someone who was not obligated to be there to open up and work those core hours, particularly as no one else was there.

37. Instead, I am satisfied that the Claimant was always to be an employee of the Respondent; that she could not come and go as she pleased; that she was engaged on regular hours and a fixed hourly rate and that she was required to render personal service. The hours of work that the Claimant undertook were between 9 a.m. to 5 p.m. on Monday to Saturday inclusive, although that was at some later reduced by Ms. Joshi to 10 a.m. to 4.00 p.m. No complaint is made about that reduction in hours in the Claimant's Claim Form.

38. The Claimant's evidence was that she was always to be placed on the payroll but that that was not the case for the first month that she worked, August 2019, because she was told by Ms. Joshi that she had not managed to pass her information to her accountant yet but that she would be on the payroll from the following month. That accorded with a spreadsheet[2] apparently prepared by the Respondent which featured at the final page of the hearing bundle.

39. I did not accept the evidence of Ms. Joshi that the Claimant asked to go on the payroll to enable her to obtain a mortgage to purchase a property and that it was agreed that after that she would revert to being self-employed. Such an arrangement would appear to me to amount to mortgage fraud but again Ms. Joshi rather worryingly in her evidence saw no apparent issue in that respect.

[2] I should say that I do not accept the accuracy of much of that spreadsheet as there was no supporting evidence as to the information provided within it.

40. For all of those reasons, I am satisfied that the relationship between the Respondent and the Claimant was always one of employer and employee and that she was at no time genuinely self employed.

Discussions about holiday pay

41. There was a set of communications between the Claimant and Ms. Joshi via WhatsApp relating to a contract of employment being drawn up. Those appear to have been sent in January 2020. Whilst the messages reference an acknowledgement from the Claimant that she would not be receiving paid holidays, I do not accept that that was on the basis that the agreement was that she would be self-employed. Instead, I accept the Claimant's evidence that she had agreed that she would not receive paid holidays as long as she was given sufficient hours of work. That is reflected within a reply from the Claimant to Ms. Joshi that she would not be able to pay "any benefits".

42. However, the Claimant's agreement on that point – which was clearly not something that she was entirely happy about given the presence of a crying emoji on her reply – is not sufficient to absolve the Respondent of liability for holiday pay given that the Respondent cannot validly contract out of the relevant section of the Working Time Regulations.

March to August 2020

43. As a result of the Covid-19 pandemic the salon closed part way through March 2020 until part way through August. The Claimant did not work during the closure. The Respondent applied for a grant under the Coronavirus Job Retention Scheme ("CJRS") in respect of the Claimant.

44. There was a wholly unsatisfactory explanation as to why the Respondent applied for such a grant if, as Ms. Joshi contends, the Claimant was truly self-employed. Whilst Ms. Joshi did not appear to have any concerns about that position because, in her view, she was trying to assist the Claimant financially, that completely overlooks the fact that if she was truly self employed that claim would have been a fraudulent one. That state of affairs seriously damaged Ms. Joshi's credibility because either she was not being truthful with the Government when she applied for the grant or she was not being truthful with me.

Return to work after furlough

45. The Claimant returned to work part way through August 2020. She was told by Ms. Joshi that the Respondent had not made a claim under the CJRS for August 2020 and she was therefore only going to be paid for the hours that she worked after she returned. I accept the Claimant's evidence that she should have received the sum of £1,433.60 net for that month but was only paid £1,066.40. Ms. Joshi's evidence was that she had not claimed any grant under the CJRS because she would have had to make a contribution in respect of national insurance payments. However, the fact that the Respondent did not make any claim at that time did not affect the Claimant's right to be paid given that I have not been taken to anything which demonstrates that the Respondent had any contractual right to lay off without pay.

Changes to the Claimant's rate of pay

46. On or around 1st September 2020 Ms. Joshi's husband informed the Claimant that the Respondent could no longer afford to pay her £11.00 per hour and that they were reducing her pay to £9.00 per hour. That was a unilateral variation. The Respondent appears to suggest that they were entitled to reduce the Claimant's hourly rate because she was socialising with her husband and friends within the salon and business was going downhill as a result. It is not necessary for me to make any finding about whether the Claimant was or was not acting in such a manner because that does not provide any basis upon which to unilaterally vary her rate of pay. That would require either agreement with the Claimant or a contractual right to vary pay. In respect of the latter, I have not been taken to any such term and with regard to the former I do not accept that the Claimant ever agreed to a variation to her pay. I did not accept Ms. Joshi's evidence that the Claimant had been prepared to reduce her pay and agreed that it was necessary for the Respondent to do so. Indeed, that flew in the face of an email that the Claimant later sent to Ms. Joshi complaining about the variation in her wages.

47. In this regard, Ms. Joshi sent an email to the Claimant on 1st September 2020. The email said this:

"Ravish had a discussion with you that it is not possible for us to pay you £11/hour based on various factors he discussed with you.

I am writing to let you know that at this stage I can pay you £9/hour. I understand that might be below your expectation level and I hope the situation with the business would change soon for me so I can review your pay again. Our kiosk is open 10.00 am to 4.00 pm from Monday to Saturday and I would like to highlight that this includes 15 minutes paid lunch break which needed to be adjusted around customer flow.

As you know our business is one of the worst affected because of Covid-19 in Skegness. I am hoping things will change soon for all of us".

48. It is notable that Ms. Joshi made no reference to the Claimant having agreed to the change in her hourly rate and, indeed, she referred to the pay rate being below the Claimant's expectations which was not in line with her evidence that the Claimant had fully agreed and understood the reason for the change.

49. It is also of note that the email included details of the hours that the salon was expected to be open and that any lunchbreak needed to be taken when convenient to the business. Again, that is not consistent with the Claimant being self employed and able to come and go as she pleased as Ms. Joshi contended.

50. The Claimant replied shortly over three hours later to say this:

"I received your email and I am not happy with the changes
I will continue working under protest
Please can you confirm when these changes will take affect I need to plan myself
Or we can discuss what we can do about this situation"

51. Ms. Joshi did not reply to that email as I would have anticipated that she would have done if the Claimant had had a complete about turn as to agreeing the variation to her hourly rate. I am satisfied that there was no reply to record any "agreement" because the Claimant never consented to a variation in her hourly rate of pay. Ms. Joshi's evidence was that instead she travelled all the way from London to Skegness to have a face to face conversation with the Claimant where she again agreed to the reduction in her hourly rate. I did not accept that there was any later agreement from the Claimant to change her hourly rate at any stage.

52. Ms Joshi contended that she did not know what working under protest meant. I did not accept that evidence as it is plain what the Claimant was saying in her email – that she was not happy with the changes and would continue to work in protest until matters were resolved. I am satisfied that they were in fact never resolved before the Claimant then resigned.

The Claimant's resignation

53. On 5th October 2020 the Claimant received her wage slip from the Respondent by email. I accept that it came as a shock to her to find that she had been paid at the rate of £9.00 per hour and that was because there had been no further dialogue about when the Respondent was intending to implement the changes as the Claimant had asked for her in last email and no agreement had been reached about her rate of pay.

54. The Claimant therefore sent a further email to Ms. Joshi resigning from employment. Nothing specifically was set out in that email as to the amount of notice that the Claimant was giving. She asked Ms. Joshi to pay her outstanding wages for the last two months and her holiday pay.

55. Following her resignation there were a series of WhatsApp messages sent between the Claimant and Ms. Joshi. Those largely related to the Claimant's husband's application for a visa but also included detail about work. Particularly, Ms. Joshi made reference to an agreement that the Claimant was to work until 17th October. The Claimant replied to say that no date had been agreed. When Ms, Joshi replied to insist that there had been an agreement the Claimant said that she would be taking matters to an Employment Tribunal. Ms. Joshi indicated that she had been expecting the same and told the Claimant not to open the salon as from the following day. I accept the Claimant's evidence that she nevertheless tried to do so but was prevented from doing so by security from the shopping centre.

56. In her last few days of employment, it is common ground that the Claimant worked the following hours:

1st October 2020 – 6 hours
2nd October 2020 – 6 hours
3rd October 2020 – 6 hours
4th October 2020 – 0 hours as the salon was closed
5th October 2020 – 6 hours
6th October 2020 – 6 hours
7th October 2020 – 4 hours as she finished early to go to London
8th October 2020 – 6 hours.

57. It is common ground that the Claimant was not paid for any of those 40 hours of work. I am satisfied that she should have been and that should have been at the rate of £11.00 per hour equating to the gross sum of £440.00.

CONCLUSIONS

58. Insofar as I have not already done so within my findings of fact above, I deal here with my conclusions in respect of each of the complaints made by the Claimant.

59. The Claimant needs only to be a worker to be entitled to make a claim of unauthorised deductions from wages and for holiday pay. She needs to have been an employee to bring a breach of contract claim in respect of notice pay. I am satisfied that at all material times the Claimant was an employee for the reasons that I have already given and the Respondent's position that she was self-employed was adopted only to seek to defeat the claim. There were no hallmarks of a self employed relationship and it appeared to me that Ms. Joshi was simply assigning a label which was convenient to the Respondent with no actual basis to that position. As an employee, the Claimant therefore has standing to bring the complaints that she advanced.

60. That being the case, I now turn to those specific complaints and I begin with the complaint about unpaid wages. The first of those relates to August 2020. I accept that the Claimant should have received the sum of £1,433.60 net for that month but was only paid £1,066.40. The sum that was properly payable to the Claimant was therefore £1,433.60 and the Respondent had no basis for paying her a lesser sum. There was no contractual or other written provision which entitled the Respondent to lay the Claimant off without pay and the decision of the Respondent not to claim under the CJRS for August 2020 did not affect that position. The Claimant therefore had the net sum of £367.20 unlawfully deducted from her wages.

61. The second part of the unauthorised deductions from wages claim relates to pay for September 2020 which was received by the Claimant on 5th October 2020. For the reasons that I have already given, I am satisfied that the Claimant at no time agreed to reduce her hourly rate of pay to £9.00 per hour. The Respondent was not entitled to unilaterally vary the Claimant's hourly rate of pay and therefore any payment at less than the rate of £11.00 per hour amounted to an unauthorised deduction from her wages.

62. I do not have a pay slip for work done in September 2020 in the hearing bundle. Although I have some reservations as to its accuracy, the best that I can do absent that wage slip and specific evidence on what was worked from the Claimant is to take the 122 hours that the Respondent says was worked in September 2020. I can only deal with what the Claimant should have been paid on a gross basis. The gross amount for 122 hours of work would have been £1,342.00 at £11.00 per hour. The Claimant was only paid on the basis of £9.00 per hour which over 122 hours would amount to £1,098.00. The difference between that and what the Claimant should have been paid is therefore £244.00 gross. The Respondent must account to Her Majesty's Revenue & Customs for the tax due on that sum.

63. Finally, in respect of unpaid wages the Claimant was not paid at all for the work that she did in October 2020. That was 40 hours as I have set out above. The

Claimant should have received £440.00 at an hourly rate of £11.00 per hour. That was the amount that was properly payable to the Claimant and there was no basis for the Respondent to have not paid her accordingly. The Respondent has therefore unlawfully deducted the sum of £440.00 gross from the Claimant's wages. The Respondent must account to Her Majesty's Revenue & Customs for the tax due on that sum.

64. I turn then to the claim for holiday pay. It is common ground that the Claimant was not paid any holiday pay at all for the time worked between 7th August 2019 and 8th October 2020. Whilst the Claimant somewhat reluctantly accepted that she would not be paid holiday pay, the Respondent is unable to rely upon that to avoid payment because they are unable to contract out of any entitlement to annual leave in that way.

65. The holiday year would begin on the Claimant's commencement of employment and so runs from 7th August to 6th August each year. Ordinarily, holiday not taken in the leave year cannot be carried over but that is save as where the leave could not be taken due to circumstances beyond the control of the worker. That includes where the worker has been told that they have no entitlement to take paid annual leave. That is the case here. The calculation of the Claimant's entitlement to annual leave therefore runs here from 7th August 2019 to 8th October 2020.

66. Whilst there is a reference in one of the WhatsApp messages between the Claimant and Ms. Joshi to a contract of employment that was being drawn up (and which was not in the hearing bundle) stating an entitlement of 22 days, that is of course not what the Claimant was actually entitled to in terms of her minimum entitlement under the Working Time Regulations 1998. That provides for 5.6 weeks of annual leave. Over the period of 14 months that she worked the Claimant therefore accrued entitlement to 32.8 days annual leave.

67. The Claimant's normal working hours at the end of her employment were six hours each day over a six day working week and should have been paid at the rate of £11.00 per hour to which the Claimant was contractually entitled. The Claimant's daily rate of pay was therefore £66.00. The gross payment in lieu of accrued but untaken annual leave to which the Claimant was entitled upon the termination of her employment was £2,164.80. The Respondent must account to Her Majesty's Revenue & Customs for the tax due on that sum.

68. Finally, there is the complaint of wrongful dismissal relating to notice. The Claimant's Claim Form sets out a claim for one weeks' notice which was what she was obliged to give the Respondent under Section 86(2) Employment Rights Act 1996. The Claimant did not specify any period of notice that she was giving to the Respondent. However, she did continue to work after 5th October 2020 and so I am satisfied that hers was not a resignation with immediate effect. She would have continued to work but for being told not to open the salon again on 8th October 2020. Nothing that the Claimant did entitled the Respondent to terminate her employment before the expiry of a period of notice.

69. Had that not happened the Claimant's employment would have ended on 12th October 2020. However, she is only entitled to payment for 9th, 10th and 12th October because she would not have worked on 11th October because the salon would have been closed and the period 6th to 8th October has already been dealt with within the unauthorised deduction from wages claim. The Respondent is

therefore Ordered to pay to the Claimant the sum of £198.00 in respect of those additional three days.

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Employment Judge Heap

Date: 12th October 2021
JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Note:

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