



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M Dowley

**Respondent:** Shirley and Millbrook Conservative Club

**Heard at:** Bristol (by video-VHS)      **On:** 21 May 2021

**Before:** Employment Judge Livesey

**Representation:**

Claimant: In person

Respondent: Mr Coen, Chairman

**JUDGMENT** having been sent to the parties on 8 June 2021 and written reasons having been requested in accordance with rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

**1. The claim**

1.1 By a Claim Form dated 22 September 2020, the Claimant brought a complaints of unlawful deductions from wages and a failure to provide written terms and conditions of employment.

**2. The evidence**

2.1 The Claimant gave evidence in support of her claim and Mr Coen gave evidence on behalf of the Respondent.

2.2 The Claimant produced a bundle of documents attached to her witness statement (C1) and the Respondent also produced a small bundle of documents (R1).

**3. The issues**

3.1 The issues in the case which fell to be determined were discussed between the Judge and the parties at the start of the hearing.

3.2 It was agreed that the Respondent's name should have been amended, as reflected in paragraph 1 of the Judgment.

- 3.3 It was clarified that the Claimant was not, in fact, bringing any claim for a redundancy payment. Although the Tribunal had coded her claim in that manner, no such claim was reflected within the Claim Form.
- 3.4 In relation to the complaint of unlawful deductions from wages, Mr Coen accepted at the outset that the Claimant had not been employed on a zero hours contract. He accepted that she was engaged to work for 32 hours per fortnight. The issue, therefore, was whether or not she had been paid on that basis.
- 3.5 It was also accepted that the Claimant had not been issued with written terms and conditions of her employment.
- 3.6 Towards the end of the hearing, it was also agreed that, rather than having to issue new proceedings, the Claimant would be allowed to amend her claim to include losses which had arisen between the date that the claim was issued and the date of the hearing (see paragraph 2 of the Judgment).

#### **4. The facts**

- 4.1 The following factual findings were made on the balance of probabilities. Any page references cited within these Reasons are to pages within the documents produced by the parties and have been quoted accordingly ([C1;...] or [R1;...]).
- 4.2 The Respondent is an unincorporated association based in Shirley, Southampton. It is run by a committee of which Mr Coen is the Chairman. The Claimant started work for the Respondent in 1983. She works in the bar and her employment is continuing.
- 4.3 For the last 15 years, according to the Claimant, she worked regularly for 16 hours per week. The Respondent did not dispute the hours, but claimed that she had only been working with that regularity for a shorter period. Mr Cohen believed that she had worked 32 hours per fortnight for about 7 years or more. She always tended to work the same shifts.
- 4.4 At the start of the coronavirus pandemic in 2020, the Claimant was furloughed. When the Club considered reopening, there was a meeting on 29 June 2020 to discuss the Claimant's hours and the safety measures that would be put in place. The Claimant was offered one shift of 4.5 hours per week. The Respondent then confirmed the changes in a letter dated 1 July [R1; 3], that she was only being offered her Wednesday evening shift to work.
- 4.5 The Claimant rejected that proposal in the following terms [R1; 4];  
*"Unfortunately I am unable to accept the change of my hours from 16 to 4.5 hours a week as this isn't financially viable for me. I am therefore requesting that my 16 hour contract be made redundant."*
- 4.6 The Respondent restated its position on 27 July [R1; 5] and it wrote again the following day as follows [R1; 6];  
*"For clarification, your working hours were not 16 hours per week, but 13.5 hours, and 18.5 hours alternating. As a club we agreed to pay you on a*

*weekly basis of 16 hours per week to assist with your claim for working tax credit/universal credit.”*

- 4.7 The Claimant made it clear that she was not happy, that she would have been working under protest and she requested a copy of her contract [R1; 7]. She then came back to work on 5 August 2020 for her first shift.
- 4.8 On 10 August, the Respondent indicated that the Claimant had no written terms and conditions that it could supply her with. It stated that her employment had always been “*on a verbal basis*” [R1; 8]. A contract was then provided for 4.5 hours per week [R1; 1-7]. The Claimant indicated that she had no intention of signing it [R1; 9]. In reply, the Respondent stated that her contract had been casual and that she was not redundant [R1; 10]. There were text messages which passed between the parties in a similar vein [C1].

## **5. Conclusions**

- 5.1 The Claimant’s status as an employee had never been denied by the Respondent. She had been referred to as such in its Response, it had kept tax records for her and had spoken of her position not being ‘redundant’, a condition unique to employees under s.139.
- 5.2 The real question in the case was what hours of work, if any, was the Claimant contractually entitled to. Although she had no express terms of employment, they could still have been implied by the conduct of the parties. If the contract had been operated in a manner which indicated that a term was obvious, settled, clear and reasonable to an officious bystander, it could have been an implied term of their relationship.
- 5.3 Here, the Respondent accepted that the Claimant had had regular hours; 13.5 hours one week and 18.5 hours the following week, alternating, averaging out at 32 hours per fortnight [R1; 6]. That, on the Respondent’s case, appeared to have been an express term of the arrangement between them. Even if that was not the basis upon which the parties had expressly agreed to work and provide work, given the period over which the Claimant had worked on that basis, there was an implied term to that effect which governed the relationship between them.
- 5.4 At the end of lockdown, the parties had a choice. The Respondent could have offered new terms and conditions which was, in effect, what it did by proffering a contract with 4.5 hours in it. The Claimant could have accepted it and the parties would have moved forward under a variation or novation to that effect. Alternatively, she could have rejected the offer, which is what she did. The parties then had several options. The Respondent could have dismissed her as redundant or for some other substantial reason. It did not do so, despite the Claimant’s invitation. The Claimant could have resigned and claimed constructive unfair dismissal or she could have stood and sued which is, precisely what she did.
- 5.5 The Claimant was entitled, therefore, to the repayment of the unlawful deductions that were made from her salary on the basis of the term set out above.

Compensation

- 5.6 The difference between her pay at an average of 16 hours per week and at 4.5 hours per week was £88.14 (£126-£37.86). Twenty weeks elapsed in 2020 between August and December and a further twenty-one in 2021 between January and the date of the hearing;  $41 \times £88.14 = £3,613.74$ .
- 5.7 In relation to the failure to provide written terms and conditions, Mr Coen said that he had no employment law experience or knowledge. The Respondent's acceptance of its failure to provide the necessary paperwork was disarmingly frank. Nevertheless, the Judge concluded that it was just and equitable to award the higher amount under section 38 of the Employment Act 2002 since the Respondent's failure had extended over such a significant period of time and there appeared to have been little attempt to take advice and/or ensure that its employees were employed on the correct basis. An award of four weeks' pay was made in paragraph 3 of the Judgment reflects those sums.

Employment Judge Livesey

**Date: 27 July 2021**

Reasons sent to the Parties: 04 August 2021

FOR THE TRIBUNAL OFFICE