EMPLOYMENT TRIBUNALS

Claimant
Ms T Alonso-Maneiro

Respondent
Melrose Tokyngton Ltd

Heard at: **Watford via Cloud Video Platform**

On: 15 February 2022

Before: **Employment Judge French**

Appearances:
For the Claimant: Ms Maria Dolores Alonso, claimant's Mother
For the Respondent: Mr Malcolm Cameron, Consultant

RESERVED JUDGMENT

1. The claim for unauthorised deductions from wages is well-founded and upheld.
2. The claim for wrongful dismissal with regards to the claimant's notice pay, is well-founded and is upheld.
3. The respondent is ordered to pay the claimant £642.83 gross in damages.

REASONS

Introduction

1. This is a claim brought by the claimant by way of claim form issued 26 September 2020 for wrongful dismissal due to incorrect notice pay and unauthorised deductions from wages. In its response the respondent denies the claim for unauthorised deduction from wages and says that claimant was paid correctly. With respect to her notice pay, the respondent accepts that she was incorrectly paid her notice pay at the 80% furlough rate, rather than full pay and state that they have since gone on to pay the balance due in full. The claimant does not accept that this has resolved the issue with notice pay and still pursues that claim.

Evidence

2. I was provided with and read, a bundle consisting of 111 pages plus supplemental pages 112-115. The claimant stated that this bundle had not been agreed by herself, however, she confirmed that she had had sight of all documentation within it. She did not seek to adduce any additional documents.

3. I was provided with a witness statement for the claimant and heard evidence from her.

4. The claimant had also submitted a statement from Ms Maria Dolores Alonso, the claimant's mother, however this was not considered by me in determining the issues because the claimant accepted that the evidence of her mother did not go to relevant matters in issue.

5. I also had a witness statement and heard from Ms Rosemarie Lee, Director on behalf of the respondent.

6. I also heard closing submissions from both parties' representatives.

Preliminary issues – Application to amend

7. On reading the court file it was clear that the claimant had indicated that she wished to amend her claim to include the following claims:
    a) Unfair dismissal
    b) Defamation of character
    c) Unauthorised deduction from wages specifically in relation to payments in February and March 2020.

8. On 27 May 2021 Employment Judge Manley directed:

    'The Claimant has now made an application to amend the claim. The claimant should be aware that in most circumstances an employee needs 2 years' service to bring a claim for unfair dismissal which it does not appear the claimant has. The Tribunal has no jurisdiction to hear claims for 'defamation of character.' Unless the claimant indicates that she wishes to pursue an application to amend before 14 days, the matter will be re-listed for 1 hour in the near future.'

9. The claimant responded to that, by email dated 3 June 2021 indicating that she did wish to amend her claim to bring an unlawful deduction from wages claim. She then went on to query why she could not bring the other claims she referred to.

10. At the outset of the hearing, I asked the claimant if she wished to pursue her application to amend to which she confirmed that she did.

11. In relation to the unfair dismissal claim and defamation of character claim I advised that I did not have jurisdiction to hear either. Defamation was not within the tribunal's jurisdiction and in relation to the unfair dismissal Section 108 of

the Employment Rights Act 1996 provides that the right to complain of unfair dismissal only arises once someone has been continuously employed for not less than two years at the date of termination. The claimant was employed from 23 April 2019 to 30 June 2020 and therefore did not satisfy this requirement. The two year requirement does not apply in certain classes of cases where the reason for dismissal is one of a list of prohibited reasons in section 108(3). The claimant did not suggest that her case fell within one of these exceptions.

12. In relation to the unauthorised deduction from wages the respondent objected to the amendment for the following reasons:
    a. That it did not appear in the claim form
    b. Any claim for February and March 2020 would now be out of time
    c. Furlough was a different entity to wages and therefore it did not fall as a series of deductions.

13. The claimant stated that she did not make specific reference to the deductions in February and March 2020 because she did not get wage slips and these were unclear. Her claim form did however refer to furlough pay not being paid.

14. Guidance as to whether or not to allow an application to amend is given in the case of Selkent Bus Company v Moore 1996 EAT, the overarching principle was stated by Mummery J to be

    ''whenever the discretion to grant an amendment is invoked the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it".

15. Mummery J went on to set out a non-exhaustive list of factors relevant to the exercise of discretion:
    a) The nature of the amendment;
    b) The applicability of time limits;
    c) The timing and manner of the application.

16. It was stressed however that the paramount consideration remains that of comparative disadvantage, the Tribunal must balance the disadvantage to the claimant caused by refusing the amendment against the disadvantage to the respondent caused by allowing it. In respect of the nature of the amendment it was said in Selkent "applications to amend are many different kinds ranging on the one hand from the correction of clerical and typing errors to addition of factual details to existing claims and the additional substitution of other labels for facts already pleaded to on the other hand the make of an entirely new factual allegation which change the basis of the existing claim. The Tribunal has to decide whether the amendments sought is one of the minor matters or is a substantial alteration pleading a new course of action. Where an

amendment merely involves relabelling facts that were fully set out in the claim form the amendment will in most circumstances be very readily permitted TGWU v Safeway Stores Limited EAT 2007. If, on the other hand, it introduces a whole new claim it is important to consider time limits as part of the overall balancing exercise.

17. In respect of time limits Mummery J observed that if a new complaint or cause of action is proposed to be added by way of amendment it is essential for the Tribunal to consider whether that complaint is out of time and if so, whether the time limits should be extended under the applicable statutory provisions. It is not an absolute bar however that a claim is out of time. The Tribunal has to consider whether the claim would have been out of time even if included in the original claim form.

18. In determining the issue, I considered all of the circumstances of the case and the balance of hardship on each party and concluded that the application to amend should be allowed. I considered that the focus when looking at whether an amendment should be granted was not to concentrate on the formal classification of the cause of action. The question was whether the amendment was likely to involve a substantially different enquiry from the existing claim. I took a wide reading of the claim form and noted that although no specific reference was made to deductions from February and March wages, the claimant did refer to incorrect pay. The claimant had also made reference to incorrect pay for those months throughout these proceedings and when corresponding with the respondent.

19. In terms of the submission that the claim would be out of time, the time limit is 3 months beginning with the date of payment of the wages from which the deduction was made (S.23(2)(a) ERA) with an extension for early conciliation, unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the tribunal considers reasonable.

20. If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series: S.23(3) ERA. For a number of deductions to be a “series” there has to be “sufficient frequency of repetition”, that is a sufficient factual and temporal link (Per Langstaff P in Bear Scotland v Fulton [2015] IRLR 15).

21. In this case, the claimant asserted that the unlawful deductions started in February 2020 and continued to June 2020 with her pay being due on 30th June 2020. Her claim was submitted on 26 September 2020 (with an early conciliation certificate for the period 23 August to 22 September 2020). I did not accept that respondent’s assertion that incorrect furlough pay is different to other pay. My view is that furlough pay can fall within the definition of ‘wages’

as defined in section 27 ERA 1996 which describes wages to mean "any sums payable to the worker in connection with his employment." On that basis, I found it was a series of deductions from February 2020 to June 2020, for which the time limit would start to run at the point of the last deduction in June 2020. I therefore found that her claim was in time.

Issues

22. Having dealt with the preliminary issues I went on to agree the issues between the parties as follows:
    a) What were the agreed hours between the parties at the point of her termination (superseded by furlough leave) 10 hours or 20 hours per week?
    b) Was the claimant paid the correct hours for the months of Feb and March 2020?
    c) Was the subsequent furlough calculation for March to June correct?
    d) Was the claimant paid the correct notice pay?

Fact finding

23. The claimant was employed by the respondent as a nursery cleaner from 23 April 2019. Her employment was terminated on 30 June 2020.

24. The claimant was initially employed at the respondent's Acton site however she subsequently moved to their Wembley site. It was agreed that she was employed to work 2 hours per day Monday to Friday.

25. The claimant states that she was not issued with a contract of employment. The respondent states that one was issued for which the claimant was provided with a copy. The respondent had since lost their copy and could not provide it. On the evidence before me I was satisfied that the claimant had been issued with a contract of employment. However, due to it being lost there was no contract of employment before me and I have had to make findings about what agreement there was between the parties.

26. In respect of pay, the claimant asserted that her pay was not made clear to her and suggested that she received a salary, although she could not state what this salary was or what had been agreed. The respondent denied this and stated that the agreement was that the claimant was paid hourly at a rate of £10 per hour.

27. I note that the wage slips at pages 53 to 56 of the bundle state an hourly amount and a rate. I note that the amount varied each month which is consistent with her being paid hourly, as it would vary depending on the number of weeks in a particular month. I also note that at page 50 of the bundle, when discussing taking on an additional site in Sudbury, the claimant made reference to completing the same two hours like her existing site and did not discuss a salary to be paid as a result.

28. On the evidence before me I find that the claimant understood she was paid hourly. I also note that with regard to her reported losses she has calculated these at an hourly rate.

29. I therefore find that the claimant was paid hourly based on actual hours worked at a rate of £10 per hour.

Unauthorised deductions in February and March 2020

30. In February 2020, the claimant was contacted by Melanie Johnson on behalf of the respondent and asked if she was also willing to clean at an additional site of the respondent's in Sudbury. On the evidence before me at page 50 of the bundle, this was agreed at two hours per day as per her existing site and commenced on 14 February 2020.

31. It is agreed between the parties that the claimant worked for two hours at each site from 14 February 2020 until 23 March 2020 when there was a national lockdown as a result of the covid 19 pandemic.

32. The respondent accepts that the additional hours worked for the new site at Sudbury was 22 hours based on there being 11 days worked that month at 2 hours per day. This should have been paid in the claimant's February payroll but was omitted. The respondent asserts that it was processed the following month in March.

33. The claimant states that whether or not the February hours were processed in March, she was still underpaid for February on the basis that, for her usual site at Wembley she had worked 40 hours but was only paid for 36 hours.

34. On viewing of her wage slip for February 2020, I am satisfied she was only paid 36 hours.

35. The claimant states that she did not take any time off during that month and should have been paid the full 40 hours. The respondent asserts that the

reason for the reduction was owing to half term when the claimant was not required to clean the Wembley site. On questioning however, the respondent accepts that the half term in February 2020 would have been 1 week long which would have accounted for a deduction of 10 hours based on 2 hours per day at 5 days per week. The claimant asserts that she did work the whole month with no break for half term.

36. In determining the issue, I prefer the evidence of the claimant on the matter. Based on the number of days in February, on the usual agreement the claimant should have worked 40 hours. If the respondent is correct, and there was a one week break for half term this would have resulted in a deduction of 10 hours not 4 hours. The respondent's explanation does not provide an adequate explanation for the fact that four hours was deducted.

37. For the month of February 2020, I find that the claimant should have been paid 62 hours. She was paid for 36 hours and this is therefore 26 hours less than it should have been.

38. In relation to the payment in March 2020, on looking at her wage slip the claimant has been paid 71 hours. There is an entry for holiday pay but this was not made as a payment and the figure does not appear in the total paid. The respondent explained that this simply showed an entry for holiday previously paid in the year and agreed no holiday was paid that month. I therefore find that the claimant was paid 71 hours for the month of March 2020.

39. For the month of March 2020 it is agreed that the claimant was employed to work at both the Wembley and Sudbury sites. For the period 2 March to 20 March (23 March 2020 being the date the claimant was told not to come into work due to the covid 19 pandemic) this totals 15 working days, which, at 2 hours per day for each site (4 hours per day) would total 60 hours. The parties agree this.

40. The respondent asserts that the additional 22 hours worked in the Sudbury site and missed from the claimant's February payroll, were paid in the month of March. The claimant states that they were not.

41. I find that the additional 22 hours were not paid in March because had they been, the total amount that the claimant would have been paid would have been at least 60 hours (for the two sites from 2 March to 23 March 2020) plus 22 hours which would have totalled a minimum of 82 hours. The respondent conceded this point in evidence.

42. In respect of the period 23 to 31st March 2020 this totals 7 working days. The claimant stated that she was entitled to full pay for this period because she was told when advised not to come to work that she would be paid in full. The claimant refers me to page 82 in relation to this. This is a text message exchange between the claimant and Melanie Johnson, a manager of the respondents. Ms Johnson states as follows:

'Hi Tamara, unfortunately we have had to make the horrific decision to close the nurseries today…we will update you once we know more. I have requested all your hours be added on to the March payment for this Friday.'

43. The respondent stated that there was no such agreement. Her contract was always one that she would be paid hourly based on actual hours completed. The reference by Ms Johnson to payment for March hours was for completed hours. The respondent's position is that it was an unprecedented time in which they had to close. The claimant was therefore unpaid until they could enrol her on the furlough scheme which was done from 1st April 2020.

44. In resolving the issue, I find that there was no agreement to pay the claimant in full for the remainder of March. The message that the claimant seeks to rely on to support this is too ambiguous in its wording and in the absence of a clear variation I find that the original agreement between the parties remained.

45. I therefore find that for the month of March (period 1st March to 20th March) the claimant was entitled to 60 hours pay at her usual rate of pay, for which she received 71 hours pay.

46. I then turn to the issue of furlough pay for the period 23 March to 31 March 2020. There is a 'furlough notice' at page 46 of the bundle, dated 23rd March but which refers to the claimant's last day of work as being 1st April. It is clear from the communications at page 82 of the bundle that the claimant was told not to work from 23 March 2020.

47. I have regard to the Treasury Direction made on 15 April 2020 under s71 and 76 of the Coronavirus Act 2020 being the relevant direction in place at the time. My reading of the same is that this would have allowed an employee to recover 80% of any salary paid to a furloughed employee from 19 March 2020.

48. I find that the claimant was furloughed from 23 March 2020 when she was told not to work and was sent notice of the same. It refers to her last day of work being 1st April but this was clearly not the case. The claimant was unable to work from 23 March due to coronavirus and was sent notice on that date. The respondent sought to vary the claimant's terms of employment to place her on

furlough and did so from 23rd March 2020. I find that the respondent could have properly claimed furlough pay for her from this time.

Unauthorised deductions – furlough pay

49. The claimant states that there has been an unauthorised deduction in her wages by virtue of her not being paid the correct furlough pay. This is on the basis that the respondent incorrectly paid her in February, which her furlough pay was subsequently calculated on. She also asserts that her furlough pay should have been calculated on the hours that she was due to work for those months, namely the increased 20 hours per week.

50. The respondent accepts that they underpaid her for the month of February and that her furlough was calculated on this basis, however they state that the calculation is correct as it is based on what she was actually paid not what she was properly due. I cannot accept that position. To do so, would mean that the claimant suffers a loss as a result of the mistake made by the respondent.

51. However, I have regard to the Treasury Direction made on 15 April 2020 under s71 and 76 of the Coronavirus Act 2020 being the relevant direction in place at the time. Paragraph 7.2 states as follows:

7.2 Except in relation to a fixed rate employee, the reference salary of an employee or a person treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership) is the greater of:

(a) the average monthly (or daily or other appropriate pro-rata) amount paid to the employee for the period comprising the tax year 2019-20 (or, if less, the period of employment) before the period of furlough began, and

(b) the actual amount paid to the employee in the corresponding calendar period in the previous year.

52. Paragraph 7.6 goes on to state as follows:

7.6 A person is a fixed rate employee if:

(a) the person is an employee or treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership)

(b) the person is entitled under their contract to be paid an annual salary

(c) the person is entitled under their contract to be paid that salary in respect of a number of hours in a year whether those hours are specified in or ascertained in accordance with their contract ("the basic hours")

(d) the person is not entitled under their contract to a payment in respect of the basic hours other than an annual salary

(e) the person is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month in equal weekly, multiple of weeks or monthly instalments ("the salary period"), and

(f) the basic hours worked in a salary period do not normally vary according to business, economic or agricultural seasonal considerations.

53. The claimant did not receive an annual salary, was not paid in equal monthly instalments and her hours did vary. As such, the claimant is not a fixed rate employee within the definition of 7.6. Therefore, her furlough pay should have been calculated in accordance with paragraph 7.2 as an average based on the months worked from when she started in April 2019 prior to her furlough starting.

54. For those reasons I also do not accept the claimant's position that she should have been paid at the increased rate of 20 hours per week.

Notice Pay

55. The claimant states that she should have been paid notice pay based on the agreement in February 2020 that she would be working 20 hours per week across the two respondent's sites. She states that this was the agreement prior to her furlough and nothing had taken place to amend this.

56. The respondent states that the second site at Sudbury was only ever a trial and that the claimant was advised of this. The trial did not work out and at some point in March 2020, the respondent told the claimant that she would be allowed to continue working at the Sudbury site until 1st April at which point it would end.

57. Page 50 of the bundle shows a series of text messages between Ms Melanie Johnson and the claimant regarding the Sudbury site and evidences this initial agreement between the parties to take on this work. This makes no reference to it being a trial period.

58. Ms Rosemarie Lee gave evidence that she spoke to the claimant in person at the Sudbury site at some point in February 2020 to indicate it was a trial period. This was after the claimant had already started the additional hours. Ms Lee could not be specific as to when this conversation took place only that it was in person and on site. The claimant denied such a conversation took place.

59. Ms Rosemarie Lee also gave evidence to state that the conversation regarding the additional hours ending from 1st April 2020 took place with the claimant in person at the Sudbury site. Again, she could not be specific on when this took place but believed it to be at some point in March. I have not seen any written evidence to confirm that the arrangement was ending but note that it appeared that the respondent took a relaxed approach to dealing with such matters as evidenced by the agreement to increase her hours being via text message.

60. Whilst I accept that the agreement could have been ended orally, I prefer the evidence of the claimant on the issue. The claimant was quite clear that she had only ever met Ms Lee on one occasion and no discussions took place regarding her work. Ms Lee's evidence on the other hand was very vague on the issue. As such I find that at the point of termination the claimant was still contracted to work 20 hours per week and her notice pay should have reflected this.

The Law

Unauthorised deduction from wages

61. The claimant must bring a claim under the jurisdiction of the Employment Tribunal. There is no freestanding authority under the furlough regulations which allows a claimant to bring a claim in respect of that legislation.

62. The claimant therefore brings a claim of unlawful deduction of wages i.e. under Part II of the Employment Rights Act 1996. For these purposes it is accepted that the claimant was an employee of the respondent.

63. The general prohibition and deductions are set out in section 13(1) of the Employment Rights Act 1996 ("the 1996 Act") which states that: "An employer shall not make a deduction from wages of a worker employed by him."

64. Section 27(1) defines wages as "any sums payable to the worker in connection with his employment", and includes any fee, bonus, commission, holiday pay or other emolument referable to the employment.

65. Section 13(3) of that act states that 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 wages properly payable by the worker on that occasions (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 workers wage on that occasion.

66. In order to decide what is properly payable the Tribunal has to decide what the contractual agreement is between the claimant and the respondent, and the approach to determining this is the same approach as adopted by the Civil Courts in contractual claims (Greg May (Carpet Fitters and Contractors) Ltd v Dring [1990] EAT).

Wrongful dismissal

67. If there is an express contract term as to notice (written or orally agreed), this will apply, provided this is not less than the period of notice required by s.86 Employment Rights Act 1996 (after the employee has been employed for at least one month, one week, then one week for each completed year of service up to a maximum of 12 weeks).

68. In this case, although I have not had sight of the written contract, both parties agreed that the correct notice period was 2 weeks. The issue in dispute was one of quantum only.

Conclusions

Unauthorised deduction from wages

69. My starting point is the claimant's contractual right to pay which I have found to be £10 per hour for actual hours worked.

70. Based on my fact finding above, for the month of February the claimant worked 62 hours and was paid 36 hours. This was a shortfall of 26 hours.

71. For the month of March, the claimant worked 60 hours prior to her being furloughed and was paid 71 hours, an additional 11 hours. This relates to the actual hours worked and the furlough period is addressed below.

72. I then turn to the issue of furlough. Notice was sent to the claimant as at page 46 of the bundle dated 23 March 2020. This did not make any reference to what the agreed rate of pay would be for the claimant's furlough period. The claimant had also been told not to attend work that day.

73. This was a variation to the claimant's contract and at page 47 an email attaching the notice, asked the claimant to confirm if she accepted this. I can see no evidence that she did, however the respondent clearly took it as accepted as they went on to make furlough payments to her, which the claimant in turn accepted. I am satisfied in the circumstances that there was a variation to the contract.

74. I must therefore look at whether there has been an unlawful deduction based on the variation to the claimant's contract.

75. Firstly, in that regard, the notice is dated 23 March 2020 and states that her position is temporarily eliminated because of Coronavirus. It goes on to state that the claimant's official last day of work will be 1st April 2020 but I do not accept that. She was clearly told not to attend work on 23 March and did not do so.

76. I therefore find that the claimant, was entitled to pay from the period that she was furloughed, namely 23rd March 2020.

77. The notice of furlough does not express the rate of pay, for which I make no criticism of the respondent. This was an unprecedented time for which they had to take immediate action when facing the pressures of the covid 19 pandemic.

78. In absence of an express variation, I find that there was an implied term to the variation namely that the claimant would be paid at the correct rate according to the Coronavirus Job Retention Scheme. This provides at paragraph 7.2 detailed above that the calculation to be completed is an average of the months worked by the claimant up to the point that she was placed on furlough. The onus was on the respondent to calculate this correctly.

79. It was calculated based on the claimant's February 2020 pay alone. Applying paragraph 7.2 of the Coronavirus Job Retention Scheme Directive, there has therefore been an incorrect calculation. Whether it amounts to an unlawful deduction from wages is addressed under quantum below.

Notice pay

80. For the reasons stated above I consider that at the time of her notice the claimant was still contracted to work at both sites which would total 4 hours per day.

81. There is no payslip for June 2020 in the bundle, but from the list of payments provided at page 40 of the bundle the claimant appears to have been paid £384.00 for that month, which is said to include furlough pay and 2 weeks' notice pay. The respondent agrees that the two weeks' notice pay has been paid at 80% rather than full pay. This was also based on the claimant being contracted to work at only one site.

82. During the course of these proceedings, the respondent has attempted to rectify the issue by paying the claimant an additional £35.51 which they say is the 20% incorrectly deducted and rely on the following calculation:

    Full pay in June 2020 £480 x 12 months, divided by 12 gives a weekly figure of £110.77 for which they then paid her 80% of it. 20% of the £110.77 weekly for 2 weeks is £44.31 for which they have gone on to deduct £8.80 tax equalling £35.51 which has been paid to the claimant.

83. This calculation is incorrect, firstly, because it deducts tax. The claimant was under the personal allowance tax threshold and therefore did not pay tax and this should not have been deducted from her notice pay.

84. Secondly, notice pay should be calculated based on the average for the 12 weeks worked prior to the notice period. This claimant was on furlough during this period however and therefore received a reduced rate of pay. Therefore, this must be taken into account and for someone who usually works fixed hours they must be paid their full rate of pay whilst on notice, not their reduced furlough pay.

85. For the two weeks of her notice period, based on my findings above, I find that the claimant was still contracted to work 2 hours per day at both sites during her notice period. This would have totalled 20 hours per week at £200 per week and the claimant should have therefore been paid £400 in notice pay.

<u>Quantum</u>

86. The correct rate of furlough pay should have been £438.16 per month. This is based on the average pay for the months worked prior to the claimant's furlough. This is broken down as follows, the information having been taken from the payment list at page 40 of the bundle and the wage slips at pages 53-66 of the bundle:

    May 2019 £464.00
    June 2019 £480.00
    July 2019 £704.00
    August 2019 £133.60

September 2019 £400.00
October 2019 £460.00
November 2019 £420.00
December 2019 £300.00
January 2020 £400.00
February 2020 £360.00 paid but for the reasons stated above this should have been £620.00 and I have therefore used the latter figure for my calculation.

87. Total £4381.60 divided by number of months, namely 10 months, is an average of £438.16 and I find that this is the monthly furlough figure that should have been paid to the claimant.

88. To work out the weekly amount of furlough pay: £438.16 x 12 months divided by 52 weeks equals £101.11. To get the day rate I further divide this figure by 5 which totals £20.22.

Amounts owed

89. February 2020 – the claimant should have been 62 hours and was paid for 36 hours. This is an underpayment of 26 hours, namely £260.00.

90. For the period, 1st March to 20 March 2020 – the claimant should have been paid 60 hours for the full hours worked prior to furlough, at a total of £600.00. For the period, 23 March to 31 March 2020 the claimant should have been paid furlough pay of 7 days totalling £141.55. For the month of March, the claimant should have been paid a total of £741.55 (£600.00 plus £141.55). She was paid £710.00. This is an underpayment of £31.55.

91. April 2020 – the claimant was paid £336.55 in furlough pay. This should have been £438.16 as calculated above. There was therefore an underpayment of £101.61.

92. May 2020 – the claimant was paid £371.20 in furlough pay. This should have been £438.16 as calculated above. There was therefore an underpayment of £66.96.

93. June 2020 – the claimant was paid £384.00. For the first two weeks she should have been paid furlough pay at a rate of £202.22 (weekly rate of £101.11 x 2 weeks). For the second two weeks she should have been paid her full notice pay of £400.00. The total amount that should have been paid was £602.22. There was therefore an underpayment of £218.22.

94. Total underpayments:

February 2020 £260.00
March 2020 £31.55
April 2020 £101.61
May 2020 £66.96
June 2020 £218.22.

Total £678.34.

95. This total sum was properly payable to the claimant and the fact that it was not amounts to an unlawful deduction from her wages.

96. The respondent also made payment to the claimant in the sum of £35.51 in attempting to correct the notice pay underpayment. The claimant has acknowledged receipt of this sum and therefore the total owed to the claimant for unauthorised deduction from wages and notice pay is £642.83 gross.

Employment Judge French

8th March 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

9 March 2022

FOR THE TRIBUNALS