



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mrs S McGowan

v

1<sup>st</sup> Class Care Agency Limited

**Heard at:** Liverpool Employment Tribunal\*

*\*(this was a hybrid hearing with the claimant attending in person on 30 March 2021 and the respondent's representative and witnesses attending remotely by Cloud Video Platform ('CVP'))*

**On:** 29 and 30 March 2021

**Before:** Employment Judge Johnson

## Appearances

**For the First Claimant:** in person

**For the Respondent:** Mr Brayley (director)

## JUDGMENT

1. The effective date of termination of the claimant's employment was a date in late October 2019. This was because she did not receive the P45 issued by the respondent on 24 July 2019 and which was sent by second class post shortly after this date. She only became aware of the respondent's decision to dismiss when the P45 was re-sent to her on an unspecified date in late October 2019.
2. Accordingly, the claimant's claim form was presented in time and her claims can be accepted, subject to the decision of 5 January 2021 dismissing her complaint of discrimination arising from a disability contrary to section 15 Equality Act 2010.
3. The claimant's complaint of unfair dismissal was not well founded and is dismissed. This means that her complaint of unfair dismissal was unsuccessful as she was fairly dismissed because of some other substantial reason in accordance with section 98(1)(b) Employment Rights Act 1996.

4. The claimant's complaint of unlawful deduction from wages is well founded and succeeds because the effective date of termination did not take place until late October 2019.
5. The quantification of the complaint of unlawful deduction of wages will take place at a remedy hearing when the parties will be required to provide evidence identifying what wages should have been paid and to identify a precise day for the effective date of termination in late October 2019. For the purposes of this complaint, it is understood that as the claimant remained absent from work through ill health until the effective date of termination, any such claim is likely to be restricted to unpaid statutory sick pay.
6. As the claimant was dismissed without notice, she is entitled to receive notice pay in accordance with her contract of employment of 2 weeks, based upon her two completed years of service. The quantification of this complaint will take place at the remedy hearing.
7. The claim will now be listed for a remedy hearing in the Liverpool Employment Tribunal with a hearing length of 1 day on a date to be confirmed. The case will be listed as an attended 'in person' hearing in order that the claimant can participate fully, although the respondent may request that they attend remotely using CVP, if they notify the Tribunal within 7 days of receiving the Notice of Hearing.

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Employment Judge Johnson

Date: 30 March 2021

Sent to the parties on:

6 April 2021

For the Tribunal Office