



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms. B Bozhikova

**Respondent:** Alterations Boutique Ltd

**Heard at:** London Central

**On:** 29 June 2022

**Before:** Employment Judge Joyce

## Representation

Claimant: Ms. A Nanhoo-Robinson (Counsel)

Respondent: Ms. SJ Wood (Litigation Consultant)

# RESERVED JUDGMENT

The Judgment of the Tribunal is that the Respondent:

1. Failed to pay the Claimant overtime pay;
2. Failed to pay the Claimant outstanding leave entitlement on termination;
3. Failed to pay the Claimant notice pay in breach of contract;
4. The Respondent is ordered to pay the Claimant the net sum of £4,430.04 in overtime pay, the net sum of £2,691.80 in respect of unpaid notice pay and the net sum of £874.80 in respect of outstanding leave entitlement on termination.

# REASONS

## Claims and issues

1. The Claimant has brought a claim for breach of contract, unauthorised deduction from wages and unpaid annual leave. The issues were agreed with the parties at the outset of the hearing as follows: (i) whether the Claimant resigned on 5 October 2021 or whether she was dismissed by the Respondent (ii) Whether there was any unlawful deduction from the Claimant's wages by the Respondent, in particular whether the Claimant completed overtime which the Respondent did not pay her for and; (iii) whether any annual leave on termination was due to the Claimant.

## Hearing and Procedure

2. The Tribunal heard evidence from Raul Echeverria (Owner of the Respondent) on behalf of the Respondent and, heard evidence also from the Claimant. No other witnesses were called as part of the Claimant's case. There was a bundle of documents. Both parties made closing submissions at the conclusion of the hearing.

### Facts

3. The Respondent is a retail boutique that specializes in alterations to formal wear and in particular, bridal wear, with outlets in both Manchester and London. It employs approximately 7 people. The Claimant was employed as a seamstress and worked for the Respondent for approximately 3 months from 13 July 2021 to 5 October 2021. She worked 43.5 hours per week, over a 5 day week. Her initial salary was £30,000 per annum until 13 August 2021, which increased to £35,000 per annum after this date.
4. The Claimant's employment contract contained the following clause relating to notice:  
  
**After successful completion of your trial period you are entitled to receive one month's notice of termination from the Company**
5. As part of the interview process, the Respondent informed the Claimant that she would be required to work from both the London and Manchester outlets of the business.
6. In August 2021, the seamstress working in Manchester went on annual leave from 30 July 2021. The Claimant was asked to cover the work of this seamstress while the latter was on annual leave. The seamstress on annual leave was unable to return and so the Respondent asked the Claimant to stay on in Manchester, to which she agreed. The Claimant informed the Respondent that she did not wish to work in Manchester beyond 15 September 2021.
7. There was an agreement that the Claimant would be reimbursed for overtime and expenses incurred during her period in Manchester. Upon her return to London she submitted an email with expenses and hours of overtime worked. This included 112 hours of overtime. The Respondent did not query the overtime hours and paid them. However, they were paid at the rate of £8.91 per hour whereas they ought to have been paid at an hourly rate of £15.47. This was accepted as being an error by the Respondent at the hearing.
8. At the hearing, there was much dispute as to the Claimant's conditions of work and her duties at work. I did not consider that much of the evidence was of relevance to the issues to be determined in the case. The Claimant's duties in the Manchester outlet included seamstress work, answering phones and responding to text messages from the Respondent. It is clear from the evidence adduced that the Claimant was required to respond to text messages both before and after working hours as sent to her by the Respondent (see paragraph 3 of the Claimant's witness statement). It is also clear from text messages between the Claimant and her partner Marvin Anderson, that she was working overtime hours.

9. The Claimant was also required to work overtime hours in order to complete her duties as a seamstress. These hours were detailed in her written diary and reproduced in typed ledgers. Upon her return to London on 15 September 2021, the Claimant was covering the duties and responsibilities of two additional support employees. The Claimant fulfilled a number of other duties including answering customer service phone lines for Manchester and London and dealing with technical issues, material requests and deliveries for both outlets.
10. As to annual leave entitlement, the Claimant was entitled to 5.6 weeks per annum.
11. On 5 October 2021 the Claimant sent Mr. Echeverria a text message informing him that she was unwell and would need the day off. Thereafter a phone call took place, the contents of which were disputed at the hearing. Mr. Echeverria's evidence was that during the telephone call the Claimant stated she was unhappy, and thereafter it was mutually agreed that it would be best if the Claimant left the Respondent's employment. He further stated that it was agreed between him and the Claimant that she would not have to work her notice period. Thereafter the Respondent sent the Claimant a message referring to a "clean break" to which the Claimant replied that she "definitely agreed". He further stated that he did not ask the Claimant to go to Manchester because he had already appointed another staff member to go there.
12. The Claimant's evidence was that during the phone call Mr. Echeverria asked her to cover in the Manchester outlet to which the Claimant responded that she would not be able to do that again. She stated that Mr. Echeverria replied that he did not mean to blackmail her but if this was the case he will have to terminate her contract from the following day, 6 October 2021. The Claimant stated that she asked Mr. Echeverria about her 4 weeks notice period but was told that he did not have to pay it as the Claimant had not been employed by the Respondent for more than 2 years. She was also referred by Mr. Echeverria to the 'indeed' website for future employment opportunities.
13. In my view, the Claimant's account of what occurred is the more plausible. She did not have a new job to go to. I find it inconceivable that she would have waived her right to her contractual notice period by resigning on the spot. As to the message referring to a 'clean break' and 'definitely agree' I find that these were within the context of the other text messages which underlined the fact that the Respondent had requested the Claimant to make her last day the following day: "Tomorrow is fine for me as a last day as you requested". Consequently, I consider that the Claimant was dismissed because she did not wish to work in the Manchester outlet any longer, and was not paid her notice pay in breach of her contract.
14. Although reference was made to a bonus in the Claimant's witness statement, no quantum was placed on this bonus and it was not a matter that was pursued in the course of the hearing.

#### Legal Framework

15. The Working Time Regulations 1998 provide at Regulation 14: Compensation related to entitlement to leave

**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  $(A \times B) - C$**

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.**

### Secondary Conclusions

#### Unauthorised deduction of wages: Overtime pay

16. Having concluded that the Claimant did complete overtime work as set out in her ledgers at pages 70-75 of the bundle the following amounts are due to her. For the month of July, on an annual salary of £30,000 gives an hourly rate of £13.26 times 156 hours of overtime gives a total of £2068.56 minus the amount of £1452.76 already paid, which gives a balance due of £615.80.

17. For the month of August the rates of pay were split between pre 12 August where the Claimant was paid £30,000 per annum and post 12 August where the Claimant was paid £35,000 per annum. The claimant should have been paid at the hourly rate of £13.26 for 101.50 hours and then from 12 August at the higher hourly rate of £15.47 for 190.5 hours. This gives a total amount of £4,292.93 minus £2,323 for the month of August already paid to the Claimant gives a total due of £1,969.93.

18. For September, the hourly rate remained £15.47 multiplied by a total of 268 hours gives a total of £4,145.96 minus the amount of £3036.37 already paid by to the Claimant gives a total due of £1109.59. Therefore, for months July, August and September the Claimant is due the total sum of £3,695.32.

19. Additionally, as noted above, the Claimant was paid 112 hours at the incorrect rate of pay of £8.91 whereas they should have been paid at the

rate of 15.46. 112 times £8.91 is £997.92. 112 times £15.47 is £1,731.64. The difference between those two figures is £734.72. Adding this sum to the above total of £3,695.32 gives a total of £4,430.04.

Notice pay

20. Having concluded that the Claimant was dismissed because she no longer wished to work in Manchester it falls that the Claimant was not provided with her notice period, in breach of contract. The notice period was of 4 weeks and it was agreed at the hearing that this would be paid at the higher rate of contractual pay (i.e. £35,000 per annum). The hourly rate of £15.47 multiplied by 43.5 hours of pay gives one week of pay at £672.95 multiplied by 4 weeks gives a total due of £2,691.80

Annual leave

21. It was not disputed that the Claimant was due annual leave as at the date of termination of her employment. However, there was a dispute as to the exact number of days due. Applying section 14 of the Working Time Regulations gave the following result. 5.6 weeks X 12/52 (being the proportion of the Claimant's leave year that expired before her termination date of 5 October 2021) gives 1.292 weeks of leave, which when converted to days of annual leave and rounded up, gives 6.5 days of annual leave. At the hearing it was agreed that this would be paid at the higher rate of pay. One day of pay, given the work week was 43.5 hours, is 8.7 hours multiplied by the hourly rate of £15.47 which is £134.59. Multiplied by 6.5 days gives a total due of £874.80.

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Employment Judge **Joyce**

Date: 21<sup>st</sup> July 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
21/07/2022

FOR EMPLOYMENT TRIBUNALS