EMPLOYMENT TRIBUNALS

Claimant: Mrs M Durojaiye

Respondent: St Mary's Care Ltd

Held at: London South Employment Tribunal **On:** 27 and 28 June 2022

Before: Employment Judge Barker
Mr J Hutchings
Ms N O'Hare

Representation:
Claimant: Ms Durojaiye, claimant's daughter
Respondent: Mr Cater, consultant

JUDGMENT

The respondent is to pay to the claimant the following sums forthwith:

a. The respondent accepts that the claimant is owed outstanding holiday pay for 173 hours which is £1,700.59 gross

b. The respondent failed to set up a workplace pension for the claimant. She is entitled to recover the unpaid contributions to the date of her dismissal of £982.80;

c. The claimant is entitled to notice monies of £3,802.68, which is 12 weeks' notice at £316.89 net per week

d. The claimant is entitled to be paid compensation for unfair dismissal from the respondent as follows:

    i. A basic award based on 18 years' continuous service, age at dismissal of 68 (therefore a multiplier of 1.5) and a gross weekly wage of £339.14, so £9,156.78;

    ii. A compensatory award subject to a 10% reduction on the principles in *Polkey v AE Dayton Services Ltd* and an uplift of 5% as the respondent failed to abide by provisions of the ACAS

Code of Practice, calculated as follows

1. Losses from the date of termination of 7 December 2018 for a period of 52 weeks at a net weekly wage of £316.89, plus pension of £42.12 per month, a total of £16,983.72; and

2. £700 for loss of statutory rights

Therefore the respondent is to pay to the claimant the sum of £16,711.12 for the compensatory award for unfair dismissal.

e. The respondent made unlawful deductions from wages of £4467.76 gross and this is to be repaid to the claimant

f. The respondent is to pay £47.37 to the claimant for PPE purchased but not reimbursed during her employment;

g. The claimant is awarded injury to feelings for disability discrimination of £5,500, plus interest of 8% calculated from the date of the discriminatory act (23 May 2017) to the date of calculation, which is 1862 days, which interest amounts to £2244.60, making the total award for injury to feelings £7,744.60. This discrimination did not arise in connection with the termination of the claimant's employment and this part of the award is not taxable.

h. The non-discrimination elements of the award are taxable in so far as they exceed £30,000. However, the Tribunal was not provided with any information about the claimant's tax position in tax year 2022/2023, other than that she was not employed. We have therefore declined to gross up the award as any taxable elements over £30,000 would be within the claimant's yearly personal allowance. Should the claimant wish to apply for the Tribunal to reconsider the issue of grossing up her award she is to provide information about her income and tax status in order for the Tribunal to do so.

The Recoupment Regulations do not apply to this judgment and award of compensation.

REASONS

1. This remedy hearing follows a reserved judgment and reasons sent to the parties on 29 March 2022. The Tribunal had provided detailed case management orders in a separate document which provided for the exchange of witness statements and the further disclosure of documents, but due to an administrative error at the Tribunal this was not sent to the parties in advance. The parties agreed that the claimant's evidence on her losses, injury to feelings and mitigation of those losses would be taken by way of questions from the judge with an opportunity for cross-examination of her answers from

the respondent's representative. Both parties made submissions at the start of the hearing, and both had provided Schedules of Loss. The claimant's schedule of loss contained further pleadings and was accompanied by a schedule of unlawful deductions, which the respondent was able to comment on.

2. An issue at the liability hearings was that the respondent had not provided disclosure of documents relating to the claimant's annual leave and sickness absences, nor the signing in sheet referred to in the claimant's evidence, all of which could have assisted the Tribunal in making decisions as to her claims for unlawful deductions from wages. No further disclosure had been made of these documents at this remedy hearing. The respondent's representative acknowledged the lack of proper records and made a number of concessions in the respondent's Counter Schedule of Loss as regards holiday pay and pension losses. However no explanation was given by the respondent or their representative as to whether those documents did or did not exist or whether the proper searches had been carried out as required for a disclosure exercise.

3. A number of provisional findings had been made by the Tribunal in the liability judgment in relation to deductions from wages and further findings have been made in this judgment and reasons. As a consequence of the lack of further disclosure by the respondent, findings have been made on the basis of the information already in the Tribunal's possession at the liability hearing.

Issues for the Tribunal to decide

4. The following list of issues was provided by the Tribunal following the reserved decision but never received by the parties in advance of the hearing. It was provided by email to the parties by the judge on the morning of the first day of the remedy hearing. It is nevertheless a useful guide as to the decisions that the Tribunal must make and is set out below with each of the Tribunal's findings of fact in relation to each issue, where necessary. The issues in the list were covered to a great extent by the parties in their submissions and schedules of loss.

The Law

5. Part IX of the Employment Rights Act 1996 (ERA) provides that employees with more than two years' continuous service have a right not to be unfairly dismissed. This means that the employer may only dismiss for one of the potentially fair reasons in s98 ERA and if a fair procedure was followed, as provided for in s98(4) ERA and the ACAS Code of Practice.

6. A Tribunal has discretion to increase or reduce an award for unfair dismissal compensation if either the employer or the employee has failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, up to 25%.

7. As per *Polkey v AE Dayton Services Ltd* the Tribunal must consider whether

there was a chance that an employee would have been fairly dismissed anyway if a fair procedure had been followed and if so, whether the claimant's compensation should be reduced. If the claimant by her conduct caused or contributed to her dismissal, the Tribunal must consider whether to reduce any of her basic award (s122 ERA) or compensatory award (s123(6) ERA) for contributory fault.

8. Part II of ERA and s13 in particular provides that an employee has a right not to suffer unauthorised deductions from their wages.

9. Regulation 14 of the Working Time Regulations 1998 provides that an employee must receive payment on termination of their employment for annual leave that was accrued during the leave year but remains untaken.

10. Remedies for discrimination are covered by s124 Equality Act 2010. Awards for injury to feelings follow the guidance in *Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871*, subsequently updated, into three broad categories of injury:

    a. a top band to be applied only in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment. Only in very exceptional cases should an award of compensation for injury to feelings exceed the top of the top band
    b. a middle band (now £9,900 to £29,600) for serious cases that do not merit an award in the highest band, and
    c. a lower band which is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. The lower band has been updated such that it is now £990 to £9,900

11. The circumstances in which an award of aggravated damages are payable were set out in broad terms as follows in *Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT.*

Findings of Fact and conclusions

Unfair dismissal:

12. In relation to the claimant's claims of unfair dismissal, the Tribunal finds as follows. The claimant told the Tribunal that in December 2021, after the end of the liability hearing, she decided that she did not wish to carry on working. She was 70 years old in May 2020 and has subsequently decided to retire.

13. The claimant's basic award for unfair dismissal has been calculated on the basis of the statutory formula in the Employment Rights Act 1996 and was agreed by the claimant and the respondent. The Tribunal agrees with their calculations and the claimant is awarded £9156.78 as her basic award.

14. The Tribunal needs to decide how much compensation to award the claimant for unfair dismissal. In assessing this, the Tribunal needs to decide what financial losses the dismissal has caused the claimant. The dismissal caused

the claimant to lose her wages and benefits arising from her employment with the respondent. She earned £9.83 per hour for a 34.5 hour week. She therefore earned £339.14 gross per week. Her net salary was £316.89 which is after tax but has no deductions for National Insurance, due to the claimant's age at the time to which these proceedings relate. The claimant was unsure what her net weekly salary was and the respondent initially provided a net figure of £301.16, but this is based on deductions for tax and NI. We have used the figure of £316.89 as her net weekly salary.

15. The claimant was also entitled to pension contributions from the respondent, which they had failed to pay during her employment but which would have continued to be payable had she remained in employment. These were £42.12 per month and have been added on to her wages as additional financial losses caused by the dismissal.

16. The Tribunal must assess if the claimant had taken reasonable steps to replace her lost earnings, for example by looking for another job, and also assess for what period of loss she should be compensated. The burden of proof is on the respondent to show that the claimant has failed to mitigate her losses. The claimant was questioned by the respondent about her health, which she says entirely prevented her from working in the period following her resignation on 7 December 2018 until her decision to retire in December 2021.

17. The Tribunal's decision is that the claimant is to be compensated for 12 months of future loss of earnings from the date of the end of what would have been her notice period in March 2019, to March 2020. We accepted, having seen the claimant's GP and other medical records in the main hearing bundle, that the claimant suffered a significant deterioration in her mental health in the period following her resignation from the respondent. She was able to access one-to-one therapy and also group therapy for depression, stress and anxiety. We note the progress reports in the main hearing bundle that showed that, despite this therapy, by March 2019 her mental health had gone from moderate depression to "moderate to severe" depression. We also note that she has described becoming less incapacitated since but that her memory is still affected. Her evidence was that she had therapy for over a year one-to-one.

18. We note that the claimant made no efforts at any point to look for alternative work, of any kind. When asked about other jobs, the claimant's evidence was that it she decided that it was "*too difficult to look for work because of my age and my condition, the stress*."

19. It is a claimant's duty to mitigate her losses. When asked questions about what her situation was regarding alternative work, the claimant has clearly made assumptions about her ability to find alternative work in part due to her age, without any evidence that she would have been unable to find work because of her age.

20. We accepted her evidence that her mental health was a debilitating situation for a considerable period of time after her resignation and consider it proper

that she be awarded 12 months future loss of earnings, from the end of her notice period to March 2020.

21. The next question for the Tribunal to consider is whether there was a chance that she would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, should the claimant's compensation be reduced? By how much? This is referred to as a "Polkey" reduction, as a reference to the case *Polkey v AE Dayton Services Ltd*.

22. The Tribunal found that the claimant's dismissal was unfair and that a fair procedure was not followed. The respondent began a disciplinary investigation but the claimant was entitled to conclude that this would not be a fair investigation or disciplinary procedure as a result of the respondent's actions, and resigned in response to this as well as other factors which all contributed to a breach of trust and confidence.

23. The Tribunal was not directed by either party to any arguments in relation to *Polkey* but we must nevertheless consider whether or not to make a reduction in her compensation for this reason. We note that the claimant was found via CCTV monitoring to have been sleeping on duty on the night shift on two occasions and Ms Patel's evidence at the Tribunal hearing (although not to the claimant during her employment) was that there was also evidence to suggest that the claimant had "back-filled" resident monitoring charts all in one go instead of actually carrying out the monitoring checks. The Tribunal was provided with the CCTV footage during the liability hearing.

24. We note that, despite the claimant's valid arguments about the reasonableness of being monitored without being warned by the respondent and despite not having been provided with the CCTV footage herself before she resigned, and despite our acceptance of her argument that the respondent had allowed a culture to develop whereby night staff did sleep on duty, there is evidence to suggest that had a fair procedure been followed by the respondent, the claimant may have been found to have been sleeping on duty and/or have falsified patient records, both of which are serious offences generally amounting (individually and together) to gross misconduct.

25. However, we accept that the investigation was very much in its infancy and the claimant did have mitigating circumstances which may have been taken into account by the respondent including her ill health, her length of service and the culture that the respondent had allowed to develop around the night shifts, sleeping and monitoring of residents. We have also taken into account the fact that despite the evidence given by Ms Patel that day shift carers reported residents lying soaked in urine after the claimant's night shifts, no evidence of these reports was disclosed to the Tribunal. We would have expected (given the potential seriousness of the allegation) for there to be written reports from the day staff, which if they exist should have been disclosed to the Tribunal, given the relevance to the claimant's dismissal. No such reports were ever disclosed.

26. Taking all of these factors into account we conclude that it is just and

equitable to reduce the claimant's compensation by 10% as there was a chance, albeit small, that she would have been fairly dismissed anyway if a fair procedure had been followed.

27. As the claimant was being investigated for gross misconduct, and as she also had a grievance appeal outstanding at the time of her dismissal, the ACAS Code of Practice on Disciplinary and Grievance Procedures applied. The Tribunal must ask whether the respondent or the claimant unreasonably failed to comply with it and if so, whether it is just and equitable to increase or decrease any award payable to the claimant and by what proportion, up to 25%.

28. The claimant successfully argued that the way in which the respondent dealt with the allegations of gross misconduct against her was such as to cause her to consider herself dismissed. However, much of the respondent's behaviour that led the claimant to this conclusion was in relation to an offer of £3000 to the claimant which the respondent sought to argue was part of a "protected conversation" as per s111A Employment Rights Act 1996 and which the claimant sought to argue was "blackmail", as well as earlier acts by the respondent which together amounted to a breach of trust and confidence.

29. In terms of the respondent's conduct in relation to the disciplinary investigation, and comparing their behaviour to the standards of good industrial relations practice set out in the ACAS Code, the respondent has in fact complied with much of the Code. The claimant was invited to a disciplinary investigation and warned of the nature of the possible charges against her. The investigation meeting was delayed by just over a month from the date of the claimant's suspension because of the "protected conversations" and because the claimant made requests for disclosure of the CCTV footage, which was not provided.

30. The claimant also said that because the investigation meeting was at 8pm on a Friday night she would not be able to be accompanied, and that as a consequence she would not have a fair hearing. However, the meeting was not the disciplinary hearing itself but an investigation and there is no right to be accompanied at an investigation meeting in the ACAS Code. Also, the lack of CCTV footage before the investigation meeting was not itself a breach of the Code. However, the delay of one month between suspending the claimant and scheduling an investigation meeting was a breach of the need to act without undue delay, as was the excessive delay in providing the claimant with an outcome from her grievance appeal, which was not received until February 2019, some months after her resignation and was not received before disciplinary action was commenced as the respondent had assured her. We therefore consider a 5% uplift for these failures is appropriate.

31. The Tribunal must also consider whether, if the claimant was unfairly dismissed, she caused or contributed to the dismissal by blameworthy conduct? We have considered this issue in relation to the *Polkey* deduction above and as the issue of the claimant's conduct is already the cause of a *Polkey* deduction of 10%, we have declined to make any further reduction for

this reason and that this is just and equitable. *Dee v Suffolk County Council EAT 0180/18* is authority for the principle that the Tribunal should consider the effect of both deductions and ensure that there is no "double counting" of deductions.

32. What basic award is payable to the claimant, if any? It was calculated by the parties and agreed, and is endorsed by the Tribunal that a basic award based on 18 years' continuous service, age at dismissal of 68 (and therefore a multiplication factor of 1.5) and a gross weekly wage of £339.14 is to be awarded and that this amounts to £9156.78.

Wrongful dismissal / Notice pay

33. What was the claimant's notice period? The claimant is entitled to three months' notice under her contract, which has been calculated by the parties and endorsed by the Tribunal to be £4069.68 plus three months of pension contributions of £126.36, which equals £4196.04.

34. Was the claimant paid for that notice period? The claimant received two payments at the conclusion of her employment in her December 2018 pay. The claimant asked for a breakdown of these payments and was never given a clear indication by the respondent of what she was paid for, but the documents disclosed in the hearing bundle indicate that the payments were for 132.5 hours holiday pay, and the rest corresponded to the claimant's wages payable from her suspension on 2 November 2018 until her resignation on 7 December 2018. They are not therefore any payments in lieu of notice and she is entitled to recover the full amount of her notice payments.

Disability Discrimination and Aggravated Damages

35. What financial losses, if any, has the discrimination caused the claimant? The Tribunal found that the discrimination suffered by the claimant related only to the respondent failing to carry out a risk assessment for her in the workplace when she transferred to Jasmine wing on 23 May 2017 and that this was a failure to make a reasonable adjustment for her for her back condition. The Tribunal does not consider that this failure has caused the claimant any financial loss. However, we accept that it has caused her injury to feelings.

36. The claimant was asked to give evidence about the issue of her injury to feelings during the remedy hearing, but apart from briefly noting that the respondent had known for a long time that she had a back problem but did not provide her with a proper chair or workstation, much of the claimant's evidence on injury to feelings related to those matters which the Tribunal did not find was unlawful discrimination, or to those matters which related to the claimant's constructive unfair dismissal claim, such as the CCTV monitoring and the decision to take disciplinary action against her.

37. The Tribunal has taken account of the nature of the failure to make reasonable adjustments, in that it occurred when the claimant moved to Jasmine wing in May 2017 and was not remedied despite the claimant having

an accident at work involving a chair in 2018. We have therefore placed the award in the lower Vento band at £5,500 plus interest. This failure to make reasonable adjustments was not the cause of the majority of the claimant's upset and injury to feelings. Her evidence before the Tribunal at the remedy hearing demonstrated that the respondent's decision to monitor her behaviour on CCTV was by far the main cause of her distress, but that was not an act that we found to be discrimination and so cannot be compensated for with an award of injury to feelings. However we have also taken account of the claimant's unusually emotional relationship with her place of work. An injury to feelings award depends not on the seriousness of the discrimination but on the nature of the claimant's reaction to that discrimination. If a claimant is extremely upset by behaviour that others would not have been so upset about, then the Tribunal should reflect this fact in the award for injury to feelings and we have done so.

38. We have calculated interest at 8% on the entire period from the date of the failure to make reasonable adjustments (23 May 2017) to the date of calculation (28 June 2022), which is 1862 days. This means that the claimant is entitled to an additional sum of £2244.60 interest on her injury to feelings award.

39. The Tribunal has declined to make an award for aggravated damages. Awards for injury to feelings in discrimination cases may include an added element of aggravated damages in particularly serious cases of discrimination. The circumstances in which an award of aggravated damages are payable were set out in broad terms as follows in *Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT* which identified three broad categories:

    a. where the manner in which the wrong was committed was particularly upsetting, that is, in a 'high-handed, malicious, insulting or oppressive manner'

    b. where there was a discriminatory motive, that is, the conduct was evidently based on prejudice or animosity, or was spiteful, vindictive or intended to wound; and

    c. where subsequent conduct adds to the injury, for example, where the employer conducts tribunal proceedings in an unnecessarily offensive manner, or 'rubs salt in the wound' by plainly showing that it does not take the claimant's complaint of discrimination seriously.

40. Two features of this case bear repeating. The first is that the only discrimination that the Tribunal found that the claimant was subjected to was an instance of a failure to make reasonable adjustments, in relation to a failure to conduct a risk assessment in the workplace, given that the claimant had an ongoing back condition. It is only this discrimination that can be the basis of an award for aggravated damages as they only apply in cases of discrimination, and are calculated as an addition to an award for injury to feelings. The claimant's daughter has indicated that this was a feature of the reserved

judgment that she disagreed with and she indicated that she considered applying for reconsideration or appealing against the Tribunal's decision, but that the claimant did not wish to do so. The issues of the discrimination and detriments that the claimant considers she was subject to, but the Tribunal found there was insufficient evidence of, are therefore not for our consideration at this remedy hearing.

41. The second feature is that the claimant appears to have had, on the evidence before us, a particularly intense and emotional relationship with her place of work and the respondent's decision to challenge the claimant's behaviour using CCTV has prompted an intense reaction in the claimant, precipitating serious mental ill health. The fact that the claimant has had this reaction does not mean that it follows automatically that the respondent has conducted itself in a manner that would give rise to a claim for aggravated damages. The Tribunal has criticised the respondent on several previous occasions for its chaotic and disorganised management, chaotic and disorganised record keeping and payroll. Also at times Ms Patel's demeanour during the liability hearing was somewhat disrespectful towards the proceedings. However, this was not limited to the claimant – indeed, she was at times somewhat contemptuous to the Tribunal panel, including the judge.

42. It cannot however be said that the respondent's conduct passes the high threshold for aggravated damages. The conduct was on several occasions discourteous and disrespectful of the process and the jurisdiction, but it was not the case that the respondent plainly showed that it did not take the claimant's complaint of discrimination seriously. An external consultant was engaged to hear the claimant's grievance during her employment and a separate consultant was engaged to hear her grievance appeal. Another consultant was engaged to manage the litigation process on behalf of the respondent.

43. We did not find that the respondent conducted the discrimination (that is, the failure to conduct a risk assessment) in a "high-handed, malicious, insulting or oppressive manner" – indeed, the evidence before us was that at the time the claimant returned to work and started on Jasmine wing in May 2017, she was happy to be back and pleased with the changes that the respondent had made. The lack of a risk assessment was due to poor management and a general lack of care towards staff. There was no motive of spite, viciousness or intent to wound in this regard.

44. Finally, the conduct for which the respondent was particularly criticised and is culpable for in terms of the claimant's subsequent poor mental health relates to the circumstances that led to her constructive dismissal, which did not feature any acts of discrimination. In summary therefore, we do not find that there are grounds on which we consider it appropriate to make an award of aggravated damages.

Holiday Pay (Working Time Regulations 1998)

45. The respondent has consistently been asked to disclose the claimant's personnel file records to allow a proper calculation of her annual leave and sickness absences. The respondent has consistently failed to disclose these records or to provide an explanation as to why they have not been disclosed.

46. The claimant was entitled to 5.6 weeks pro rata for holiday, that being 193.2 hours pro rata for a 34.5 hour working week.

47. The respondent's representative acknowledged at this remedy hearing that the lack of proper records meant that he did not contest the claimant's claim for accrued but unpaid annual leave. He has calculated this as the claimant being owed 112.70 hours for leave year 2017/2018 and 60.7 hours for leave year 2018/2019, which is a total of 173 hours. This is on the basis that there is only evidence before the Tribunal to show that the claimant was paid 80.5 hours holiday pay in 2017/18 and 132.50 hours in 2018/2019.

48. The claimant claims for 193 hours, but this is for future loss of holiday pay, which is already accounted for in her unfair dismissal compensatory award.

49. With the limited information available to us, we are content that the respondent's estimate of 173 hours owed is appropriate and is a fair sum in compensation to the claimant. In fact, the calculation for 2018/2019 would appear to run past the claimant's last date of employment and may be an overpayment. However, we consider the sums put forward by the respondent a fair amount in compensation for the claimant.

Unauthorised deductions

50. Were the wages paid to the claimant in the period from 7 March 2017 onwards less than the wages she should have been paid? We find that they were. We have already made initial findings in paragraph 229 of the liability judgment and reasons as follows:

"229. As a provisional indication, we find that as of 6 March 2017, the claimant is owed the following subject to further evidence being provided by both parties:

> *a. She is entitled to full pay from 6 March to 16 March 2017 for the reasons set out in our findings of fact, which is 5 working days at 11.5 hours per day, so 57.5 hours pay;*
> *b. She is not entitled to pay from 17 March 2017 to 2 April 2017 for the reasons found earlier as she was neither covered by a valid sick note nor able to persuade the Tribunal that she was not able to return to work. This period was therefore unauthorised absence;*
> *c. She is entitled to sick pay at her full pay rate for the period 3/4/2017-2/5/2017 of 4 weeks;*
> *d. She is, as set out above, not entitled to recover pay for the period 3/5/2017 to 22/5/2017 as she was neither covered by a valid sick note nor able to persuade the Tribunal that she was not able to return to work. This period was therefore unauthorised absence.*

e. She is entitled to her wages for the period 8 March to 7 April 2018;
f. Having submitted a valid sick note for the period 27/01/2018 to 10/02/2018 she is entitled to be paid contractual sick pay for that period of 2 weeks;
g. The claimant asserts that she is still owed £47.37 for PPE purchased but not refunded to her. The respondent must pay this sum.
h. Any further sums claimed by the claimant will be assessed on the basis of further disclosure of attendance records and absence records yet to be provided….".

51. We have calculated the sums in a-f above as follows:

    a. £565.23 (57.5 hours x £9.83);
    b. [no award of compensation]
    c. £1356.54 (4 weeks x £339.14)
    d. [no award of compensation]
    e. £1356.54 (4 weeks x £339.14)
    f. £678.27 (2 weeks x £339.14)
    g. £47.37

52. Further sums claimed by the claimant were set out in a schedule to the updated schedule of loss. Many of these sums arise from the claimant claiming pay for the minutes and hours each day when she arrived early for work, or left the building late. During the main hearing, the Tribunal heard evidence that the claimant would frequently arrive an hour or more early for work. She said that there was a shortage of sanitary pads for the residents in the home and that she would often need to come in early to find pads for the residents. However, we do not accept that this was a requirement of the claimant's job, or that it was authorised by the respondent. The claimant made several references during her evidence that St Mary's was her "second home" and we find that on occasion she treated it as such. This does not entitle her to be paid for the times when she chose to come in early. What was clear to the Tribunal was that the claimant could be paid for overtime, and was paid for working additional hours over her 34.5 per week, but that this had to be authorised. There was no evidence before us that the additional daily minutes or hours being claimed were authorised by the respondent. They are therefore not "wages properly payable" as envisaged by the Employment Rights Act 1996.

53. Of the further sums claimed for by the claimant in her updated Schedule, we find the following to be properly payable:

    a. In January 2018, she was not paid for a week of her sickness absence, when she was self-certifying. As she is entitled to contractual sick pay from the first day of sickness absence in accordance with the terms of her contract of employment, this week is payable to her (£339.15); and

b. For May 2018 the claimant claims for £172.03 for 17.5 hours work done but not paid for. We have considered the evidence in the main hearing bundle that the claimant attended a number of training sessions in April and May 2018 and did a significant amount of overtime, some of which she was paid in full for but not all. The claimant's emails and letters of complaint to the respondent at the time and immediately afterwards (and which also formed part of her grievance that was still outstanding on her resignation in December 2018) all complain of underpayment of wages for this period, in particular the email of 4 June 2018. The respondent has not produced any records to show that the query was addressed. The respondent did not dispute that the claimant attended training in that period. The claimant may recover the sum of £172.03.

54. The total sums payable for unlawful deductions from wages are £4467.76 gross and £47.37 for the refund for PPE purchased.

55. The Tribunal has already found that the respondent failed in its requirements in relation to pay statements contrary to s8 Employment Rights Act 1996. However, the compensation for this is to order that the respondent pay to the claimant sums deducted which were not notified to the claimant. These sums have already been awarded in relation to the claimant's claim for unlawful deductions from wages and therefore no further compensation is payable in this regard.

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Employment Judge Barker
Date: 1 July 2022

Sent to the parties on
Date: 9 September 2022