EMPLOYMENT TRIBUNALS

Claimant: Thomas Lowther

Respondent: Lowther Decorators Limited

Heard at: Newcastle (by video) **On:** 14 & 15 July 2022

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

Before: Employment Judge Withers

Representation

Claimant: Mr Haywood, counsel

Respondent: Miss Zakrzewska, litigation executive

REASONS

Background

1. The claimant was employed by the respondent until his employment terminated.

Claims

2. The claimant makes claims of unfair dismissal, for a redundancy payment, for unlawful deductions, and for unpaid holiday pay, notice pay, arrears of pay and other payments.

3. The respondent denies that it unfairly dismissed the claimant as alleged or at all. It says that it dismissed the claimant fairly for gross misconduct. The respondent also denies any other payments are due to the claimant, and instead claims in respect of alleged excess holidays taken by the claimant (said to be an employer's contract claim).

Procedure, documents and evidence heard

4. The hearing was conducted via video. There were no technical issues during the hearing. I explained to the parties the ground rules for the hearing, including that the making of any recordings of the hearing was prohibited. Throughout the hearing that the parties were able to participate fully without issue.

5. The claimant was represented by Mr Haywood, and the respondent by Miss Zakrzewska.

6. I first heard evidence from the claimant, followed by evidence from Mr Overend, director of the respondent. Both had prepared written witness statements - two in the case of the respondent, one of which was filed late together with its exhibits, but upon which the parties agreed I could nevertheless consider having given time at the start of the hearing for the parties to read these.

7. I had before me a bundle of agreed documents comprising 91 PDF pages, plus various documents purporting to be witness statements from various people. The purported witness statements submitted on behalf of the claimant and from Mr Groom for the respondent are actually emails/letters from various people on the claimant's character. I give no weight to these, as they are not witness statements and the authors were not present to be examined. They also do not go to the substance of the claim.

8. I also placed little weight on Ms Matthews' statement as she was not present to be examined.

Issues

9. At the start of the hearing the parties agreed on a list of issues for me to decide. The issues agreed were:

    a. Are there any time limit issues?

    <u>Unfair dismissal</u>

    b. Was the claimant an employee and does he meet the qualifying period for his claims?

    c. Was the claimant dismissed and if so:

        i. What does the respondent say the potentially fair reason for the dismissal under s 98(1) and (2) was and what was the potentially fair reason, if any?
        ii. Did the respondent act in a procedurally fair manner? iii. Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

d. If the respondent did not use a fair procedure, would the claimant have been fairly dismissed in any event and when?

e. What adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with the principles in Polkey v AE Dayton Services Ltd [1987] UKHL 8?

f. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, as set out in section 122(2), and if so to what extent?

g. Did the claimant, by their blameworthy or culpable conduct, cause or contribute to the dismissal to any extent, and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award under section 123(6)?

h. What adjustment, if any, should be made to any compensatory award to reflect any failure to comply with the relevant ACAS code of practice.

Breach of contract

i. What was the claimant's notice period?

j. Was the claimant paid for that notice period?

k. If not, was the claimant guilty of gross misconduct/was the respondent entitled to dismiss without notice?

Wages

l. Did the respondent make a deduction from the claimant's agreed wages and, if so, in what amount?

m. Were any deductions exempt or authorised?

Holiday pay

n. What was the leave year?

o. How much leave had the claimant accrued and taken?

p. Were any days carried over from previous holiday years?

q. How many days remain unpaid?

Other claims

r. Is the claimant able to establish a right to the other payments claimed, being income protection premiums and car allowance?

Findings of fact

10. It is agreed that the claimant was an original director and a shareholder of the respondent when it was set up in 2002. The claimant says he was an employee of the respondent from this time, and this was not challenged by the respondent.

11. It is agreed that the claimant sold the entire shareholding in the respondent to Mr Overend in September 2019.

12. It is agreed that after this time the claimant remained employed by the respondent, and also remained a registered director at Companies House. It is agreed by the parties that claimant's gross annual salary was £52,000.

13. The terms of the claimant's employment contract relevant to these proceedings are:

    a. No contractual sick pay scheme.
    b. Six months' notice to be given by either party to terminate the contract.
    c. Silent on any right for the respondent to make deductions from the claimant's wages.

14. I therefore find that the claimant was employed by the respondent from its incorporation on 12 September 2002.

15. As to the claimant's entitlement to paid holiday, I find that the contract sets out the position fully, being that the claimant was entitled to 25 days' paid leave per leave year, which was a calendar year.

16. The claimant's evidence was that he carried over 5 days' leave from 2020 into 2021, and had 5 days' accrued but untaken leave in 2021 – a total of 10 days' owed. The respondent has produced no records to contradict that position and I find as a fact that the claimant had 10 days' untaken holiday.

17. As to the claimant's entitlement to payment of income protection premiums, the claimant says the respondent has always paid these premiums into a scheme the claimant had joined. In addition, Mr Overend accepted in his evidence that these premiums were paid by the respondent from when he purchased the company. I therefore find as a fact that the claimant was entitled to the payment of income protection premiums by the respondent. Mr Overend also accepted that the premiums were not paid for the last 1.5 months' of the claimant's employment.

18. As to the claimant's entitlement to use of a vehicle, Mr Overend accepted that the claimant was permitted to use Mr Overend's car for company business. The claimant says he was permitted to use it for both company business as well as personal use, and indeed did do so from the time when Mr Overend took over the business. In the letter of 3 December 2021, the car is listed as company property. Given the length of time that had passed with the claimant using the vehicle for both business and personal use, I find on the as a fact on the balance of probabilities that the claimant was entitled to the use of the car as a term of his contract, agreed to by the respondent.

19. As to the claimant's entitlement to notice, both parties agree that the contract properly reflects this at six months.

20. There is a dispute concerning a purported deduction of monies from the claimant's wages in respect of curtains paid for by the respondent. The claimant said that Mr Overend of the respondent verbally agreed that the respondent would pay for the curtains as a gesture of goodwill. The respondent said it did not agree to pay for the curtains. However, the respondent was aware of the payment for the curtains at 22 December 2020 at the latest when it was contacted by the curtain provider, being almost a year before the purported deduction, and took no action. I therefore find on the balance of probabilities that the respondent did in fact agree that the claimant could have the benefit of the sums for the curtains and agreed to pay for the same.

21. Turning to the circumstances leading up to the claimant's dismissal, the parties agree that a meeting took place between the claimant and Mr Overend on or around 16 November 2021. The parties also agree that at that meeting Mr Overend expressed concerns about an alleged amount missing from the respondent's bank account from the time that Mr Overend purchased the respondent, and that the claimant was asked to take a period of leave. The parties agree the meeting was amicable.

22. The parties do not agree whether the leave was initially said to be paid or unpaid, but do agree that it was ultimately agreed the leave would be paid. There is no suggestion that the leave was to be taken as holiday.

23. The respondent's ET3 says that the claimant was in fact suspended on paid leave for withdrawing monies from the respondent's bank account without authorisation, but today Mr Overend said that was an error and the claimant was not in fact suspended.

24. It is agreed that the last payment of wages made to the claimant was on 19 November 2021. The claimant is therefore entitled to pay from that date until the termination of his employment.

25. It is agreed that the next meeting was on or around 26 November 2021 at Bowburn services, and that the meeting lasted ten minutes. It is agreed that

again the accounts discrepancy from the time of the purchase of the respondent was raised, and the claimant informed Mr Overend that he had relied on the advice of accountants when he was the owner of the respondent.

26. Also at the meeting, the parties agree that it was discussed that it did not make financial sense for the respondent to continue to employee the claimant alongside another employee who performed a similar role.

27. Mr Overend says he and the claimant agreed that the claimant would be made redundant.

28. The claimant says that there was no redundancy agreed per se, but rather that the claimant's would have a change of role at the respondent.

29. Mr Overend says this was not agreed, but did acknowledge he said he would look at other roles.

30. This is the first major area of disagreement between the parties. The only document in relation to this meeting is a set of handwritten minutes from the respondent, which the claimant says are false and made up after the event. Those minutes, in relation to this point, record "TL & JO discussed Tom finishing on 17th Dec as he was aware JO could not afford both TL & Michael Why. This was agreed and JO said he would write to TL with agreement to cease employment on 17th Dec 2021."

31. I do not consider the minutes to be conclusive. They can be said to concur with the respondent's version of events, but they also do not contradict the claimant's version of events insofar as the claimant does agree his current role would come to an end.

32. I therefore and in any event look to any other documents to assist me. I note that there are various text messages between the claimant and Mr Overend after the meeting, on 29 November, 30 November, and 2 December 2021. In these messages, the claimant complains about not being paid the previous week and being owed various sums of money. In particular, in the message on 2 December 2021, the claimant refers to "money owed to date", implying there would be further monies arsing, presumably from his continued employment. Of course, given that the alleged date for termination was 17 December 2021, there would be further monies due either way, and as such the messages are also not conclusive.

33. Next, on 3 December 2021, the respondent writes to the claimant. That letter begins "I am writing to advise that we are giving you notice". Of course, if the termination of the claimant's employment had already been agreed, then there would be no need to now give notice. This document therefore points away from the respondent's version of events.

34. The rest of the letter reads:

> "As of 17th December 2021 you will be no longer employed by Lowther Decorators Limited.
>
> From 17th December 2021 you will not be eligible for any benefits associated with your position.
>
> Please return the following company property: Range Rover, registration number SY16 VGL, Company credit and bank cards, office key and fuel cards on or before Friday 17th December 2021. The vehicle is to be returned to the office at Whitfield House, Meadowfield, DH7 BXL. If this is not possible, then arrang-ements fortne·conection of the vehicle before Ftiday11111 December should be made.
>
> You are entitled to 4 weeks salary, of £2884.32. Minus the attached invoice for personal purchase of goods for your home, leaving a balance of £25.09, which will be paid 17th December. Please find the invoice from Brewers for a purchase of curtains for your home included.
>
> All retention monies owed to you, will be held on account until the resolution of the ongoing issue with the SPA. As soon as this matter is resolved, all payments due to you, will be paid directly.
>
> If you have any information about our customers, employees or companies stored on paper or on your personal devices, you must delete it immediately.
>
> If you have questions or clarifications, I am contactable up to five working days after your last day of employment."

35. Lastly, on 7 December 2021, the claimant responded to that letter asserting what he says are his contractual rights.

36. Stepping back and considering the documentary evidence as a whole, alongside the witness evidence, I find on the balance of probabilities that there was no agreement that the claimant's employment would come to an end made at the meeting on or around 26 November 2021.

37. I find that instead the respondent gave notice of its intention to terminate the claimant's employment by its letter dated 3 December 2021, which would have reached the claimant on or around 5 December 2021.

38. However, that letter was then superseded by the fact that on 13 December 2021, the respondent wrote a letter dismissing the claimant for gross misconduct with immediate effect. The gross misconduct relied upon was that the claimant had withdrawn the sum of £2,939.89 from the respondent's bank account without authority to do so. The full letter reads:

"Dear Tom,

I am writing to confirm the decision to summarily dismiss you for gross misconduct. Further, I can confirm that the decision to dismiss was made with immediate effect, from 13th December 2021, without notice or pay in iieu of notice.

As such, your last date of employment with Lowther Decorators Limited was 13th December 2021.

That said, you remain bound by any post-termination confidentiality obligations and restrictive covenants, until these expire under the terms of your contract of employment.

The decision to dismiss was made following a full investigation regarding the unauthorise.d taking of £2939.89 on 3rd December 2021 from the company bank account.

During our meeting in November, you were placed on leave while an investigation was carried out regarding a sum in excess of £380k in the company accounts. This issue is still ongoing.

In accordance with the company's written disciplinary procedure, you are entitled to appeal thi$ decision. If you wish to appeal this decision you. must do so by setting out your reasons in writing and sending these to:

Joss Overend, Whitfield House, Meadowfield, Durham DH7 BXL by 2otn December 2021.

Yours sincerely,

Joss Overend"

39. I find as a fact that this letter and the dismissal was communicated to the claimant on 15 December 2021, being two days after the respondent posted the dismissal letter to the claimant.

40. As for the monies withdrawn, the respondent's case is that the claimant had no authority to make the withdrawal.

41. The claimant said he did; and the withdrawal was in respect of retention monies the claimant says he was due for works completed by the respondent prior to the sale of the respondent to Mr Overend.

42. Mr Overend agreed that two previous retentions had been paid to the claimant on this basis, however, Mr Overend had later discovered that this should not

have been the case under the SPA and both parties had been proceeding on the basis of mistake. The SPA in fact said nothing about the claimant being paid retentions, and both parties had misunderstood this point. Mr Overend therefore set about removing the claimant's authority to access the respondent's bank account.

43. Mr Overend accepted that the claimant was entitled to access the respondent's bank account. Specifically, Mr Overend said "He may have been entitled to make payments but that's because I could not remove him from the bank. I'd asked for him to be removed from the 16th". Mr Overend was referring to 16 November 2021. What had happened is there had been an error by the bank in not actioning Mr Overend's instructions. Mr Overend accepted that the claimant did not know his removal from the bank was being sought, hence accepting the claimant's entitlement to access the respondent's bank account at the time of the transfer of retention monies.

44. Therefore, the claimant did not appeal his dismissal in writing. He said he tried to telephone Mr Overend without success.

45. Early conciliation was commenced by the claimant on 11 January 2022, and the certificate was issued on 13 January 2022. The ET1 was presented on 21 January 2022.

46. The claimant stated that he had not had any earnings since termination of his employment and this was not challenged on that by the respondent.

Law

Dismissal

47. Section 94 Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the respondent under section 95. Section 95 includes three categories of dismissal: termination by the employer, expiry of a limited-term contract, and constructive dismissal.

48. There are no statutory requirements as to the mechanics of giving notice. It has long been established that notice is not effective until it is actually given and effectively communicated to the employer, with an ascertainable date on which the contract is to cease (**Mitie Security (London) Ltd v Ibrahim UKEAT/0067/10**).

Reason for dismissal

49. Section 98 deals with the fairness of dismissals. There are two stages within section 98, the first of which is that the employer must show that it had a potentially fair reason for the dismissal within section 98(2).

50. For the purposes of establishing the reason for dismissal, the employer only needs to have a genuine belief; the belief does not have to be correct or justified (**Trust House Forte Leisure Ltd v Aquilar [1976] IRLR 251** and **Maintenance Co Ltd v Dormer [1982] IRLR 491**).

51. The starting point, when considering the reason for a dismissal, is "a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee" (**Abernethy v Mott, Hay & Anderson [1974] ICR 323**). In **UPS Ltd v Harrison UKEAT/0038/11**, the tribunal failed to distinguish between its perception of the reason for dismissal and the set of facts known to the employer which caused it to dismiss. The EAT stated that the correct approach is for a tribunal: (i) first to make factual findings as to the employer's reasons for dismissal; and (ii) then decide how the employer's reasons are best characterised in terms of the statutory reasons in s 98(1).

Fairness

52. The second part of section 98 applies if the employer shows that it had a potentially fair reason for the dismissal. The Tribunal must then consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason in accordance with s 98(4) ERA, which requires a consideration of all the circumstances, including the size and administrative resources of the employer (s.98(4)(a)). The question of fairness also has to be determined "in accordance with equity and the substantial merits of the case" (s.98(4)(b)), although current case law indicates that this is not an additional test.

53. It must then be asked whether, in all aspects of the case the employer acted within the range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**).

54. The size and administrative resources of the employer's undertaking are something to which the Tribunal must have regard. It can be reasonable for a large employer to do things which a very small employer could not do.

Polkey reduction and contributory fault

55. Where a dismissal is procedurally unfair, the law is such that there can be a reduction in compensation on the basis that if the employer had acted fairly the

claimant would have been dismissed in any event at or around the same time: **Polkey v AE Dayton Services Ltd [1987]**.

56. Under s 122(2) ERA, where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

57. Under s 123(6) ERA, where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

Unauthorised deduction from wages

58. Section 13(1) ERA 1996 provides the right for a worker not to suffer an unauthorised deduction from wages:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless—
(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

59. An employee has a right to complain to an employment tribunal of an unlawful deduction from wages pursuant to section 23 ERA 1996.

60. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within three months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the tribunal considers it was presented within a reasonable period after that.

Holiday pay

61. Regulations 13 and 13A of The Working Time Regulations 1998 (Regulations) provide for a minimum period of annual leave of 5.6 weeks per annum. The leave year begins on the start date of the claimant's employment in the first year and, in subsequent years, on the anniversary of the start of the claimant's employment, unless a written relevant agreement between the employee and employer provides for a different leave year.

62. Regulations 14 and 16 set out provisions in relation to compensation for the entitlement to leave. These provide that upon termination where the proportion

of leave taken by a worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of untaken leave

63. There will be an unauthorised deduction from wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

64. Regulation 30(1)(b) gives the right for a worker to make a complaint to a Tribunal for a breach of Regulation 14(2) and 16(1).

65. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 ERA, with some modifications. There is no statutory cap on a week's pay for this purpose. An average of pay over the previous 52 weeks is taken. In accordance with a series of cases including the Court of Appeal's judgment in **British Gas Trading Ltd v Lock and anor 2017 ICR 1,** all elements of a worker's normal remuneration, not just basic wages, must be taken into account when calculating holiday pay for the basic four weeks' leave derived from European law but not for the additional 1.6 weeks leave which is purely domestic in origin.

Breach of contract

66. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.

67. A claim of breach of contract must be presented within three months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonable practicable to do so, in which case it must be submitted within what the tribunal considers to be a reasonable period thereafter.

Financial loss

68. Where a tribunal makes a declaration that there has been an unauthorised deduction from wages, it may order the employer to pay to the worker, in addition to the amount deducted, such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the unlawful deduction: section 24(2) ERA.

Conclusions

69. The claimant and respondent provided me with oral submissions on the issues, which I have considered where necessary in reaching my conclusions.

Time limits

70. The respondent did not pursue its argument that the claim was out of time and in any event I conclude the claim was in time, it having been submitted within three months of the EDT.

Status

71. The respondent did not challenge the claimant on whether he was an employee of the respondent. I have seen no evidence to suggest that the claimant was anything but an employee of the respondent and I conclude as such.

Dismissal

72. I conclude from the letter dated 13 December 2021 that the claimant was summarily dismissed on receipt of that letter, which I found to be on 15 December 2021. This is the effective date of termination.

Reason for dismissal

73. The respondent accepted in submissions that its reason for dismissal was gross misconduct relating to the withdrawal of £2,939.89 from the respondent's bank account by the claimant and not the claimant's redundancy, as the alleged gross misconduct superseded any reason for dismissal by way of redundancy. The parties did not therefore address me on the redundancy point and the respondent did not pursue it as a reason or the reason for dismissal.

74. The potentially fair reason relied upon by the respondent is therefore conduct under 98(2), and I conclude that the respondent genuinely believed that was the reason for the dismissal of the claimant.

Was the dismissal fair?

75. I conclude that the respondent failed to carry out any investigation into the reason behind its decision to dismiss. There was no investigatory meeting concerning the withdrawal of monies. The two previous meetings concerned the claimant's role with the respondent, and an alleged sum of monies missing from the company accounts in relation to the share sale.

76. Taking into account the size and administrative resources of the respondent – it is not a large organisation – the respondent nevertheless made no attempt at an investigation concerning the withdrawal of monies at all and as such the investigation stage fell short of that which a reasonable employer acting within the band of reasonable responses would have carried out.

77. There was also no disciplinary meeting at all, and I conclude that the respondent did not act within the band of reasonable responses in that respect either.

78. I have the band of reasonable responses clearly in mind in reaching my decision. It is immaterial what decision I would have made. A reasonable employer would have simply made enquiries of the claimant following the discovery of the withdrawal of monies, but the respondent here chose not to do so and instead summarily dismissed the claimant. I find for these reasons that the respondent's decision to dismiss the claimant was outside the range of reasonable responses to his conduct.

79. For the reasons set out above, I find that the dismissal was unfair

ACAS code

80. I have already set out the respondent's procedural failings. The respondent is in clear breach of the ACAS code, having held no meetings relevant to the reason for dismissal whatsoever.

81. However, there was also no appeal hearing. I conclude that this is because the claimant chose not to appeal.

82. As such, I will award uplift on any damages in the sum of 15%.

Polkey reduction

83. The respondent's position is that it would have dismissed the claimant on a fair basis even if it had followed the correct procedure. However, as I found as a fact above, both the claimant and respondent had proceeded on the basis of mistake in relation to the retention payments. Mistake does not suggest that either party is guilty, and I therefore cannot conclude that the claimant would have been dismissed fairly in the near future. I therefore make no reduction in respect of Polkey.

Contributory fault

84. The respondent's position is that the claimant's dismissal was nevertheless caused by his actions alone. The claimant did not make specific submissions on this point.

85. The claimant's conduct said to give rise to contributory fault is his withdrawal of sums from the respondent's bank account. I have no hesitation in finding that that conduct was at the behest of the claimant, however for the reasons set out above that was on the basis of both parties' mistake in their joint interpretation of the SPA. As such, I do not find that the claimant's conduct would have or properly has contributed to his dismissal.

Other claims

86. In respect of the breach of contract claim, I conclude that on the basis of there being no breach of contract by the claimant in respect of the dismissal, the respondent is in breach of contract by failing to give the claimant the required 6 months' notice of termination.

87. In respect of the claim for holiday pay, I conclude that the claimant is entitled to recover 10 days' pay in respect of accrued but untaken holiday.

88. In respect of the claim for unlawful deductions from wages, I conclude that the respondent did unlawfully purport to deduct the monies in respect of the curtains from the claimant's pay, and indeed the claimant has received no pay since 19 November 2021. Payment is therefore due to the claimant for the period from that date until his termination on 15 December 2021.

Remedy

89. In respect of the unauthorised deduction from wages for the period 19 November 2021 to 15 December 2021, the calculation of loss is 3.6 weeks' gross pay, being 3.6 x £1,000 = £3,600. The respondent agreed that figure.

90. In respect of the unauthorised deduction from wages relating to the failure to pay the claimant's income protection premiums for the period 1 November 2021 to 15 December 2021, the calculation of loss is 1.5 months' contributions, being 1.5 x £210 = £315. The respondent agreed that figure.

91. In respect of the unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken annual leave on termination of employment, the calculation of loss is 10 days' gross pay, being 10 x £200 = £2,000. The respondent agreed that figure.

92. The calculation of damages for wrongful dismissal is 24.6 weeks of gross losses, being salary at £1,000 per week, income protection at £48.46 per week, plus company car use at £184.62 per week. This totals £30,333.77, but is capped at the sum of £25,000. The respondent agreed that figure.

93. The calculation of the basic award is 19 years x 1.5 x £544, plus 1 year x 1 x £544, totalling £16,048. The respondent agreed that figure.

94. The entitlement to and calculation of the compensatory award was agreed between the parties as 1 year of losses of salary (giving credit for notice pay awarded), income protection premiums, and company car use, plus a 15% uplift for failure to follow the ACAS code. The parties agreed that this figure would exceed the cap of a year's gross pay, and agreed the figure of £52,000.

Employment Judge Withers

Date 4 October 2022

REASONS SENT TO THE PARTIES ON

4 October 2022

Miss K Featherstone
FOR THE TRIBUNAL OFFICE