



EMPLOYMENT TRIBUNALS

Claimant

Miss Keely Rawlings

v

Respondent

A & D Holdings

Heard at: Watford

On: 8 July 2022

Before: Employment Judge Talbot-Ponsonby

Appearances

For the Claimant: In person

For the Respondent: Mr Kevin Burrows

RESERVED JUDGMENT

1. The claimant's claim for deductions of wages is well founded and the claimant is awarded the gross sum of £3,470.04. The claimant may need to account for tax and NI on this sum.
2. This sum is the difference between the gross amount that should have been paid by the respondent to the claimant over the period of her employment (£49,000) and the actual amount paid by the respondent to the claimant (£45,529.96).
3. The respondent is in breach of contract by failing to contribute to the claimant's pension and the claimant is awarded the sum of £675, being 9 months at £2,500 x 3%.
4. The claimant's claim for notice pay and holiday pay is not well founded and is dismissed.
5. The respondent is in breach of its obligation to provide the claimant with written particulars of her employment and the claimant is awarded the sum of £2,307.68, being 4 times the weekly wage of £576.92.

REASONS

Introduction

1. This is a claim brought by Miss Keely Rawlings, the claimant, against A & D Holdings Limited, the respondent, in respect of wages, holiday pay, arrears of pay and other payments that she says were outstanding when her employment came to an end.

Claims and issues

2. The claimant claims that she has been underpaid in respect of the following:

- (a) Wages – having seen her wage slips (which she says were not provided to her during her employment), she says that the amount paid to her by the respondent does not reflect the amount she had agreed to be paid
 - (b) Although she did not initially ask for a pension, she did ask to be enrolled in the pension scheme with effect from July 2020 and this was not done, so she did not receive any pension contributions from the respondent
 - (c) At the time she left, she had only used 17 days of her 21 days' holiday allowance, and therefore was owed in respect of 4 days' holiday
 - (d) She states that the respondent terminated her employment one day early, and therefore she is missing a day's pay
3. At the outset of the hearing, I identified the following issues to be resolved:
4. Preliminary issues
- (a) Was the claim brought in time?
 - (b) Was the claimant employed by the respondent?
5. Substantive issues
- (a) What were the terms of the contract? In particular, was it based on gross or net pay?
 - (b) Has the claimant been given written particulars of her employment in accordance with section 1 of the Employment Rights Act 1996?
 - (c) How much was it agreed that the claimant would be paid?
 - (d) Was the claimant entitled to a pension contribution?
 - (e) If so, from when?
 - (f) How much was the claimant paid?
 - (g) If it was less than agreed, was there a lawful reason for the deduction?
 - (h) Was any deduction agreed?
 - (i) Were any of the deductions more than 2 years before issue of the claim?
 - (j) When was the claimant on furlough?
 - (k) When was the last day of her employment?
 - (l) How much holiday was the claimant entitled to and how much was used

- (m) Has there been a failure by the respondent to account to HMRC for tax deducted
- 6. If I find in favour of the claimant, the following will need to be considered by way of remedy:
 - (a) Amount of unpaid wages
 - (b) Pension contributions
 - (c) Holiday pay
 - (d) Notice pay
 - (e) Any award for non provision of written particulars

Procedure, documents and evidence

- 7. The hearing was held at Watford Employment Tribunal on 7 July 2022 at 10.00. It was originally listed as an in person hearing.
- 8. On 5 and 6 July 2020, Mr Kevin Burrows, the accountant acting as representative for the respondent, and who was also due to give evidence for the respondent, raised 2 concerns:
 - (a) Mr A Head, the director of the respondent, is in hospital receiving treatment for late stage cancer, and his son, Mr D Head, the other director, was looking after him; and
 - (b) Mr Burrows, the representative, was unable himself to attend an in person hearing due to lymphodema and bound legs, meaning that he cannot drive and has mobility problems.
- 9. Mr Burrows therefore requested that the hearing be held via CVP. He also raised concerns about the provision of the hearing bundle and the quality of the documents supplied.
- 10. This was opposed by the claimant, who insisted that she had provided all relevant documents and that the hearing should proceed in person.
- 11. Regional Employment Judge Foxwell ordered that the hearing should proceed as a hybrid hearing, with the claimant in person and Mr Burrows attending by CVP.
- 12. The tribunal had hearing bundles prepared by the claimant and the respondent. The parties each confirmed that they had these bundles, either in paper or electronically.
- 13. Witness statements were provided by the claimant and by Mr Darren Head and Mr Burrows on behalf of the respondent. I heard live evidence from the claimant and from Mr Burrows, and submissions from the claimant and Mr Burrows.

Fact finding

14. The claimant started work for the respondent on 1 July 2019, as a product co-ordinator.
15. In her witness statement, the claimant states that she agreed a starting salary of £30,000, the same as her previous employment, with 21 days' holiday in addition to statutory holidays, and she had access to a pool car. She asked about a written contract but was told by Darren Head that this was a verbal contract, as that was how he liked to work.
16. Mr Head in his witness statement make no reference to any written contract, and neither party has provided a written contract to the tribunal. Accordingly, I find that there was no written contract of employment, and that the claimant was not provided with any written particulars of her employment.
17. Mr Head states that he agreed to employ the claimant on what he describes as a "net pay" agreement, i.e. that the claimant would receive the same net amount each month, of £1,830, and the gross amount might be adjusted to make this match. Mr Burrows explains in his witness statement that HMC have a "grossing up" tool as part of the PAYE filing programme to make this possible.
18. In her oral evidence, the claimant stated that she had not agreed to this, and had never heard of a "net pay" agreement, and the first she had heard of this was when the respondent responded through ACAS to the claimant's complaint. Mr Burrows said such agreements were reasonably common, and gave as an example a company director who might wish to have a consistent income.
19. In the ET3, the respondent states that the claimant had "complicated passed (sic) tax issues", and that the net pay agreement was to ensure that she had a consistent income. The claimant accepted that, at the start of her employment, she owed some money to HMRC, and she therefore expected this to affect her initial net salary, but that she expected her pay to increase after a few months after this had been paid off through PAYE, as long as the respondent used the correct tax codes.
20. On balance, considering the evidence of the claimant, and according relatively little weight to the evidence of Mr Head, as he was not available for cross examination, I find that the claimant was employed on a gross salary of £30,000, and not any form of net salary arrangement. I also note the point made by the claimant in her oral evidence, that she had two conversations with Mr Head in June 2020, in which she asked about her PAYE coding and the tax; she also sent emails in July 2020, in one of which she refers to a salary of £29,000 or £30,000, and asks for conformation which is correct. There is no response from Mr Head to state that the claimant has a net pay agreement rather than gross.
21. In addition, I consider it much more likely that the parties agreed a gross salary for the claimant, as it is far more usual. A net payment arrangement may be useful for partners, who wish to make consistent drawings on account of profits not yet calculated, or owner-managers who might ultimately take a salary or bonus related to the profits of the company, but they are very rare for junior employees.

22. It is also implausible that an employer would apparently voluntarily assume liability for the tax debt of a new employee, which would be the effect of a “net pay” agreement.
23. Finally, it is sufficiently unusual that, if it had been agreed, I would expect there to be a written record of it, and there is not. In his witness statement, Mr Burrows states, “*the respondent company advised me that they had agreed a net wage constant (sic) for this employee*” but I have seen no letter or email recording this.
24. The claimant explained that she never received payslips during her employment, but only on 19 April 2021 after her employment ended. This has not been challenged by the respondent in any meaningful way; Mr Burrows stated that he sent all the respondent’s payslips to Mr Head for onward submission to the employees, but Mr Head was not available to comment on this. I accept the claimant’s evidence that she did not receive the payslips while employed.
25. She has not provided bank statements or suggested that the net figures shown on the payslips are different from what she received, and so I find that she has received the net amounts shown on the payslips.
26. The gross amount is harder to ascertain; the claimant suggests that the payslips have been edited, and relies on a printout which has a column headed “date last edited”. I find that this is not sufficiently clear to suggest that the figures have been tampered with. However, analysis of the various figures in the payslips and in the information obtained by the claimant by HMRC shows that the “year to date” figures on the payslips do not tally with the actual amounts on the payslips, nor do the payslips match the figures given by the respondent to HMRC. I will accordingly adopt the monthly figures from the payslips, which are set out in the schedule to this decision, and work from these. The “year to date” figures in that schedule are not taken from the payslips but are calculated by adding up the monthly figures. This is not entirely satisfactory but that is not the claimant’s fault; she has provided the best information she could. The respondent has failed to provide clear information.
27. Other than deductions for tax and national insurance, there is no suggestion that any other deductions have been agreed or sought to be made.
28. I consider now the question of when the claimant was on furlough. Her evidence was that, at the end of March 2020, Mr Head closed the office but asked the claimant to take all her things home so that she could continue working from home. She did work throughout April 2020, although it was a little quiet, but then in early May 2020, the claimant questioned the level of her pay with Mr Head, as she had received less than expected. She pointed out to Mr Head that, if she was on furlough, she should not be working and she had not been asked to be placed on furlough.
29. Similarly, the claimant explained that she came back to work at the beginning of July 2020.

30. The respondent has adduced no evidence in respect of this and I accept the claimant's evidence that she worked in April and July 2020, and throughout the second lockdown in later 2020 as well.
31. I note that the respondent made a cash payment to the claimant in early May 2020. The claimant states that it was £200; the respondent states that it was £100. It is not sufficiently clear what this related to, so I will treat this as an ex gratia payment and will not take it into account in the calculations below.
32. As far as holidays are concerned, the claimant's position is that she was entitled to 21 days of holiday but only took 17 in the year to the end of March 2021, as set out in her schedule. This was accepted on behalf of the respondent by Mr Burrows.
33. As for the last day of her employment is concerned, the claimant states that she gave notice to leave on 26 March 2020, but Mr Head asked her to finish a day early, on 25 March 2020. Mr Burrows explained that the respondent had paid the claimant until the end of March 2021, and so the claimant had not been underpaid in this regard. I will take this into account when calculating any remedy due to the claimant.
34. The claimant has said that, in June 2020, she asked Mr Head about her pension, and this is consistent with the email I have seen from July 2020 when she chased up this issue. There is no signed agreement from the claimant opting out of any pension arrangements, and so I find that the claimant was entitled to pension contributions with effect from 1 July 2020, and that these were not paid by the respondent. The minimum legal requirement is 3% and I find that the claimant should have been paid 3% of her gross salary by way of employer's pension contributions from that date.

Law

35. Other than to the extent regulated by legislation such as the National Minimum Wage Act 1998 and regulations made thereunder, the level of a salary payable to an employee, and how and when it is payable, is a matter to be agreed by the employer and employee (or occasionally by collective bargaining) and is governed by the terms of the relevant employment contract.
36. Once this agreement has been reached, however, the employer is obliged to pay the salary in the times and manner agreed. This is governed by Part II of the Employment Rights Act 1996 ("the ERA"), and section 13 provides as follows:

"13 Right not to suffer unauthorised deductions

(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.*
 - (2) *In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—*
 - (a) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
 - (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*
 - (3) *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 the wages properly payable by him to the worker on that occasion (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 worker’s wages on that occasion.*
 - (4) *Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*
 - (5) *For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*
 - (6) *For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*
 - (7) *This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.”*
37. Section 14 of the ERA excludes from section 13 any deductions made to recoup overpaid wages or expenses, and certain other deductions, none of which is relevant to this case.

38. A “worker” is defined in section 230 of the ERA, and includes (but is not restricted to) an employee.
39. “Wages” are defined by section 27 of the ERA and include “any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise” (section 27(1)(a)).
40. Pension contributions are not wages within the meaning of the ERA, as confirmed by the EAT in *Somerset County Council v Chambers* EAT 0417/12. I address the position with respect to pension contributions below.
41. Under the Coronavirus Job Retention Scheme, introduced pursuant to s.76 of the Coronavirus Act 2020, employers were permitted and encouraged to place staff on furlough. The staff were not permitted to work, but employers were to pay them 80% of their wages, subject to a cap of £2,500 per month. Employers were entitled to claim a grant from the government (administered by HMRC) to cover a proportion of the wages and pension contributions of staff who were placed on furlough; this started as an amount equal to the 80% paid to the staff, but gradually decreased, with the employer still being required to pay the 80% to the employee (subject to the cap). It follows from this that the payments due to employees under the furlough scheme (other than pension contributions) are wages within the meaning of s.27 ERA. Employers were still required to deduct and account for income tax and NICs under the PAYE scheme.
42. Pursuant to section 23 of the ERA, any claim to the Tribunal must be made within 3 months of the deduction or, in the case of a series of deductions, 3 months of the last of the series (subject to any extension of time arising out of a reference to ACAS).
43. As to pensions, under Part 1 of the Pensions Act 2008, every employer has duties:
 - (a) To choose and register with a pension scheme that can be used for automatic enrolment
 - (b) To inform their staff of the scheme; and
 - (c) To put the staff into the scheme unless they opt out
44. The employer must, for the staff enrolled in the scheme, make contributions of at least 3% of qualifying earnings.
45. If and to the extent that the employer is under a contractual duty to pay the pension contributions, then an employee may nonetheless have a remedy in the tribunal arising out of the breach of contract.
46. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 gives the Tribunal jurisdiction to hear claims for damages made by employees against their employers. Any such claim can only be brought after the termination of employment and must relate to a cause of action which arises or is outstanding on the termination of employment.

47. As with claims in respect of deductions from wages, any such claim must be brought within 3 months of the termination of employment.
48. Section 1 of the ERA provides as follows:

“1 Statement of initial employment particulars

- (1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.*
- (2) Subject to sections 2(2) to (4)—*
 - (a) the particulars required by subsections (3) and (4) must be included in a single document; and*
 - (b) the statement must be given not later than the beginning of the employment.*
- (3) The statement shall contain particulars of—*
 - (a) the names of the employer and worker,*
 - (b) the date when the employment began, and*
 - (c) in the case of a statement given to an employee, the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).*
- (4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment of a statement given under section 2(4) containing them) is given, of—*
 - (a) the scale or rate of remuneration or the method of calculating remuneration,*
 - (b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),*
 - (c) any terms and conditions relating to hours of work including any terms and conditions relating to—*
 - (i) normal working hours,*
 - (ii) the days of the week the worker is required to work, and*
 - (iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined,*

- (d) *any terms and conditions relating to any of the following—*
 - (i) *entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the worker's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),*
 - (ii) *incapacity for work due to sickness or injury, including any provision for sick pay, ...*
 - (iia) *any other paid leave, and*
 - (iii) *pensions and pension schemes,*
- (da) *any other benefits provided by the employer that do not fall within another paragraph of this subsection,*
- (e) *the length of notice which the worker is obliged to give and entitled to receive to terminate his contract of employment or other worker's contract,*
- (f) *the title of the job which the worker is employed to do or a brief description of the work for which he is employed,*
- (g) *where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,*
- (ga) *any probationary period, including any conditions and its duration,*
- (h) *either the place of work or, where the worker is required or permitted to work at various places, an indication of that and of the address of the employer,*
- (j) *any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, ...*
- (k) *where the worker is required to work outside the United Kingdom for a period of more than one month—*
 - (i) *the period for which he is to work outside the United Kingdom,*

- (ii) *the currency in which remuneration is to be paid while he is working outside the United Kingdom,*
 - (iii) *any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and*
 - (iv) *any terms and conditions relating to his return to the United Kingdom,*
 - (l) *any training entitlement provided by the employer,*
 - (m) *any part of that training entitlement which the employer requires the worker to complete, and*
 - (n) *any other training which the employer requires the worker to complete and which the employer will not bear the cost of.*
 - (5) *Subsection (4)(d)(iii) does not apply to a worker of a body or authority if—*
 - (a) *the worker's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act, and*
 - (b) *any such provision requires the body or authority to give to a new worker information concerning the worker's pension rights or the determination of questions affecting those rights.*
 - (6) *In this section “probationary period” means a temporary period specified in the contract of employment or other worker's contract between a worker and an employer that—*
 - (a) *commences at the beginning of the employment, and*
 - (b) *is intended to enable the employer to assess the worker's suitability for the employment.”*
49. Section 38 of the Employment Act 2002 provides a remedy for the failure to provide written particulars of employment in accordance with section 1 of the ERA. It provides as follows:
- “38 Failure to give statement of employment particulars etc**
- (1) *This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.*
 - (2) *If in the case of proceedings to which this section applies—*

- (a) *the employment tribunal finds in favour of the worker, but makes no award to him in respect of the claim to which the proceedings relate, and*
- (b) *when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 (c 18) (duty to give a written statement of initial employment particulars or of particulars of change) or (in the case of a claim by an employee) under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday),*

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

- (3) *If in the case of proceedings to which this section applies—*

- (a) *the employment tribunal makes an award to the [worker] in respect of the claim to which the proceedings relate, and*
- (b) *when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by an employee) under section 41B or 41C of that Act,*

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

- (4) *In subsections (2) and (3)—*

- (a) *references to the minimum amount are to an amount equal to two weeks' pay, and*
- (b) *references to the higher amount are to an amount equal to four weeks' pay.*

- (5) *The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.*

- (6) *The amount of a week's pay of a worker shall—*

- (a) *be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c 18), and*

- (b) *not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).*
 - (6A) *The provisions referred to in subsection (6) shall apply for the purposes of that subsection—*
 - (a) *as if a reference to an employee were a reference to a worker; and*
 - (b) *as if a reference to an employee's contract of employment were a reference to a worker's contract of employment or other worker's contract.]*
 - (7) *For the purposes of Chapter 2 of Part 14 of the Employment Rights Act 1996 as applied by subsection (6), the calculation date shall be taken to be—*
 - (a) *if the worker was employed by the employer on the date the proceedings were begun, that date, and*
 - (b) *if he was not, in the case of an employee, the effective date of termination as defined by section 97 of that Act or in the case of all other workers the date on which the termination takes effect]*
 - (8) *The Secretary of State may by order—*
 - (a) *amend Schedule 5 for the purpose of—*
 - (i) *adding a jurisdiction to the list in that Schedule, or*
 - (ii) *removing a jurisdiction from that list;*
 - (b) *make provision, in relation to a jurisdiction listed in Schedule 5, for this section not to apply to proceedings relating to claims of a description specified in the order;*
 - (c) *make provision for this section to apply, with or without modifications, as if—*
 - (i) *any individual of a description specified in the order who would not otherwise be an employee for the purposes of this section were an employee for those purposes, and*
 - (ii) *a person of a description specified in the order were, in the case of any such individual, the individual's employer for those purposes."*
50. Under the tax legislation, employers are required to deduct income tax and national insurance contributions from employees' income and account to

HMRC in respect of this. Employers are required to provide payslips that show the gross amount of pay, the amounts deducted and accounted for to HMRC, and the net amount of pay.

Conclusions

51. With regard to the issues identified above, I therefore find as follows:

Was the claim brought in time?

52. The claim was brought in time. The last day of the claimant's employment was 26 March 2021, the reference to ACAS was on 20 May 2021, the certificate was issued on 28 June 2021 and the claim was received by the tribunal on 27 July 2021, which is within one month of the ACAS certificate.

Was the claimant employed by the respondent?

53. Both parties agree that the claimant was employed by the respondent.

What were the terms of the contract? In particular, was it based on gross or net pay?

54. As I have set out above in my findings of fact, the parties agreed that the claimant would be paid a gross salary of £30,000.

Has the claimant been given written particulars of her employment in accordance with section 1 of the Employment Rights Act 1996?

55. No, she has not. Accordingly, I am required to award her either 2 weeks' pay or (if I consider it just and equitable to do so), 4 weeks' pay.

56. Considering the egregious failure to provide any written information about her contract, or any payslips during her employment, I consider that it is just and equitable to award the higher amount of 4 weeks' pay.

How much was it agreed that the claimant would be paid?

57. As I have set out above in my findings of fact, the parties agreed that the claimant would be paid a gross salary of £30,000.

Was the claimant entitled to a pension contribution? If so, from when?

58. As I have set out above in my findings of fact, the claimant was entitled to be paid a pension contribution of 3% of her gross salary from 1 July 2020.

How much was the claimant paid?

59. I have set out in the attached schedule how much the claimant was paid. For August 2019 until the end of March 2020, the claimant should have been paid £20,000 net of tax. She was paid a total of £19,029.30 gross, which amounts to a gross shortfall of £970.70 (gross).

60. For the year 2020-2021, and working until the end of March 2021 (as the respondent has done), the claimant's gross salary was £30,000, except that for 2 months (Mar and June 2020) she was only receiving 80% of this. This

amounts to a total due for the year of £29,000. The payslips indicate that she was actually paid £26,500.66, amounting to a gross shortfall of £2,499.34.

61. This amounts to a total shortfall in gross wages of £3,470.04.

If it was less than agreed, was there a lawful reason for the deduction?

62. No lawful reason has been advanced by the respondent.

Was any deduction agreed?

63. No deduction was agreed.

Were any of the deductions more than 2 years before issue of the claim?

64. All the deductions were within 2 years of the claim

When was the claimant on furlough?

65. As I have set out above in my findings of fact, the claimant was on furlough in May and June 2020, but not in April or July 2020.

When was the last day of her employment?

How much holiday was the claimant entitled to and how much was used

66. I will address these two issues together. The last day of the claimant's employment was supposed to be Friday 26 March 2021, but the respondent asked her to stop work on Thursday 25 March 2021. However, I accept that the respondent has (subject to the shortfall that I have already calculated) paid the claimant until the end of March 2021. This means that the claimant has been paid for 5 days (27-31 March 2021), when she was no longer working. Accordingly, although it was agreed that the claimant had not used all her holiday allowance, by paying her until the end of the month this has been addressed.

Has there been a failure by the respondent to account to HMRC for tax deducted?

67. I simply cannot resolve this question on the information available to me. The figures given in the payslips do not tally with the figures on the HMRC printouts which the claimant has obtained, and which is the information supposedly given by the respondent to HMRC.

68. I will resolve this issue by requiring the respondent to make any payment to the claimant gross of tax, so that the claimant can resolve this direct with HMRC and only pay so much tax as is necessary. It may be that no additional tax is due.

69. Accordingly, by way of remedy:

- (a) The claimant is entitled to the sum of £3,470.04 in respect of unpaid wages as set out above. Tax and NI may be due on this sum.

- (b) The claimant is entitled to pension contributions in the sum of £675, being 9 months at £2,500 x 3%
- (c) By calculating the claimant's wages up to the end of March 2021, as the respondent did, the claimant is not entitled to any additional payment in respect of holiday or notice
- (d) The payment for the respondent's failure to provide a written statement of terms of employment amounts to the sum of £2,307.68, being 4 times the weekly wage of £576.92.
- (e) Although the claimant states in her schedule of loss that the shortfall in wages has caused her financial difficulty for which she wishes to be compensated, there is no evidence of any actual financial loss that can be shown to have been caused by the unpaid wages. I therefore make no award for this, but it is another factor I have taken into account when awarding the higher amount for the failure to provide written particulars of her employment.

70. The total amount due to the claimant is therefore £6,452.72.

Employment Judge Talbot-Ponsonby

Date: 29 September 2022

Sent to the parties on: 6 October 2022

For the Tribunal Office

SCHEDULE: FIGURES FROM CLAIMANT'S PAYSLEIPS

Month	Year	Gross	Deductions			Net	Year to date			
			Tax	NI	Total		Gross	Deductions	Tax	Net
August	2019	1,981.50	0.00	151.50	151.50	1,830.00	1,981.50	151.50	0.00	1,830.00
September	2019	1,981.50	0.00	151.50	151.50	1,830.00	3,963.00	303.00	0.00	3,660.00
October	2019	2,511.05	466.00	215.05	681.05	1,830.00	6,474.05	984.05	466.00	5,490.00
November	2019	2,511.05	466.00	215.05	681.05	1,830.00	8,985.10	1,665.10	932.00	7,320.00
December	2019	2,511.05	466.00	215.05	681.05	1,830.00	11,496.15	2,346.15	1,398.00	9,150.00
January	2020	2,511.05	466.00	215.05	681.05	1,830.00	14,007.20	3,027.20	1,864.00	10,980.00
February	2020	2,511.05	466.00	215.05	681.05	1,830.00	16,518.25	3,708.25	2,330.00	12,810.00
March	2020	2,511.05	466.00	215.05	681.05	1,830.00	19,029.30	4,389.30	2,796.00	14,640.00
April	2020	2,008.84	365.60	146.02	511.62	1,497.22	2,008.84	511.62	365.60	1,497.22
May	2020	2,008.84	365.60	146.02	511.62	1,497.22	4,017.68	1,023.24	731.20	2,994.44
June	2020	2,008.84	365.60	146.02	511.62	1,497.22	6,026.52	1,534.86	1,096.80	4,491.66
July	2020	2,008.84	365.60	146.02	511.62	1,497.22	8,035.36	2,046.48	1,462.40	5,988.88
August	2020	2,498.13	463.40	204.73	668.13	1,830.00	10,533.49	2,714.61	1,925.80	7,818.88
September	2020	2,244.95	240.60	174.35	414.95	1,830.00	12,778.44	3,129.56	2,166.40	9,648.88
October	2020	2,498.13	463.40	204.73	668.13	1,830.00	15,276.57	3,797.69	2,629.80	11,478.88
November	2020	2,244.95	240.60	174.35	414.95	1,830.00	17,521.52	4,212.64	2,870.40	13,308.88
December	2020	2,244.73	240.40	174.33	414.73	1,830.00	19,766.25	4,627.37	3,110.80	15,138.88
January	2021	2,244.73	240.40	174.33	414.73	1,830.00	22,010.98	5,042.10	3,351.20	16,968.88
February	2021	2,244.95	240.60	174.35	414.95	1,830.00	24,255.93	5,457.05	3,591.80	18,798.88
March	2021	2,244.73	240.40	174.33	414.73	1,830.00	26,500.66	5,871.78	3,832.20	20,628.88