



EMPLOYMENT TRIBUNALS

Claimant: Miss M Yule

Respondent: Health Hut Professionals Limited

Heard at: Newcastle CFCTC **On:** 28 September 2022

Before: Employment Judge Arullendran

Representation:

Claimant: In person

Respondent: Mr Gregory Hine (solicitor)

Reasons

1. The claimant presented a claim form to the Employment Tribunal on 12 April 2022 and made claims of unfair dismissal, notice pay, holiday pay and arrears of pay against the respondent. The respondent resisted all the claims.

The hearing

2. The issues to be determined by this Tribunal were agreed between the parties at the beginning of this hearing as being the following:
 - 2.1 Was the C dismissed on 8 February 2022? If so, the dismissal was unfair.
 - 2.2 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.2.1 What financial losses has the dismissal caused the claimant?
 - 2.2.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.2.3 If not, for what period of loss should the claimant be compensated?

- 2.2 .4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 2.2 .5 If so, should the claimant's compensation be reduced? By how much?
- 2.2 .6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.2 .7 Did the respondent or the claimant unreasonably fail to comply with it by failing to follow a dismissal procedure or by failing to appeal?
- 2.2 .8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 2.2 .9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- 2.2 .10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 2.2 .11 Does the statutory cap of fifty-two weeks' pay apply?

- 2.3 What basic award is payable to the claimant, if any?

- 2.4 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

- 2.5 What was the claimant's notice period?

- 2.6 Was the claimant paid for that notice period?

- 2.8 Is the claimant entitled to receive payment for accrued and outstanding annual leave? If so, how is the sum to be calculated?

- 2.9 Has the respondent made unauthorised deductions from the claimant's wages? If so, how is this sum to be calculated?

3. I was provided with a joint bundle of documents consisting of 280 pages. There was a dispute between the parties with regard to the correct version of the letters sent by the respondent to the claimant during the disciplinary process and a number of text or WhatsApp messages. The respondent very helpfully did not take issue with those extra documents being added to the bundle and I gave the claimant permission to add those documents which are now numbered 281 to 293.

4. I heard witness evidence from the claimant, Mrs Angela Yule, Ms Deborah Robson, Ms Jordan McCrostie, Mr Nadeem Shah (director), Mrs Shamshad Shah (director), Mr Jonathan Dolan (business manager), Ms Sarah Kinghorn (pharmacy assistants) and Ms Hafsana Begum (locum pharmacist).

5. I asked the claimant whether she required any reasonable adjustments to be made to assist her with effectively taking part in the hearing. She told me that she was experiencing extreme anxiety at present, for which she is being treated, and it was agreed that Ms McCrostie would remain seated next to claimant throughout the hearing to provide whatever assistance the claimant required, that I would provide whatever explanations the claimant required, that the claimant could ask questions of me throughout the hearing regarding the process and that the claimant could request breaks whenever she needed them. The claimant was upset at several times during the hearing

and, on each occasion, she was asked whether a break was required. On one of these occasions a break was requested and was accommodated by the Tribunal.

6. Mr Hine very helpfully set out the respondent's case at the beginning of the hearing and conceded that, if this Tribunal were to find that the claimant was dismissed on 8 February 2022, no procedures were followed by the respondent prior to the dismissal and that the claimant would be entitled to receive four weeks' notice pay. The respondent also conceded that, if the claimant was dismissed on 8 February 2022, which is disputed, then the claimant would be entitled to receive her accrued and outstanding holiday pay and wages up to 8 February 2022.

The facts

7. The claimant began her employment with the respondent on 16 October 2017. The claimant was employed as a pharmacy assistant and she is qualified as a pharmacy dispenser. The respondent company operates two pharmacies and the claimant was based at a pharmacy in Morpeth, Northumberland. The respondent does not have a dedicated HR Department and obtains its HR advice from a third party. Mrs Shah is the director within the respondent organisation who is responsible for HR matters, but the external HR advisor can be approached by any of the respondent's managers at any time and such requests for advice do not have to go through Mrs Shah.
8. On 31 January 2022 Mr Shah, a director of the respondent company, was contacted by the NHS and advised that a member of the public had made an anonymous online complaint about his pharmacy. The complaint was about the way the customer had been spoken to by a female member of staff, but the complainant did not give any details from which the female member of staff could be identified and it did not specify the date on which the incident is said to have occurred. Mr Shah did not respond to the original complaint, he was contacted again by the NHS team on 4 February 2022 and he was again asked to respond to the complaint. As a result, Mr Shah spoke to Sarah Kinghorn by telephone to find out which staff members had been in work on 28 and 29 January 2022, which appeared to him to be the timeframe in which the incident took place. Ms Kinghorn told Mr Shah that Ms Begum was the pharmacist on duty on those particular days. Mr Shah then asked Ms Kinghorn to pass the telephone to Ms Begum so that he could ask her whether she remembered any incident or complaint from 28 or 29 January 2022. Meanwhile, Ms Kinghorn told the claimant about what she had been asked by Mr Shah.
9. Ms Begum told Mr Shah during the telephone call on 4 February 2022 that there had been an incident about a delivery issue with two patients, plus a telephone call on 29 January 2022 which the claimant had taken where the customer was being difficult which resulted in the claimant's tone being slightly raised. Ms Begum's account of the latter incident was that it was the patient who was rude to the claimant and that the claimant had replied that she was merely doing her job and that she could not do what the patient was asking her to do. Ms Begum told Mr Shah that she did not believe that any of the staff, including the claimant, did anything on 28 or 29 January 2022 which could be a cause for concern and that their behaviour had not been in any way inappropriate. At the end of this conversation Mr Shah asked Ms Begum to speak to the claimant about what they had discussed.

10. Ms Begum spoke to the claimant in the backroom, away from other members of staff, and asked her what she could remember about the incident with the customer on the telephone, explaining that Mr Shah had asked her to recount to the claimant his conversation with Ms Begum. The claimant told Ms Begum that she could not remember the conversation however she was aware that two other patients had made a complaint that week. Ms Begum told the claimant that it was definitely not the two patients who had raised the anonymous complaint. The claimant found this to be an odd statement given that the complaint was anonymous and the claimant queried this comment, to which Ms Begum replied that Mr Shah had told her that it was not these two patients who had made the complaint. At this stage, the claimant started feeling uncomfortable about carrying on the conversation in private and decided to go into the dispensary area where other members of staff were present because she felt very upset and confused about why her telephone conversation appeared to be the focus of the investigation when the complaint was anonymous and there had been three people working on 28 and 29 January, but that it appeared the claimant was the only one who was being questioned. The claimant then told Ms Begum that she was going to send a message to Mr Shah to ask why hers was the only name that had been mentioned in connection with this complaint. Ms Begum told the claimant not to bother sending such a message to Mr Shah and that it was nothing to worry about. Ms Begum told the claimant that she “had her back” but this upset the claimant further as she did not understand why Ms Begum needed to “have her back” when the complaint was anonymous and no names had been mentioned. At this stage the claimant became upset, anxious and angry and asked Ms Begum who had actually brought her name up in the first place. Ms Begum did not answer this question and the claimant said it could only be either Ms Begum or Mr Shah at which point Ms Begum said it was Mr Shah.
11. The claimant was very angry that Mr Shah had implicated her in this complaint as she had been feeling that Mr and Mrs Shah wanted her out of the business for a while. Ms Begum tried to reassure the claimant that it was not an issue to get upset about, but the claimant felt that Ms Begum was missing the point as she felt that she was being targeted by the respondent.
12. The claimant sent a message to Mr Shah at 3:59 PM whilst she was at work on 4 February 2022 (page 165). Mr Shah replied to the claimant at 11:30 PM that evening and the claimant felt that the message was rather aggressive (page 166). Mr Shah and the claimant exchange messages until 12:50 AM (page 166 to 170) and the claimant was extremely upset throughout the exchange because she felt that Mr Shah’s version of the telephone call with Ms Begum was different to what she had been told directly by Ms Begum herself.
13. When the claimant returned to work on the morning of 8 February 2022, she spoke to the business manager, Mr Dolan, about the events which had taken place. Mr Dolan was not aware of the events as he was not in work on 4 February 2022 or 7 February 2022 as he had been away on annual leave. The claimant explained to Mr Dolan that she had received differing accounts from Mr Shah and Ms Begum about who had mentioned her name in connection with the anonymous complaint received by the NHS and that each were blaming the other. The claimant also told him about Mr Shah sending messages to her between 11:30 PM and 12:50 AM which was well outside work hours. Mr Dolan

suggested that the best way to deal with the situation was for him to speak to Mr Shah and that he would get back to the claimant after that conversation. Mr Dolan asked the claimant if she felt all right to continue with her shift, to which the claimant said yes.

14. Later that morning, after Mr Shah had seen some patients, he asked if he could have five minutes with the claimant in the staff room upstairs, to which she agreed. Mr Dolan was also present at this meeting. The minutes from this meeting can be seen at pages 96 to 97 of the bundle. Mr Dolan produced these minutes, although the claimant's evidence is that Mr Dolan was not taking minutes throughout the meeting, that he did not have a pen and paper with him and that he sat throughout the meeting with his legs crossed. Mr Dolan says that he typed up the minutes immediately after the meeting had ended, however he did not provide a copy to the claimant. Mr Dolan is aware of the ACAS code of practice on disciplining grievance procedures and accept that none of the requirements of that code were followed during this meeting because it was not anticipated that the meeting would end with the claimant's dismissal.
15. Mr Shah started the meeting by asking the claimant what was upsetting her. The claimant said that the WhatsApp messages on the previous Friday night had been out of order and that she felt Mr Shah had crossed the line. Mr Shah said that the claimant's messages had not been sent during working hours, which the claimant disagreed with as they were sent before 5 PM. The claimant offered to show the messages to Mr Shah, but he declined as he said he had already seen them. They also discussed the events of the afternoon of 4 February 2022 and the claimant questioned why Mr Shah had decided not to speak to her directly. The claimant also said that it was unfair that her name had been given in connection with the anonymous complaint when there were three people who were working in the pharmacy on particular days in question. The claimant said that Ms Begum had told her that Mr Shah had mentioned the claimant's name in connection with the complaint but that he had said in his WhatsApp messages it was Ms Begum who had mentioned the claimant's name. The claimant also questioned why Mr Shah had said that he had received the complaint from the NHS on 4 February 2022 when in reality it had been received before then and she further questioned why Mr Shah had not spoken to any of the other staff about the complaint. Mr Shah was extremely unhappy about this exchange and he was unhappy that the claimant had involved Mr Dolan when he had not been present at the relevant time. The claimant replied that Mr Dolan was the pharmacy manager and that it was his job to deal with such matters and that was why she had raised her concerns with him. Mr Shah went on to say no blame was being ascribed to any of the members of staff in respect of the anonymous complaint and Mr Dolan confirmed that that was the case. The claimant went on to say that the respondent's response to the NHS was not the issue that they had been discussing and that the real issue was the manner in which Mr Shah had approached the investigation, the telephone call to Ms Begum and the WhatsApp messages later that day. The claimant indicated that she was unhappy with these events. Mr Shah said that he did not need to put up with the claimant questioning him, that he could fact find however he wanted and that he could do whatever he wanted. Mr Dolan's evidence is that both the claimant and Mr Shah raised their voices and were talking over the top of each other during the meeting. Mr Shah then told the claimant to go downstairs, hand her keys over and to leave. Mr Shah told the claimant that that was her last day at work and that she no longer worked for the respondent, after which he left the room. The notes typed up by Mr Dolan at page 97 of the bundle reflect that the

claimant was told that she needed to go downstairs, to leave her keys, to leave the premises and not to return.

16. The claimant was extremely upset and tearful at this turn of events because she had lost her job. She went downstairs and handed her keys to Miss Kinghorn before she returned home. The claimant told Miss Kinghorn, as she handed her the keys, that she had lost her job. Mr Dolan accepts that the claimant said these words and he also accepts that he was surprised at the turn of events.
17. Mr Dolan's evidence is that he understood that the claimant would be returning to work after 8 February 2022 once the matter had been resolved and that he did not understand that the claimant had been dismissed. When asked directly by the Tribunal what he did about the claimant's statement that she had lost her job or who he spoke to about it, Mr Dolan said that he did nothing and spoke to no one about it. I do not accept Mr Dolan's evidence as an accurate reflection of what happened on the day as it is inherently implausible for a manager to not do anything or say anything when an employee hands in her keys and publicly announces that she has been dismissed. It is also clear from the account given by Miss Kinghorn that Mr Dolan and Mr Shah were together in the upstairs office after the claimant had left the building and did not come back downstairs until an announcement was made to the rest of the staff about the claimant's departure. In those circumstances, looking at all of the evidence in the round and on the balance of probabilities, it is extremely unlikely that Mr Dolan did not discuss the nature of the claimant's departure from the workplace with Mr Shah before the official announcement was made to the rest of the staff.
18. Both Mr Shah and Mr Dolan were asked why the claimant was required to hand in her keys on 8 February 2022 if, as the respondent says the claimant had not been dismissed. Mr Shah's evidence is that he had lost all trust in the claimant, she was disruptive to the business, she had attacked his credibility and he did not feel she should have access to the premises where patient records were kept. Mr Dolan told the Tribunal that the claimant was asked to hand the keys in because there was no trust between Mr Shah and the claimant and the workplace needed to be kept secure. However, it is clear from all of the accounts that Mr Shah did not take any advice or have any discussion with Mr Dolan before he told the claimant to leave her keys and I am not satisfied that Mr Dolan could have known on 8 February 2022 the purported reasons why Mr Shah had asked the claimant to hand in her keys. In the circumstances I do not accept Mr Dolan's evidence as an accurate account of what happened at the time and I prefer the claimant's evidence that Mr Shah was angry with her and decided to terminate her employment on 8 February 22, he told her to hand in her keys before leaving the building because he had decided that she was not coming back and that her employment had come to an end.
19. Mr Shah held a meeting on 8 February 2022 with the employees at the workplace where the claimant was based. There are conflicting accounts from the respondent's own witnesses as to the timing of that meeting, Ms Kinghorn saying that it was in the morning at around 11:30 AM and Mr Dolan's evidence is that it was late in the afternoon. There are also conflicting accounts between Mr Shah and his wife, who also works within the respondent organisation, as to the time he spoke to her in her capacity as the person with responsibility for HR matters about the incident with the claimant. Mr Shah says he

spoke to his wife later in the afternoon and Mrs Shah says that the conversation took place in the evening after 6:30 PM. In all the circumstances, I find Mr Shah not to be a credible witness and I find that he has attempted to rewrite history in order to suit his own narrative. Mr Shah's evidence to the Tribunal is that he told the rest of the staff that the claimant would not be returning to her original post but that she may return to work part-time in a different capacity. However, the messages sent to the claimant by the staff on 8 February 2022, which can be seen at pages 174 and 176, clearly state that they understood the claimant had lost her job and that Mr Shah had told the staff she was not coming back. Looking at all the evidence in the round, I am satisfied that Mr Shah's account and Mr Dolan's account of what happened on 8 February 2022 is not truthful and that this evidence has been provided in an attempt to mislead the claimant and to try and cover up the fact that the respondent realised after it had dismissed the claimant that it should not have done so without following a proper procedure.

20. Mrs Shah contacted her external HR adviser on 9 February 2022 and she wrote a letter to the claimant dated 10 February 2022, a copy of which can be seen page 101 of the bundle, inviting the claimant to an investigation meeting concerning alleged misconduct, purporting to treat the claimant as if she was still an employee. The claimant received this letter on 12 February 2022, however, in the meantime, the claimant had spoken to her GP on 8 February 2022 and told him that she had been dismissed (page 147), she had contacted citizens advice and ACAS to obtain advice about what to do because she had been dismissed and she had also made a claim for benefits as a result of the advice that she had received on the basis that she was now unemployed. In all the circumstances, and viewing all of the evidence in the round on the balance of probabilities, I am satisfied that the claimant believed that she had been dismissed, her subsequent actions demonstrate that she understood on 8 February 2022 that she had been dismissed and that she needed to take steps to claim benefits because she no longer had an income and she had to obtain legal advice about how to deal with the dismissal.
21. The respondent went through a lengthy process of arranging and rearranging disciplinary hearings in an attempt to backtrack and put right what it had done wrong on 8 February 2022. The claimant provided copies of her sick note to the respondent and explained that she would not be attending any of the meetings because this is the advice she received from citizens advice. I accept the claimant's explanation that she only provided copies of her sick notes on the basis of this advice and not because she believed that she was still an employee. The respondent made attempts to pay the claimant her wages at the end of February and March 2022, which the claimant declined to accept because she believed that such payments were fraudulent as she had already been dismissed.
22. The claimant was unfit from work due to her mental health as a result of the treatment she received from the respondent from 8 February 2022 to 29 June 2022. The claimant began a temporary job on 29 June 2022 and this continued until 31 August 2022 when she was unfit for work due to ill-health. The claimant is claiming loss of earnings from 8 February 2022 to 31 August 2022 and does not wish to claim any losses after 31 August 2022, as reflected in her witness statement and schedule of loss.

23. The claimant was paid to the end of January and has not received the wages she was entitled to up to 8 February 2022, four weeks' notice pay or the accrued and outstanding holiday pay she was entitled to as at the date her employment came to an end.

Submissions

24. The respondent relied on written closing submissions, the contents of which are not reproduced here but have been considered in their entirety. The respondent submits that the claimant was not dismissed on 8 February 2022 and relies on the case of BG Gail Ltd v Gilbert [1978] IRLR 453 in which the EAT held that the Tribunal must take an objective view of how the words or actions of the respondent would have been understood by a reasonable employee in the relevant circumstances (including proceeding and subsequent events and the nature of the workplace). The respondent's submission is that the provision of a fit note to the respondent when the claimant was asked to attend a disciplinary hearing is inconsistent with the claimant's assertion that she had been dismissed on 8 February.
25. The claimant made oral closing submissions and submits that the words said to her by Mr Shah on 8 February 2022 were clear in that she was to hand in her keys, leave the building and not return, as reflected in the note taken by Mr Dolan. The claimant also submits that the private messages she received from members of staff make it clear that they had been told about her dismissal and that it was not expressed as a suspension at the time.

The law

26. Section 98(4) of the Employment Rights Act 1996 (ERA) provides "*... The determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer) – depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.*"
27. Section 122(2) ERA provides "*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.*" I note that this provision is worded in mandatory terms and does not give the Tribunal discretion to reduce the award.
28. Section 123(1) ERA provides "*subject to the provisions of this section ... The amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer.*"
29. Section 123(6) ERA provides "*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.” I note that the just and equitable consideration applies only to the proportion by which the Tribunal reduces the award, but it does not apply to whether or not to make the reduction in the first place, nor does it entitle the Tribunal to take into account matters other than conduct that is causative or contributory to the dismissal.

30. I refer myself to the guidance given in the case of Rentplus UK Ltd v Coulson EA 2020 000809 in which the Employment Appeal Tribunal said that when considering an ACAS uplift the Tribunal should ask the following questions:

- Is the claim one which raises a matter to which the ACAS code applies
- has there been a failure to comply with the ACAS code in relation to that matter
- was the failure to comply with the ACAS code unreasonable
- is it just and equitable to award an uplift because of the failure to comply with the ACAS code and if so by what percentage up to 25%

31. I refer myself to the case of Graham Group plc v Garrett EAT 161/97 in which the Employment Appeal Tribunal held that any ambiguity is likely to be construed against the person seeking to rely on it.

Conclusions

32. Applying the law to the relevant facts, I find that the claimant was dismissed by Mr Shah on 8 February 2022. I am satisfied that the claimant herself understood that she had been dismissed and that Mr Shah also understood that he had dismissed the claimant, as reflected by the note produced by Mr Dolan and the subsequent messages sent by staff members to the claimant later that evening expressing sympathy that the claimant had lost her job. I am satisfied that the words used by Mr Shah were not ambiguous. Even on the respondents own evidence, the claimant was told to leave the building, hand in her keys and not to return. I accept the claimant's evidence as an accurate reflection of what was said to her by Mr Shah, which was she had to go downstairs, hand in her keys, leave the building, that it was her last day and that she no longer worked at Health Hut. Even if I am wrong, and there was some ambiguity, applying the guidance in the case of Garrett, any ambiguity must be construed against the person seeking to rely upon it and in this case it is the respondent who is seeking to rely upon it as it was Mr Shah's words which were used on behalf of the respondent. In any event, I am satisfied that a reasonable employee would understand by the words used by Mr Shah that they had been dismissed on 8 February 2022. All the attempts by the respondent after 8 February 2022 to arrange disciplinary hearings and to pay wages to the claimant as if she were still employed were a cynical attempt by the respondent to try and cover up its mistake and put right mistakes it had made when the claimant was summarily dismissed. I find that this attempt by the respondent has been disingenuous and it has been calculated to undermine the claimant's credibility and prevent her from pursuing her claim for compensation in the Employment Tribunal.

33. I do not accept the respondents submission that the provision of a fit note by the claimant in response to the respondent requiring her attendance at a disciplinary hearing is any

indication that the claimant subjectively or objectively understood that she was still employed. The claimant was very clear in her evidence, and I accept the claimant's evidence, that the only reason she provided a copy of her fit note to the respondent was because she was advised by citizens advice to do so and that it was not because the claimant thought that she was still employed by the respondent.

34. The respondent has conceded that, if there was a dismissal on 8 February 2022, that it would be deemed to be unfair, both substantively and procedurally. The respondent has not attempted to argue that it had a fair reason to dismiss the claimant on 8 February 2022. In the circumstances, I find that the claimant's dismissal is unfair pursuant to section 98 of the Employment Rights Act 1996.
35. I find that the respondent made no attempt whatsoever to apply any kind of process or procedure to the dismissal on 8 February 2022 and that it only made enquiries of its external HR providers after the dismissal had taken place. In those circumstances, I have no hesitation in finding that this is a claim to which the ACAS code applies, that there has been a failure to comply with that code by the respondent and that that failure was entirely unreasonable because no attempts were made by Mr Shah or Mr Dolan to follow the ACAS code or to halt the meeting and rearrange it so that the requirements of the ACAS code could be implemented (i.e. notifying the claimant of the nature of the allegations, allowing the claimant to be accompanied at a hearing, providing the claimant with copies of the relevant evidence and making provisions for the claimant to appeal against any decision, among other things). I find that Mr Shah behaved in a hot-headed manner in that he believed he could do whatever he wanted, he dismissed the claimant and then left the meeting room and his failure to follow any kind of process was entirely unreasonable. In those circumstances, I have no hesitation in finding that it is just and equitable for this Tribunal to award an uplift of the compensatory award to be awarded to the claimant in light of the unfair dismissal and that the uplift should be applied at the rate of 25% as provided for by section 207A of the Trade Union labour Relations Consolidation Act 1992: Rentplus UK Ltd applied.
36. The respondent has conceded that, if the claimant was dismissed on 8 February 2022, she is entitled to 4 weeks' notice pay, wages between 1 and 8 February 2022 and accrued and outstanding annual leave under the Working Time Regulations 1998 up to the date of termination.
37. The parties agree that the claimant is entitled to a basic award in the sum of £1386.96, 8 days wages in the sum of £349.04 net and 3 days accrued and outstanding annual leave in the sum of £130.89 net. However, during closing submissions, the respondent accepted that these should be calculated as gross figures.
38. I find that the claimant's claim for notice pay is well-founded and succeeds and the respondent is ordered to pay to the claimant 4 weeks' notice pay (the figures having been agreed between the parties) i.e. four multiplied by £306.25 = **£1225**. This is a net award and the respondent shall be liable to the Inland Revenue for any tax and national insurance payments thereon.
39. The respondent is ordered to pay to the claimant three days holiday pay (the figures having been agreed between the parties) i.e. three multiplied by £69.35 = **£208.05**. This

is a gross award and is subject to any tax and national insurance payments thereon that the respondent may be obligated to pay.

40. The claimant's claim for the unauthorised deduction of wages under section 13 of the ERA 1996 is well-founded. The respondent is ordered to pay to the claimant 8 days wages (the figures having been agreed between the parties) i.e. 8 multiplied by £69.35 = **£554.80**. This is a gross award and is subject to any tax and national insurance payments thereon that the respondent may be obligated to pay.

41. In terms of the compensation for unfair dismissal, I am not satisfied that there is any evidence in front of this Tribunal that the claimant's conduct prior to her dismissal was such that it would be just and equitable to reduce the amount of the basic award. Therefore, I make no reduction under section 122(2) ERA. The respondent is ordered to pay to the claimant a basic award in respect of four weeks continuous service i.e. four multiplied by £346.75 = **£1387**.

42. In terms of the compensatory award for unfair dismissal, I am not satisfied that there is any evidence in front of this Tribunal that the claimant's conduct prior to her dismissal was such that she caused or contributed to her dismissal and, therefore, I make no reduction under section 123(6) ERA. Further, I find that there is no evidence in front of this Tribunal that the claimant would have been fairly dismissed at a later date and, therefore, I make no reduction under the provisions of Polkey. The evidence of the respondent is that it had already made the decision that the claimant was not to return to her substantive role and that she would have to work in some other role or on a part-time basis, without discussing or agreeing this with the claimant. In those circumstances, the mindset of the respondent appears to be that the claimant would have continued working for the respondent in some other capacity and would not have been fairly dismissed after 8 February 2022. No reduction is to be made for the chance that the claimant might have been fairly dismissed at a later date and no reduction is to be made for failure to mitigate losses, therefore, the respondent is ordered to pay to the claimant a compensatory award in the following terms:

- loss of statutory rights ££500
- loss of earnings from 9 March 2022 to 31 August 2022 (25 weeks) i.e. 25 multiplied by £306.25 = £7656.25 minus income received by the claimant in the sum of £ 2,862.12 = £4794.13
- Increase of 25 % = £1198.53
- Total Compensatory award = **£6,492.66**

Grand total for the unfair dismissal award = £7,879.66

Prescribed element = £6,492.66

Period of prescribed element from 9 March 2022 to 31 Aug 2022

Excess over grand total over prescribed element = £1,387

43. Total award = **£9867.51**

44. The Employment Protection (Recoupment of Jobseekers allowance and Income Support) Regulations 1996 apply.

Case No:2500453/2022

Employment Judge Arullendran

Date: 18 October 2022