



# EMPLOYMENT TRIBUNALS

**First Claimant:** Angela- Margaret Carr

**Second Claimant:** Dawn Hollett

**Third Claimant:** Angela Archer

**Respondent:** Meadowdene Residential home c/o Apollo Homes

**Heard at:** London South **On:** 25 June 2021

**Before:** Employment Judge Sekhon

**Representation**

Claimant: In person

Respondent: N/A

## CORRECTED JUDGMENT

Under the provisions of Rule 69, the judgment dated 28 June 2021 is corrected as set out above in bold type

### Employment Tribunals Rules of Procedure 2013, Rule 21

The respondent not having presented a response to the claim, did not attend the hearing on 25 June 2021. Having heard the evidence of the claimants under oath and the documentation provided to the Tribunal,

#### The Judgment of the Tribunal is that:

1. The respondent has made an unlawful deduction of wages in respect of all three claimants.
2. The first, second and third named claimants' claims for payment of
  - (a) statutory redundancy pay,
  - (b) unpaid wages and
  - (c) accrued but untaken holiday pay succeed.
3. The respondent shall pay to each claimant, respectively, the total sums set out below, being: -
  - a. In respect of the first claimant (Angela Carr), the total sum of **£13,390.60**, being comprised of £9,798 in respect of statutory redundancy payment, £2,612.80 (net)

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in respect of unpaid wages in December 2018 and January 2019 and £979.80 (net) in respect of unpaid holiday pay.

- (b) In respect of the second claimant (Dawn Hollett), the total sum of **£6,044.76**, being comprised of £4,698 in respect of statutory redundancy payment, £1,221.48 (gross) in respect of unpaid wages in December 2018 and January 2019 and £125.28 (gross) in respect of unpaid holiday pay.
- (c) In respect of the third claimant (Angela Archer), the total sum of **£4,700.64**, being comprised of £3,228.60 in respect of statutory redundancy payment, £767.34 (gross) in respect of payment of unpaid wages in December 2018 and £704.70 (gross) in respect of unpaid holiday pay.
- (d) Where the figures provided above are gross figures, they will be subject to lawful deductions of tax and national insurance.

## **REASONS**

The Tribunal found the following facts:-

### **First claimant**

1. The first claimant commenced employment at Meadowdene residential home on 1 September 1995. She signed a contract of employment but never received a copy from the respondent. She was informed in November 2018 along with the residents that the nursing home was closing down at the end of November 2018 and that her employment would end.
2. She agreed with the respondent to work her statutory notice period of 12 weeks. The last date of her employment was on 30 January 2019, and she worked at the nursing care home for 23 years. She was 82 years old when her employment ended.
3. The ET1 form stated that she was contracted to work 36 hours a week at £7.83 per hour and paid £281 (gross) per week. The first claimant was unable to attend the hearing and give evidence, however her representative, Mr Burnett, confirmed that she worked additional hours a week routinely to cover staff shortages. The claimant's bank statements support this and show that she earned above this figure consistently for the 12-month period prior to being made redundant as follows:-

Date	Paid per month (net figures)
09/03/2018	£1200.60
09/04/2018	£1314.50
08/05/2018	£1342.05
07/06/2018	£1473.48
09/07/2018	£1498.60
07/08/2018	£1623.80
07/09/2018	£1523.72
08/10/2018	£1573.76

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07/11/2018	£1398.32
07/12/2018	£947.16

4. Mr Burnett claimed £10,305 for a redundancy payment but he was unable to explain what figures he had used to calculate this using the online government calculator due to the passage of time that has taken place since he has carried out these calculations.
5. Based on the first claimant's bank statements, taking an average for the first claimant's earnings in the 12-week period before she was made redundant produces a weekly average wage of £326.60 net per week. As the claimant is above the state pension age, she would not pay any National Insurance contributions and the deductions from her pay were minimal. The redundancy payment is calculated on the basis of the claimant's length of service of 23 years (which is subject to the statutory cap of 20 years), being aged 82 on the effective date of termination and the gross weekly wage of £326.60 which produces a figure of £9,798.
6. Mr Burnett was not able to clearly identify the value of the unpaid wages for December 2018 and January 2019. A log kept at the care home identified that the claimant worked 88 hours in January 2018 but did not identify whether a higher rate of pay was paid for weekend work for which the first claimant was paid £9.50 an hour and how many hours were worked at the weekend.
7. In the absence of clear documentation, I am satisfied that the first claimant is likely to have carried out similar hours of work in December 2018 and January 2019 as she had done in the previous 12 months. Based on her bank statements and taking an average for the first claimant's earnings in the 12-week period before she was made redundant, I award the first claimant a weekly sum of £326.60 net for the period of work from 7 December 2018 – 31 January 2019 totalling 8 weeks.
8. The first claimant's holiday entitlement ran from 1 April to 31 March each year and she was entitled to 25 days a year. Between 1 April 2018 and 31 January 2019, she would have been entitled to 18.75 holidays. She took minimal holiday between 1 April 2018 and 31 January 2019, comprising of one or two days and as evidenced by the pay set out in the above table. The first claimant claims 15 days holiday (3 weeks) and I accept that this is the figure owed to her. Taking an average for the first claimant's earnings in the 12-week period before she was made redundant, I calculate holiday pay by using a figure of £326.60 net per week.

**Second Claimant**

9. The second claimant commenced employment at Meadowdene residential home as a housekeeper on 8 January 1996. She was informed by letter on 1 November 2018 that the care home was closing down on 23 November 2018.
10. She agreed with the respondent to work her statutory notice period of 12 weeks. During this time she carried out various duties including cleaning cupboards,

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filing admin, answering the phone, packing boxes. The last date of her employment was on 31 January 2019, and she worked at the nursing care home for 23 years.

11. She agreed with the respondent that her wages for December 2018 and January 2019 together with a redundancy payment and outstanding holiday pay would be paid at the end of February 2019. She was sent a text message from the respondent dated 28 February 2019 confirming that she would pay these sums in the middle of March 2019. The respondent never paid these sums and did not respond to the second claimant's messages seeking payment.
12. The second claimant worked 20 hours a week at £7.83 per hour and was paid £156.60 gross per week.
13. The redundancy payment is calculated on the basis of the claimant's length service of 23 years (which is subject to the statutory cap of 20 years), being aged 62 on the effective date of termination and the gross weekly wage of £156.60 which produces a figure of £4,698.
14. The second claimant was not paid wages for the hours worked in December 2018 and January 2019. A payslip dated December 2018 shows that the claimant was owed £626.40 (gross) in wages. A log of hours worked in January 2019 which was kept in the residential home shows that 76 hours were worked by the second claimant in January 2019 and the second claimant is owed £595.08 for January 2019.
15. The second claimant signed a contract of employment with the respondent but she never received a copy. The second claimant's holiday entitlement ran from 1 April to 31 March each year and she was entitled to 25 days a year. Between 1 April 2018 and 31 January 2019, she would have been entitled to 18.75 holidays. The second claimant claims 4 days holiday (16 hours at £7.83) totalling £125.28.

**Third Claimant**

16. The third claimant commenced employment at Meadowdene residential home on 23 June 2008. She was informed by letter on 1 November 2018 that the care home was closing down on 23 November 2018.
17. She agreed with the respondent to work her statutory notice period of 12 weeks but by agreement the respondent told her that she was not needed for the last month of her employment. The last date of employment was on 23 December 2018, and she worked at the nursing care home for approximately 10.5 years.
18. She agreed with the respondent that her wages for December 2018 together with a redundancy payment and outstanding holiday pay would be paid on 7 February 2019. The respondent never paid these sums and did not respond to the second claimant's messages seeking payment. The payslip dated 7 December 2018 shows that the third claimant was paid at an hourly rate of £7.83 and that she earned £1,221.48 per month (gross).

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19. The redundancy payment is calculated on the basis of the claimant's length of service of 10 complete years, being aged 49 on the effective date of termination and the gross weekly wage of £234.90 (30 hours at £7.83) which produces a figure of £3,288.60.
  
20. The third claimant was not paid wages for the hours worked between 3 December 2018 and 23 December 2018. She worked 98 hours at £7.83 per hour and the third claimant is owed £767.34.
  
21. The third claimant signed a contract of employment with the respondent, but she never received a copy. The third claimant's holiday entitlement ran from 1 April to 31 March each year and she was entitled to 25 days a year. Between 1 April 2018 and 23 December 2019, she would have been entitled to 16 holidays. The third claimant cannot recall taking any holiday during this period and she claims 15 days holiday for which she would have carried out a 6 hour shift each day (90 hours at £7.83) totalling £704.70.

Employment Judge Sekhon

Date: 28 June 2021

Corrected Judgment dated: 15 November 2022

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