



Case No. 2306028/2021

EMPLOYMENT TRIBUNALS

Claimant: Ms K Beckford

Respondent: Guy's and St Thomas' NHS Foundation Trust

RECORD OF A PRELIMINARY HEARING

Heard at: London South (By CVP) **On:** 3 and 4 November 2022

Before: Employment Judge Self

Appearances

For the Claimant: In Person

For the Respondent: Ms I Egan – Counsel

JUDGMENT

1. The Claim for unfair constructive dismissal is not well-founded and is dismissed.
2. The Claim for Unlawful Deduction of Wages is not well-founded and is dismissed.
3. The Claim for Unpaid Holiday Pay is not well-founded and is dismissed.

WRITTEN REASONS

(As requested by the Claimant)

1. The Claimant worked for the Respondent as a Patient Access Co-ordinator from 17 September 2018. On 24 September 2021 the Claimant resigned her employment giving four weeks' notice and her Effective Date of Termination was 22 October 2021. The Claimant asserts that she was constructively dismissed and that her dismissal was unfair. The Respondent denies both of

those contentions. The Claimant also asserted that she was owed outstanding pay and outstanding holiday at the termination of her employment. Those matters were also denied by the Respondent.

2. Drawing out from the Claimant the detail of the conduct that she considered amounted to a repudiatory breach of contract was not a particularly straightforward task but was ultimately achieved. The reasons given by the Claimant are as follows:
 - a) The Claimant she was given an unduly heavy workload which caused her stress.
 - b) The Workload she was given was far higher than that given to other staff and the Claimant felt victimised by that.
 - c) When workload issues were brought to the attention of her managers nothing was done.
 - d) The Claimant does not consider that she should have been subjected to the Sickness Absence Policy and that she was victimised because it was implemented.
 - e) The Claimant considered that the grievance process that she instituted in September 2021 was deliberately mishandled by the Respondent and was being unnecessarily drawn out.
 - f) The Claimant felt bullied and victimised on account of the matters set out above.
3. These matters, it is alleged, led to a breach of the implied term of trust and confidence leading to the Claimant accepting the breach by resigning. The last straw was the grievance issues. The Respondent had suggested that the reason for the resignation was either that the Claimant wished to go to university or emigrate to Canada but ultimately it was accepted that the Claimant was resigning on account of her perception of the Respondent's conduct.
4. This Claim was listed for two days and I heard oral evidence from the Claimant in support of her Claim and from Mr Holsgrove and Ms Wright on behalf of the Claimant. I also considered the written statements from all of those witnesses and such documents within the bundle as the parties took me to either in those statements or during cross examination. I gave an oral Judgment on the second afternoon and the Claimant immediately sought written reasons.

Unfair Constructive Dismissal

5. The statutory basis for constructive dismissal is set out at section 95 (1) (c) of the ERA 1996 and that section states that an employee is dismissed by his employer if the employee terminates the contract under which he or she is

employed (with or without notice) in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct.

5. It follows that the test for constructive dismissal is whether the employer's actions or conduct amounts to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Limited v Sharp (1978) 1 QB 761**).
6. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v BCCI SA (1998) AC 20**).
7. Any breach of the implied term of trust and confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective (**Malik at 35C**). There is no need to demonstrate intention to breach the contract. Intent is irrelevant.
8. A relatively minor act may be sufficient to entitle the employee to resign and leave the employment if it is the last straw in a series of incidents. The particular incident which finally causes the resignation may in itself be insufficient to justify that action, but that act needs to be viewed against a background of such incidents that it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It is the last straw that causes the employee to terminate a deteriorating or deteriorated relationship.
9. It is clear that the repudiatory conduct may consist of a series of acts or incidents, some of which may be more trivial, which cumulatively amounts to a repudiatory breach of the implied term of trust and confidence. The question to be asked is whether the cumulative series of acts alleged, taken together, amount to a repudiatory breach of the implied term. Although the final straw may be relatively insignificant, it must not be entirely trivial. It must contribute something to the preceding acts.
10. The paragraphs prior to his one within this section are a summary of Lord Dyson's Judgment in **London Borough of Waltham Forest v Omilaju (2005) ICR 481**.
11. In **Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 978** it was identified that normally it will be sufficient to answer the following questions to establish whether an employee has been constructively dismissed:
 - a) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?
 - b) Has he or she affirmed the contract since that date?
 - c) If not, was that act or omission in itself a repudiatory breach of contract?
 - d) If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust

and confidence?

e) Did the employee respond to that breach?

The Facts

12. The Respondent is a substantial London NHS Trust employing approximately 16,000 staff. The Claimant worked in the Cardiology and Diagnostics department. A team of 13 non-clinicians worked in that department including the Claimant. Ms Wright was the Assistant Service Manager and below her in the management hierarchy were a number of Team Leads . The Claimant was a Patient Access Coordinator and her duties involved reviewing previous appointments within cardiology which had not yet been given an outcome and processing these, either by discharging the patient or booking a follow-up appointment. When the Claimant was not working from home she would assist in the running of the reception alongside her colleagues dealing with queries and cashing in the clinic, working within diagnostics by processing referrals and booking patients for their diagnostic tests as well as covering the phones and emails.
13. The claimant was directly line managed by Ms Wright from September 2018 until June 2020 when she was promoted from Team Lead to Assistant Service Manager. Mrs Roy-McCauley (MJ) was recruited internally to the Team Lead role and took over the line management responsibility for the Claimant alongside Miss Ramson. Alexis King later took over from Ms Ramson and then when she left in September 2021 Mr Horvath took up the Team Lead role alongside MJ.
14. The Claimant had a very poor sickness record. That is not meant to be a statement that is critical of the Claimant in any way but is simply a matter of record and fact. The Respondent has a Sickness Absence Policy and Procedure which includes a process for managing sickness absence. It is said in that document that a Review should be held when, in a rolling twelve-month period, there is a cumulative total of eight sick days or five episodes. The Claimant did not feel that she should have been subjected to a Review as she believed that there needed to be five episodes of sickness and further she believed that her managers had deliberately split up periods of sickness absence so as to get to the trigger point and cause a Review to be had. The Claimant had clearly, deliberately or otherwise, misread the policy and had missed / ignored the alternative trigger of eight sick days. Any upset she experienced about being subjected to the policy without good reason is clearly fundamentally flawed as she had significantly more than eight days sickness absence on any view.
15. I have considered the Claimant's sickness absence and conclude that rather than the Respondent utilising the Policy as a means to bully or victimise the Claimant they could have, and probably should have, deployed the policy at an earlier stage. The primary criticism against the Respondent would be that they were too slow to act and take the Claimant's sickness in hand. It cannot be

said that they were over zealous in their approach vis a vis this policy in relation to the Claimant.

16. On 26 February 2020 the Claimant met with Ms Wright in relation to a Step 1 Sickness Advisory Meeting following seven periods of sickness absence totalling thirty-one days. I consider that it was wholly appropriate for such a meeting to be convened. At that meeting the Claimant did not assert that the absences were work related and she hoped that, with medication, the issue would improve. The matter was not progressed to the next stage of the Absence Process despite little improvement in the Claimant's sickness absence.
17. The Claimant was absent for just under a month on account of stress at work shortly after this meeting and because of the symptoms of gastritis it was agreed that the Claimant could work from home for a period in the summer of 2020. There was a further lengthy absence of 2.5 months between October and December 2020.
18. On 15 January 2021 MJ suggested, entirely reasonably, that the Claimant attend an OH Appointment but before it could take place the Claimant was absent again between 19 January 2021 and 17 March 2021.
19. The OH appointment took place on 25 March 2021. In the report, dated the same day, it was revealed that the claimant had longstanding abdominal problems which had resulted in episodes of sickness over the past year. The Claimant stated that she had seen a specialist in November 2020 and was taking symptomatic medication with some benefit and a review was imminent.
20. The Claimant reported that despite some improvement she still had ongoing symptoms. She told the Occupational Health Physician that she wished to return to work and the OH Physician could see no medical contraindication to her resuming work provided that she could work from home for a reduced period of 4 hours per day during the first month and that she should undertake admin type DSE work, avoiding duties which required her to speak on the telephone if at all possible. It was recorded that the Claimant's symptoms tended to be exacerbated by stress and that she was receiving stress therapy through her GP. It was recommended that there was a stress risk assessment of her duties on her return to work so as to help identify specific work pressures and consider ways to minimise those pressures.
20. The Claimant returned to work on 31 March with the adjustments proposed by OH in situ. On 8 April 2021 the Claimant met Ms King and MJ to discuss her return to work. In that meeting the Claimant did raise issues about the distribution of work and that the Claimant had some anxiety about dealing with the cashing in backlog. I accept that the notes of the meeting are accurate and a reasonable summary. The Claimant pointed out that the notes had not been sent to her. I agree that it would have been best practice to do so but consider that there is no evidence upon which to make a finding that these notes were false and did not reflect the meeting.

21. There was a further OH Review on 26 May 2021. The Claimant had been back at work (all be it working from home) over the interim period. The report disclosed that the Claimant had ongoing gastric symptoms made worse by stress and prolonged talking. She was still under the treatment of a specialist and hoped to see him for a review in August 2021 to discuss tests and further treatment options.
22. The Claimant told the OH physician that she had been working six hours per day for the last three weeks and was currently just coping with her duties. The assessment was that there was no reason why she could not continue at work but that she should continue to work six hours a day until the middle of June and then increase to 8 hours a day thereafter. It was also suggested that she continued to work from home until a further Occupational Health review at some point in mid-July. It was noted that as the Claimant's symptoms were exacerbated by stress and pressure, it was again suggested that a stress risk assessment of her duties was undertaken to help identify specific work pressures and consider ways to minimise them. That had not been done following the OH Review in March.
22. There was a meeting on 28 May 2021 with MJ and there are notes of that meeting in the bundle. Again, the Claimant challenged the accuracy of the notes at this hearing but when cross examined on them was able to accept the accuracy of some of the notes, challenged a very limited amount of the notes and could not recall whether some other matters had been discussed. I am satisfied that, whilst not verbatim, the notes are an accurate representation of what was discussed.
23. The Claimant indicated that she was comfortable with the hours she was doing upon her return and that no adjustment to those was necessary. The Claimant mentioned that she perceived some unfairness in the way work was being distributed and in particular that she was the only person charged with undertaking the cashing up backlog and she had some anxiety about doing that work. Working from Home was confirmed for a further period.
24. As the Claimant was working from home there were limits to what she could do. Ms Wright gave a very clear explanation as to why the Claimant would end up doing more historic cashing up work, in that she was unable to work on reception as she was at home, so it made sense for those there at the time on reception to be doing the current day's work as they were in the here and now. It was explained to me that the process was the same for historical backlogs and current work. An outcome had to be recorded. I was told and I accepted that extra information may be needed on the historical matters and that would have to be sought.
24. There was nothing from any of the evidence that suggested to me that the work allocated to the Claimant would have been any more stressful than any other part of the various administrative functions. Further I am quite satisfied that by complying with the adjustments sought by the Claimant and/or recommended by the OH Physician that there was a limit to the work that

could be given to the Claimant and the work that she was given was perfectly reasonable in all the circumstances.

25. The Claimant told me that she was not under any form of target in respect of the number of cases to be dealt with each day and so there was no pressure exerted from that perspective. I am sure from time to time there were frustrations about getting information from Consultants, Medical secretaries and others but I am not persuaded that this amounted to any more than would exist in any job from time to time. There are days when things run smoothly and others when it does not.
26. The Claimant described herself as a perfectionist. If that is a trait she holds then some stress will come internally from trying to be perfect every day. That is not something that can be laid at the Respondent's door, however. The indication from the Claimant was that she would get through her work quicker than others and when she had finished she would be given more work to do. As a result, she did more work than others. I have no objective evidence to suggest whether that was the case or not but would observe that the Claimant was not working on a piece work system or job and finish and so it is not surprising or unreasonable for her to be given more work to do once the work she had been doing had finished. Different staff will all work at differing speeds according to their abilities and attitudes. It is to the Claimant's credit if she had the ability to work faster and better than others but it is not unreasonable or unfair for the managers to provide her with work to fill her time. After all she is paid for the hours she works.
27. Returning to the meeting with MJ on 28 May the Claimant expressed that she sometimes got stressed especially when chasing consultants and secretaries for information. The response from management was supportive suggesting that the Team Leads are copied into correspondence to Consultants so they could fight the Claimant's corner if Consultants or Secretaries were unhelpful. MJ expressed concern that the Claimant appeared to be working sometimes very late at night and she made it clear that this was unnecessary and not supported or required by the Respondent and was concerned that it was unhealthy and so asked the Claimant not to do it in the future. The Claimant stated that she was happy with the support she was getting and that matters would be reviewed after the next OH visit. As requested by OH the Claimant was asked to fill in a Stress Risk Assessment but the Claimant declined.
28. Having reviewed the meeting and upon accepting the notes as an accurate record the overall impression is of a manager working closely with the Claimant to understand her condition and its impact on work. The Claimant has portrayed MJ as a malevolent force working against her. I have not had the opportunity of assessing MJ in person as she was not called as a witness in this case but I can find no evidence of this malevolence from the notes and the overriding impression is that she wanted to assist the Claimant so that she could improve her attendance at work for the good of the Claimant and the Respondent.

29. The Claimant refused the stress risk assessment and no more was done about it. Whilst I understand why the Claimant's view may have been accepted I do take the view that a learning point from all this could be that the manager should have insisted that it was undertaken having heard what the Claimant had to say. Having said that the Claimant was making her position as to what stressed her in her job quite clear even without the formal assessment.
29. The Claimant asserted that there were numerous emails that would evidence a bullying and victimising culture. They were not in the bundle and the Claimant suggested that it was because they were on her email account that she no longer had access to. The Claimant did not make an application for specific disclosure and the Respondent informed me that they had complied with their disclosure obligations. Ultimately I accepted in the absence of contrary evidence that appropriate disclosure had taken place and have considered matters on the papers I was taken to in the bundle.
30. Having considered matters in the bundle such as the exchange that took place around 20 May 2021 and on 24 June 2021 I am unable to see that any of the requests / actions by the Respondent were in any way unreasonable let alone of a bullying nature. Notwithstanding this objective assessment I have no reason to doubt that the Claimant was stressed and anxious at this time but the Respondent was simply making the adjustments that were required and asking the Claimant to do the job she was paid to do.
31. The Claimant was signed off sick due to stress between 30 June to 29 July 2021 and then with a hand injury from 29 July 2021 to 30 August 2021.
32. On 16 August 2021 the claimant wrote to Ms Wright to advise her that she would be attending university for two days a week from the 1 September and so would only be available to work three days a week, however she would not know which days until she received her timetable. At that time the Claimant was employed on a full-time five day a week contract. She subsequently confirmed that she would be able to work on Monday Tuesdays and Thursdays. MJ acknowledged receipt and confirm that she would find and forward the correct form in relating to flexible working. It is surprising that the Claimant was so late in communicating this potential change and naïve / presumptuous that she would be permitted to make the change without going through any proper process.
33. There was a further OH appointment on 18 August. The focal point of that letter was in relation to the Claimant's hand injury and temporary adjustments that would be required.
34. On 23 August MJ sent the Claimant an invitation to a Sickness Advisory Meeting to discuss the Claimant's sickness absence since 19 March 2020. It was suggested that the Flexible Working issue be discussed at the meeting. I have detailed the sickness absence in the course of these Reasons and there was ample sickness absence upon which such a course could be reasonably based.

35. The Claimant did not consider that this meeting was merited and suggested that it was a means to ensure that her flexible working was refused. There is clear evidence that the decision to go to the Sickness policy was taken after the most recent OH Report and in reality the only real surprise was that the Claimant had not had such a meeting previously. I reject, however, that the Claimant was being punished or victimised in any way by being asked to attend this meeting. It is incumbent on an employer especially perhaps in the public sector to monitor absence. The Claimant was known to suffer from stress and she was proposing adding the workload of a university degree on to a situation that she already appeared to be struggling with. That required careful consideration and was linked to her sickness absence and the propensity for it to happen in the future. Further the Claimant had had some lengthy absences and so a formal procedure was entirely appropriate. I do not consider that it was commenced as a means to thwart the Claimant's flexible working plans as the Claimant suggested. There is not a shred of evidence to support the Claimant's contention.
36. On 26 August the Claimant wrote to MJ and asked for the Sickness Absence process to be withdrawn as she only had two periods of sickness in the rolling 12 months. As stated earlier that request was based on a misreading / misunderstanding of the trigger point. The Claimant also mentioned that she did not feel she was being treated fairly which was causing issues with her mental health. I have no doubt that the Claimant believed she was not being treated fairly but, objectively, I can find no evidence to support that belief.
37. The Claimant worked on a phased return basis when she got back to work which was due to increase over time. Again, the Respondent kept to the adjustments suggested by the OH Physician but they were in relation to the hand issue.
38. On 9 September 2021 the claimant requested annual leave for the period of 13 September to 17 September 2021. On the following day MJ responded refusing the request on the basis that the claimant had provided insufficient notice and had also given no reason for the need for the absences. Once again this seems to be a perfectly reasonable management decision.
39. On 10 September 2021 the claimant emailed raising a concern that she was being bullied by MJ in relation to the annual leave issue. Ms Wright was absent at that time and so did not pick up the e-mail until the 19 September when she replied confirming that she would discuss matters with Mr Alner who had also been copied in and had been present at work over the previous week.
40. On 14 September the Claimant raised a Stage 1 grievance stating that she felt bullied and victimised which was affecting her mental health and well-being . She stated that her line manager MJ was indirectly forcing her out of her job by the way she communicates with the Claimant in emails and on the phone. HR advice was taken as to how to proceed and a meeting was set up to deal with the issue on 30 October 2021. This was communicated by letter on 21

September. The Claimant was absent again from 17 September to 30 September.

41. On 24 September the Claimant resigned. There was no indication that the Claimant considered herself to be constructively dismissed in that letter. She thanked the respondent for the opportunities afforded to her and stated that it was time for her to move on to new challenges and to work on her mental health and well-being.

Conclusions

42. Has the Claimant been constructively dismissed? I return to each of the issues identified at the start of this case to record my findings.

a) The Claimant was given an unduly heavy workload which caused her stress.

I accept that this was the Claimant's perception and I also accept that the Claimant did suffer from stress but there is no evidence to support her suggestion that she was given an unduly heavy workload. The Claimant was working remotely at the material time as a reasonable adjustment and was given work to fill her time. She was not subject to any daily or weekly disposal targets and was able to work at her own pace at her own time. If work ran out she was given more so as to fill her time and this was entirely appropriate.

b) The Workload she was given was far higher than that given to other staff and the Claimant felt victimised by that.

I accept that this was the Claimant's perception and I also accept that the Claimant did feel victimised but there is no evidence to support her suggestion that her workload was far higher than other staff. I find that it was a busy department and all members of staff were given tasks that filled their time. To the extent that the Claimant did more work (and even that is unevicenced) it was because she was quicker / more efficient than others and so was personally capable of doing more work than others. I find that she was working at her pace and that there was no deliberate attempt to load the Claimant with work. The type of work she got was dictated by the fact that she was working at home as an adjustment for her health conditions.

c) When workload issues were brought to the attention of her managers nothing was done.

I accept that this was the Claimant's perception but do not consider that that is correct. Many adjustments were made following the visits to OH in order to meet the Claimant's needs. I have seen discussions in the 1 to 1s where stress has been raised and suggestions have been put forward. I

accept that there are one or two emails where the Claimant raises the fact that she is stressed and there is no specific reference back about it but often that is because the mention of stress is superseded by something else which is focussed upon. The Claimant did not suggest that she was unhappy with her managers at the meeting in the 1 to 1 meeting in May 2021 and refused to take a Stress Risk Assessment thereby blocking a full consideration of work place stress issues. There was no benefit to the Respondent doing nothing as it was in their interests to get the Claimant back to work at full capacity.

d) The Claimant does not consider that she should have been subjected to the Sickness Absence Policy and that she was victimised because it was implemented.

This allegation is based upon a misunderstanding of the Policy trigger. I find that the Claimant was placed within the Policy on two occasions for perfectly valid reasons. In fact, a far more robust approach would have been reasonable. The Claimant, in any event, only ever entered the policy at the very lowest level and the Respondent utilised OH reasonably and appropriately applying their recommendations. I reject the suggestion that the September 2021 entry into the Policy was motivated by anything other than a formal Process being an appropriate way to deal with what was, on any reckoning, substantial sickness absence.

e) The Claimant considered that the grievance process that she instituted in September 2021 was deliberately mishandled by the Respondent and was being unnecessarily drawn out.

The Claimant never really explained what it was about the handling of the grievance that the Respondent got wrong despite being questioned on the matter. She resigned 10 days after it was lodged at a time when there was a hearing already booked. It was not unreasonable for the respondent to view it as a Dignity at Work issue nor was it unreasonable to suggest that a more informal approach was tried. It was open to the Claimant to reject that suggestion if she wished to. Ideally the hearing should have been earlier than the end of October and the respondent should be mindful of trying to expedite such matters but in the real world there is a service to get out and whilst the meeting should have been in the first half of October as opposed to the very end, the time frame was by no means outside a reasonable period. I am quite satisfied that the timing was not a deliberate act to spite the Claimant. It was in the Claimant's interests to get matters sorted and the claimant back to health and work.

f) The Claimant felt bullied and victimised on account of the matters set out above.

I fully accept that the Claimant did feel bullied and victimised and that the Claimant will always feel that is the case but objectively I have not found there to be any bullying behaviour by any of the Respondent's staff and find that there is no objective basis for the Claimant's view.

43. I now apply these findings to the test set out in Kaur. The most recent act or omission on the part of the employer which the Claimant says caused or triggered her resignation were the matters which culminated in September with the workload issues, Sickness Policy and Grievance all in play. The Claimant did not affirm the contract after that date. I find that the most recent act / acts were not a repudiatory breach nor, was it a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence. The Respondent has not without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them and the Claimant. Accordingly, there was no constructive dismissal and the claim for unfair dismissal fails.
44. I turn now to the money claims. These claims have been difficult to pin down save that the Claimant contends that she is owed more holiday pay upon termination that she was paid and also that she should have been paid for the period 1 September 2021 to 16 September 2021. A number of different figures have been put forward although the precise basis upon which the Claimant challenged matters had never been fully illuminated before this hearing. As this was an unfair dismissal claim / money claim no List of Issues was drawn up prior to the trial date.
45. In the Claimant's witness statement there is little about this claim. At para 3 she states ***"MJ was counting the sickness occurrences incorrectly because she was counting each sick note as an occurrence. As long as I didn't return to work, it was still the same occurrence"***. The Claimant pointed to this as being of assistance in her claim but it is a very general comment and I am not able to see that the number of occurrences of sickness would make any difference to either pay or holiday. The Claimant does refer to MJ making mistakes with sickness recording at paragraph 4 but that seems to refer back to para 3 and so similarly takes matters nowhere.
46. The Claimant's witness statement was limited and did not deal with any of her claims in much detail. Documents were not cross-referred. I gave the Claimant the opportunity to supplement her statement at the outset of the hearing once we had clarified what the issues were but the Claimant stated that she did not wish to add anything. The Claimant also did not add anything about these claims when invited to effectively re-examine herself once Counsel had asked her questions.
47. Mr Holsgrove was tendered to give evidence in respect of the money claims. It became clear that the Claimant had no issue with what he had done but her complaint was with some of the data entered upon which the payroll systems then applied to calculate her pay. Taking into account the overriding objective

and the fact that the Claimant was acting in person, I permitted the claimant overnight to draft a further statement to clearly enunciate her money claims. The direction I gave her was as follows:

“By no later than 7:00 PM today the claimant shall set out with reference to the paginated bundle a witness statement in which she explains precisely why she contends that the salary and or holiday pay has been incorrectly calculated by the respondent”

48. The Claimant did produce a witness statement in that time scale that provided a number of page references along with:

“I believe the reason is because MJ did not upload correct details of my sickness occurrences and my annual leave on the system and that affected the way I was paid.”

The Claimant then supplied incidences of actions she took to correct it and also gave details in relation to issues around her P45 which I had already told her I had no jurisdiction over.

49. I have considered each of those page references. They include sick notes, a request for leave, annual charts, pay slips and some leave forms. The Claimant even in her closing submissions this morning gave me no indication of what I should derive from this information or what inferences I should draw or even how it came to be that sums were owing to her.
50. Her primary point however was that if the original dates had been entered wrongly then that would feed through to her final pay. Mr Holsgrove accepted that would be the case. I have considered his comprehensive statement which was based upon what the Claimant said she was due (p.71) namely 85.73 hours holiday pay and 2 weeks return to work pay 1/9/21 to 16/9/21.
51. The Respondent has accepted that originally there were errors made which led to the amount of sickness being under recorded and the annual leave taken over recorded. Mr Ganz spent substantial time correcting these errors and the calculations are clearly set out in the statement and within the bundle justifying the payments made and the final conclusion that in fact the Claimant was overpaid by £202.04.
52. The Claimant has had every opportunity to indicate where the Respondent has made an error and to show why she is owed money by way of holiday pay or salary and she has failed to do so. I am satisfied on the evidence before me that the deductions made to the holiday pay were entitled to be made under the Claimant's contract of employment and that the salary for the first half of September was paid. Accordingly, those Claims fail.

Employment Judge G Self
Date: 08 December 2022

Sent to the parties on:
Date: 29 December 2022