



EMPLOYMENT TRIBUNALS

Claimant: Miss E Knight

Respondent: Tracey Broomhead t/a Kutz International

HELD AT: Manchester **ON:** 14 February 2023

BEFORE: Employment Judge Johnson

(NB: Employment Judge Greer observing)

REPRESENTATION:

Claimant: Ms Sandra Knott (claimant's mother)

Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint of unlawful deduction from wages is well founded and succeeds. The respondent must pay the claimant £48.10 gross in settlement of this complaint.
- (2) The complaint of unpaid annual leave entitlement is well founded and succeeds. The respondent must pay the claimant £182.01 gross in settlement of this complaint.
- (3) Accordingly, the respondent must pay the claimant the total sum of **£230.11** representing the total gross sum for the successful wages and annual leave complaints referred to in (1) and (2) above.

REASONS

Introduction

1. The claimant presented a claim form to the Tribunal on 27 June 2022 following a period of early conciliation from 16 June 2022 to 23 June 2022. She brought complaints of unpaid annual leave/holiday pay and unlawful deduction from wages.
2. The respondent presented a response and grounds of resistance on 28 July 2022 disputing that she employed the claimant and asserting that she was a trainee who did not receive a wage from her as her contract was with a third party training provider.
3. The case was originally listed to take place on 13 October 2022, but Employment Judge Leach ordered its postponement and relisted for 20 February 2023 with a longer hearing length of 1 day and made case management orders for both parties to comply with.
4. Respondent did not attend the final hearing and gave no reason why she was not attending. The respondent's contact details were used to serve the Notice of Hearing upon her and it is understood that her business continues to operate her business at the salon's address.

Issues

5. Although a formal list of issues had not been agreed prior to the final hearing, an initial discussion with the parties at the beginning of the hearing enabled me to identify the issues and which reflected those typically encountered in complaints seeking holiday pay and unpaid wages.
6. Holiday pay
 - a) What was the claimant's leave year?
 - b) How much of that leave year had passed at the time of the claimant's effective date of termination on 1 July 2023?
 - c) How much annual leave entitlement had accrued at the time of the claimant's effective date of termination on 1 July 2023?
 - d) How much paid leave had the claimant taken in that leave year?
 - e) Are any untaken annual leave days from previous years carried over?
 - f) How many days remain unpaid?
 - g) What was the claimant's relevant daily rate of pay?
7. Unpaid wages
 - a) Were wages paid to the claimant in June 2023 which were less than wages she should have been paid?

- b) Was any deduction required by statute?
 - c) Was any deduction required and/or authorised by contract?
 - d) Did the claimant have the relevant contract and/or notice before the deduction was made?
 - e) Did the claimant agree in writing to deductions being made of this nature before they were made?
 - f) How much is the claimant owed?
8. There was also consideration given to the claimant's employment status and whether she was a worker and thereby entitled to bring the complaints of unlawful deduction of wages and holiday pay.

Evidence used

9. The claimant gave witness evidence under oath. She was a credible witness and reliable, making concessions and providing clarification as appropriate.
10. The respondent's evidence consisted of the grounds of resistance. Unfortunately, the respondent did not attend the hearing to give evidence and she did not call any other witnesses such as staff at the training provider to support the allegations made in the grounds of resistance. Little weight could be attributed to this information without the benefit of the respondent's evidence being given under oath and accordingly the claimant's witness evidence went unchallenged at the final hearing.
11. No documentation was provided which might support the arguments raised by the respondent concerning the claimant's employment relationship. Employment Judge Leach had made clear to the parties that it was their responsibility to bring any evidence to the final hearing that they wished to rely upon and call any witnesses whom they believed would assist the Tribunal in determining the case. The respondent appeared to believe that little responsibility rested with her to produce this evidence and there is no reason for me to believe that she did not understand what was expected of her, given the detailed replies contained in the response and provided to the claimant in earlier electronic communications such as by WhatsApp and included in the hearing bundle.
12. On this subject, there was a hearing bundle which was prepared by Ms Knott and consisted of just 39 pages and containing the proceedings, emails, texts and WhatsApp messages. It was very helpful and she is to be commended upon the good job she made of this case management order, given that she was not legally qualified and had not dealt with the preparation of a hearing bundle before.

Findings of fact

Background

13. The claimant (Ms Knight) was at the relevant time, a trainee hairstylist. It is understood that she is no longer pursuing this career path and is exploring alternative training and employment opportunities.
14. In relation to hairdressing however, she was initially employed for a short period Rachel Kirkwood trading/as 'Mama Sanctuary' from 1 February 2022. Ms Kirkwood was attempting to secure a formal apprenticeship for Ms Knight, but unfortunately had to close her business on 29 March 2022 because of rising debts and Ms Knight's employment was terminated on this date. During this employment, she worked Monday to Saturday (Wednesday and Sunday were her non working days) and she was paid the sum of £4.30 per hour which was the apprentice minimum wage at that time.

The claimant's employment with the respondent

15. The respondent ('Kutz International') was an unincorporated business owned by Ms Broomhead. Their premises are based in Stockport. Ms Knight became aware of the business on Instagram and direct messaged Ms Broomhead asking if any apprenticeships were available. She was invited to an interview on 23 March 2022 and Ms Kirkwood allowed Ms Knight a day off work to attend it. During the interview I accept that Ms Broomhead told Ms Knight that her business was looking for an apprentice and explained that she used Michael John Training as a training provider.
16. Ms Broomhead went on to explain that it was usual for hairdressing apprentices to first of all go and register with a training provider, who would in turn allocate the student to a salon nearby to their home address. However, Ms Broomhead said that she was prepared to let Ms Knight start working with her and she provided the details of Michael John Training to Ms Knight so she could arrange the apprenticeship training. It is understood that Ms Knight contacted this training provider and her induction day for the apprenticeship course was 31 March 2022.
17. Ms Knight gave convincing evidence about a reluctance on the part of Ms Broomhead to discuss pay at the interview and that she did not want to provide or accept any documents. This appeared to be a theme throughout the duration of the parties' working relationship and it is not clear why Ms Broomhead wished to work on such an informal basis.
18. Ms Knight started work on Friday 1 April 2022 and Saturday 2 April 2022 and this took the form of 'tester' days to enable both parties to see whether the relationship would work. Ms Knight described being trained on working tasks such as hair washing and sweeping up. Although there was no mention of payments, she was given at the end of day 2, with cash in hand which she was informed represented pay and tips. She was also

shown her 'tips jar' which was where her tips would be placed and which she could collect at any time.

19. Ms Knight continued working the following week and it was clear that Ms Broomhead was happy with her work and wanted the working relationship to continue. She became aware that her working days were Tuesday, Thursday, Friday and Saturday. Sunday and Mondays were non working days for the salon and Wednesday was the college day for training purposes. Ms Broomhead did not provide anything in writing to support this arrangement.
20. Eventually, on 11 April 2022, Ms Broomhead asked Ms Knight for her bank details so that her wages could be paid directly into this account. It did not appear that any formal arrangement was agreed, but Ms Knight was then paid on a roughly weekly basis (according to her bank statement extract on page 36 of the bundle) and which ranged from £110.63 to £187.59 depending upon the hours worked. This continued to her date of termination on 27 May 2022. There was one week at the beginning of May 2022, where Ms Knight only worked 1 day and on this occasion she received a small cash in hand payment. Presumably, this was because of low amount involved and Ms Broomhead may have had the cash available in the till, unlike when having to pay higher amounts which required a bank transfer. However, it was clear that Ms Broomhead was paying Ms Knight on a regular basis and for a significant number of hours each week.
21. In relation to the training with Michael John, Ms Knight had her induction day on 31 March 2022 which was the day before she started with Kutz International. I accept that she was asked to sign documents when she began, but was not provided with copies of these signed documents and it appears that she commenced work with the business on the understanding that a verbal agreement was in place with Ms Broomhead for Ms Knight to start working as a paid trainee with day release each week for training under the apprenticeship.
22. Ms Knight explained that she took a day's unpaid leave on 28 April 2022 and received a call from the College asking her to call back. When she returned the call on 29 April 2022, she was informed that the College wanted to transfer her from an apprenticeship to a traineeship which involved greater time in the College and fewer days working in the salon, which would be unpaid but subject to £10 expenses per day. It appears that this was because Ms Knight had not had significant training time in College and the aim was to better prepare her for an apprenticeship.
23. The same day, Ms Knight met and discussed this matter with Ms Broomhead. She explained that she was unhappy with the prospect of working for little or no pay as she needed to earn a wage. I accept that Ms Broomhead agreed with Ms Knight and said she was pleased with her work and that there was plenty of work for her to do. Indeed, I accepted that on one Wednesday, Ms Knight was asked to call the College to say she would not be attending because Kutz International were very busy and needed her to work. Accordingly, they both agreed that Ms Knight would

continue to work on the existing basis with one day for College and this situation continued until the date of termination. I did not see any documentation within the hearing bundle which supported the respondent's contention that Ms Knight had begun working in or converted to a traineeship which removed the right to be paid.

24. On the final week of Ms Knight's employment, she became ill with tonsillitis on Tuesday 24 May 2022 but was able to finish her shift. However, the next day she was unable to attend College and was prescribed antibiotics which would finish on the Tuesday the following week. She exchanged WhatsApp messages with Ms Broomhead over 25 to 27 May 2022 and explained that she would not be fit for Thursday 26 May 2022. She confirmed that she would not be fit to return to work until at least the following Tuesday. At the same time I understand that Ms Broomhead removed Ms Knight from the staff WhatsApp group temporarily which she explained was to avoid her getting all of the notifications while off ill, (pages 25 and 26 of the bundle).

25. On 27 May 2022, Ms Knight said that although she was not fit to attend work, she said that she needed some money to settle an outstanding bill for dance lessons and wanted to access her Tips jar at the salon. She did not call Ms Broomhead because she believed her to be away from the salon and instead called her colleague Brogan Tunnicliffe. It was agreed that she could come in and collect the money in the jar. While the wisdom of attending work while ill on 27 May 2022 might be questioned, there was nothing available to suggest to me she was not doing something she was prevented from doing as a result of the tonsillitis.

26. Ms Broomhead sent a WhatsApp message at 17:08 and 17:10 on 27 May 2022 and expressed surprise at Ms Knight's visit to the salon without asking her permission and was clearly suspicious that she might be contemplating handing her notice in and questioned whether she was planning to return to work on Tuesday, (p.27).

27. Following a chasing message two hours later, Ms Knight eventually replied with a WhatsApp message at 20:09 and sent the following message:

"Really sorry but I won't be returning. I don't feel like I'm able to get the support I need with this career path at Kutz. I have spoken to the college who have been very supportive and I am waiting for a call back to discuss future options with them..."

Ms Knight confirmed that this message was notice of resignation with immediate effect. Ms Broomhead sent a lengthy message expressing surprise and explaining what she had done to support Ms Knight. However, she clearly acknowledged and accepted the resignation notice, (pp. 27 to 32).

28. Following her resignation, Ms Knight realised that she remained owed a day's pay for 24 May 2022 and also unpaid holiday pay entitlement for the duration of her work with the respondent. She commenced early

conciliation with ACAS and once she presented her claim, she used the calculator program on the government website. This amounted to £48.10 wages and £182.01 annual leave. The details were sent to Kutz International on 4 August 2022, (p.33).

29. The respondent did not challenge the quantification of these figures, but Ms Broomhead argued in her SMS message of 6 August 2022 that Ms Knight was subject to a traineeship and therefore not entitled to wages. She referred to an attached document which confirmed that traineeships were not paid but entitled to expenses, (pp. 34 to 5).
30. What Ms Broomhead was able to provide however, was any documentation which demonstrated that Ms Knight started her work as a traineeship or converted to this provision later on. Having considered the claimant's convincing oral evidence under oath and her supporting documents and the absence of any oral or documentary evidence to the contrary, I must find on balance of probabilities that Ms Knight throughout her work with Kutz International, was employed to work a variable number of hours each week and which were paid using an apprentice hourly rate.

The law

Unlawful deduction from wages

31. Section 13 of the Employment Rights Act 1996 ('ERA') provides that a worker has the right not to have their employer make an unauthorised deduction from their wages.
32. The exceptions are where a deduction is required or authorised by a statutory provision or a relevant provision of the worker's contract or where the worker has previously given in writing their agreement to the making of the deduction.
33. Section 14 ERA provides that section 13 does not apply where the deduction is made by the employer to reimburse an overpayment of wages.
- a. If not an employee, was the claimant a worker for the respondent within the meaning of section 230(3)(b) of the Employment Rights Act 1996 [*or equivalent provisions*] in that:
 - i. he/she worked under a contract whereby the claimant undertook to do or to perform personally any work or services for the respondent, and
 - ii. the respondent was not by virtue of that contract a client or customer of any profession or business undertaking carried on by the individual?

34. Section 230(1) ERA provides that an employee is an individual who has entered into a contract of employment and section 230(3) ERA provides that a worker is an individual who has entered into a contract of employment or any other contract whether express or implied and (if express) whether oral or in writing to perform personal work or services for another.

Holiday pay

35. Regulations 13 and 13A of the Working Time Regulations 1998 ('WTR') provide that a worker is entitled to annual leave in each leave year, (4 weeks and 1.6 weeks respectively).

36. Regulation 13(2) WTR, provides that a worker's leave year begins on

- a) On such date during the calendar year as may be provided for in a relevant agreement: or
- b) Where there are no provisions of a relevant agreement which apply, the date will be (for all employment beginning after 1 October 1998), on the date which that employment begins and each subsequent anniversary of that date.

37. The word 'calendar year' is interpreted by regulation 2 WTR as meaning '*...the period of twelve months beginning with 1st January in any year*'.

38. Leave may not normally be carried over into a subsequent leave year, unless there is agreement between the parties or where it was not reasonably practicable to take the leave as a result of the effects of the coronavirus in accordance with regulation 13(10) WTR as amended.

39. Regulation 30 WTR, provides workers with the right to bring a complaint to the Tribunal regarding (amongst other things), breaches of rights under regulation 13 and 13A.

40. The description of the term 'worker' in the WTR is described in the Interpretation regulation 2 on the same basis as section 230(3) ERA.

Discussion

41. I accepted that Ms Knight entered into either a contract of employment or an implied contract to undertake personal services for Ms Broomhead's business while completing her apprenticeship with Kutz International. This was based upon her giving exclusive service when required and if necessary, cancelling a particular day release training day with the College because of work pressures. I saw no evidence that Ms Knight either began her working relationship under a traineeship or converted at a later

date. Accordingly, I accept that Ms Knight was either an employee or worker at the material time and is able to bring complaints for unlawful deduction from wages or unpaid annual leave. C

42. It was clear from the bank statements that she received regular payments for the hours worked and her final payment was received on 23 May 2022. While she would only be paid for the work that she did, this meant that she did not receive the payment for 24 May 2022 which was the last completed day of service before her resignation. The figure has not been paid by the respondent and has not been disputed and the claimant is therefore entitled to £48.10 gross for this loss.
43. In terms of unpaid annual leave, I accept that Ms Knight did not take any of her accrued annual leave entitlement between her dates of employment and any leave that was taken was unpaid. Accordingly, she was owed her accrued entitlement at the date of resignation and it remained unpaid. The calculation of the figure claimed was not disputed by the respondent and I accept that Ms Knight took appropriate steps to calculate her losses using the government website calculator. Accordingly, I accept that Ms Knight was entitled to the annual leave payments claimed in the sum of £182.01 gross.

Conclusion

44. It is not clear why the respondent decided not to attend the final hearing, but in the absence of any explanation it was in the interests of justice to proceed with the hearing.
45. Ms Knight provided sufficient oral evidence and documentation in support to persuade me that her complaints must succeed and accordingly she is entitled to receive the outstanding monies that she claims.
46. Consequently, Ms Knight is entitled to the following:
- a) A gross payment in respect of unpaid wages in the sum of £48.10
 - b) A gross payment in respect of unpaid annual leave entitlement in the sum of £182.01.
47. This makes a total judgment to be paid by the respondent in the sum of £230.11.

Employment Judge Johnson

Date 20 February 2023

JUDGMENT SENT TO THE PARTIES ON
28 February 2023

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2404967/2022**

Name of case: **Miss E Knight** v **Tracey Broomhead t/a
Kutz International**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 28 February 2023

the calculation day in this case is: 1 March 2023

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:
www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.