Case Number: 1301349/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms R Collins	**V**	**Global Fruit & Nuts Limited & Mr H Miremadi**

Heard at: Birmingham **On**: 10 – 14 October2022

Before: Employment Judge Broughton
Ms W Ellis
Mr K Palmer

Appearances:
For Claimant: Mr M Jackson, counsel
Respondent: Mr B Hendley, consultant

JUDGMENT

1. The claimant's claims for wrongful dismissal, unpaid holiday pay, failure to provide written pay statements succeed. The respondent also failed to provide a written statement of terms and conditions.

2. By consent, the respondent will pay the claimant the sum of £1242.

3. The claimant's other claims of disability discrimination, failure to make reasonable adjustments, breach of contract, unpaid wages, victimisation and detriment and dismissal as a result of having made protected disclosures all fail and are dismissed.

Employment Judge Broughton

Date: 6 February 2023

REASONS

1. This was a difficult case. A seemingly friendly working relationship had turned sour after just a few months.

2. There were numerous documents which the respondent asserted were falsified and/or produced after the date claimed by the claimant. There were significant disputes on the facts and, indeed, material discrepancies and inconsistencies within the evidence produced by each party.

3. **The undisputed facts were as follows**:

4. The second respondent was the owner and managing director of the first respondent, a pistachio importer, a role he commenced in March 2019. Save where the context requires otherwise, we shall refer to them collectively as the respondent.

5. The claimant did some work for the respondent in July 2020. She was initially assisting with office management and administration. She worked for twenty-five hours in one week and was paid £10 per hour. It was common ground that those were the terms agreed at that time.

6. The claimant's status during that week was, however, in dispute. There were inconsistencies in how the claimant described the position in her claim form and before us.

7. It was not suggested, however, that the claimant had continuous employment from July 2020, nor were there any claims in relation to the July to September period.

8. The claimant had appendicitis across the summer of 2020 and we heard that the respondent took on an apprentice, B, as office manager during that time.

9. The respondent and claimant had remained in contact, however, and in late September or early October 2020, they discussed an alternative role for her.

10. By this stage, the respondent had moved their business operations to the second respondent's home address in Stratford upon Avon.

11. It was common ground that the claimant started work on or around 5 October 2020. She spent most of the first few weeks training and helping to sort out the administration at the office.

12. All largely went well for several weeks.

13. The claimant claimed things changed after she made a protected disclosure about the respondent's need for employer liability insurance on 8 and 9 December 2020. The respondent denied both the absence of the insurance and the disclosure.

14. From the middle of December 2020, the claimant was working almost entirely from her home, which was always the intention. One of her principal tasks was looking to develop leads and update the respondent's database of potential customers.

15. On 28 December 2020, the claimant and the respondent had a telephone conversation which the respondent followed up by text for clarification. It stated

    "At the moment, the company can only afford to offer you twenty hours per week working from home at £10 per hour on a self-employed basis please feel free to look for other situations to supplement your income"

    The message continued to state that the respondent hoped this would improve in the future.

16. The claimant submitted invoices for twenty hours work for that week and each of the next two weeks.

17. Her last day of work was on 5 or 6 January 2021. She asked for a letter stating that she had been dismissed and one was provided "to whom it may concern".

18. It was no longer suggested that the provision of that letter, at the request of the claimant and in anticipation of a dismissal at some stage, amounted to a dismissal in law. Instead, the claimant relied on the conversation and text exchange on 28 December 2020 as amounting to a dismissal.

19. The undisputed communications between the parties appeared to remain amicable until 14 January 2021. Thereafter, the breakdown in their relationship escalated rapidly.

20. We now turn to the more disputed elements of the evidence before us. Rather than detailing these chronologically, as we ordinarily would, in this case we consider it will be clearer if we approach them by topic.

    Disability, knowledge and the alleged need for adjustments (an ergonomic chair)

21. The claimant said that, at her original interview in July 2020, she had raised the fact that she had back problems and that she would need a lumbar support chair. She said that the respondent agreed this at the time.

22. The respondent denied any such conversation, saying that the claimant had only requested a more comfortable chair, with no reference to any back problem, several months later.

23. The claimant claimed that she had hand delivered a letter to the respondent on 22 July 2020, her third day of work, detailing her medical condition and the need for a specialist chair. In that letter the claimant also asserted that she couldn't work more than thirty hours per week.

24. That letter seemed inconsistent with any alleged prior discussion at interview. It stated that the claimant was bringing the issue to the respondent's attention which would be a surprising statement if the matter had already been discussed a few days earlier.

25. The letter also requested an adjustment and provided medical evidence to support the request. That appeared inconsistent with the claim that the respondent had already agreed to provide the chair allegedly requested.

26. Furthermore, in a grievance (which the claimant alleged she had hand delivered on 5 January 2021) the claimant said that the issue with her need for a specialist chair "began on 29 November 2020" and that she had "raised it verbally in November 2020" both of which appeared inconsistent with her suggestion that she had raised it before, in July 2020, both verbally and in writing.

27. As an aside, we note that 5 January 2021 was a day the claimant was not working in the office (as confirmed by a text message that day) so it was unclear how it could have been hand delivered. The respondent said the alleged grievance was not received until it was sent by email on 9 February 2021.

28. The only document not in dispute on this topic was a text from the claimant to the respondent's wife on 16 November 2020. In that text the claimant asked for a new chair to be ordered as her own was "not very comfortable", which would be surprising if the text was chasing a chair by way of a reasonable adjustment from months earlier. That text stated the respondent had approved this.

29. Moreover, the claimant also said in her alleged grievance, mentioned above, that an ergonomic chair was refused by the respondent, yet her own evidence, in relation to both the interview in July 2020 and in the text in November 2020, was that the respondent had agreed to provide one.

30. The claimant also alleged before us that she had raised the issue by letter dated 15 December 2020, but the document relied on made no reference

to her back or the need for a chair. No other document was produced, nor could any explanation be given for its absence.

31. A further document, purporting to be an email but undated, from the claimant to the respondent, suggested that there had been numerous verbal requests for such a chair and referenced the non-existent letter of 15 December 2020.

32. That email, if genuine, only made sense if sent in the week before the alleged grievance of 5 January 2021.

33. The respondent denied ever receiving any written request for an ergonomic chair until a month after the claimant had stopped working for him.

34. It seemed to us to be highly unlikely that the claimant would have hand delivered any letters to the respondent given their regular communications by text and email and where the respondent denied ever receiving them.

35. That view was strengthened as, on the claimant's case, she was receiving no response to such letters and yet she continued to hand deliver them.

36. Moreover, it seems to us that, if the claimant had submitted a formal grievance about her need for an ergonomic chair on 5 January 2021, she would surely have referenced one or more of the three alleged prior written requests, including one only a few days earlier.

37. In addition, each of those disputed letters, had they been produced at the time claimed by the claimant, did not sit comfortably with the undisputed record of otherwise friendly correspondence between the parties until 14 January 2021.

38. In all those circumstances, therefore, we are struggling to find any plausible explanation other than that offered by the respondent, that the first time the issue of the claimant's back and her need for an ergonomic chair was raised was, in fact, when she emailed the purported earlier grievance on 9 February 2021.

39. By that stage, of course, the grievance made no sense as it was seeking to resolve the issue of the chair as if the claimant was still working for the respondent.

40. Moreover, the absence of any reference to other alleged written requests at that stage seemed to support the respondent's assertion that there had been no such letters. A further email from the claimant, dated 22 February 2021, also made no such reference.

41. There was a suspicion, in relation to this and other aspects of the claimant's case, that, as the claimant's narrative supporting her claims developed, the documents, purportedly supporting that narrative, appeared. We address that point further below in relation to the claimant's contract.

42. As a result of the above, we do not accept that any of the alleged correspondence about the claimant's disability, or her need for an ergonomic chair, reached the respondent while the claimant was still working for them.

43. That, however, is not necessarily fatal to her claim. It was not in dispute that there had been a discussion about the comfort of the claimant's chair and the alternatives that may have been available. It was also common ground that, from the middle of December 2020, the claimant was working from her home.

44. It was not in dispute that the claimant had a back problem, including scoliosis, and that this amounted to a disability. She asserted that she had made the respondent aware of this, both verbally and in writing.

45. We have already found that we do not accept that any of the alleged written communications were received by the respondent. That finding obviously raised serious credibility concerns about the claimant's evidence.

46. That said, as will be explored further below, we also had concerns about some of the respondent's evidence.

47. We note, however, that the only undisputed document to reference the claimant's back whilst she was working for the respondent was a text exchange on 13 November 2020 in which the claimant said she would not be in work that day as her back was bad. She said she "hurt it while lifting the jack out of the car to change her car tyre".

48. Before us the claimant acknowledged that her text was untrue as she hadn't changed her tyre, nor would she be able to. She said she had simply inflated it.

49. She could not explain why she had sent such a misleading message but acknowledged that it would not create the impression of somebody with a disabling back condition. It was not obvious in presentation.

50. We consider that there would have been some supporting written record if the claimant had raised both her back condition and her need for an adjusted chair. In the absence of the same and given the numerous

inconsistencies in the claimant's version of events we do not accept that she raised the issue verbally either.

51. As a result, we accept that the respondent neither knew of her disability, nor of her need for an adjustment.

National insurance information

52. The claimant first started work for the respondent on 20 July 2020. She said that the respondent asked for her national insurance and bank account details so that she could be paid through their payroll.

53. The respondents said that they had simply agreed to pay her £10 per hour on a self-employed basis.

54. The claimant said that she produced a letter with the requested information on it to Mr Miremadi on 22 July 2020 and that he acknowledged receipt by letter dated 23 July 2020. Neither of those alleged letters was before us and the respondent denied they had ever existed.

55. What we did have, however, was a text message from the claimant to the respondent at the end of her first week's work, sent in the evening of 24 July 2020. That text message set out the hours worked (25), the agreed rate of pay (£10ph) and provided the claimant's bank details but not her national insurance number.

56. It seemed to us highly unlikely that such a text would be sent if the claimant had provided the information 2 days earlier and receipt had been acknowledged the day before.

57. We note at this point that the claimant had produced a printout of all WhatsApp messages passing between her and the respondent and yet this message was inexplicably missing, having only been disclosed by the respondent.

58. We also note that when the claimant first raised the issue of her NI information in correspondence after the working relationship ended, on 15 and 21 January 2021, she claimed that she had given the information to a temporary member of admin staff, N, rather than the second respondent himself.

59. In those circumstances we are not satisfied that the claimant produced her NI details in July 2020, nor that there was any agreement about employment status at that stage. It seems to us more likely that an hourly rate was agreed, and the issue of status did not even arise.

The "offer letter" and "contract"

60. Across the summer of 2020, the respondent has asked the claimant for assistance in preparing a couple of employment contracts.

61. He said that he was terrible at administration, a point that was not in dispute. He also said that he would have no idea how to prepare such contracts.

62. The claimant agreed to assist, albeit it transpired that she was too unwell to do so until the end of September 2020.

63. The claimant said that, prior to preparing the contracts, on 21 September 2020 she had met the respondent and been offered a job as business development manager. She said that she was offered £2500 net per month, plus 7% commission and bonus and expenses and that she would be an employee on 3 months' notice.

64. The claimant said that the respondent had given her a formal offer letter on the company's letterhead that day.

65. The respondent denied this. He said that he had only verbally offered a self-employed telesales role at £10 per hour as previously. He also said that he would not have been capable of producing the alleged offer letter on company letterhead.

66. The claimant said that she took the offer letter home, considered it and subsequently signed it to indicate her agreement to its terms. She also said that, on her first day, 5 October 2020, the respondent provided her with a formal contract which they both signed.

67. The respondent contended that both of those documents, and several others besides, were fraudulently manufactured by the claimant and that his purported signature on the alleged contract was not genuine.

68. The claimant initially said that she would be able to produce the original contract but failed to do so.

69. The claimant's evidence in relation to these documents seemed to us to be beyond unlikely.

70. We set out below a non-exhaustive list of our reasons for that regrettable conclusion:-

a. It was not in dispute that the respondent's administration was chaotic – it was, therefore, highly unlikely that he would have had an offer letter ready at interview and a contract on the first day.
b. The respondent needed the claimant's help with drafting contracts so was unlikely to be able to draft formal documents himself.
c. In fact, in an email from the claimant on 21 January 2021, the claimant said the respondent had asked her to produce the offer letter.
d. The respondent was a very small business with only a handful of workers and was unlikely to more than double the claimant's remuneration for no obvious reason.
e. The claimant sent in her hours weekly (which would be unnecessary if on a monthly salary) and received £10 per hour in accordance with the respondent's evidence on their agreement.
f. During the time that the claimant worked for the respondent there was no written evidence that she ever challenged her payments. She claimed she had challenged them verbally, but all the written evidence suggested otherwise.
g. On the claimant's case, she had raised at least 4 written grievances whilst still working for the respondent, yet none of them mentioned her pay, despite the fact that, on her case, she had been underpaid by many thousands of pounds.
h. When first asked for invoices, the claimant willingly produced them and offered to provide backdated ones also. It was only after speaking to HMRC on 14th January 2021, that the claimant's attitude appears to have changed.
i. Perhaps most tellingly, in an email on 29 December 2020, the claimant asked if the respondent wanted her to "do a contract outlining her duties and hours"
j. When the claimant had stopped working for the respondent she initially asserted, by email on 14 January 2021, that she had been taken on verbally as an employee.
k. Later that day she asserted a verbal contract and stated that she "required an employment contract" which she would be unlikely to say if she already had one.
l. The next day the claimant asserted, in a further email, that she had been told that her role "would be formalised in a written contract" suggesting that it hadn't been.
m. She went on to say this was "discussed numerous times as I requested a contract" which she wouldn't have done if one were provided on her first day.
n. Then, for the first time the claimant asserted the alleged agreed terms and said she had been told those "numerous times" which would not have been the case if, as claimed, they were provided in an offer letter at interview and on her first day in a contract.

71. For all of those reasons, therefore, notwithstanding our concerns about the respondent's evidence on certain other matters, we are far from satisfied that the contractual documents produced by the claimant were genuine.

Further correspondence

72. The claimant also produced an alleged letter from the respondent, who was supposed to be in administrative chaos, purportedly acknowledging receipt of her bank and NI details on 20 October 2020.

73. It seemed highly unlikely that such a letter was genuine not least because, as detailed above, when the claimant first raised the issue of PAYE in January 2021, she only referenced a verbal agreement.

74. Moreover, such a letter was inconsistent with the text messages where the respondent's wife had asked the claimant, after the date of the alleged letter, on 26 October 2020, whether the claimant wanted to submit invoices or go through the payroll.

75. In addition, it was, perhaps, suspicious that the short letter expressly referenced receipt of both bank and NI details (the latter being an issue in dispute), the "employee payroll system", the claimant's alleged job title and her alleged contract, even its alleged date. All of those were further matters in dispute.

76. Similarly, a letter purporting to confirm the claimant's 1 month probation had been passed, dated 5 November 2020, exactly 1 month after commencement, raised more questions than it answered. If genuine, it would be completely contrary to the administrative chaos the claimant described and the respondent acknowledged. In our experience, many far more organised employers are a lot less efficient when it comes to probation documentation.

77. There was also a purported grievance letter from the claimant alleging sexual harassment and discrimination. Those were not matters before us. It was said to be dated 9 December 2020, the same date as the allegations within it but, if genuine, it was surprising it made no reference to the matters that were before us.

78. The respondent said they knew nothing of those allegations until they were forwarded by email on 3 February 2021.

79. There were further purported grievances about sex discrimination allegedly hand delivered on 15 and 29 December 2020. The latter was a day the claimant was not in the office and a day she was asking the respondent for a favourable reference.

80. The 15 December 2020 letter was never forwarded to the respondent by email. The alleged letter from 29 December 2020, was forwarded shortly after the alleged 9 December letter, on 3 February 2021.

81. The last of those purported grievances, however, made no reference to the previous two grievances. Rather, it claimed that the claimant had raised the sex discrimination and sexual comments "verbally in December" which would be, at best, surprising if there had, in fact, been 2 previous written grievance within the last month.

82. Again, therefore, we are not satisfied that any of those documents were genuinely created and delivered on the original dates claimed, if at all.

Financial / contractual terms

83. Having discounted much of the purported documentary evidence we still need to consider the intended, and actual, terms of the working relationship between the parties.

84. There was no dispute that the original agreement between the parties was for the claimant to be paid £10 per hour in July 2020.

85. We have already highlighted how unlikely we felt it would be for the respondent to more than double that in October 2020. That was further confirmed by the fact that the terms claimed by the claimant were the same as those on which the respondent engaged a specialist salesperson in the industry who apparently brought in hundreds of thousands of pounds worth of business.

86. Moreover, if the claimant had been offered £2500 per month (net) we consider that there would almost certainly be several, regular written communications before us from the claimant chasing her financial entitlements.

87. What we had instead was the claimant texting in her hours worked weekly and receiving £10ph in return with no apparent contemporaneous complaint.

88. In addition, her friendly working relationship with the respondent continued which we imagine would be inconceivable if she was repeatedly being underpaid to the degree now claimed.

89. We are satisfied, therefore, that the agreement between the parties, in both intention and practice, was for the claimant to be paid hourly at £10 per hour.

90. Similar considerations apply regarding the claimant's assertion of a right to commission and expenses. The respondent denied any agreement or entitlement in relation to either.

91. There was only one text seeking travel expenses, from the claimant's home to the respondent's home-based office in Stratford, on 19 October 2020, but the claimant was claiming these at a rate (35p per mile) different to that on her purported contract (45p per mile).

92. There was also only one text seeking commission, dated 23 November 2020. The claimant sought commission at 2% on 2 sales, despite the alleged contract offering her 7%. She said that this was a typo but, as she went on to calculate the commission at 2% that seemed implausible.

93. Neither were ever paid, nor was any further claim made, nor did the claimant chase payment, including in any of her purported grievances, whilst still working for the respondent. The next mention of mileage expenses or commission was not until 21 January 2021.

94. It would also be unusual, and often taxable, for an employer to reimburse travel expenses to an employee's normal place of work, albeit we would acknowledge in this case that the office had moved from Leamington Spa to Stratford upon Avon.

95. It would be astonishing for the sums claimed by the claimant to be owed and not to be chased, in writing, at all, despite several other communications, whilst the claimant was still working.

96. It may well be that there had, at some stage, been some vague reference to future commissions or expenses. Nonetheless, for the reasons given, the claimant has failed to establish that there was any agreement, written or verbal, for the respondent to pay the claimant's travel expenses or any commission, let alone any clarity as to the agreed rates.

97. As a result, she has failed to establish any contractual right to the same.

98. For similar reasons, we also do not accept that the respondent would have verbally offered a 3 month notice period. It seems unlikely that there would have been any such discussion and we have already discounted the claimed written evidence.

99. Moreover, it would be unusual for such a small business to offer such a notice period to someone with no previous experience in the industry.

100. We are, however, prepared to accept that the claimant's official title was Business Development manager as this was how she referred to herself in official company correspondence with the respondent's approval.

Status

101. It will be clear from the above that we do not accept any of the disputed "by hand" documents relied on by the claimant, including those purporting to offer her employment status.

102. However, again, that is not the end of the matter.

103. It was not in dispute that the claimant worked for the respondent and, indeed, had "worker" status.

104. The evidence appeared to show that she was offered the choice of going on the payroll or submitting invoices and she chose the former.

105. That suggests to us that, initially, there was probably no discussion about status and no express or implied agreement at that stage.

106. By the time that the claimant chose to go on the payroll, albeit that never actually happened, it was not unreasonable for her to believe that she was an employee.

107. It appears that this was also the respondent's understanding as they received the claimant's reply and there was no evidence of any attempt to resile from the payroll / employment offer.

108. Moreover, in his text on 28 December 2020, the respondent said he could only "afford to offer you 20 hours…on a self-employed basis".

109. There would be no obvious reason for mentioning status unless the message was suggesting that it was to change or, at the very least, that there had previously been some uncertainty.

110. In any event, the respondent acknowledged in evidence that the claimant had no right of substitution and offered personal service. She worked under his direction and control and was integrated into the business. Any attempt to suggest otherwise, therefore, would appear to be little more than a sham.

111. In those circumstances, there can be little doubt that the claimant was an employee. That appeared to have been offered and also appeared to reflect the claimant's understanding.

112. Even if wrong on that, however, whatever the parties may have intended or believed or whatever her payroll and tax circumstances, we

are satisfied that the claimant was an employee for the purposes of the issues in this case.

113. We note that, shortly after the working relationship ended, the respondent claimed that they had offered to put the claimant on the payroll and pay the appropriate tax in any event, further reinforcing our findings. In fact, the respondent initially claimed that he had paid it, but he had not.

Dismissal

114. In light of the above, seeking to limit the claimant's hours and change her status to self-employed, on 28 December 2020, must have amounted to a dismissal in law, whether intended or understood as such at the time.

Employer liability insurance

115. It is not for us to determine whether the respondent had the appropriate employer liability insurance at all relevant times or, indeed, whether that was a breach of legal obligation.

116. That said, in determining when or whether the claimant raised the issue with the respondent it potentially assists our deliberations to consider the respective positions of each party which, regrettably, were both riddled with inconsistency and implausibility.

117. The claimant said that things were going well until 8 December 2020 when the respondent asked her to look for his insurance details.

118. She said she could only find his house and van insurance and that she then asked whether he had employer and public liability insurance. She said the respondent had said it wasn't necessary and that when she had pointed out that it was a legal requirement, the respondent had "exploded" swearing at her and being insulting.

119. The respondent said that he believed that he was initially covered by his policy in relation to his previous business address and had overlooked this when moving in September 2020.

120. He said he was alerted to the absence of this insurance in October 2020 by Warwickshire College in the context of their due diligence for an apprentice he had taken on. He was able to produce the paperwork to support this, albeit only during the hearing rather than in disclosure. Nonetheless, this explanation seemed to us to make sense.

121. That, however, was where the plausibility ended.

122. It appeared that the respondent returned the college paperwork without the insurance information, and it was unclear when or whether this was picked up by the college, the respondent or someone else.

123. The respondent initially claimed that he had identified the shortcoming and had asked the claimant to resolve it, which, he said, she had done.

124. The respondent then acknowledged that the claimant had not done so but that the appropriate insurance had been sourced via Tesco and that he would seek out the relevant paperwork.

125. He was unable to produce any and we are not even sure such a product is offered by Tesco.

126. Bank records were then produced evidencing a payment to an insurer, Zurich, in October 2020 which was said to be the relevant insurance. It transpired that this related to something else, and it was, in any event, subsequently refunded.

127. The respondent then produced a certificate of employer liability insurance for the period January 2020 to January 2021, but this was for his other business and premises.

128. The respondent then sought to adduce evidence by way of text messages with his accountant that he said showed that his apprentice had actually paid for the insurance and had then been reimbursed by the company.

129. That seemed fanciful. Whilst there was evidence of a small payment to B described as “reimbursement for premises insurance – Loxley Road”, that would be an inadequate sum to cover anything more than normal house insurance.

130. Moreover, what we did have were numerous emails from the respondent, whether direct or via the office manager, seeking quotes for business insurance, including employer liability insurance in the period for January to April 2021.

131. Those emails would make no sense if appropriate cover was already in place.

132. In fact, some of those emails went further. For example, the brokers were asking the respondent why there had been no insurance cover in place from the start of the business in March 2019.

133. They were also asking for details of the dispute with the claimant. In an email on 7 April the respondent's office manager said that they needed employer liability insurance because they had become aware it was a legal requirement and that the claimant had reported them to the HSE. They were seeking backdated cover.

134. That suggests that there was no cover in place, but it also suggests that the importance of this issue was a relatively recent discovery in April.

The "protected disclosure(s)"

135. The claimant claimed to have submitted a grievance, about her alleged verbal disclosure on 8 December 2020, the following day. However, the only purported grievance on that day was regarding alleged sex discrimination and sexual harassment that was said to have taken place on 9 December 2020 (and which formed no part of the complaints before us). There was no mention of any insurance deficit.

136. In any event, we have already found that we do not accept that "grievance" was submitted until forwarded by email on 3 February 2021.

137. The only potential written mention of the insurance issue from the claimant, whilst still employed, was in a document purportedly submitted on 15 December 2020, repeating the sex allegations.

138. There was only a photo of that letter before us, and the respondent said that it had never been received. It was not even forwarded subsequently, unlike some of the other purported grievances.

139. That letter not being received (or even delivered) would appear far more consistent with the ongoing good relationship between the parties for at least a couple more weeks, as evidenced by the undisputed communications between them.

140. Specifically, we had a text from the claimant to the respondent offering to walk his dogs on 15 December 2020 itself. We also noted the exchange of significant Christmas gifts and, indeed, an email from the claimant to B at the respondent, on 7 January 2021, in which she said

"I'm going to miss you and Hassan (the respondent) I'm very fond of you both."

141. Perhaps most tellingly, the claimant's initial reaction, following her dismissal on 28 December 2020, was friendly and helpful and looking to maintain some form of working relationship.

142. The claimant appeared to initially accept the reason for her dismissal until at least 21 January 2021. There was certainly no mention of any belief that her dismissal was related to any alleged whistleblowing.

143. There was no mention of any belief that the claimant's dismissal was because of raising any issue about the insurance in her alleged grievances of 29 December 2020, a further undated grievance the following week, the alleged grievance of 5 January 2021, nor in any of those grievances when forwarded to the respondent in February 2021.

144. The first and only reference in undisputed documents was in 2 emails from the claimant to the respondent both dated 22 February 2021. Despite this, in her witness statement before us, the claimant claimed that B, the office manager, had told her shortly after her dismissal, that she had been sacked in anger because of the insurance grievance.

145. Had that been the case it is inconceivable to us that the claimant would not have raised the matter once in the extensive correspondence and complaints over the following weeks until the one mention above.

146. The claimant also claimed to have reported the respondent to the HSE regarding the insurance issue in December 2020, but the response from the HSE stated that it was in response to a concern raised in February 2021. We had evidence that the claimant only raised a similar concern to Warwickshire College in relation to their apprentice on 22 February 2021.

147. It was clear that the claimant had remained in contact with B following the end of her working relationship with the respondent and that he was providing her with information as evidenced by the claimant's email to the respondent of 22 February 2021 and her subsequent WhatsApp exchange with B.

148. When stepping back and looking at what happened objectively it appears that the claimant was initially understanding of the respondent's need to restrict her hours. Once she investigated the payroll issue, however, things started to turn sour.

149. The claimant then started to make all sorts of allegations, including sex discrimination and harassment, disability discrimination, race discrimination, allegations about verbal and then written contracts and being entitled to much more pay and commission, allegations about data protection, other health and safety concerns etc.

150. The allegations about alleged whistleblowing came relatively late in the process, after many of the above.

151. It seems to us, therefore, that the most likely explanation is that the claimant was unaware of any insurance issue whilst employed or, if she was aware, she did not initially consider it of any relevance to her dismissal.

152. In January and February 2021, probably, at least in part, because Warwickshire College required it for their apprentice, the respondent was trying to source such insurance. It seems likely, therefore, that B informed the claimant of this at some point in February 2021.

153. Thereafter, the claimant's focus switched to this claim, perhaps as a result of having stumbled on an actual failing of the respondent, after her somewhat scattergun approach to allegations previously.

154. After the claimant raised the issue with the respondent, seeking a copy of the insurance certificate, there did then appear to be an increased awareness of the importance of such insurance and an attempt to arrange backdated cover as detailed above.

155. There was also email evidence that appeared to show that the respondent had checked their legal obligations around insurance with their broker, seemingly after the claimant had raised it on 22 February 2021.

The issues

156. The issues were set out by EJ Edmonds at the preliminary hearing on 10 November 2021 and were confirmed by the parties at the outset.

157. The claimant made the following complaints:

a. Automatic unfair dismissal (under s103A Employment Rights Act 1996 (ERA)) due to having made a protected disclosure,

i. the alleged disclosure having been that, on 8 (verbally and not recorded by EJ Edmonds) and/or 9 December 2020 (in writing) the claimant raised with the respondent that it was a breach of their legal obligations not to have employer liability insurance in place.

ii. The alleged dismissal was said to have occurred on 6 January 2021, when the claimant requested a dismissal letter. That was not an argument pursued before us by the end of the hearing. Instead, the claimant sought to rely on the alleged detriments below as amounting to her dismissal.

b. Detriment under s47B ERA, relying on the same alleged disclosure(s) above. The alleged detriments were all said to arise on 28 December 2020 and were as follows:

    i. Reducing the claimant's hours (to a maximum of 20 per week)
    ii. Moving her to an hourly rate
    iii. Changing her status to self-employed

    As mentioned, the claimant also sought to rely on these matters to support her unfair dismissal claim

c. The respondent conceded that the claimant was a disabled person as a result of scoliosis, disc prolapses and arthritis at all material times but denied knowledge both of disability and any disadvantage.

d. Failure to make reasonable adjustments due to the claimant's claimed need for an ergonomic chair due to her disability.

    i. This claim was best put as a need for an auxiliary aid (s.20(5) Equality Act 2010 (EqA)) to avoid the alleged disadvantage of pain and discomfort from working from the chairs, desk etc provided by the respondent.
    ii. Such a claim requires the respondent to have actual or constructive knowledge of both the disability and the disadvantage.

    The respondent said that the claimant had been offered a variety of alternative seating arrangements from a sofa to his own chair and, in any event, said the claimant was ultimately to be working from home as transpired to be the case in mid-December 2020.

e. That same claim was put, in the alternative, under s15 EqA.

    i. The unfavourable treatment being the absence of an appropriate chair and/or her dismissal on 6 January 2021(which she sought to amend to 28 December 2020).
    ii. the "something arising" from the disability being the need for such a chair or the pain and discomfort of working form a non-ergonomic chair.
    iii. Actual or constructive knowledge of disability by the respondent is required and was denied in this case.
    iv. If the above tests are met, it would then be for the respondent to show that not purchasing a specialist chair was a proportionate means of achieving a legitimate, given the alternatives offered.

f. victimisation under s27 EqA and, specifically, that she
    i. had done one or more protected acts by raising discrimination grievances (those alleged to have been submitted in writing on 9,15 and 29 December 2020 and 5 January 2021)
    ii. was subjected to detriments as a result being her
        1. "demotion" on 28 December 2020
        2. dismissal (no longer on 6 January 2021 the day after an alleged disability grievance on 5 January 2021) but amended to 28 December 2020
        3. the respondent failing to address any of her alleged grievances

g. wrongful dismissal.

    i. The claimant said she was entitled to 3 months' paid notice on dismissal or, in the alternative
    ii. Reasonable or statutory notice

h. Unlawful deduction from wages / breach of contract in respect of the following:

    i. Unpaid holiday pay (also brought under the Working Time Regulations 1998). It was common ground that none was paid.
    ii. Failure to pay her the correct / agreed wages between October 2020 and January 2021 as set out in her purported contract and offer letter.
    iii. Failure to pay her commission agreed and earned for the same period as purportedly set out in the same documents
    iv. Similarly, failure to pay mileage expenses as agreed and incurred (breach of contract only)

i. Failure to provide itemised pay statements under s 8 ERA. It was not contended that there were any unnotified deductions, other than those detailed above.

j. To that list we would add, as we are obliged to do, a failure to provide a statement of employment particulars under s1 ERA with a potential remedy under s38 Employment Act 2002.

158. We do not propose giving a lengthy exposition on the relevant, and sometimes complex, law in relation to those claims as, in the particular circumstances of this case, so many of them are fact dependent.

Decision

159. For the reasons given in our detailed findings of fact, we do not accept that the claimant raised an issue about the respondent's insurance, or lack of it, on 8 or 9 December 2020, whether verbally or in writing.

160. Had she done so and/or had she genuinely believed that it played any part in subsequent events then, we consider that, she would have raised it sooner and before her numerous other allegations.

161. As a result, we find that the claimant did not make a protected disclosure and so her claims for detriment and automatically unfair dismissal also fail.

162. We would accept that reducing the claimant's hours and changing her status on 28 December 2020, as we have found, did amount to a dismissal but she did not have qualifying service to bring a claim of "ordinary" unfair dismissal.

163. In relation to the claim of an alleged failure to make a reasonable adjustment by providing the auxiliary aid of an ergonomic chair, we are prepared to accept the respondent's concession that the claimant was disabled, as defined.

164. She provided medical evidence and an impact statement in support.

165. In those circumstances, it may well be that she would have benefited from an ergonomic chair, albeit whether it would have been reasonable for the respondent to purchase one shortly before she was to be primarily working from home became a moot point.

166. Our fact finding demonstrated that we did not accept the claimant's evidence that she had ever informed the respondent of her disability, either orally or in writing, as claimed.

167. Moreover, her disability was not visually obvious and, in sending a message, albeit a misleading one, about changing her car tyre she was not presenting as someone with a back problem. As a result, we do not accept that the respondent had constructive knowledge either.

168. Merely requesting a more comfortable chair, and not following it up, was not enough to put the respondent on notice either of the claimant's disability nor any alleged disadvantage. Indeed, the absence of any reference to her back in this request and of any follow up, potentially confirms our conclusions on knowledge.

169. For similar reasons, regarding lack of knowledge of disability, the same claim put under s15 Equality Act 2010 must also fail.

170. In relation to the victimisation complaints, it should be clear from our findings of fact that we do not accept that any of the alleged grievances (on 9, 15, 29 December 2020 and 5 January 2021) were submitted, or received, on the dates claimed or while the claimant remained employed. We were not satisfied that any of them were genuine.

171. As a result, the claimant cannot have been subjected to one or more detriments for doing the claimed protected acts.

172. In fact, we do not accept the claimant did any protected acts until after the end of her employment, when she submitted 3 of the above complaints by email, claiming they had been hand delivered previously.

173. Those alleged resubmissions were not the grievances relied on. In any event, they post-dated the principal alleged detriments of demotion / dismissal.

174. By that stage, the relationship had clearly broken down, many of the complaints could no longer be rectified and the respondent, perhaps understandably, did not consider that they were made in good faith.

175. We are inclined to agree, so section 27(3) Equality Act 2010 would potentially have been engaged. In any event, any alleged failure would not have been because of the grievances themselves

176. In relation to the claim of wrongful dismissal, we have already found that the claimant was an employee, and she was effectively dismissed on 28 December 2020.

177. There were no grounds for summary dismissal and so the claimant was entitled to notice. Given the nature of the role and the respondent being a small business we do not consider that there were grounds for anything more than the statutory notice period of 1 week.

178. As an employee, the claimant was also entitled to annual leave under the Working Time Regulations 1998 and, having not taken any, was entitled to be paid in lieu on termination.

179. We do not accept, however, that the respondent provided the claimant with the offer letter or contract that she sought to rely on in relation to wages, commission and expenses.

180. Had those documents been in place, or even had the terms they referenced been agreed, we are sure that the claimant would have been repeatedly chasing the very significant amounts she was now claiming.

181. Instead, despite evidence of regular WhatsApp communications, there was no evidence of the claimant ever alleging that her wages fell well short of the alleged contractual salary, at least not until several weeks after her dismissal. Rather, she sent in her hours and was paid accordingly.

182. Whilst there was one text requesting commission and one asking for expenses, the rates claimed in those texts did not match the alleged contractual terms, nor did the claimant say anything when the monies were not forthcoming.

183. It may be that those requests were made in hope, but we do not accept that there was any evidence of any contractual right. It may be that there had, perhaps, been a vague discussion about the possibility of such payments at some stage but, given the claimant was not even clear on the rates and didn't chase payment, they lacked the certainty required to give rise to any entitlement.

184. The claimant's version of events morphed from asserting a verbal contract, to being promised a written contract, to having written her own, before, finally, before us, asserting that the respondent had produced them himself.

185. The asserted terms would also have been very surprising for someone with little experience in the industry. We find that they lack credibility and so the other money claims must fail.

186. We have also already found that the respondent failed to provide the claimant with a statutory statement of her terms and conditions of employment and so she may be entitled to compensation under s38 Employment Act 2002.

187. The respondent acknowledged that no itemised pay statements were provided as they were not treating the claimant as an employee, although, as we have found there were no deductions made.