EMPLOYMENT TRIBUNALS

Claimant: Mrs A S I Hunt

Respondent (1): Gorj Gillingham Ltd (in voluntary liquidation)
Respondent (2): Rose Beauty Bar Ltd

Heard at London South: remotely via video link
On: 14 15 and 16 February 2023 with deliberations on 17 February 2023.

Before: Employment Judge Truscott KC (sitting with panel members) Mr A Brown and Ms S Goldthorpe

Appearances
For the Claimant: Mr Hunt (Claimant's husband)
For Respondent 1: No appearance or representation
For Respondent 2: Ms A Jervis consultant

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The employment of the claimant transferred from the first respondent to the second respondent by operation of Regulation 3 (1) b) (ii) of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

2. The claims against the first respondent are dismissed.

3. The claimant's claim of unfair dismissal brought under Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 is well founded against the second respondent.

4. The second respondent is ordered to pay:

The statutory maternity pay of £635.30.
Unpaid notice pay less statutory maternity pay of £292.60.
Unpaid holiday pay £1304.87.
Basic award £595.
Compensatory award £500.
TOTAL AWARD £3327.77

REASONS

Claims, appearances and documents

The Complaints

1. The claimant is making the following complaints:
   - 1.1 Unfair dismissal s.99 Employment Rights Act 1996
   - 1.2 Unfair dismissal Regulation 20 MPL Regulations 1999
   - 1.3 Unfair dismissal Regulation 7 TUPE Regulations 2006
   - 1.4 Unfair dismissal under s.98 Employment Rights Act 1996
   - 1.5 Maternity discrimination s.18 Equality Act 2010
   - 1.6 Notice pay
   - 1.7 Holiday pay
   - 1.8 Outstanding maternity pay
   - 1.9 Outstanding pension contributions

2. The claimant was represented by her husband and the respondent was represented by Ms A Jervis consultant.

3. The Tribunal had a bundle running to 266 pages to which additional documents relating the claimant's health and social security benefits were added.

4. At a case management hearing on 30 May 2022, a list of issues was prepared which for reasons set out later, the Tribunal had to adapt to meet the facts of and the findings in the case.

5. The Tribunal heard evidence from the claimant and Ms R Shibu a director of the second respondent.

6. Both parties provided closing written submissions, supplemented orally.

Relevant findings of fact

1. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.

2. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant to an issue in the case.

3. The claimant commenced employment with Gorj Limited on 24 June 2018 working 34 hours a week [92]. Her employment transferred from Gorj Ltd to Gorj Gillingham Ltd. Without her knowledge on 31 December 2018 according to a P45 provided on 26 October 2020 [239]. Gorj Limited was dissolved after compulsory strike off on 23 April 2019. The director was Tanvi Paul who held the 100-share capital. On 10

December 2018, the first respondent was incorporated and Angela Paul registered as Director with the issued share capital of 1, she is thought to be Tanvi Paul's mother. The claimant worked at the Gillingham salon under the terms of her contract commencing with Gorj Limited [92].

4. On 13 March 2019, the claimant was promoted to store manager as her work as a beautician had evolved and she had been recognised as having great managerial abilities [96].

5. The claimant went on maternity leave on 17 March 2020. Her child was born on 5 May 2020. At some stage thereafter, she decided that if she returned to work, it would be for 20 hours only because of child care.

6. On 2 September 2020, the second respondent was incorporated [197].

7. On 23 September 2020, the claimant sent a message to the first respondent to say that she did not wish to return to work full time but wanted to work 20 hours and was open to discussion as to when these hours were. [101] The first respondent left a voice note with the claimant saying that she "was kind of in the process of selling Gillingham". She continued "we are hoping completion will take place maximum middle of October then it's going to switch over. I have spoken to Rejitha's husband and they're keeping Gemma Burns on and keeping Emil on. Rejitha (Shibu) will be working there herself but right now, given the COVID situation they are not going to be looking to offer you an employment contract as well… Which that does mean that unfortunately the employment is going to be kind of going to be terminated." [102]. Another employee in the salon Gemma Draper was also told that she was no longer required on 24 September [additional document].

8. On 2 October 2020, the claimant contacted the first respondent to enquire about her return to work [103]. On 5 October, Tanvi Paul for the first respondent wrote to the claimant stating "I am in the process of Rejitha buying the shop". She said that TUPE would not apply and that she was still employed by the first respondent. Ms Paul offered alternative employment at the Strood branch for 32 hours as a beauty therapist and branch assistant [104-106]. She was informed that the business was to be sold to the second respondent in mid-October 2020. The claimant was informed that two employees were going to be kept on by the second respondent. There was some discussion between the parties about the employment and outstanding payments owed to the claimant.

9. On 16 October 2020, an asset sale agreement was entered into between Tanvi Paul and the second respondent for equipment which is listed [107-110]. This constituted the contents of the salon at Gillingham.

10. On 17 October 2020, the first respondent vacated 3 and 5 Railway Street, Gillingham ME7 1XF. The lease agreement was between Penn Global Limited (Landlord) and the first respondent.

11. On 19 October, the second respondent entered a new lease of the premises at 3 and 5 Railway Street, Gillingham ME7 1XF [114-167] and opened to trade under the new name and branding. Also on 19 October 2020, the claimant wrote to Ms Tanvi Paul of the first respondent raising a number of points in relation to her employment and setting out her views of what she was entitled to and restating her wish to work 20 hours [111] She received a detailed reply dated 26 October [170] on the basis that her employment was ending. There was no mention that a sale had taken place. The

request for 20 hours of work was not addressed although the offer of work at Strood was for 2 hours less each week than her pre-maternity leave arrangement.

12. On 7 November, the claimant was sent a letter of termination on the grounds of the 'demise of the business' giving two weeks' notice. The offer of alternative employment remained open until 16 November [189]. The claimant made no response. The claimant had hoped to extend her maternity leave to February or March 2021. She was pregnant again. The prospects of employment were poor because the beauty industry was seriously affected by lockdowns and there were no vacancies.

13. The second respondent contacted the claimant around the end of her maternity leave in December 2020, but the claimant did not respond. There was no other contact between them.

14. On 6 January 2023, the first respondent went into creditors voluntary liquidation.

15. On 4 March 2021, the ET1 was submitted [5].

Applicable law

16. The Transfer of Undertakings (Protections of Employment) Regulations 2006
Reg 3 – A relevant transfer
(1) These Regulations apply to—
(a)a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;
(b)…;
….
and in which the conditions set out in paragraph (3) are satisfied.
(2) In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

Reg 4 – Effect of relevant transfer on contracts of employment

(1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

Reg 7 – Dismissal of employee because of relevant transfer

(1) Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part X of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is—
(a)the transfer itself; or
(b)a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

(2) This paragraph applies where the sole or principal reason for the dismissal is a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.
(3) Where paragraph (2) applies—
(a)paragraph (1) shall not apply;
(b)without prejudice to the application of section 98(4) of the 1996 Act (test of fair dismissal), the dismissal shall, for the purposes of sections 98(1) and 135 of that Act (reason for dismissal), be regarded as having been for redundancy where section 98(2)(c) of that Act applies, or otherwise for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

Reg 10 – Pensions

(1) Regulations 4 and 5 shall not apply—
(a)to so much of a contract of employment or collective agreement as relates to an occupational pension scheme within the meaning of the Pension Schemes Act 1993; or
(b)to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue of any such agreement and relating to such a scheme or otherwise arising in connection with that person's employment and relating to such a scheme.
(2) For the purposes of paragraphs (1) and (3), any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall not be treated as being part of the scheme.
(3) An employee whose contract of employment is transferred in the circumstances described in regulation 4(1) shall not be entitled to bring a claim against the transferor for—
(a)breach of contract; or
(b)constructive unfair dismissal under section 95(1)(c) of the 1996 Act,
arising out of a loss or reduction in his rights under an occupational pension scheme in consequence of the transfer, save insofar as the alleged breach of contract or dismissal (as the case may be) occurred prior to the date on which these Regulations took effect.

S.1 Pension Schemes Act 1993

In this Act, unless the context otherwise requires—
"occupational pension scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;
…

17. The Maternity and Parental Leave etc. Regulations 1999
Reg 10 – Redundancy during maternity leave

(1) This regulation applies where, during an employee's ordinary or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.
(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).
(3) The new contract of employment must be such that—

(a)the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
(b)its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

Reg 20 – Unfair dismissal

(1) An employee who is dismissed is entitled under section 99 of the 1996 Act to be regarded for the purposes of Part X of that Act as unfairly dismissed if—

…
(b)the reason or principal reason for the dismissal is that the employee is redundant, and regulation 10 has not been complied with.

(2) An employee who is dismissed shall also be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if—

(a)the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
(b)it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
(c)it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(6) Paragraph (1) does not apply in relation to an employee if—

(a)immediately before the end of her additional maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five, and
(b)it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances or for an associated employer to offer her a job of that kind.

(7) Paragraph (1) does not apply in relation to an employee if—

(a)it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances;
(b)an associated employer offers her a job of that kind, and
(c)she accepts or unreasonably refuses that offer.

Transfer of Undertaking

18. The definition of an 'economic entity' in regulation 3(2) of the 2006 Regulations is reflected in **Cheesman v. R Brewer Contracts Ltd** [2001] IRLR 144 EAT. In this case the Employment Appeal Tribunal reviewed some key European Court of Justice decisions and distilled from these a number of factors for determining in relation to TUPE 1981 whether there was an undertaking and, if so, whether it had transferred. The EAT held:

> "(i) As to whether there is an undertaking … an organised grouping of persons and assets enabling (or facilitating) the exercise of an economic activity which pursues a specific objective …
> (ii) … such an undertaking … must be sufficiently structured and autonomous but will not necessarily have significant assets, tangible or intangible;
> (iii) in certain sectors, such as cleaning and surveillance, the assets are often reduced to their most basic and the activities are essentially based on manpower;
> (iv) an organised grouping of wage-earners who are specifically and permanently assigned to a common task may, in the absence of other factors of production, amount to an economic entity;
> (v) an activity of itself is not an entity; the identity of an entity emerges from other factors, such as its workforce, management style, the way in which its work is organised, its operating methods and, where appropriate, the operational resources available to it."

19. As to the question of whether there had been a transfer, the following factors were highlighted by the EAT in **Cheesman**:

> "(i) … the decisive criteria for establishing the existence of a transfer is whether the entity in question retains its identity, as indicated … by the fact that its operation is actually continued or resumed; …
> (iii) in considering whether the conditions for … a transfer are met, it is necessary to consider all the factors characterising the transaction in question, but each as a single factor and none is to be considered in isolation;
> (iv) amongst the matters … for consideration, are the type of undertaking, whether or not its tangible assets are transferred, the value of its intangible assets at the time of transfer, whether or not the majority of its employees are taken over by the new company, whether or not its customers are transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, in which they are suspended;
> (v) account has to be taken … of the type of undertaking or business in issue, and the degree of importance to be attached to the several criteria will necessarily vary according to the activity carried on;
> (vi) where an economic entity is able to function without any significant tangible or intangible assets, the maintenance of its identity following the transaction … cannot logically depend on the transfer of such assets;
> (vii) even where the assets are owned and are required to run the undertaking, the fact that they do not pass does not preclude a transfer; …
> (x) the absence of any contractual link between the transferor and transferee may be evidence that there has been no relevant transfer, but it is certainly not conclusive as there is no need for any direct contractual relationship;
> (xi) when no employees are transferred, the reasons why that is the case can be relevant as to whether or not there was a transfer."

20. This guidancewas approved by the Court of Appeal in **McCarrick v. Hunter** [2013] ICR 235 CA.

Maternity rights

21. After a period of ordinary maternity leave, the woman has a right to return to work. The right is to return at the end of the additional maternity leave, if no earlier date of return has been notified, or to return on a date duly notified to the employer as the employee's intended date of return. If she is not allowed to return then, she will be treated as dismissed. If the reason or principal reason for the dismissal is related to maternity leave, it will be automatically unfair (section 99 ERA; MAPLE SI 1999/3312 regulation 20). It will also be an unfair dismissal if the reason for dismissal is redundancy and the special rules required by regulation 10 (offer of suitable alternative employment, if available) have not been complied with or if she is selected for redundancy for a reason connected with her maternity leave (MAPLE regulation 20(1)(b) and (2)).

22. The right to return is subject to the special rules applicable under MAPLE SI 1999/3312, regulation 10 governing the situation where, at any time during either the OML or AML period, it becomes not practicable by reason of redundancy for the employee to be allowed to return to her old job. The Tribunal noted that the test here is 'not practicable' rather than the less rigorous 'not reasonably practicable' applying under regulation 18(2) where the issue is a reason other than redundancy preventing return from AML. In such circumstances the employee is entitled to be offered any suitable available vacancy on terms and conditions 'not substantially less favourable' than those applying to the old job. The Tribunal noted that the right to preferential treatment in a redundancy situation conferred by MAPLE regulation 10 does not extend to any right to be given preference in a conventional redundancy selection exercise, by not being selected for redundancy regardless of the outcome of any selection exercise undertaken by the employer.

Analysis and decision

23. The second respondent took over equipment and stock in a transaction between the second respondent and Ms T Paul. The lease did not transfer directly between the respondents but through the landlord.

24. In relation to intangible assets. the second respondent operated under its own trade name and branding. As to customers, the evidence was that the second respondent did not purchase and receive the first respondent’s diary, existing bookings, or customer information. The bookings app used by the first respondent was discontinued and a new contract was entered into by the second respondent for the app. But the second respondent did honour existing bookings. The Tribunal was doubtful of the evidence that it was as little as 5 or 6 bookings from the first respondent’s customers for the first week or two. The second respondent retained the existing telephone number under a new contract. The second respondent did not purchase the first respondent’s Facebook page but took it over [207] as it did with the website and Instagram account.

25. The first respondent had five employees and Ms Tanvi Paul (totalling six). Two of those employees were retained with a third, the co-owner, managing the salon.

26. The type of business and activities remained the same as between the first and second respondents. There was a transfer of an economic entity which retained its identity. This was neither an asset reliant business nor a labour intensive business. It was a business deploying both assets and employees.

27. The claimant knew on 23 September 2020 that she was being dismissed by the first respondent. The termination was reiterated on 5 October 2020. Neither communication specified a date of termination. It was on 7 November that the claimant was given two weeks' notice by the first respondent. Thus, the effective date of termination was 22 November 2020. The Tribunal did not lose sight of the fact that the termination was by the first respondent and on 17/19 October 2020 there had been a transfer of an undertaking. The Tribunal understood that on the finding of a TUPE transfer, it substituted the second respondent for the first respondent as employer. It would be trite to say that only the employer can dismiss but in the unusual circumstances of this case, where neither the claimant nor the second respondent knew it was the employer, the Tribunal proceeded on the basis that the termination of employment by the first respondent was effective against the claimant. The claimant was not wanted by the second respondent in circumstances where despite the statement to the contrary, there was a transfer of undertaking which continued in its existence. The dismissal was because of the transfer of the undertaking.

28. It was argued that the actions of the claimant were such as to establish objection to the transfer. In this regard, reference was made to the restrictive covenant in the contract with the first respondent which concerned the claimant but the Tribunal did not accept that this was sufficient alone to be an objection to transfer to the second respondent. The claimant was also suspicious of the motives of both respondents but again this is not enough to constitute an objection.

29. It was also argued that the issues under section 99 of ERA and the MAPLE Regs 1999 did not constitute a claim against the second respondent. The Tribunal considered that they might and taking account of the legally complicated case dealt with at case management and the availability of the witness for the second respondent, the Tribunal proceeded on the basis that there were such claims and took evidence and submissions on the point from the second respondent.

30. It was argued that the claimant could have avoided redundancy by accepting the employment offered. The Tribunal noted that the offer was of 32 hours work at Strood with no managerial responsibilities. The claimant did not respond to the offer and said in evidence that it involved a drive of 30 minutes each way. She was a 5 minute walk from the Gillingham salon. The Tribunal make no finding on suitability in the light of its decision that there was a transfer. In any event, the Tribunal noted that this was not a flexible working request and further any refusal to entertain an informal or formal request for a change in hours is not pregnancy and/or maternity discrimination, nor is it a claim before the tribunal.

31. The Tribunal found that the treatment of the claimant by the first respondent was not because of the claimant's pregnancy, or her ordinary or additional maternity leave.

32. Although the dismissal was automatically unfair, the Tribunal found that on the evidence it heard that there had been a transfer of undertaking from Gorj Limited to Gorj Gillingham Limited of which the claimant was completely unaware. As such, the claimant

was qualified to claim unfair dismissal having a continuous period of employment from 24 June 2018.

The Tribunal noted that at the first respondent, Ms Paul and the claimant managed staff, whereas at the second respondent only Mrs Shibu is responsible for managing staff. The claimant's role of salon manager, which compromised 50% of her duties, was absorbed. It was accepted in evidence that reducing costs was critical to the second respondent's survival in climate of the Covid 19 pandemic. The Tribunal heard that the second respondent concluded that the claimant was not qualified in individual eyelashes, massages and acrylic nails because she did not carry out these treatments as part of her role at the first respondent. Whether this opinion was correct or not, the Tribunal make no finding. The accuracy of the opinion might have been tested had there been consultation and discussion but there was none. Gemma Burns had been kept on with the second respondent because she had been the lead acrylic technician with the first respondent and she was retained instead of the claimant for that reason which was unrelated to the claimant's pregnancy and maternity leave. The claimant suggested that hours worked with the second respondent should have been split amongst all staff. The claimant had decided that she wished to work for 20 hours so this might have required an alteration to other employees' hours to allow a to job share but this is unlikely as the second respondent could not have imposed less favourable terms on other employees.

33. The dismissal and/or not selecting the claimant for continued employment was not because of the claimant's absence on maternity leave (section 99 ERA 1996). Accordingly, the claims against the second respondent under section 99 ERA 1996, section 18 EqA 2010, or under Regulations 10 and 20(2) MAPLE Regs 1999 are dismissed as not well founded.

34. The claimant said that she did not contact the second respondent about a position as she thought that working for it would be in breach of her restrictive covenants. The Tribunal considered that this was not the whole reason for not making contact. The second respondent made contact with the claimant in December to which the claimant did not respond. Had both sides persisted, there would have been some discussion and consultation but the end result was likely to be an end of employment at the end of the period of statutory maternity pay.

35. Had this been a case of "ordinary" unfair dismissal, it was accepted by the second respondent that there was a complete failure of consultation but standing its views of the skillset of the claimant and the fact that no manager was needed nor a 20 hour employee, it is likely that she would have been fairly dismissed soon after the second respondent took over if they had known that they had taken her over.

36.

37. The claimant gave evidence about injury to feelings but this was mostly attributable to being treated unfairly rather than because she was on maternity leave and the Tribunal found that there were no actions against her because she was on maternity leave.

The Issues

38. Parties were given time to address the Tribunal on all aspects of the case. The Tribunal had to adjust the issues to take account of the interaction between the various statutory provisions and Regulations. It did not have to decide the issue of ordinary unfair dismissal but had it required to do so, would have held the dismissal unfair through lack of consultation. The Tribunal decided that the reason or principal reason for the claimant's dismissal did not relate to her pregnancy, absence on maternity leave or that she was in her protected period. It was agreed that the claimant was in the protected period at the time of her dismissal. It was 'not practicable by reason of redundancy' for the first respondent to continue to employ the claimant under her existing contract of employment or that she was selected for that reason. The Tribunal did not consider the unfavourable treatment because of pregnancy or maternity. The claimant was absent when there must have been discussions taking place but the absence and thus inability to contribute made no difference. The Tribunal understood that the regulations say that the employee has the right not to be subjected to any detriment for having exercised the right to maternity leave. Being absent may have been a detriment but that alone is insufficient, there must be a link with the employer's act or failure to act and the exercise of the right and the Tribunal could detect no such link. As stated earlier, the Tribunal did not decide the issue of whether the alternative employment offered by the first respondent was suitable because of the finding that there had been a transfer of an undertaking. For the same reason, the dismissal was by reason of redundancy with the first respondent.

39. As the Tribunal finds that there was a relevant transfer, the second respondent takes over the liabilities of the first respondent, except for pensions..

40. The second respondent bears no liability for the pensions claim as liability does not pass in relation to occupational pensions (Reg 10 (1) TUPE 2006). From the information available, the Tribunal was unable to determine what loss the claimant had suffered in relation to pensions as against the first respondent. The employer contributions for the first respondent were all made after delay. The second respondent was not required to make contributions until 3 months service.

41. The claimant's household was in receipt of Universal credit after the dismissal so the Recoupment of Benefits Regulations do not apply.

42. Quantification

<u>SMP</u>

Parties were agreed that the amount due was £635.30 [79].

<u>Notice</u>

The claimant is owed notice pay. After taking into account the SMP payments for two weeks (£151.20 per week), the outstanding notice monies totals £292.60 (£595.00 – £302.40).

<u>Holiday</u>

There was no contractual provision for untaken but accrued holiday leave to be carried over. Notwithstanding this, the claimant received accrued but untaken holiday leave from the 2019/20 leave year in her July 2020 pay. There had been no payment made for the previous holiday year or for the partial 2020/21 leave year. The holiday pay

calculation remained disputed and was dependant on findings of the Tribunal on continuity of employment and effective date of termination and the holiday year. There is no leave year stipulated in the contract, the leave year is calculated from the start of employment: 24 June – 23 June. The payment of the last leave years' entitlement being paid in July 2020 is consistent with the leave year ending in June. There is no evidence of any alternative leave year being agreed. The Tribunal considered that Ms Paul was confused when she said that the claimant was owed the full 28 days leave for the current leave year which would not have yet accrued. The Deduction for Wages (Limitation) Regs 2014 (2014/3322) amended section 23 ERA 1996 provides a Tribunal can only consider unauthorised deductions claims where payment due within the two-year period prior to the presentation of the claim. The claim was presented on 4 March 2021 [5]. The tribunal has no jurisdiction to hear unlawful deductions claim prior to 4 March 2019.

There are two periods where holiday pay is due.
4/3/19 (2 years prior to ET1) until 23/6/19
and
24/6/20 to 15/12/20

Weekly pay prior to 18/3/19 was £272. From 18/3/19 it was £297.50

2019 - 14/365 = 0.0384 x 5.6 = 0.215 weeks @ £272 = £58.58
plus 98/365 = 0.2685 x 5.6 = 1.504 weeks @ £297.50 = £447.44
total £506.02

2020 - 175/365 = 0.4795 x 5.6 = 2.6852 weeks @ £297.50 = £798.85

Total holiday pay = £1,304,87

Redundancy Pay / Basic award

2 weeks @ £297.50 = £595

Compensatory award

Loss of statutory rights £500

As the dismissal was automatically unfair, the Tribunal addressed the issue of compensation. The Tribunal decided that the claimant was entitled to SMP for the period between the effective date of termination on 22 November 2020 and 14 December 2020 being the end of the paid maternity leave period [80]. The Tribunal did not award compensation for the period subsequent to that date as the claimant had said "My intention was to take my accrued holiday after my paid maternity period and return to work around February or March 2021 [81]. She was not seeking employment.

43. The Tribunal greatly appreciated the assistance provided by the parties and the success of the claim against the second respondent does not in any way reflect on the representation at the hearing.

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EMPLOYMENT JUDGE TRUSCOTT KC

Date 27 February 2023

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