# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs M Khushi**

**Respondent:** **Meridian Marlow Limited**

**On:** **13 December 2022**

**Before:** **Employment Judge McAvoy Newns**

**At:** **Watford Employment Tribunal**

**Appearances:**

**For the Claimant:** **In person**

**For the Respondent:** **Ms Broulidakis, Lay Representative**

## WRITTEN REASONS

Introduction

1. During the hearing, I confirmed that the Claimant's claim for unauthorised deductions from wages, contrary to section 13 of the Employment Rights Act 1996 (the "ERA"), succeeded both in respect to the Claimant's unpaid wages and her unpaid holiday pay. I ordered the Respondent to pay the Claimant the sum of £500.

2. I also confirmed that the Respondent's contract claim, brought pursuant to Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the "Order"), was not well founded and was therefore dismissed.

3. The Judgment was sent to the parties on 21 January 2023.

4. On 14 December 2022, the Respondent requested written reasons for that Judgment. That request was brought to my attention on 2 February 2023 and I

have produced these reasons as soon as practicable after this date. These reasons are set out below.

Issues

5. It was agreed at the outset of this hearing that the Claimant's claim was limited to a claim for unauthorised deductions from wages. Specifically, it concerned:

    a. wages for 24 and 26 November 2021 as well as a sum which the Claimant says was deducted from her wages without authorisation on 10 December 2021. The Respondent resisted this claim on the basis that:

        i. the Claimant did not work and/or did not work the full day and/or failed to clock in on 24 and 26 November 2021 and was paid what the Respondent believed she was entitled to; and

        ii. the Claimant had made some errors, meaning that it was entitled to make deductions from her wages; and

    b. a payment for accrued but untaken holiday as of the termination date. The Respondent accepted liability for this claim but neither it nor the Claimant were clear on how much holiday pay was due. This was a matter for me to determine.

6. Although the Claimant had ticked the 'other payments' box in her ET1, it was confirmed that no other claims were being brought.

7. The Respondent also pursued an employer contract claim against the Claimant. This concerned losses that it had suffered which it believed were caused by the Claimant's actions. As a preliminary issue, I raised the fact that the Claimant did not appear to be pursuing a breach of contract claim pursuant to the Order. The Respondent did not disagree.

Preliminary

8. At the outset of the hearing, the Claimant complained that she had been provided with documents late by the Respondent. This included timesheets and clocking in and out records. The Respondent believed that it had provided copies of these documents to the Claimant earlier, however the Claimant disagreed.

9. I asked the Claimant whether she was seeking a postponement in order to consider the documents. The Claimant did not wish for the hearing to be postponed and was content for me to give her some time during the hearing, before cross examination commenced, in order to properly consider the documents.

10. As there were only a small number of documents for the Claimant to consider, and the hearing had been listed for one day, I was content to proceed on this

basis. Neither party objected to this and I considered it to be compliant with the overriding objective.

Evidence

11. The Claimant served a witness statement and was cross examined on that statement. It was agreed that this, together with the contents of her ET1, would comprise her evidence.

12. Ms Broulidakis gave evidence on behalf of the Respondent. She did not serve a witness statement but it was agreed that the contents of the Respondent's ET3, and an email that she sent to the Claimant, would comprise her evidence. She was cross examined on that evidence.

13. No other witnesses were called to give evidence on behalf of either party.

14. I also had sight of a small bundle/file of documents prepared by the Respondent, together with some documents that had been sent to the Tribunal separately by the Claimant.

15. Having considered the evidence, both oral and documentary, I made the following findings of fact on the balance of probabilities.

Findings of fact

*Background*

16. The Claimant commenced employment with the Respondent on 10 November 2021. She was an Assistant Reservations and Events Manager at Crowne Plaza, Marlow. Her employment terminated on 26 November 2021, therefore, 16 days later.

17. Prior to commencing employment with the Respondent, the Claimant had been out of employment for several years, in receipt of disability related benefits.

*Negotiation of terms*

18. The Claimant attended an interview with Ms Broulidakis on or around 1 November 2021. She was offered the role with a base salary of £32,000 working 9am until 6pm, Monday to Friday. The Claimant requested that her hours be 9am until 3pm, working the same days and for the same salary. She subsequently agreed to consider a 9am until 6pm working pattern, provided the salary was increased to £33,000. A conversation took place between Ms Broulidakis and the Claimant on either 3 or 4 November 2021 following which the Claimant confirmed in writing that she accepted a salary of £33,000. This email does not refer to the hours of work that had been agreed but it is likely that, had the Claimant objected to the 9am until 6pm working pattern at this point, she would have referred to the same here.

19. Therefore, I found as a matter of fact that it was agreed between the parties at this point that:

    a. The Claimant's working hours would be 9am until 6pm between Monday and Friday; and

    b. Her salary would be £33,000 gross per annum.

*Contract and staff handbook*

20. On 13 November 2021, the Respondent says that it sent the Claimant her draft contract as well as a staff handbook. The email requested that the Claimant sign and return the last page of both documents. Both parties agree that the Claimant did not sign and return either of these documents at any point.

21. On 14 November 2021, the Claimant emailed the Respondent and:

    a. Requested a full version of the staff handbook, stating that the copy she had received was incomplete;

    b. Requested further information in relation to duties, overtime, bonuses or other incentives and holidays; and

    c. Requested that her hours be reduced such that she could leave at 4.30pm on a Friday.

22. On 15 November 2021, Ms Broulidakis replied to the Claimant and confirmed that the full copy of the staff handbook had been provided. She also addressed the other points but these are not relevant to the issues I am required to determine.

23. The staff handbook included the following provisions:

    *By signing this Handbook, you authorise the Employer to deduct from your pay, such sums of money equal to any shortfall, loss or damage sustained by the Employer caused by your actions, whether intentional or negligent, direct or indirect.*

    *Upon termination of employment, any monies such as deficiencies / shortages or debts will be recovered from final pay in full.*

24. The Claimant's evidence was that she saw this provision for the first time after 15 November 2021. She could not be specific regarding the date.

*Events leading to the Claimant's resignation*

25. Ms Broulidakis's evidence was that, within 48 hours of the Claimant commencing employment with the Respondent, the Reservations Manager had alerted Ms Broulidakis to the fact that the Claimant was making personal calls at work and discussing her disability related benefits with her colleagues. The

Claimant denied this. Ms Broulidakis accepted that she did not see the Claimant do this herself, this information was provided to her second hand by the Reservations Manager. The Reservations Manager did not attend this hearing to give evidence, despite being an employee of the Respondent at the time of the hearing.

26. Ms Broulidakis's evidence was also that, despite sufficient training having been provided to the Claimant by the Reservations Manager, the Claimant made numerous errors which resulted in financial losses for the Respondent. The Claimant denied this and contended that no evidence of such training had been adduced as part of these proceedings, which the Respondent accepted. This is considered later in these reasons.

27. On 17 November 2021, the Claimant tendered her resignation with notice. She explained that this was due to her ill health.

*24 November 2021*

28. The parties agreed that the Claimant was paid half of a daily rate for this day.

29. The Respondent's timesheet states that the Claimant worked between 12.15pm and 6.15pm on this date.

30. The extract from the Claimant's clocking in cards however states that the Claimant clocked on at 12.20pm and clocked out at 6.08pm. It states that she worked approximately 5 and ¾ hours.

31. The Respondent accepts that the Claimant worked for some of this date albeit their position is that she only worked half a day. Ms Broulidakis said that, although the time sheet and clock in cards state that the Claimant arrived at around 12.15/12.20, the Claimant would have had a lunch break before starting work. Ms Broulidakis acknowledged however that she did not personally see the Claimant having a lunch break. The Claimant denied doing so, saying that she ate lunch before arriving at the workplace.

*26 November 2021*

32. The Respondent agreed that the Claimant was not paid for this day.

33. The Respondent's timesheet does not record the Claimant has having worked any hours during this day. The Respondent's reasons for not paying the Claimant for this day are that the Claimant was required to arrange for her timesheet to be signed and her failure to do so meant that she was not entitled to any pay.

34. The extract from the Claimant's clocking in and out cards however states that the Claimant clocked on at 8.45am and clocked out at 6.06pm. It states that she worked approximately 9 and 1/3 hours. The Respondent accepted that the Claimant worked for the full day on this date.

*Alleged errors*

35. On 1 December 2021, Ms Broulidakis emailed HR Head office asking for £239 to be deducted from the Claimant's wages. This was because a guest, who I have referred to as AA, had a booking however the Claimant had processed it for the wrong date. The Claimant had allegedly booked AA's treatments for the correct date but had however booked his room for the wrong date. AA was a 'no show' on the date that the Respondent was expecting him to check in to his room, causing loss revenue for the Respondent in regard to his room charges. The Respondent alleged that this error was caused by the Claimant.

36. It was also alleged that the Claimant had made an error with a customer referred to as TM. It was alleged that this error caused the Respondent a loss of revenue of £289. The correspondence demonstrates that the Claimant was involved in adjusting this customer's booking. There are email exchanges between the Claimant and such customer. As well as confirming the change of dates to the customer, the Claimant was required to make a change to the Respondent's internal booking system, which she allegedly did not make.

37. Ms Broulidakis's evidence was that, when these alleged errors occurred, the Claimant was the only person on duty validating the bookings. However, Ms Broulidakis accepted that she did not personally see the Claimant doing so. She heard second hand from the Reservations Manger that the Claimant had done so.

38. Ms Broulidakis also said the bookings were made using the Claimant's account, which she had a password for. The Claimant said that everyone used each other's accounts and, therefore, another member of staff could have made the change.

39. The Claimant also said that she had not been adequately trained on completing these tasks and did not receive sufficient support from her line manager. As mentioned earlier, no evidence of training was provided to me during this hearing, which Ms Broulidakis accepted in cross examination, and the Reservations Manager did not attend the hearing, to give evidence about the support that she had allegedly provided to the Claimant. This is particularly relevant given that both parties accept that the Claimant was out of employment for a significant period of time prior to joining the Respondent.

*10 December 2021*

40. The Claimant's wage slip of this date stated that she was due to be paid £1,459.62 gross. However, the sum of £239 was deducted from this because of her alleged error, allegedly causing the Respondent loss.

<u>The Law</u>

41. Pursuant to section 13(1) of the ERA:

*"An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."*

Section 13(2) of the ERA defines "Relevant provision" as a provision of the contract comprised—

*"(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion."*

42. Article 4 of the Order states:

*"Proceedings may be brought before an employment tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if*

*(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*

*(b) the claim is not one to which article 5 applies;*

*(c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and*

*(d) proceedings in respect of a claim of that employee have been brought before an employment tribunal by virtue of this Order".*

Submissions

43. Both parties were given the opportunity to give oral submissions. These submissions are not set out in detail in these reasons but both parties can be assured that I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

44. The Claimant accepts that she received a payment for some of the work that she undertook in November 2021. The dispute is regarding pay for 24 and 26

November 2021. Further, the Claimant challenged a deduction of £239 which the Respondent accepted that it made from her wages on 10 December 2021. It is these matters that I am required to draw conclusions about.

*What should the Claimant have been paid, subject to the Respondent's right to make deductions?*

45. The first issue I had to determine was whether, subject to the Respondent's right to make deductions, the Claimant was entitled to be paid for 24 and 26 November 2021. If she was so entitled, I have had to determine whether she was paid properly for those days.

*26 November 2021*

46. Although not in chronological order, it is easier to draw conclusions regarding 26 November 2021 first. The Respondent accepted that Claimant worked a full day on this date yet the Claimant was not paid for doing so. Subject to the Respondent's right to make deductions (considered later), the Claimant was entitled to be paid for this day. This is irrespective of whether or not she had arranged for her timesheet to be signed. If she worked this day, which the Respondent accepts, she ought to be paid for doing so.

47. There is no evidence of there being a specific agreement between the parties as to how pay should be calculated, save that a gross annual salary of £33,000 was agreed. Although this was not clear, it appeared from the emails referred to earlier that this was based on a full time position working 9am until 6pm. This was then reflected in the Claimant's draft contract of employment which the Claimant did not sign. One of the reasons she did not do so was because she wanted to adjust the hours for Friday. Nevertheless, the clocking in and out records show that the Claimant did generally work from 9am until 6pm. I have also concluded that it is likely that this was agreed between the parties before the Claimant started work.

48. The Respondent calculated the Claimant's daily rate as being £126.92. In doing so, the Respondent divided the Claimant's gross annual salary by 260 days, the number of working days in the year. I noted that if the Claimant was working from 9am to 6pm, over 5 days per week, she would be working approximately 42.5 hours, plus unpaid breaks. This would equate to an hourly rate of around £14.93. Assuming 8.5 hours per day, the daily rate of £126.91 is roughly the same.

49. Consequently, I concluded that, subject to the Respondent's right to make deductions, the Claimant was entitled to be paid £126.92 for 26 November 2021.

*24 November 2021*

50. In respect to 24 November 2021, the Claimant's timesheet records that she worked 6 hours. The extract from the Claimant's clocking in cards however

states that the Claimant clocked on at 12.20pm and clocked out at 6.08pm. It states that she worked approximately 5 and ¾ hours.

51. Ms Broulidakis's evidence was that the Claimant did not work this whole time and would have taken a lunch break. The Claimant denied this and her evidence was that, if she was to take lunch, she would have had it before coming into work. Ms Broulidakis accepted that she was not working on shift on 24 November 2021 and therefore could not say for definite, either way, whether the Claimant was working this time. No other witness on behalf of the Respondent could say this either.

52. I accepted the evidence of the Claimant. She was able to give first hand evidence of what she worked and Ms Broulidakis could not. Furthermore, what the Claimant said she worked is, to some extent, corroborated by the documentary evidence namely the clocking in and out sheet.

53. Based on the above mentioned hourly rate of £14.93, and assuming around 5 and ¾ hours work, the Claimant ought to have been paid £85.85. However, she was paid based on a half day rate of £63.46.

54. Consequently, I found that she was owed £22.39 for this day.

*Was the deduction authorised?*

55. The next issue I had to determine was whether the deduction from the Claimant's wages was authorised. As explained earlier, section 13(1)(a) of the ERA allows an employer to make a deduction from an employee's wages provided that the deduction is authorised by a relevant provision of an employee's contract. A relevant provision means a provision in one or more written terms of the contract which the employer has provided to the employee before the deduction was made. The provision is satisfied if the employer gives a copy of the contract containing the relevant term to the worker.

56. On 13 November 2021, the Respondent wrote to the Claimant and attached a contract of employment and Staff Handbook. The next day, the Claimant replied to the Respondent and stated: "Many thanks for sending me the contract. After reviewing the documents, I have a few points". One point was that she wanted to see a full copy of the handbook because she believed that the copy sent on 13 November 2021 was incomplete. The Respondent replied the following day to say that the full copy was attached. The Claimant accepted in evidence that she saw it at around 15 November 2021 although did not read it because her employment would be terminating soon, as she had resigned shortly thereafter.

57. The deduction was made on 10 December 2021. All that Respondent was required to do was to provide the contract with the relevant provision to the Claimant before the deduction was made. The Respondent says it provided this on 13 November 2021. The Claimant confirmed that she saw the whole staff handbook after the Respondent responded to her email on 15 November 2021.

58. On the balance of probabilities I have found that the deductions provision was provided to the Claimant before the deduction was made. There is no requirement, in this instance, for the Claimant to have either read or signed to confirm her agreement with the deductions provisions.

59. The parties accepted that the sum of £239 was deducted from the Claimant's wages on 10 December 2021. The Respondent's evidence was that this was because of an error that the Claimant had made as explained earlier.

60. The Claimant strongly and passionately denied that these errors were solely hers. She was new to the business, was working closely with another manager and said she could not be considered solely responsible for them She had also been out of employment for many years because of her disability and had not received the training that she would have expected to receive.

61. The law states that where contractual provisions and written agreements authorising deductions are being relied on, these should be drafted as precisely as possible. Employers are unlikely to be able to rely on clauses that are ambiguous or too widely drafted. Any ambiguity is likely to be construed against the employer and in favour of the employee.

62. The law also states that, when analysing repayment clauses, Employment Tribunals should bear in mind that such terms should be 'subject to a considerable degree of scrutiny' because of the vast disparity in economic power between employer and employee.

63. Even if it is established that there is a contractual provision authorising the type of deduction in question a Tribunal must then go on to consider whether the actual deduction is in fact justified.

64. Consequently, I analysed the relevant deductions clause, in conjunction with the facts relied upon by the Respondent.

65. The specific deductions provisions relied upon by the Respondent stated (my emphasis):

    *By signing this Handbook, you authorise the Employer to deduct from your pay, such sums of money equal to any shortfall, loss or damage sustained by the Employer caused by your actions, whether intentional or negligent, direct or indirect.*

66. It went on to state:

    *Upon termination of employment, any monies such as deficiencies / shortages or debts will be recovered from final pay in full.*

67. One concern I had with this clause was the requirement for the handbook to be signed in order for the employee to authorise any deduction. This is specifically stated in the provision itself.

68. As stated earlier, the Claimant did not sign the contract. Although there is no need for a worker to sign the contract or handbook in order for s13(1)(a) to apply, as explained earlier, it appeared to be the Respondent's intention that this clause would not operate unless the handbook had been physically signed.

69. The second concern was that there was a need for me to determine, on a balance of probabilities, that the Claimant's actions caused the shortfall, loss or damage in order for the deductions clause to apply, either directly, indirectly, intentionally or negligently.

70. To "cause" something to happen is to make something happen. There was no direct evidence of this available to me. The Claimant strongly denied that she had caused the errors. The person who considered that the Claimant was so responsible, the Reservations Manager, did not give evidence at this hearing, despite her remaining in the Respondent's employment. There was uncertainty regarding whether the Claimant made the mistakes herself, given the Claimant's evidence that employees used each other's passwords on a regular basis, whether they were permitted to do so or not. There is no reliable evidence of the Claimant receiving the training needed to avoid making these errors. She had not worked in the Respondent's employment for long and had been out of employment for many years.

71. At best, and whilst I did not make any findings about this, the Respondent could say that the Claimant contributed to the errors. On the balance of probabilities, the evidence before me did not persuade me that she caused them. Certainly there was no evidence of her causing the errors intentionally and the Respondent cannot say that she did so negligently, given the lack of training that I have found it provided to the Claimant.

72. Consequently, the deductions made to the Claimant's wages were unauthorised and the Claimant's claim for unauthorised deductions from wages was well founded.

73. I found that the Claimant was owed the following:

    a. £239 which was deducted from her wages on 10 December 2021;

    b. £22.39 for the work undertaken on 24 November 2021; and

    c. £126.92 for the work undertaken on 26 November 2021.

*Holiday pay claim*

74. As the Claimant was employed from 10 November 2021 to 26 November 2021, she had 16 days service. She accrued 20 days holiday excluding bank holidays per year. This equates to 1.66 days per month. November has 30 days. On this basis, I found that the Claimant accrued 0.88 days holiday which equates to a payment of £111.69.

*Employer contract claim*

75. As for the employer contract claim, the legislation provides that an employer may bring an employer counter claim against an employee where the employee has brought a contract claim against the employer pursuant to the Order.

76. The Claimant had not expressly brought a contract claim against the Respondent. There was no reference to a breach of contract claim, or the Order, anywhere in the Claimant's claim form or in her witness statement, which she says she sent to the Tribunal alongside her claim. When I raised this with the Respondent, she did not disagree. She did not signpost me to part of her claim where she believed that the Claimant had pursued a breach of contract claim. She has brought a claim for payments including holiday pay which is a claim for unauthorised deductions from wages.

77. Further, the Respondent's claim would need to be for damages caused by the Claimant by breaching her contract. I was not persuaded that the Claimant had in fact breached her contract of employment, largely for the reasons explained earlier when looking at the deductions claim.

78. The Respondent's employer contract claim was therefore not well founded and was dismissed.

**Employment Judge McAvoy Newns**

**20 March 2023**

**Sent to the parties on:**
**20.3.2023**

**For the Tribunal: GDJ**