



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Hines

**Respondent:** Ear Doctors Microsuction Clinic UK Limited

**HELD AT:** Manchester

**ON:** 14 February 2023  
(with 30 March 2023 in chambers)

**BEFORE:** Employment Judge Johnson

## REPRESENTATION:

**Claimant:** In person, unrepresented

**Respondent:** Ms S Younis (litigation consultant)

# JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint of unlawful deduction from wages is not well founded and is unsuccessful.
- (2) The complaint of breach of contract/notice pay is well founded and is successful. The claimant is entitled to receive the net sum of £264.26 in respect of this complaint from the respondent.
- (3) The complaint of unpaid annual leave entitlement is well founded and is successful. The claimant is entitled to receive the net sum of £370.50 in respect of this complaint from the respondent.
- (4) The respondent shall pay the total gross sum of **£634.76** in full and final settlement of the two successful complaints in this claim described in paragraphs (2) and (3) of this judgment.

# REASONS

## Introduction

1. The claimant presented a claim form to the Tribunal on 4 August 2022 following a period of early conciliation from 12 July 2022 to 4 August 2022. She brought complaints of breach of contract/notice pay, unpaid annual leave/holiday pay and unlawful deduction from wages.
2. The respondent presented a response and grounds of resistance on 6 September 2022.
3. The case was originally listed to take place on 2 November 2022, but Employment Judge Feeney ordered its postponement and relisting for 14 February 2023 with a longer hearing length of 1 day.

## Issues

4. Although a formal list of issues had not been agreed prior to the final hearing, an initial discussion with the parties at the beginning of the hearing enabled me to identify the issues and which reflected those typically encountered in complaints seeking notice pay, holiday pay and unpaid wages.
5. A singular issue however, in this case, related to the question of whether the claimant had been involved in the unilateral variation of her contract of employment on 28 June 2022 with the purpose of deceiving the respondent's director and enhancing her contractual terms. Ms Younis submitted that if the respondent could prove that this had happened as alleged, this would amount to an illegality and thereby prevent the claimant succeeding with her claims. The claimant disputes this allegation.
6. I approached this case using the following issues below, (with the alleged allegation of unilateral variation of contract by the claimant, remaining as an allegation to be taken into account when deciding each complaint.
7. Breach of contract
  - a) What was the claimant's notice period?
  - b) Was the claimant paid her notice period?
  - c) If not, can the respondent prove the claimant guilty of gross misconduct meaning that it can dismiss the claimant without notice?
8. Holiday pay
  - a) What was the claimant's leave year?
  - b) How much of that leave year had passed at the time of the claimant's effective date of termination on 1 July 2023?

- c) How much annual leave entitlement had accrued at the time of the claimant's effective date of termination on 1 July 2023?
- d) How much paid leave had the claimant taken in that leave year?
- e) Are any untaken annual leave days from previous years carried over?
- f) How many days remain unpaid?
- g) What was the claimant's relevant daily rate of pay?

9. Unpaid wages

- a) Were wages paid to the claimant in June 2023 which were less than wages she should have been paid?
- b) Was any deduction required by statute?
- c) Was any deduction required and/or authorised by contract?
- d) Did the claimant have the relevant contract and/or notice before the deduction was made?
- e) Did the claimant agree in writing to deductions being made of this nature before they were made?
- f) How much is the claimant owed?

**Evidence used**

- 10. The claimant gave witness evidence and relied upon a witness statement exchanged with the respondent's representative before the final hearing. There was an issue regarding a variation to her statement contained in the bundles made available to the Tribunal, which included new paragraphs, and which appeared to have removed some of the original paragraphs. Ms Younis explained that she had reviewed the statement which had been served in an unlocked Word document and had inadvertently inserted her own notes into the statement, which had replaced some of the paragraphs. I agreed that this was an innocent mistake and once we had ensured that everyone had the correct original version of the claimant's statement, we were able to proceed hearing her evidence.
- 11. The respondent's evidence consisted of witness evidence from Ms Elizabeth Oduwaiye who is the director and owner of the respondent company and her partner, Mr Abiodun Oduwaiye.
- 12. There was a hearing bundle which consisted of just 100 pages and containing the proceedings, contracts of employment, emails, texts and WhatsApp messages.

13. The witness evidence and final submissions were concluded on the day of the final hearing, and I reserved my decision. Ms Younis provided further copies of documents to the Tribunal and the claimant on the day following the final hearing. It related to a record of changes made of Reagan Reads' contract at around the same time as the claimant was alleged to have amended hers. While I understood that the respondent felt that it was unable to provide a copy of this statement until the discussions took place during the final hearing concerning the alleged variation of the contract by the claimant, I felt that they were raising this argument as an issue, had control of the documents concerned and should have known that they might have been relevant to support the arguments that they wished to advance.
14. I concluded that while under Rule 2, I could allow the documents to be added to the final hearing documents at this late state, I felt it was not in the interests of justice to do so. It did not materially affect my consideration of the issues arising from these proceedings and for the reasons given below, I did not think it would materially affect my deliberation in this case. Moreover, if I did allow this documentation, it would have been in the interests of justice to recall the claimant to give further evidence concerning this late disclosure which would have involved a disproportionate use of the Tribunal's resources.

## **Findings of fact**

### Background

15. The respondent company ('EDMC') is a business which is owned by Ms Oduwaiye who is the managing director. It is based in south Manchester near Glossop. It carries out various ear nose and throat ('ENT') related procedures for privately paying customers and which are carried out by Ms Oduwaiye, who is an ENT doctor. She informs me that as a surgeon, she does not use the prefix 'Doctor' and I understand that this is correct.
16. Ms Oduwaiye's works for a number of hours each week as an NHS doctor and only attends the EDMC premises, when customers have booked procedures. I accept however, that the business was open during normal daytime hours from Monday to Saturday each week and there would be a receptionist available to take appointments and another assistant who would assist Ms Oduwaiye in the treatment room.
17. The treatment room had a glass window which enabled those inside to look out and see those sat at the reception desk.
18. The claimant (Mrs Hines) started working for EDMC from 25 November 2021 and until the end of the year, she continued to work hours in her old job. This meant that she was unable to work the usual 32 hours per week with EDMC until January 2022. She was introduced to EDMC by Nicola Reads, who was a manager there and also a friend of Mrs Hines. She

was appointed as a clinic assistant and Ms Reads had a managerial role in the business.

### Contracts

19. The issues concerning the correct contract of employment will be discussed further below. However, I accept on balance (and as described on the front page of the contract at p.39 of the bundle), Mrs Hines was appointed to her clinic assistant role on 25 November 2021 and being line managed by Ms Reads. Her rate of pay was the then minimum wage at that time, £9 per hour with weekly hours given as being 32 hours. Even if she did not work these hours immediately, I accept that she broadly worked these hours each week (with the occasional variation), until she gave notice of her resignation on 24 June 2021.
20. She had a probationary period of 3 months and once this was completed, her notice period would be one week until she had completed two years of service, (p.43).
21. Her annual leave entitlement was described as being '*As per statutory calculated at: 180 hours per annum*'. Section 6 of the contract said that this holiday could be taken '*...in each calendar year*'. It made clear that holidays must be agreed with management and significantly, '*There is no entitlement to carry forward any unused holiday from year to the next*', (p.41).
22. Section 5 of the contract (p.41), provided that:

*'The Employee's normal hours of employment shall be between 9.00am to 6.00pm on Monday to Saturday with a 30 minutes unpaid break for lunch, when working more than 6 consecutive hours.*

*Your starting, finishing time and daily hours of work and/or days of work may change. A rota will be provided a month in advance. Please note that occasionally, this may need to be changed by the clinic manager. If this is the case it will be discussed and agreed with you in good time'.*
23. A further copy of a contract relating to Mrs Hines could be found at p.46 to 49 and provided an effective date of 25 November 2021. It was different on the front sheet because the rate of pay was described as being £9.50 per hour. This reflected the increase in the National Minimum Wage that was applicable from 1 April 2022. There was a variation to the hours of employment in section 5 in that the final sentence appeared different, although it was illegible in the copy available to the Tribunal. The holidays section 6 was also slightly different, (p.48). The termination section 10 remained the same as before, (p.49). There was no signature page.
24. EDMC referred to a copy of the redacted contract of Reagan who was another clinic assistant, and which was asserted as being the original template of the contract, although clearly it had been adjusted for this employee and was not a blank copy, (pp50 to 54). It included a signature

space for the company as well as the employee on the final page. The final sentence of the hours of employment section 5 is slightly different in that it simply stated, *'This rota may be subject to change by the clinic manager subject to agreement by you'*, (p.51).

25. Mrs Hines said that she could not find her original contract when she handed in her notice of resignation on the morning of 25 June 2022, and she printed off a copy from the work computer in reception. Nicola Reads who resigned at the same time, was there with her. She believes that Ms Reads updated the contracts earlier that year to reflect the change in National Minimum Wage. Ms Reads was not available to give evidence and unfortunately, it was not possible to hear her evidence concerning this matter. She denied altering the contract when she accessed the computer on 25 June 2022.
26. Ms Oduwaiye said she could see Mrs Hines and Ms Reads working on the computer on the morning of 25 June 2022 through the glass of the treatment room. Reference is made to a record of Mrs Hines' saved contract on what appears to be Google Chrome, and which notes that in the Date Modified column, that the most recent modification took place on '25/06/2022 11:36'. This is consistent with the time that Mrs Hines and Ms Reads were sat at the computer and looking (on Mrs Hines' evidence), for her contract of employment. However, this record, while indicating a modification at the material time, does not include copies of the original versions of the document and the amended document which would clearly show what was in the original version, what had been varied and when. I take judicial notice from the fact that even the smallest use of the keyboard or mouse when accessing document on a document program such as Word etc, can be treated as a modification by the computer. This could involve something as innocuous as a tap of the space bar and the user would be invited to save the document before closing it by a window popping up on the screen.
27. This was a case where I had one witness's word against another and without additional witness evidence or sufficient documentation to corroborate one version over the other. Accordingly, I must find on balance that the documents provided are all genuine and represent the contracts at a particular time and any changes are not attributed to any dishonesty by any party. I conclude on balance that the document beginning at page 39 and signed by the claimant, must be the version that she signed and which was valid at the time of Mrs Hines' resignation.
28. Importantly, I would also say that although Ms Oduwaiye said that she used a holiday year as running from April to March, to accord with HMRC tax years and would tell each employee that this (and not the contractual description of a calendar year), there is no written record that she did so. While there is a lot of sense in her adopting a HMRC year for annual leave in terms of calculating pay, I must find that Mrs Hines reference to the contractual term which is used in all of the contracts provided in the bundle is correct.

The incident on Saturday 18 June 2022

29. This was a working day like any other and the usual hours of opening applied, being 9am until 6pm. I understood that Mrs Oduwaiye has taken another clinic assistant Reagan English ('Reagan') during the day.
30. Mrs Hines says that Mrs Oduwaiye had decided to close the business early that day at 16:40 hours which would have been 1 hour and 20 minutes early. She said that Mrs Oduwaiye and Reagan were locking up while Mrs Hines pumped up her car tyre. She said that she was not told to stay at work and she was not told that she would lose any money. She found that her pay had been reduced by 1 hour and nobody else had suffered this deduction.
31. Mrs Oduwaiye on the other hand, described Mrs Hines leaving the clinic 'abruptly'. She said that Reagan told her that Mrs Hines had become upset when she found that Mrs Oduwaiye has taken Reagan to a garden centre. I accepted that because of the compact nature of the EDMC car park at the rear of the premises, Mrs Hines' car would have been blocked in by Mrs Oduwaiye's car. Mrs Oduwaiye was in the consultation room and on balance I accept that at around 5pm she called Ms Reads as Mrs Hines' line manager and instructed her to deduct 1 hours pay as the rota has provided for her to work until 6pm. She says she did not want the remaining 20 minutes of the unworked time, because this related to locking up rather than actual work as a clinic assistant.
32. I also accept on balance that Mrs Oduwaiye then went outside and saw Mrs Hines pumping up a tyre on her car and the reason for this was because her vehicle was blocked in and after leaving work so suddenly and early, she could not face returning to ask Mrs Oduwaiye to move her car. While it was accepted by Mrs Hines that Mrs Oduwaiye was 'generous' and would sometimes shut the business early, this would typically be 15 minutes or 20 minutes early and not a much larger time of 1 hour 20 minutes. I accepted that EDMC relied upon customers visiting the shop as 'walk ins' to book appointments and it is unlikely that a small business would close so early and in the way that Mrs Hines identified.
33. There was no dispute that the increased hourly rate of £9.50 was deducted from the following week's pay and while it was not clear that Ms Reads followed Ms Oduwaiye's instruction to meet with Mrs Hines and explain that a deduction would take place and why that was. Nonetheless, she left work without permission 1 hour 20 minutes early and there was no dispute that contract term 4 (Pay & Deductions) which explained that Mrs Hines would be paid 'for the hours worked.'

The claimant's resignation

34. There was no dispute that Mrs Hines handed in notice of her resignation on Saturday 25 June 2022. She was aggrieved about the deduction of 1 hours pay and which she noted when she received her wage on 24 June 2022. At 11.30am on 25 June 2022 she handed in her notice of

resignation. There was a dispute about whether Mrs Hines was aggressive in front of a patient regarding the hours pay and the resignation.

35. Ms Reads also gave notice of her resignation and I understand that she decided not to work her notice as she believed she was owed untaken holiday pay amounting the notice period.
36. There was no dispute that Mrs Hines' notice period was one week and her effective date of termination would be 1 July 2022. There was no dispute that she should work this remaining period.
37. There was a problem for Mrs Oduwaiye in that she was now without Mrs Reads and she had reconfigure the rota for the following week and at 6:03 on the morning of Monday 27 June 2022, she messaged Reagan and Mrs Hines using WhatsApp and saying as follows (p.57):

*'Due to emergency changes in Rota, as per your contract, you are aware that there may be changes in rota hours and staff flexibility will be required at that point to accommodate the needs of the business.  
Please see below your revised hours for this week*

*[...]*

*Amy Hines*

*Monday 27/06/22 09:00-18:00*

*Tuesday 28/06/22 09:00-18:00*

*Wednesday 29/06/22 09:00-18:00*

*Friday 01/07/22 09:00-18:00*

*This makes Amy's hours for this week 36.*

*I am aware that 9 hours of the above have already been paid to Amy therefore it will be deducted from this week's pay.*

*Salaries for this week will be paid on Saturday 02/07/22...'*

38. Mrs Hines was clearly unhappy with this last minute change and quickly replied at 06:13 as follows (p58):

*'As stated in my contract last minute changes to my rota must be agreed upon by myself and management. Unless I will still be paid for the 32 hours I am contracted to do I don't agree to these changes and as I have been informed I'd still be entitled to my full contractual pay.'*

Ms Oduwaiye replied at 06:18 as follows:

*'Kindly send me a copy of your contract that I have signed, you seem to have a different contract from the one I drafted? I am afraid you will only get paid for the hours you work.'*

39. This correspondence continued and was ill tempered and Ms Oduwaiye raised the issue of misconduct but confirmed that Mrs Hines would be paid



for the hours she worked. The WhatsApp messages continued until 06.42 before the parties paused their communications. Mrs Oduwaiye appeared to be concerned about Mrs Hines not working on Thursday with Reagan and Mrs Hines appeared to be concerned about the raising of possible conduct issues and working the additional 9 hours which she owed because she did not work the full 32 hours the previous week (pp58-9).

40. The communications resumed at 12:39 when Mrs Hines sent a WhatsApp message to Mrs Oduwaiye saying '*I have emailed over a sick note effective from today. Uniforms have been left in clinic and my keys are with market street pharmacy as I was told to do, (p.60).*' The Med 3 fit note was issued by Mrs Hines' GP on 27 June 2022 and stated that she was not fit for work until 4 July 2022 by reason of '*stress and anxiety*', which of course was after the effective date of termination on 1 July 2022 when Mrs Hines' notice expired (p.61). Mrs Hines did not return to EDMC and secured alternative employment before her fit note expired.
41. Mrs Oduwaiye believed that Mrs Hines did not attend work according to the rota and Mr Oduwaiye gave evidence that he passed the premises at 9:30am, returning from dropping his children off at their schools and noted that the shutters were closed. He phoned Mrs Oduwaiye who was working an NHS shift and she asked him to pass by on his way to work. He said in his oral evidence that he passed at around 10:30am and 11:00am and noted that the shutters of the business premisses remained closed at both the front and back. However, he saw two women at the rear of the premises in the car park by a white car. He accepted that he could not recall whether they were Mrs Hines and/or Ms Reads. Mrs Oduwaiye did not appear to message Mrs Hines or call her, to see what was happening. There was an issue in how she managed staff in the business and appeared to be reluctant to engage in this sort of conversation and instead would rely upon a manager such as Ms Reads, who of course was no longer working for EDMC.
42. Mrs Hines said she was unwell when she arrived at work at 9:00am but thought it would take time to get an appointment with her GP. She was able to get a telephone appointment that morning and the Med3 was issued promptly. At that point, she decided she could leave work. She said that Ms Reads did come to the premises to drop off her uniform, but Mrs Hines believes she was in the premises during the morning before she left at lunch. She provided a photograph of the inside of the premises at 12:29pm on 27 June 2022 and I accept that she was present at this time.
43. It was not entirely clear whether Mrs Hines opened the EDMC premises that morning or whether she simply attended to drop off her uniform with Ms Reads. This is a case of Mrs Hines word against that of Mr Oduwaiye. On balance, I accept that Mrs Hines did not want to attend work on 27 June 2022 but was feeling unwell. Whether her stress and anxiety were caused by work, is not clear, but what is clear is that her GP was prepared to sign her off as unfit for work for the remainder of her notice period. She did attend the premises that morning and communicated when she was leaving. She may not have worked effectively and opened the shutters,

but it was not a case of a complete refusal to work, and the fit note corroborated her ill health for the final week of notice.

44. Mrs Hines' payslips usually provided gross pay for 32 hours work each week calculated at £9.50 per hour (from April 2022) and amounting to £304.00. In addition to usual deductions for income tax and national insurance, the payslip dated 24 June 2022 included a deduction for 1 hour's pay of £9.50 for '*unauthorised leave*'.
45. The following week's payslip dated 1 July 2022, and which was the final day of Mrs Hines' employment only included her statutory sick pay ('SSP') as she was not entitled to any contractual sick pay. Overpaid holiday of £87.40 was deducted as was the overpaid 9 hours referred to above of £85.50. This meant she received no pay and had a deficit of -£133.16. Accordingly, EDMC argues that Mrs Hines in reality owes them money rather than the other way round.
46. There was no dispute that 51 hours of Mrs Hines' annual leave entitlement had been taken by 1 July 2022. EDMC argued that this meant that if the leave year began on 1 April 2022 (and with no contractual right to carry over leave from the previous year), she was in deficit with her annual leave to the extent of 41.8 hours. However, Mrs Hines argued that her leave year began on 1 January 2022 and with the additional 3 month period being calculated, she was actually owed accrue annual leave of 90 hours. Ms Oduwaiye believed that no notice pay was payable because Mrs Hines refused to work before she provided her fit note to EDMC and had she been aware of the issue regarding the contract of employment being varied, this illegality amounted to gross misconduct and would allow her to terminate the contract immediately without notice. However, I noted that no notice of summary dismissal for these reasons appears to have been given.
47. I have of course made findings above regarding the interpretation of the holiday year and the calendar year identified in the contracts of employment and additionally, I have been unable to find that the contracts were deliberately varied as alleged by Mrs Oduwaiye. While there may have been conduct issues alleged relating to the way the resignation was delivered, there was no investigation or process or evidence to support the contention that this occurred as alleged as was sufficiently serious to amount to gross misconduct as alleged. The claimant simply didn't work her notice period once she was in receipt of her fit note and EDMC simply made adjustments to her final pay reflecting what they believed related to her conduct and failures to work her hours on the rota.

## **The law**

### Unlawful deduction from wages

48. Section 13 of the Employment Rights Act 1996 ('ERA') provides that a worker has the right not to have their employer make an unauthorised deduction from their wages.

49. The exceptions are where a deduction is required or authorised by a statutory provision or a relevant provision of the worker's contract or where the worker has previously given in writing their agreement to the making of the deduction.
50. Section 14 ERA provides that section 13 does not apply where the deduction is made by the employer to reimburse an overpayment of wages.

#### Holiday pay

51. Regulations 13 and 13A of the Working Time Regulations 1998 ('WTR') provide that a worker is entitled to annual leave in each leave year, (4 weeks and 1.6 weeks respectively).
52. Regulation 13(2) WTR, provides that a worker's leave year begins on
- a) On such date during the calendar year as may be provided for in a relevant agreement: or
  - b) Where there are no provisions of a relevant agreement which apply, the date will be (for all employment beginning after 1 October 1998), on the date which that employment begins and each subsequent anniversary of that date.
53. The word 'calendar year' is interpreted by regulation 2 WTR as meaning '*...the period of twelve months beginning with 1<sup>st</sup> January in any year*'.
54. Leave may not normally be carried over into a subsequent leave year, unless there is agreement between the parties or where it was not reasonably practicable to take the leave as a result of the effects of the coronavirus in accordance with regulation 13(10) WTR as amended.
55. Regulation 30 WTR, provides workers with the right to bring a complaint to the Tribunal regarding (amongst other things), breaches of rights under regulation 13 and 13A.

#### Breach of contract

56. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.
57. A claim for notice pay is a claim for breach of contract; Delaney v Staples 1992 ICR 483 HL.

58. In Neary v Dean of Westminster [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.
59. In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract. See: Shaw v B & W Group Ltd UKEAT/0583/11.

## Discussion

### Unpaid wages

60. There was no dispute between the parties in this case that on Saturday 18 June 2022, the figure of £9.50 was deducted from the claimant's week's pay in the following week. I was not entirely clear that Ms Reads actually followed Ms Oduwaiye's instruction to explain that the deduction would take place and why it was being imposed.
61. However, while I was unable to make a finding in relation to that matter, I was able to find that Mrs Hines left work without permission some 1 hour and 20 minutes before the usual closing time at the respondent business. So, in effect, Mrs Hines was only paid for 20 minutes of the 1 hour 20 minutes which she did not work.
62. This was a deduction from the pay which the claimant expected to receive following the rote being finalised for the week which included 18 June 2022. It was clear that this deduction was not one which was required by statute. However, there was no dispute that contract term 4 (Pay & Deductions) in the contract of employment between the respondent and claimant explained that Mrs Hines would be paid '*for the hours worked.*' This contract was in force before the deduction was made, was available to Mrs Hines before the deduction and she had signed her agreement of the terms and conditions provided by the contract.
63. This was clearly an agreement between the employer and employee that the employee would be notified of the hours to be worked, knew she was expected to work until the normal closing time of the business and unilaterally left without agreement Ms Oduwaiye. While there were occasions when Mrs Hine might be allowed to leave slightly early, this scenario was something different from that occasional 'bonus' that might arise. The deduction arose entirely from Mrs Hines' failure to work her contract hours and she already knew the consequences of leaving early without permission. Accordingly, the respondent was justified in deducting the £9.50 in issue and this complaint fails.

Breach of contract

64. I concluded that Mrs Hines had a probationary period of 3 months and once completed, her notice period would then be one week, (until she had completed two years of service), (p.43).
65. There was also no dispute that Mrs Hines' notice period was one week, and her effective date of termination would be 1 July 2022. There was an expectation by Ms Oduwaiye that Mrs Hines should work this remaining period and Mrs Hines knew this to be the case.
66. My finding regarding 27 June 2022 was that Mrs Hines did not want to attend work on 27 June 2022 but did not conclude she simply refused to work her final week. I accepted that she was feeling unwell and while the reason was unclear, her GP was prepared to sign her off as unfit for work for the remainder of her notice period. She did attend her workplace on the morning of 27 June 2022 and when she left, informed the respondent. Consequently, there was not a refusal to work and the fit note which she provided supported her being too unwell to work the final week of notice.
67. While Ms Oduwaiye believed that there were conduct issues relating to Mrs Hines that may have affected her continued employment, I did not see evidence which supported gross misconduct on her part and no process took place to investigate this matter as a disciplinary issue.
68. Accordingly, I do not accept that the respondent has proven that Mrs Hines was guilty of any gross misconduct which would have enabled a dismissal without notice. This means that Mrs Hines' complaint of notice pay succeeds and she is entitled to a week's notice pay, based upon her typical working week, less any Statutory Sick Pay she received, which according to the payslip in the bundle at page 94, amounted to £39.74
69. Based upon the figures provided at the final hearing, Mrs Hines is entitled to receive the sum of £304 gross which represents 32 hours (being a typical working week) at £9.50 per hour. However, following the deduction of £39.74 SSP, a net figure of £264.26.

Holiday pay

70. I concluded that Mrs Hines' leave year ran from January to December each year and not from April – March.
71. This finding of course affected the extent to which Mrs Hines suffered a loss of holiday pay when she resigned on 1 July 2022, given that her leave year had run from January 2022 to that date.
72. This meant that Mrs Hines had according to the evidence during the period of January to July 2022, accrued untaken annual leave entitlement which was 90 hours less the 51 hours which she confirms that she had already taken that year. This left 39 hours which by applying the revised hourly

rate at the date of termination of £9.50, which meant Mrs Hines was entitled to receive £370.50.

Conclusion

73. For the reasons given above, I conclude as follows:

- a) The complaint of unlawful deduction from wages is not well founded and is unsuccessful.
- b) The complaint of wrongful dismissal/notice pay is well founded and is successful. The respondent shall pay her £304.00 in respect of this loss, (subject to the deduction of £39.74 SSP received by the claimant during her week's sickness absence during her final week of work). This means that the net figure payable is £264.26
- c) The complaint of unpaid annual leave entitlement is well founded and is successful. The respondent shall pay her £370.50 in respect of this loss.

74. Accordingly, the respondent shall pay the total sum of **£634.76** in full and final settlement of the claimant's successful complaints.

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Employment Judge Johnson

Date 30 March 2023

JUDGMENT SENT TO THE PARTIES ON

4 April 2023

FOR THE TRIBUNAL OFFICE



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2405971/2022**

Name of case: **Mrs A Hines** v **Ear Doctors  
Microsuction Clinic UK  
Ltd**

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

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

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

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

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

**the relevant decision day** in this case is: 4 April 2023

**the calculation day** in this case is: 5 April 2023

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

For the Employment Tribunal Office

## GUIDANCE NOTE

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

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

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