



# EMPLOYMENT TRIBUNALS

**Claimant:** Laura Jones

**Respondent:** A Shelf Above the Rest Limited

**Heard at:** Newcastle Employment Tribunal (remotely by CVP)

**On:** 29 March 2023

**Before:** Employment Judge Sweeney

## Representation

Claimant: Neil Guss, solicitor

Respondent: No appearance

# JUDGMENT

1. The claim of wrongful dismissal (failure to pay 1 week's notice) is well-founded and succeeds.
2. The Respondent is ordered to pay the Claimant the net sum of **£340** for breach of contract.
3. The claim of unlawful deduction of wages (in respect of unpaid wages) is well-founded and succeeds. The Respondent unlawfully deducted (failed to pay) the gross amount of £1,700 on 28 September 2022
  - a. The sum of £1,700 consists of the shortfall of wages which were due as follows:
    - i. 28 July 2022: £102 in respect of 6 hours worked on 21 July 2022
    - ii. 28 August 2022: £1,598 in respect of 94 hours worked in August 2022
4. The Respondent is ordered to pay the Claimant the gross amount of **£745.88** in respect of unpaid wages. That amount is calculated by giving credit to the following sums paid by the Respondent towards the monies owed on the following dates:
  - a. £200 on 05 September 2022
  - b. £704.12 on 30 January 2023

- c. £50 on 27 March 2023
5. The claim under regulation 30 Working Time Regulations 1998 for failure to pay accrued and untaken holiday is well-founded and succeeds.
6. The Respondent is ordered to pay to the Claimant the gross sum of **£221**.
7. The total amount ordered to be paid to the Claimant is **£1,306.88**.

## REASONS

1. By a Claim Form presented on **23 January 2023**, she brought the following claims:
  - a. A claim of deduction of wages in respect of unpaid wages.
  - b. A claim of failure to pay holiday pay on termination of employment.
  - c. A claim of failure to pay notice of 1 week.
2. The Respondent did not return a response to the claim and has taken no part in these proceedings.
3. The Claimant was represented at today's hearing by Mr Guss, solicitor at Thompsons solicitors. He had prepared a bundle of 99 pages and written submissions. I heard sworn evidence from Mrs Jones whom I found to be an honest and credible witness.

### Facts

4. The Claimant was employed by the Respondent as a Graphic Designer/Laser Engraver from **21 July 2022** to **31 August 2022**. She had done some previous work as a freelance graphic designer but had been paid in respect of that work. She became an employee and entered into a new contract with the arrival of a laser.
5. Her written contract provided that she was to work 20 hours a week consisting of 7 paid hours (9am – 5pm) on Tuesdays and Wednesdays and 6 paid hours (9am – 4pm) on Thursdays at the rate of **£17** an hour. The contract provides for payment to be the 28<sup>th</sup> of each month. It also provides for holidays to be 28 days a year (pro rata) and for 1 week's notice of termination in the first 6 months of employment.
6. Her first day under her contract of employment was **21 July 2022**. That was a Thursday. She worked 6 hours that day. She then worked 20 hours the following week, making a total of 26 hours worked in July 2022.
7. On **28 July 2022**, she was paid **£340** in respect of 20 hours worked. That left a shortfall of **£102**, in respect of the 6 hours worked on 21 July.

8. In the month of August 2022, the Claimant worked a total of 94 hours (20 hours in each of the weeks commencing 1<sup>st</sup>, 8<sup>th</sup>, 15<sup>th</sup> and 22<sup>nd</sup> August and 14 hours in the week last week). Therefore, the amount properly payable to her on **28<sup>th</sup> August** (the next pay date) was **£1,598**.
9. The Claimant's employment was summarily terminated on **31 August 2022**. The Respondent's director, Alan Mertsch, spoke to the Claimant that day and they agreed, by way of a variation of the contract, that the outstanding wages, outstanding holiday pay and payment in lieu of notice would be paid on the next payroll date of **28 September 2022**. That letter was at page 42 of the bundle. The same day, Mr Mertsch wrote to the Claimant to say that he hoped to work with her on future projects (page 43).
10. As far as holidays were concerned, the Respondent's holiday year was from 01 January to 31 December. Her annual pro-rata holiday entitlement was 16 days. The Claimant's accrued holiday entitlement from 21 July to 31 August was 13 hours. The Claimant had not taken any of that holiday.
11. That meant that the amounts properly payable to the Claimant on **28 September 2022** were:
  - a. **£1,700** (consisting of the shortfalls of **£102** and **£1,598** from July and August)
  - b. **£221** in respect of accrued but untaken holiday.
12. The Claimant was also expecting to be paid her payment in lieu of notice of **£340**.
13. There were payslips in the bundle which on the face of things showed payments to the Claimant of £1,369.47 and £942.88 on 31 August 2022 and 30 September 2022 respectively. However, those payslips are a fiction. No such payments were made on those dates. The Claimant produced her bank statements for August and September 2022. The only payment which was made to the Claimant by the Respondent was of £200 on 05 September 2022. This was made as a contribution towards the unpaid wages.
14. Therefore, as of 28 September 2022, there was a shortfall owed to the Claimant of **£1,500** in respect of outstanding wages and **£221** in respect of holiday pay.
15. The Respondent made further payments to the Claimant towards her unpaid wages as follows:
  - a. £704.12 on 30 January 2023
  - b. £50 on 27 March 2023
16. Giving credit for those sums, that left an outstanding amount of **£745.88** in respect of outstanding wages and **£221** in respect of holiday pay. This was in addition to her notice pay.

17. The Claimant contacted ACAS on **09 December 2022**. A certificate was issued on **23 December 2022**. She was confused about time limits. Although she was a member of a trade union, the only contact she had was in early September 2022. She was sent a link to contact ACAS.
18. She was unsure when time began to run for the purposes of bringing her claims and believed that the date of **28 September 2022** was the key date. This was due to the fact that Mr Mertsch had told her and written to her on 31 August 2022 to confirm that she would be paid the monies due to her on that day. It was also due to the fact that the payslip (which bore no relation to reality) gave a date of 30 September 2022.
19. Although her employment ended on **31 August 2022**, the time for presentation of a complaint of unlawful deduction of wages runs from the date the wages are properly payable, which in this case was the **28 September 2022** - that being the date on which it was agreed, immediately prior to termination, that payment in respect of outstanding wages was to be made. That was also the case of payment of holiday pay. In relation to a complaint for holiday pay (whether under section 23 Employment Rights Act 1996) or under regulation 30 Working Time Regulations 1998, time runs from the date payment was due or properly payable, that is **28 September 2022**. The position is somewhat different under the Extension of Jurisdiction Order 1994, in that claims for breach of contract (such as payment in lieu of notice) run from the date of termination of employment and must be outstanding on the date of employment. That distinction was a distinction lost on the Claimant. She simply did not know this.

## Relevant law

### 13.— Right not to suffer unauthorised deductions.

(1) 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.

(2) In this section "*relevant provision*", in relation to a worker's contract, means 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.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly

payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

### **23.— Complaints to [employment tribunals]**

(1) A worker may present a complaint to an [employment tribunal]

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2))

(2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(4) Where the [employment tribunal] is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

20. There is a similar provision in article 7 of the ETs Extension of Jurisdiction Order which provides that complaints must be brought within three months of the effective date of termination of the contract giving rise to the claim unless the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period and it was presented within such further period as the tribunal considers reasonable.
21. Regulations 13 and 13A Working Time Regulations 1998 provide an entitlement to 4 weeks and 1.6 paid annual leave respectively. Regulation 14 provides for the employee/worker to be compensated in respect of accrued but untaken holiday when employment is terminated. Regulation 30 provides that a worker may present a complaint for failure to make such payment. Time for such a complaint runs from the date payment was due.

### **Conclusions**

22. From my findings I can conclude that the following amounts were properly payable to the Claimant on the following dates:
- a. £442 on 28 July 2022
  - b. £1,598 on 28 August 2022
23. As is clear from my findings, only £340 had been paid to the Claimant on **28 July 2022**. Therefore, by the last day of her employment, on 31 August 2022, she was entitled to the balance of £1,700. There was no contractual provision entitling the Respondent to deduct any monies from the Claimant's wages.
24. As a result of the agreement between the Claimant and the Respondent that the amounts due would be paid on the next payroll after the date of termination, that total outstanding amount was properly payable on 28 September 2022. It was not paid – a mere £200 was paid on 05 September. Therefore, there was a series of deductions from the Claimant's pay, the last of which was 28 September 2022.
25. Having regard to the early conciliation dates and extension of time thereby afforded, the claims in respect of arrears of pay and holiday pay were presented in time.
26. The amount of holiday pay due to the Claimant was 13 hours. At a rate of £17 an hour this amounts to **£221**.

27. The Claim for notice pay is a claim for breach of contract. It is clear from the contract that the Claimant was entitled to be paid 1 week's notice pay. It is also clear from my findings that she was not paid it. The amount of a week's pay was **£340** net – at the time, the Claimant's earnings were not such as to attract tax.
28. A claim for breach of contract must be brought within 3 months of the date of termination of employment – not from the date payment was due (which is the case for the claims of unlawful deductions and holiday pay). Therefore, the three month time limit expired on 30 November 2022. That meant that the claim, having been presented on 23 January 2023 was on the fact of it out of time, unless the Claimant could satisfy me that it was not reasonably practicable to present her claim in time and if I remained satisfied that it was presented within a reasonable period.
29. I was so satisfied. The Claimant was ignorant of the distinction between the time limit applicable to the deduction of wages claim and the contract claim. She saw them as all the same thing. Although she was a member of a union and had access to some advice, the only advice she received was to contact ACAS. She was aware that there was three month time limit but not how it applied, and not that there was a distinction as regards when time started running.
30. In my judgement her ignorance was reasonable. There are not many who would understand the distinction. Further, the payslips issued to the Claimant gave a payment date of 30 September 2022. That payslip bore no resemblance to reality.
31. Although the Claim Form was not issued until 23 January 2023, given that it was within time in respect of the complaints for arrears of wages and holiday pay, I was satisfied that the claim for notice pay – presented on the same claim form – was presented within a reasonable period of time after 30 November 2022.
32. Therefore, I extended time for presentation of the complaint of wrongful dismissal (notice pay) to 23 January 2023.

### **Summary**

33. The claims for unlawful deduction of wages and failure to pay outstanding holiday are upheld, as is the claim for breach of contract, in respect of the failure to give notice/pay in lieu of notice.
34. I have given credit to the Respondent for making payments which the Claimant accepted were made towards the arrears of wages which built up. Those payments for which I have given credit are:
- a. A payment of £200 made on 05 September 2022
  - b. Two payments totalling £704.12 made on 30 January 2023
  - c. A payment of £50 made on 27 March 2023

35. That means that the amounts due to the claimant are as follows:

- a. **£745.88** in respect of unpaid wages
- b. **£221** in respect of unpaid holiday pay
- c. **£340** in respect of unpaid notice

36. The total amount comes to **£1,306.88**.

Employment Judge Sweeney  
Date: 29 March 2023