Case No: 2308149/2020
2308150/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr M Drozda (1)
Mr D Lysiak (2)

Respondent: Hi Spec Facilities Services Ltd

Heard at: **Croydon (by video (CVP))** **On:** **3 July 2023**

Before: **EJ Leith**

Representation
Claimants: Mr Drozda (in person). Mr Lysiak did not attend the hearing and was not separately represented.
Respondent: Mr Forde (Director)

JUDGMENT

1. The first claimant's complaint of unauthorised deduction from wages in respect of the pay periods from May to October 2020 fails and is dismissed.
2. The second claimant's complaint of unauthorised deduction from wages in respect of the pay periods from May to October 2020 fails and is dismissed.
3. The respondent made an unauthorised deduction from the first claimant's wages by failing to pay accrued but untaken annual leave on termination of employment, as is ordered to pay the first claimant the gross sum of **£130.80** in respect of the amount unlawfully deducted.
4. The respondent made an unauthorised deduction from the second claimant's wages by failing to pay accrued but untaken annual leave on termination of employment, as is ordered to pay the second claimant the gross sum of **£130.80** in respect of the amount unlawfully deducted.

REASONS

Claims and issues

1. The claimants make a complaint of unauthorised deduction from wages, in respect of alleged underpayments during their employment, and in respect of an alleged failure by the respondent to pay for accrued but untaken annual leave on termination of their employment.

2. I discussed the issues with the parties at the start of the hearing. The issues were agreed to be as follows.

    2.1. The claimants claim payment in respect of 10 days of annual leave which they say they were unable to take in the 2019/20 leave year, and which they say they were permitted to carry over to the 2020/21 leave year but which the employer then refused to let them take. It was common ground that the claimants had 10 days of untaken annual leave in 2019/20. It common ground also that the claimants were not permitted to take them in the 2020/21 leave year (and were not paid in lieu on termination). The sole issue for the Tribunal to determine was therefore whether those days were carried over into the 2020/21 leave year.

    2.2. The claimants claim that the respondent made an unauthorised deduction from wages in respect of their pay from May 2020 to the termination of their employment in October 2020, the claimants having been paid for 1.5 hours per day throughout that period. The respondent's case was that their contracts of employment had been varied by implied agreement to reduce their hours from 2.5 hours per day to 1.5 hours per day. The sole issue for the Tribunal to determine was whether the claimants' contracts of employment had been varied to reduce their hours of work (and pay).

    2.3. The claimants claim unauthorised deduction from wages in respect of a sum which was deducted from their pay in instalments in July, August and September 2020. It is common ground that a deduction was made in each of those months. The respondent's case was that the deduction was for an overpayment made in respect of hours paid but not worked from March 2020 onwards. The sole issue for the Tribunal to determine was whether that deduction was in respect of an overpayment.

Procedure, documents and evidence heard

3. I heard evidence from Mr Drozda. Although he had not prepared a witness statement, I accepted the document explaining the claims as his evidence. On behalf of the respondent I heard from Mr Forde, Director. Although his witness statement was only sent to the Tribunal and the claimants on the morning of the hearing, I admitted it into evidence for the reasons I gave orally at the time. Mr Lysiak did not attend the hearing and had not tendered a witness statement. I indicated that I would proceed to hear the combined claims on the basis of the evidence that had been put before me.

4. I had before me a bundle of 89 pages, plus some additional text messages between the first claimant and Agnieszka Michalska, which had not been received by the respondent prior to the hearing. I adjourned the hearing for a short time to allow Mr Forde to read them.

5. Because of various issues with documents at the start of the hearing, I did not start hearing evidence until 12:25. The first claimant's evidence concluded at 13:20. I indicated to the parties that we would take lunch before the respondent's evidence. The first claimant then explained (for the first time) that he had to leave for work at 14:00, and that he had not realised that the hearing would last all day. With Mr Forde's agreement, we heard his evidence immediately. I then heard brief closing submissions from Mr Forde and from the first claimant. I indicated that I would reserve my decision, to allow the first claimant to leave the hearing and go to work. The hearing concluded at 13:37

Factual findings

6. I make the following findings of fact on balance of probabilities. There are three strands to the claim. Because the factual narrative overlaps, in the interests of readability I have dealt with them thematically rather than strictly chronologically. However I have borne the chronological sequence of events in mind in coming to my conclusions.

7. The respondent is a contract cleaning company. It holds a contract with East Sussex Fire Service to clean various of its premises.

8. The claimants were employed by the respondent to clean Maresfield Fire & Rescue Training Centre. They were initially employed in 2016 by Churchill Cleaning Services (who held the contract at that time). In April 2019 their employment transferred under TUPE to Tenon. In November 2019 they transferred against to the Respondent. Until March 2020, the claimants reported to Peter Marcincak. From March 2020 they reported to Agnieszka Michalska, Regional Service Manager. Mr Marcincak and Ms Michalska are no longer employed by the respondent; neither of them gave evidence to the tribunal.

9. The claimants were originally employed to work 2.5 hours per day each. They had discretion over when they undertook they hours, provided they did them after 6pm. In practice they worked together; they often undertook the work late at night. The claimants were required to sign in and out using a sign-in book at the premises. The first claimant's evidence was that in respect of their normal working hours they would be paid for 2.5 hours per day, regardless of how long the cleaning took. Mr Forde suggested to the first claimant in the course of cross-examination that that was inconsistent with the normal way that cleaning contracts operate. The respondent had, however, no direct evidence of what was agreed between the claimants and Churchill. The first claimant's evidence was clear and consistent regarding the way in which claimants were remunerated for the work they did, and I accept it. The claimants were paid monthly in arrears. Their hourly rate, at the time in question, was £8.72.

10. It was common ground that the claimants were entitled to 20 days annual leave per year, plus bank holidays (a total of 28 days per year). The leave year ran from April to March. The written terms originally entered into between the claimants and Churchill were not in evidence before me. There was in evidence a document produced by Tenon entitled "Terms of Employment and Staff Handbook". Regarding annual leave, it said this:

> "Holiday entitlement must be taken in the applicable year and can neither be carried forward nor exchanged for monetary payment unless with the explicit approval of a Director. Holiday must be taken at times convenient to the Company and sufficient notice of intention (being a minimum of two weeks' notice) to take holiday must be given to your line manager."

Annual leave requests

11. The claimants requested to take ten days of annual leave in February 2020. They wished to take the leave together – something they had done previously without difficulty. The first claimant's evidence was that they made the request five weeks before they intended to take the leave. The His evidence was that he chased his line manager, Mr Marcincak for approval, but never got a response. The first claimant's evidence was that he no longer had the text messages, because they were on an old phone which is no longer in his possession. The respondent did not adduce any direct evidence regarding when the request was made. I accept the first claimant's evidence regarding when the leave was requested.

12. The first claimant's evidence was that both he and Mr Lysiak was eventually told that they could not take the leave they had requested, and that he would not be able to take it during the remainder of that leave year. His evidence was that both claimants were told by Ms Michalska that they would be able to take the leave in the following leave year (2020/21). In April 2020, the claimants asked for confirmation of when they could take their annual leave during 2020/21. In June 2020 they were told that they could not carry over the 10 untaken days leave from the previous year.

13. On 10 June 2020, both claimants emailed the respondent's HR to complain about the loss of annual leave. In that email, they explicitly alleged that they had been told by Ms Michalska that their unused holiday from 2019/20 would be carried over into the new leave year. The accusation was put in direct terms – it referred to them has having been lied to by Ms Michalska.

14. On 12 June 2020, Ms Michalska responded to each of the claimants. Her letter said this:

> Following Company processes and procedures and as you stated your TUPE rights from previous employer Tenon FM, please find enclosed extract from Terms of Employment and copy of Hi-spec Facilities Services Limited T & C's, regarding annual leave, with

annual leave and carrying forward/over into the following holiday year advising the same, annual leave is not permitted to be carried over into the new holiday year.

From your personnel record and information received on TUPE extraction 5 days annual leave had been taken, further annual leave was authorised and taken from 17th to 21st February 2020. From the holiday dates already taken, five of which were taken before TUPE date, and the allowance of 20 days per annum your days remaining were easily calculated by you without the need for clarification.

To accommodate the smooth running of the contract measures need to be put in place, if the potential outcome of your annual leave request disrupts the smooth running of the contract, with two members of staff located at ESFR Maresfield one member of staff covers the other for holidays, if both staff members request the same dates then this will involve arranging external cover."

15. The letter did not address the allegation that Ms Michalska had told the claimants that they would be permitted to carry over the annual leave.

16. The claimants were not satisfied with the response; on 19 June 2020 they each sent a further email to HR. The emails were in the same terms. They set out the background, then concluded as follows:

> "1.Letter is showing explanation of holiday which been taken and what I have left for current tax year but doesn't explain or answer any accusations which I made in previous email.
>
> 2. Could you please explain how Manager which I complained about carry on an investigation to her own and my case?
>
> I hope you will replay to this message in promptly matter as well as this case could be resolved as soon as possible otherwise I will take this further."

17. On 26 June 2020, Lisa Pascoe, HR/Payroll Manager, wrote to each of the claimants. In respect of the allegation that the claimants had been assured by Ms Michalska that they could carry over the untaken annual leave, the letter said this:

> "The letter you received dated 12th June 2020 was sent from Regional Service Manager, Agnieszka Michalska, as the contract manager for the ESFR contract, Peter Marcincak, left the company early March 2020 and any requests and alleged misleading assurances regarding annual leave would primarily have been with him. Terms and conditions for both your previous employer and Hi-spec Services were sent to show that both companies have the same

> policy on annual leave and do not permit days to be carried forward nor exchanged for a monetary payment, under no circumstance would this have been agreed.
>
> (…)
>
> Historical annual leave requested and alleged communications would have taken place with Peter Marcincak and cannot be confirmed, rejected annual leave request was made in March to Agnieszka Michalska and reason given, no mention of annual leave being carried forward or monetary payment was agreed in this instance."

18. There was no further correspondence regarding the disputed annual leave.

Overtime/touchpoint cleaning

19. During the early part of the COVID pandemic, the respondent's client, East Sussex Fire Service, requested additional cleaning be undertaken of touch points. They provided the respondent with extra funding to undertake that cleaning. The respondents case was that it was agreed that the claimants would undertake an additional 2.5 hours per day on touchpoint cleaning. From March 2020, the claimants were paid overtime for undertaking the touchpoint cleaning.

20. The first claimant's evidence was that that had never been discussed with the claimants, and that they had never been told that they were supposed to be working extra hours to carry out touchpoint cleaning. During the course his evidence it became apparent that he was unaware that he had been paid overtime from March 2020 onwards.

21. Due to the restrictions in place at the time, the respondent was unable to visit the site regularly to check the times that the claimants had been signing in and out of work. In June 2020 Ms Michalska checked the signing in and out book, and noted that the claimants had not been undertaking the overtime for which they were being paid. She wrote to both claimants on 30 June 2020 to indicate that they had been overpaid the sum of £802.24, and that that sum would be recovered in three monthly instalments.

22. The claimants' case had been that they had not been overpaid, and that consequently the recovery constituted an unauthorised deduction from wages. The first claimant accepted during his evidence that he had been paid overtime for undertaking that work. On his own evidence, he had been entirely unaware that he was supposed to be doing the extra hours (and so had not been doing them). He therefore indicated that he was no longer pursuing that element of his claim.

23. I have heard no evidence from Mr Lysiak. However I accept the first claimant's evidence that neither of the claimants had been doing the extra

hours for touchpoint cleaning (because they were unaware they were supposed to be doing them). I find that Mr Lysiak did not do the extra hours, and that consequently he was overpaid between March and June 2020.

24. On 12 August 2020, both claimants emailed Ms Michalska, with the subject "deduction". The emails were both in the same terms, as follows:

> "I just checked my payslip and I had deduction of 228£ from my pay. We spoken about this on the our previous meeting and I disagreed and chalange your decision regarding deduction from my pay, you didn't come back to me with any lawfull explanation of the deduction and deducted money from my pay without informing me.
>
> I'm expecting correct wages to be paid to my account as soon as possible. I would like to ask you within three days to send me formal confirmation when I can expect correction to my pay.
>
> If I will not receive any information from yourself within three working days I will be contacting Employment Tribunal regarding breaches of my T&C."

25. Ms Michalska responded to each of the claimants as follows:

> "I understand your dissatisfaction, however letter with explanation of deductions was sent 2 months ago. We have met and talk about.
> You have been overpaid regarding the hours. We have to take overpaid money back from you.
> If you will have any questions please contact me."

<u>Reduction in hours of work</u>

26. Also during the early part of the COVID pandemic, the respondent's client, East Sussex Fire Service, requested that the normal hours of work for the contract be reduced. This was due to reduced footfall at the site. On 11 May 2020, Ms Michalska wrote to both claimants explaining that with effect from 1 May 2020 their hours of work were reduced to 1.5 hours per day, Monday to Friday. The respondent sought to suggest that this followed some consultation between Ms Michalska and the claimants. Mr Forde relied on an email sent from Ms Michalska to the respondent's HR, in the following terms:

> "Please find attached table of work hours at 4 fire stations
>
> Please send the letter to cleaners to inform them as we have to change the work hours. All of them are aware of the changes as I have spoken to them. We have to confirm the changes by letter. When I have spoken to cleaners I told them we will change the work hours from beginning of April. I'm not sure if it's correct as we have to give them a notice period, so from 01.05 will be ok.

> However cleaners at Seaford, Rye and Roedean already work according new schedule."

27. The first claimant's evidence was that Ms Michalska had never spoken to either claimant about the proposed change, and that the letter of 11 May 2020 was the first time they became aware of it. There was no evidence from the respondent about when or how Ms Michalska had discussed the proposed changes with the claimants. Nor was there any explanation for why it took almost a month for the letter setting out the changes to be issued to the claimants. I accept the first claimant's evidence, that the letter of 11 May 2020 was the first time either claimant was made aware of the proposed change to their hours.

28. The claimants' payslips showed that from May onwards, they were paid for the lower number of hours.

29. The first claimant's evidence was that he and Mr Lysiak told Ms Michalska verbally that they objected to the change. He could not recall when he had done so, although he recalled it being after the letter on 11 May 2020. He accepted that he had not objected to or complained about the change in writing. I deal with that point in my conclusions below. The first claimant's evidence was that after receiving the letter, he and Mr Lysiak reduced their working hours to approximately 1.5 hours per day.

30. On 30 October 2020, the second claimant emailed Ms Michalska resigning his employment, in these terms:

> "Dear Agnieszka Michalska. I am writing to you because the time has come for me to resign from my position.
>
> My last day will be exactly one week from today, on 05.11.2020. Again, thank you for opportunity to work for Hi-spec Services Ltd and I wish you all the best."

31. The first claimant resigned on the same day. His resignation email was not in evidence before me, but it was not suggested that it was in substantially different terms.

Law

Unauthorised deduction

32. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

33. Section 13(3) provides as follows:

> "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."

34. Section 14(1) provides as follows:

> "Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—
>
> (a) an overpayment of wages, or
>
> (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker."

35. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Holiday pay

36. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. The leave year begins on the start date of the claimant's employment in the first year and, in subsequent years, on the anniversary of the start of the claimant's employment, unless a written relevant agreement between the employee and employer provides for a different leave year. There will be an unauthorised deduction from wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

37. A worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996, with some modifications. There is no statutory cap on a week's pay for this purpose.

Variation of contract

38. The Employment Tribunal has jurisdiction to resolve disputes about the construction of a contract of employment in the context of a claim for

unauthorised deduction from wages under Part II of the Employment Rights Act 1996 (*Agarwal v Cardiff University & Anor* [2018] EWCA Civ 2084).

39. If an employer simply announces a unilateral change in contractual terms, that will constitute a breach of contract. However where the variation has immediate practical effect, and the employee continues to work without objection after effect has been given to the variation, then they may well be taken to have impliedly agreed to the change (*Jones v Associated Tunnelling Co Ltd* [1981] IRLR 477).

40. In *Solectron Scotland Ltd v Roper and ors* [2004] IRLR 4, Elias J described the question for the Tribunal as follows:

> "The fundamental question is this: is the employee's conduct, by continuing to work, only referable to his having accepted the new terms imposed by the employer? That may sometimes be the case. For example, if an employer varies the contractual terms by, for example, changing the wage or perhaps altering job duties and the employees go along with that without protest, then in those circumstances it may be possible to infer that they have by their conduct after a period of time accepted the change in terms and conditions. If they reject the change, they must either refuse to implement it or make it plain that by acceding to it, they are doing so without prejudice to their contractual rights. But sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing, his conduct is entirely consistent with the original contract containing; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct."

<u>Transfer of Undertakings (Protection of Employment) Regulations 2006</u>

41. Insofar as relevant, regulation 4 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 provides as follows:

> "Effect of relevant transfer on contracts of employment
> 4.—(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.
>
> (2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer—

> (a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and
> (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.
>
> (…)
>
> (4) Subject to regulation 9, in respect of a contract of employment that is, or will be, transferred by paragraph (1), any purported variation of the contract shall be void if the sole or principal reason for the variation 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.
>
> (5) Paragraph (4) shall not prevent the employer and his employee, whose contract of employment is, or will be, transferred by paragraph (1), from agreeing a variation of that contract if the sole or principal reason for the variation is—
>
> > (a) a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce; or
> > (b) a reason unconnected with the transfer…"

Conclusions

42. The first part of the claim for unauthorised deduction from wages turns on the proper interpretation of the claimants' contracts of employment. It is common ground that the claimants were paid for 1.5 hours work per day (7.5 hours per week) from 1 May 2020 until the end of their employment. The claimants' case is that they had not been consulted on the variation, and had not agreed to it, and that consequently they should have continued to be paid for 2.5 hours work per day (12.5 hours per week).

43. I conclude that the claimants' contracts of employment were varied with effect from 1 May 2020. I reach that conclusion for the following reasons:
    - 43.1. The letter of 11 May 2020 was entirely clear that their hours of work (and pay) would be reduced with effect from 1 May 2020.
    - 43.2. The pay that both claimants received on 11 June 2020 (for May 2020) reflected the change, as did their pay in every pay period for the remainder of their employment.

43.3. In practice, both claimants did reduce their hours of work to 1.5 hours per day. They did not continue working for 2.5 hours per day.

43.4. Neither claimant indicated in writing that they disagreed with the change; neither put anything in writing which came close to indicating that they were working under protest.

43.5. While I accept that the first claimant raised some dissatisfaction about the change with Ms Michalska, I conclude that it fell far short of indicating that he was working under protest. Both claimants were not slow to complain in writing when they felt aggrieved – they did so about both the annual leave issue, and the overpayment deduction. It is telling that in the various emails that they sent about both of those issues, they did not mention the reduction in hours. I find that that is indicative of the real position, which is that they had accepted the change to their working hours (albeit perhaps grudgingly).

43.6. Neither claimant raised the matter in their resignation.

43.7. Both claimants resigned at the end of October 2020, some five and a half months after the change was first notified to them. This was not a change which had a delayed effect; it had an immediate and tangible effect on the claimants. The fact that they continued to work, and did so for only 1.5 hours per day, is in my judgment only referrable to them having accepted the amended terms.

44. There could of course be considerable criticism of the way that the respondent implemented the change, and the failure to consult the claimants on it. But ultimately, by their conduct the claimants agreed to be bound by the change.

45. It follows then that there was no deduction in respect of the rate of pay from June 2020 to the end of the claimants' employment. The claimants were paid for 1.5 hours per day (7.5 hours per week), which was in line with their contractual entitlement.

46. The first claimant accepted in evidence that the deduction made in the pay for July, August and September was correct, in that it was for hours that he had been paid for (for touchpoint cleaning) but had not worked. It follows (and indeed he accepted) that the deduction of that sum was not an unauthorised deduction from wages.

47. That concession does not bind Mr Lysiak. But I have found that Mr Lysiak did not do the "touchpoint cleaning" hours. He was paid for those hours. I conclude that that was an overpayment. The respondent was entitled to deduct that overpayment from his pay, which it did in July, August and September 2020.

48. It follows that the claim of unauthorised deduction from wages brought by both claimants in respect of the pay periods from May 2020 to October 2020 fails, and is dismissed.

Annual leave

49. I conclude that the claimants were informed by Ms Michalska that they were permitted to carry over ten days annual leave from 2019/20 to 2020/21. I reach that conclusion for the following reasons:
    49.1. The claimants' consistent position has been that that was what they were told by Ms Michalska. They first raised it in the email of 10 June 2020, in which they directly accused her of having lied to them.
    49.2. When Ms Michalska responded to the email of 10 June 2020, she did not deny telling the claimants that they could carry leave over. Given the direct way in which it was raised, I consider it overwhelmingly likely that Ms Michalska would have corrected them on the point if she thought it was inaccurate.
    49.3. In the letter of 26 June 2020, Ms Pascoe did not suggest that she had interviewed Ms Michalska. The letter was apparently predicated on Ms Pascoe's view of what she considered would have happened, rather than any attempt to find out what had in fact happened.

50. I have then considered whether, as a matter of fact, that gave rise to a contractual right to carry over annual leave. I conclude that it did. Ms Michalska was in a position of authority. Having given that assurance to the claimants, they would have expected to be able to rely upon it.

51. I do bear in mind the wording of the Tenon Staff Handbook, which stated that carry-over could only be agreed by a Director. The respondent's position was that that was the terms on which the claimants transferred. But that would only be right if their terms had changed while employed by Tenon. The claimants had originally transferred from Churchill to Tenon. Their original contract with Churchill was not in evidence. So I treat the Tenon Staff Handbook with considerable care in terms of assessing the contractual terms on which the claimants were employed.

52. In any event, the claimants were employed in a junior role, where they worked independently and without regular contact with colleagues (other than each other). Other than the emails they sent to a generic HR email address, Ms Michalska was their point of contact with the respondent. In the circumstances, I consider that the direct assurance the claimants received from Ms Michalska, as their line-manager, would have bound the respondent. In the circumstances she had apparent authority, notwithstanding any contractual provision that carry-over could only be agreed by a Director.

53. It follows that the claimants were permitted to carry over 10 days annual leave from 2019/20 to 2020/21. It was not suggested to me that they had either taken too much or too little of the annual leave they had accrued

during 2020/21. So I conclude that on termination, they were entitled to be paid for 10 days annual leave (for which they were not paid). By failing to pay them for that sum, the respondent made an unauthorised deduction from their wages.

54. I have already concluded that the claimants' contracts of employment had been varied, such that their daily working hours as at the point of termination were 1.5 hours per day. 10 days' pay at 1.5 hours per day equals 15 hours. At £8.72 per hour that gives a gross sum of £130.80.

Employment Judge Leith

6 July 2023