



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Ms Julie-Ann Verhulpen

AND

**Respondent**

The Cabin at Elmer Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD REMOTELY  
By CVP VIDEO**

**ON**

11 August 2023

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** Mr Devlin of Counsel

**For the Respondent:** Mr J Aylward, Director

### JUDGMENT

The judgment of the tribunal is that the claimant succeeds in her claims for breach of contract and unlawful deduction from wages and the respondent is ordered to pay the claimant the following sums: (i) one week's notice pay in the net sum of £464.54; (ii) three weeks' pay for the period from 1 June 2022 to 20 June 2022 in the gross sum of £1,846.14; and (iii) 31 days' accrued holiday pay in the gross sum of £3,815.17.

### RESERVED REASONS

1. In this case the claimant Ms Julie-Ann Verhulpen brings monetary claims for breach of contract, unlawful deduction from wages, and for accrued but unpaid holiday pay against her ex-employer the Cabin at Elmer Ltd. The respondent denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 68 pages, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. I have heard from Mr John Aylward for the respondent.
4. There was a degree of conflict on the evidence. I have heard both the witnesses give their evidence. I found the following facts proven on the balance of probabilities after considering

the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. The Facts:
6. The respondent company operates a village pub in the Bognor Regis Area. Mr John Aylward, from whom I have heard, is a director of the respondent company. He and his wife Mrs Emma Aylward took over the pub in 2020. Mrs Aylward was the General Manager and she was responsible for the day-to-day running of the business including HR matters. She became a director for a short period of time, but in any event at all relevant times had authority to deal with staff and payment matters on behalf of the respondent. She also had access to the respondent's bank account and authority to use it.
7. The claimant was employed by the respondent as Head Chef from 15 May 2021 until her summary dismissal by reason of alleged gross misconduct on 20 June 2022. The claimant was paid monthly in arrears at the end of each month. Her gross monthly pay was £2,666.00 which resulted in net monthly pay of £2,013.00. It is agreed by the parties that the claimant's gross weekly pay was £615.38, and that her net weekly pay was £464.54.
8. The claimant asserts in her grounds of complaint that Mr and Mrs Aylward separated, and that in August 2021 the claimant and Mrs Aylward began a personal relationship. She asserts that Mr Aylward discovered this in December 2021. What is agreed by the parties is that on 20 June 2022 there was some sort of argument between the three of them and Mr Aylward summarily dismissed the claimant.
9. The claimant pursues three monetary claims following her summary dismissal. The first claim is a claim for unlawful deduction from wages in respect of her unpaid salary from 1 June to 20 June 2022. The second claim is also a claim for unlawful deduction from wages in respect of accrued but unpaid holiday entitlement. The third claim is for breach of contract for the claimant's lost notice period. My findings of fact in connection with each of these three claims is as follows.
10. First, it is agreed by the respondent that the claimant was not paid her salary for the period of three weeks from 1 June to 20 June 2022. The respondent asserts that this was because the claimant had already received a payment from Mrs Aylward which was not authorised. The circumstances are that the respondent was being pursued by the brewery Marstons following non-payment of or business rates. The claimant paid these on behalf of the respondent by way of a loan in order to satisfy the debt collectors. She paid them £1,443.00 on 1 March 2022, £2,000.00 on 8 March 2022, and cash fees of £77.78 and £100.00. Mrs Aylward repaid the sums to the claimant by way of a payment of £1,000 on 4 May 2022 and the balance in the evening of 20 June 2022 immediately after the claimant's dismissal.
11. Mrs Aylward still had authority to act on behalf of the respondent and still had access to the respondent's bank accounts. I find that these repayments to the claimant were therefore authorised by the respondent's business, and respondent is not now entitled to offset these sums against the wages otherwise due. I therefore find that the respondent has made an unlawful deduction from the claimant's wages for the period of three weeks from 1 June to 20 June 2022.
12. The second claim is for the unlawful deduction of accrued but unpaid holiday pay on the termination of employment. The claimant signed a contract of employment which provided that the holiday year coincided with the commencement of her employment on 15 May 2021. She was entitled to 28 days holiday for that year. For her second holiday year from 15 May 2022 until her dismissal on 20 June 2022 she was entitled pro-rata to a further three days. The claimant says that she took no annual leave during the whole of her employment. She relies on a letter dated 5 January 2022 from Mrs Aylward which thanked her for working so hard over the Christmas period without breaks, and agreeing that she would not lose any accrued holiday entitlement, and that the respondent authorised her to carry over the entirety of any untaken and accrued holiday into the next holiday year if necessary.
13. I found it surprising that the claimant had not had any holiday for just over a year, but she had made use of certain days in lieu which had been awarded to when she worked her rest days, and when questioned on this matter and potential absences from the business she

- gave a satisfactory reply to the extent that any breaks were taken on her normal days off or because of days in lieu.
14. I therefore find that the claimant was entitled to 31 days holiday which had accrued, and that the respondent had agreed to allow her to carry these days forward. The claimant was not paid for any of her 31 days accrued holiday pay and this sum was unlawfully deducted from her final salary.
  15. The third claim is for the claimant's lost notice period which it is agreed by the parties was one week. The respondent asserts that the claimant committed gross misconduct in two respects: firstly: "consuming excessive alcohol beverages between shifts"; and secondly "verbal aggressive behaviour", particularly during the events on 20 June 2020 when there was an argument between the parties.
  16. The respondent argues that the claimant had repeatedly been drinking between shifts, which is denied by the claimant. To the extent that there was any possible misconduct in this regard, it had clearly been accepted by the respondent before 20 June 2022 and in my judgment cannot be said suddenly to be gross misconduct at that stage. There was also an argument between Mr and Mrs Aylward at the end of which the claimant was dismissed. The claimant denies any aggressive behaviour but accepted she was present to witness the argument between Mr and Mrs Aylward. The respondent has not discharged the burden approved sufficiently to suggest that the claimant was guilty of any gross misconduct at this stage. I cannot therefore find that the claimant was guilty of gross misconduct, and she was dismissed without notice.
  17. Having established the above facts, I now apply the law.
  18. The Law:
  19. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") and the claim was outstanding on the termination of employment.
  20. Normal contractual principles apply to claims under the Order, which includes the right of set-off, even in circumstances where the employer has not entered an employer's counterclaim under paragraph 4 of the Order, see for instance Ridge v HM Land Registry [2014] UKEAT 0485/12.
  21. The claimant also claims in respect of deductions from wages which she alleges were not authorised and were therefore unlawful deductions from his wages contrary to section 13 of the Employment Rights Act 1996.
  22. Under section 24(2) of the Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.
  23. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 ("the Regulations"). Regulation 14 explains the entitlement to leave where a worker's employment is terminated during the course of his leave year, and as at the date of termination of employment the amount of leave which he has taken is different from the amount of leave to which he is entitled in that leave year. Where the proportion of leave taken is less than that which he is entitled, the employer is required to make a payment in lieu of leave in accordance with Regulation 14(3). In the absence of any relevant agreement which provides for payment of accrued leave, then the sum is calculated according to the formula  $(A \times B) - C$ . For the purposes of this formula A is the period of leave to which the worker is entitled under Regulations 13 and 13A; B is the proportion of the worker's leave year which expired before the termination date; and C is the period of leave taken by the worker between the start of the leave year and the termination date.
  24. Judgment:
  25. The claimant pursues three claims, and I deal with each of these in turn
  26. Unlawful Deduction - Pay for June 2022
  27. I have found that the respondent has made an unlawful deduction from the claimant's wages for the period of three weeks from 1 June to 20 June 2022. The respondent is therefore ordered to pay the claimants the sum of £1,846.14.

28. Unlawful Deduction- Accrued Holiday Pay
29. I have found that the claimant was not paid for any of her 31 days' accrued holiday pay and this sum was unlawfully deducted from her final salary. The respondent is therefore ordered to pay the claimant the gross sum of £3,815.17 (31 x £123.07).
30. Breach of Contract - Notice Pay
31. I have made no finding that the claimant was guilty of gross misconduct, and she was dismissed without notice. The failure to pay her contractual notice was a breach of contract and I award her compensation in the sum of one week's pay in the sum of £464.54.

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Employment Judge N J Roper  
Dated 11 August 2023

Judgment sent to Parties on 29 August 2023

For the Tribunal Office