EMPLOYMENT TRIBUNALS

Claimant: **Ms Alison Mottley**

Respondent: **Ms Ines Lagha**

Heard at: **East London Hearing Centre (by CVP)**

On: **30 June 2023**

Before: **Employment Judge Suzanne Palmer**

Representation

Claimant: Ms Afiya Amesu, Counsel
Respondent: Mr Steve Ryan, Employment Relations Consultant

RESERVED JUDGMENT

1. **The Claimant has a right to a redundancy payment in the sum of £3,264.**

2. **The Respondent is ordered to pay the Claimant the sum of £3,264 within 14 days of the date this judgment is sent to the parties.**

REASONS

Introduction

1. The Claimant is a nanny. She was employed by the Respondent to work as a nanny for the daughter ("the Child") of the Respondent and the Respondent's husband, Mr Holmi Atig. The Claimant's employment commenced in September 2016 and her usual place of work was the family's home in East London. She was employed as a "live-out" nanny. The Claimant's employment was terminated by the Respondent by notice given verbally on 1 July 2021 and confirmed in writing on 2 July 2021. The Claimant's employment terminated with effect from 30 July 2021.

2. In a nutshell, the Claimant claims that she was dismissed by reason of redundancy and was entitled to receive a redundancy payment. The Respondent denies that the Claimant was entitled to a redundancy payment.

Claims and Issues

3. The Claimant's claim form (ET1) was presented to the Tribunal on 17 October 2022. The claim was for (a) a redundancy payment and (b) breach of contract, relating to allegedly unpaid contractual notice pay.

4. The Respondent sent a response form (ET3) to the Tribunal on 5 December 2022, attaching grounds of resistance to both claims. The Claimant's claims were denied. In addition, the Respondent's position was that the Tribunal did not have jurisdiction to hear the claims because the ET1 was presented over a year after the Claimant's employment ended, and was therefore outside the statutory time limits.

5. The case was listed for a Preliminary Hearing which was heard by telephone on 16 March 2023 by Employment Judge Bartlett. At that hearing, the decision was that:

    5.1. The Claimant's contractual claim (related to contractual notice pay) is out of time and the Employment Tribunal has no jurisdiction to hear that part of the claim;

    5.2. It is just and equitable to extend time pursuant to s164 of the Employment Rights Act 1996 in relation to the Claimant's claim for a redundancy payment.

6. The Final Hearing has therefore been concerned solely with the Claimant's claim for a redundancy payment.

7. No list of issues had been agreed by the parties prior to the hearing. I therefore identified at the outset of the hearing the issues which it appeared to me I was required to determine. Both parties agreed that the following list accurately and comprehensively identified the issues:

    7.1. Was the Claimant an employee of the Respondent? The parties agreed that the Claimant's employment status was not in dispute.

    7.2. Had the Claimant been continuously employed for a period of at least two years ending with the Effective Date of Termination (30 July 2023)? Again, the parties agreed that she had: it was common ground that the Claimant was employed for approximately 4 years and 10 months.

    7.3. Was there a dismissal for the purposes of Section 136 of the Employment Rights Act 1996 ("ERA")?

    7.4. Should that dismissal be taken to be by reason of redundancy for the purposes of Section 139 ERA?

7.5. Was the Claimant therefore entitled to be paid a redundancy payment pursuant to Section 135 ERA?

7.6. If so, what is the amount of the redundancy payment due to the Claimant pursuant to Section 162 ERA, having particular regard to the following issues:

7.6.1. What was a week's pay?
7.6.2. What was the Claimant's period of service?
7.6.3. What was the Claimant's age?

8. During the hearing, it became apparent to me that there might be a further issue in relation to the legality of the terms and conditions operated between the parties in respect of pay. I therefore invited the parties to address me in relation to this issue and the approach I should take to whether or not the Claimant's claim should be enforceable as a matter of public policy.

Documents and evidence

9. There was a tribunal bundle of approximately 210 pages. I informed the parties that although I had read that bundle prior to the hearing, I expected the parties to take me to any documents they sought to rely on, either in cross-examination or in submissions.

10. At the conclusion of the Claimant's evidence I was made aware by Ms Amesu that there was a supplementary bundle of 318 pages with which I had not been provided. I was informed by the parties that this consisted of documents which had been disclosed by the Claimant, consisting primarily of the following categories of documents:

10.1. A full print-out of WhatsApp messages between the Claimant and the Respondent, running to 147 pages, which were relied upon to give full context to the more limited selection of messages contained in the main bundle;

10.2. Bank statements for the Claimant's account, running to around 150 pages, covering the period from 2016 to 2021.

11. I was informed that although the Claimant had provided these documents, they had not been included in the bundle by the Respondent's representative. Mr Ryan informed me that he did not take issue with the Claimant relying on these documents in cross-examination and submissions. I therefore decided to allow the Claimant to put them into evidence and rely on them.

12. There was a delay in the supplementary bundle being sent to me, which meant that I did not have time to read it prior to the Respondent's evidence. I informed the parties that I had not read the bundle and would require the parties to take me to any documents in the supplementary bundle which they wished me to see.

13. I heard oral evidence under affirmation from the Claimant and from the Respondent's husband, Mr Holmi Atig. Each had provided a witness statement. The Respondent did not attend the hearing or give evidence.

14. The oral evidence took until 5 pm to conclude. I therefore reserved judgment at the conclusion of the evidence and invited both parties to provide written submissions by 14 July 2023. I have the benefit of these submissions at the time of reaching my decision on the claim.

Fact-findings

15. I make the following findings of fact:

Commencement of the contract (2016) until 2018

15.1. The Claimant has been a nanny since 1991.

15.2. She first met the Respondent in August 2016. The Respondent was at the time looking for a nanny to care for her daughter, and called the Claimant after a word of mouth recommendation.

15.3. The Respondent employed the Claimant in the role of nanny from late September 2016. Throughout that time the Respondent and her family were living at their home ~~on the Isle of Dogs~~ in East London. The Claimant was a live-out nanny.

15.4. The Respondent made use of the services of a firm called Nannytax, which provides payroll and human resources services to people employing nannies. It deals directly with the employer client, and not with the nanny.

15.5. A contract was signed by the parties on or around 12 October 2016 setting out the particulars of the Claimant's employment. As I understand it, that contract was drafted by Nannytax. I have been provided with a copy of that contract. I accept the Claimant's evidence that she had in fact started to work for the Respondent on 19 September 2016, a week or two before the contract was signed, and earlier than the date of 1 October 2016 which appears in the contractual documentation I have seen.

15.6. At the time the Claimant was employed, the Respondent's daughter had not yet started at nursery and the Claimant worked full-time hours.

15.7. There is conflicting information as to what those hours were. The written particulars refer to a working week of around 38 hours per week. A document prepared by the Respondent in 2018 refers to "current" hours of around 46 hours per week. In her witness statement the Claimant says that she worked around 12.5 hours per day (62.5 hours per week), although there were periods during the day when she was not required to care for the Child but was effectively "on call". I make no finding as to what the Claimant's

working hours were because I do not consider it necessary to do so in order to resolve the issues before me. However, I accept the Claimant's evidence that they were in excess of the 38 hours referred to in the written particulars.

15.8. I accept the Claimant's evidence that in late October 2016 there were discussions between her and the Respondent in relation to pay, prompted by the fact that the Child was starting at nursery. The Respondent herself has provided no evidence at this hearing, and her husband does not give any evidence about this period.

15.9. The Claimant was concerned that, now she was dropping the Child at nursery and going home for three hours during the day, she might be paid less. She was concerned that she could not afford to take home less than £2,000 per month in pay, and therefore said that she would need to look for alternative full-time work. The Respondent told the Claimant that she would be paid for a full day, despite the Child being at nursery for part of the day. The Claimant was also told that she needed to be on call during the day anyway, in case the nursery or the Respondent needed her.

15.10. The Claimant tells me, and I accept, that the Claimant therefore continued to be paid at the same rate, which never changed significantly throughout her employment with the Respondent.

15.11. There is a significant issue between the parties as to what the rate of pay was. I was required to resolve that factual dispute. I shall deal with that issue below.

Variation of the contract in 2018

15.12. In September 2018, the Child started attending school. The Claimant tells me, and I accept, that her working hours continued largely unchanged, although she was now taking the Child to and from school rather than nursery and there was a longer period during the day when she was not providing direct care to the Child.

15.13. In the late summer of 2018 the Claimant and the Respondent discussed a variation to the terms of the contract, which took effect in around October 2018. I am told that a further contract was signed, although I have not been provided with a copy.

15.14. I have seen a document, drawn up by the Respondent, as a result of those discussions. It is not titled or dated. It sets out what are described as "Current Terms", including "*Net monthly Pay: £2,093.33*" and "*Total Hours per week: 46H*". It then sets out, under the heading "Proposal", terms proposed to take effect from 1 September 2018. Those include "*Net monthly Pay: £2,100"* and arrangements in respect of hours described as a "Floor system". That is described in this way: "*The net monthly pay is a guaranteed rate for 46H a week ("weekly floor"). If Alison works less than the "weekly floor" she still be paid by Atig in full. If Alison works more*

than the weekly floor then any extra hours are paid in addition to the guaranteed rate by month end. The same principle will be applied daily for extra worked hours. Daily floor: 10H. Weekly floor: 46H".

15.15. Mr Atig accepted that the document drafted by his wife "*reflects the protection put in place for the Claimant who had significant concerns about a drop in work. It was protection for her, to take care of her and protect ourselves. It sets out the minimum requirements but we can't ask her to do more"*.

15.16. The Claimant tells me, and I accept, that these were the terms which she and the Respondent agreed would operate from around September or October 2018, and reflect what in fact happened.

15.17. For reasons which are not apparent, because the Respondent did not give evidence, the Respondent emailed Nannytax on 17 September 2018 asking them to implement a "*contract revision effective on the 1st of September 2018: 4 Hours per day @ a rate of £9.5 gross"*. The Claimant was not copied into that email and was not aware of it until she saw it during disclosure in the course of these proceedings.

15.18. I find that the Claimant continued to operate under broadly the same working hours after the contractual variation in October 2018, albeit that this was now formally expressed by the parties as a "floor system" whereby she was effectively paid on the basis of working up to 46 hours, with any additional hours thereafter being paid as overtime.

The terms of the contract, including as to pay

15.19. As set out above, I find that the Claimant's working hours under her contract remained broadly the same throughout her employment, as agreed between her and the Respondent in 2016 and 2018. The document drafted by the Respondent in 2018 appears to reflect this, referring to a 46 hour week both as the current arrangement in 2018 and as the proposed arrangement going forward.

15.20. This was an arrangement which appeared to suit both parties. As the Child grew older and spent more time at school, there were longer periods during the working day when the Claimant was not providing direct care to the Child, but she was expected to be available in case called upon. She was keen to maintain full-time hours in order to maintain her salary, and the Respondent was keen to retain her services.

15.21. The Claimant says that from the start of her employment, she was paid £2,09.33 per month net (rising to £2,100 from October 2018 onwards). She says that she has never been self-employed, and has worked as an employee throughout her career.

15.22. The contract of employment refers to a different rate of pay. Clause 6.1 of the contract states, "*Your gross salary will be £1220 gross per month payable in equal monthly instalments in arrears…*

Payment will be subject to deduction at source of income tax and applicable national insurance contributions and will be made by direct credit transfer to a bank". I accept the Claimant's evidence that she never received pay of £1,220 per month.

15.23. I find that I can place little reliance on the information contained in the contract, which seems to have been prepared by Nannytax based on information provided by the Respondent. The information provided by the Respondent in September 2018 was, I find, inaccurate as to the hours worked. The original contract was also inaccurate as to the hours worked.

15.24. I find, particularly in the absence of any evidence on this issue from the Respondent herself, that the document she drafted at the time of the contractual variation in 2018 is likely to be a more reliable indication of the terms agreed between the parties.

15.25. The Claimant says that from the outset of her employment, she was paid part of her wages by way of a bank transfer, and the remainder of her wages was paid to her either in cash, or in the form of childcare vouchers.

15.26. The Respondent's position is that the Claimant's salary was the sum set out in her contract and that any other payments made to her in the form of cash or childcare vouchers were discretionary gifts.

15.27. There was no evidence from the Respondent on this issue. The Respondent's husband, Mr Atig, provided a witness statement which was almost entirely silent on the issue of pay. He does, however, say at paragraph 37, "*On Oct 18th 2021, the Claimant requested her P45. The P45 fully aligned with her contract, showing clearly her salary, NI and pension in line with the contract she is now denying".*

15.28. As I have said, I do not find the original written contract to be a reliable indicator of the pay agreed between the parties.

15.29. There are some payslips in the bundle, all dating from either 2020 or 2021. The Claimant says, and I accept, that apart from a brief period at the start of her employment, she did not receive formal payslips until after the introduction of the Furlough scheme during the Covid pandemic. They were sent to the Respondent electronically by Nannytax and, it seems, were not passed on to the Claimant. The Claimant did not have the login details to access the Nannytax account to see the payslips.

15.30. Those formal payslips show, virtually every month, a gross payment of £823.33 and a net payment of just over £800.

15.31. What the Claimant did receive each month was a payslip generated by the Respondent. This was handed to her each month with the cash element of her pay. An example of this document is in the bundle at page 155, dated 28 May 2021. The pay details are for

"*monthly pay"* of £2,199. Of this, £830 is said to be paid by bank transfer and the balance of £1,270 is described as "*cash"*. The pay details at the bottom of the page refer to "*Net monthly Pay"* of £2,100 and working hours of 46 hours.

15.32. This document therefore accords with the document prepared by the Respondent at the time of the contractual variation in 2018. It also accords with the Claimant's evidence about the agreement reached between the parties in relation to pay, and about the way the contract operated in practice. When it was put to Mr Atig that this document did not refer to any part of the money being a gift, he replied that it showed the "*net money in her pocket for her service".* He said that he did not want any money written into the contract for "*service which might not be done"*. He also said that his wife was not an accountant and that English was her third language.

15.33. I note that the document does not accord with the Nannytax payslip for the same month. That document refers to a gross payment of £823.33 and a net payment of approximately £807. Neither of those sums match the bank transfer made to the Claimant's bank account that month in the sum of £830. However the £830 figure tallies with the Respondent's own payslip.

15.34. Copies of some of the Claimant's bank statements are included in the main bundle, and a greater period of statements is in the supplementary bundle. The copies are of poor quality. However the Claimant tells me, and I accept, that the totals received in her bank account each month varied as to the proportion of cash or vouchers versus bank transfer, but they added up to £2,100 every month.

15.35. I also note that none of these figures are consistent with the monthly salary figure cited in the original contract (£1220 gross) or the Respondent's email to Nannytax in 2018 (4 hours per day at £9.50 per hour gross, or £760).

15.36. I therefore find on the balance of probabilities that the Claimant was paid the sum of £2,100 every month by the Respondent, in a combination of bank transfers, cash and voucher payments.

15.37. I find it inherently unlikely that, as the Respondent asserts, the cash or voucher elements of the payment were discretionary gifts rather than contractual pay. There is a paucity of witness evidence to support that assertion, particularly in the absence of the Respondent herself (who appears to have been the one dealing with the monthly pay). The only documents which appear to support the assertion are the Nannytax payslips, and for reasons already set out I consider that little reliance can be placed on the documentation generated by Nannytax as it appears to have been based, in at least some aspects, on incorrect information provided by the Respondent.

15.38. I reject the Respondent's assertion and accept the Claimant's evidence that the entire sum of £2,100 was intended by the parties

to be her salary. In saying that, I have regard to all the matters I have already set out. In my judgment it is of particular significance that the payments added up to the same sum every month. One might expect to see fluctuation in discretionary payments, particularly after December 2020 when, on Mr Atig's account, there was a deterioration in the Claimant's performance and attitude. In addition, the sums paid are entirely consistent with the documentation, generated by the Respondent, which refers to them expressly as "net monthly pay", with no reference to discretionary payments.

15.39. I further find that the sum of £2,100 per month was net rather than gross pay. It is expressly referred to as such in the documentation generated by the Respondent. I do not consider this to be an error or misunderstanding on the part of the Respondent. I note that in her email to Nannytax she specifically refers to gross pay of £9.50 per hour. The payslips the Respondent generated use technical terminology, including "accrued holiday". Whilst the Respondent may not be a payroll expert, the documentation she has generated suggests that she was well capable of understanding the distinction between net and gross pay.

15.40. I further note that the original terms and conditions drafted by Nannytax stated expressly that the Claimant's payment would be "*subject to deduction at source of income tax and applicable national insurance contributions…".* I accept the Claimant's evidence that she had always worked on an employed PAYE basis and believed that she was doing so in this job.

15.41. I therefore find that the agreement between the parties, and the way that agreement was operated in practice, was that the Claimant was paid a salary of £2,100 per month net, in a combination of bank transfer, cash and voucher payments in varying proportions.

The alleged issues with the Claimant's performance and conduct

15.42. In its ET3 response form, the Respondent's position is that over time, there were a number of issues of concern in relation to the Claimant's conduct and performance. Many of these are referred to without any indication of the date(s) on which they are alleged to have occurred.

15.43. In a document submitted to the Tribunal in January 2023, the Claimant sets out her position in relation to many of these alleged issues of concern. It is clear from what the Claimant says that some of the matters referred to date back to late 2019. I do not propose to consider matters going back that far, because the Respondent did not give evidence, and Mr Atig's evidence was that things went "downhill" "*post covid".* He only gives evidence about incidents from December 2020 onwards. I therefore find that the Respondent had no issues of significant concern in relation to the Claimant's conduct or performance prior to December 2020.

15.44. In May 2021 some sort of disagreement occurred between the Claimant and a concierge at the building where the Respondent's family lived, as the Claimant arrived and was on her way upstairs to start work. Following that disagreement, the Claimant's partner attended the building and spoke to the concierge. The concierge later reported the matter to the police, saying that he had been threatened by the Claimant's partner. Mr Atig spoke to the concierge to smooth things over. There is no evidence of the police having taken any further action. Mr Atig subsequently spoke to the Claimant about this incident and told her that if her partner came to the premises again, the police would be called.

15.45. The Claimant had declared in her pre-employment medical that she was a social smoker. In March 2021 when schools re-opened, Mr Atig says that he and his wife noticed an increase in the smell of smoking during the day and that it was reported to them by friends that the Claimant was smoking in front of the school. There is no evidence of any rule put in place by either the school or the Respondent in relation to smoking.

15.46. On two occasions, in March 2021 and May 2021, the Claimant forgot to return an oyster card which had been lent to her in order to travel to the Child's school. On one of those occasions, the Claimant sent a WhatsApp message saying that she would use the card anyway. The Respondent regarded that comment as showing a sense of entitlement. The Claimant's position, which I accept, is that when viewed in its proper context, the comment appears to have been intended and received as light-hearted banter. On the other occasion, Mr Atig asked the Claimant to meet him to return the card to him, as he was nearby. She did so.

15.47. On an occasion in April 2021 after the Child had attended a tennis club, the Claimant and the Child were talking to other parents and children who were attending the club. Mr Atig expressed concern about whether the Claimant was not taking Covid restrictions seriously. The Claimant did not consider it a significant concern, pointing out that the people they were interacting with had been engaged in the same activity for the previous 45 minutes.

15.48. On another occasion at around this time, the Child forgot to take her sports shoes to school. Following an exchange of text messages with the Respondent, the Claimant agreed to come and collect the Child's tennis shoes and drop them off in time for the Child's tennis session after school.

15.49. On another occasion at around the same time, the Claimant was taking the Child to school (by train). Normally she sent a text message to the Respondent when they got off the train. On this occasion, she was in a conversation with another parent who had just got off the train with them and forgot to send a message. Mr Atig sent a text message expressing concern that she was talking to other people in light of lockdown restrictions. The Claimant did not see this as an issue, pointing out that she had been on a

busy train and was having a conversation with someone else going to the same school. She offered to call Mr Atig to discuss it and he said that they would speak later. However there was no subsequent conversation.

15.50. In around June 2021 there was an incident at the school when a girl was alleged to have been verbally aggressive to another pupil and to have made a racially abusive remark about Muslims. Following that incident, the parents of the victim of the abuse made a complaint to the school. The parents of the alleged aggressor then tried to find out who had made the complaint. It appears that the parents of the aggressor asked the Claimant whether the Respondent's Child had ever complained about the aggressor saying anything racist to her, and she said no. Mr Atig expressed concern in his evidence that the Claimant had engaged in gossip and had not informed the family about the incident or the conversation. The Claimant considered that she had given an honest answer to a question, the incident was "done and dusted" and that there was nothing relevant to report to the Respondent.

15.51. On a subsequent occasion, the Claimant relayed in a WhatsApp message to the Respondent that the aggressor (referred to in the previous paragraph) was leaving the school because her parents were unhappy. Mr Atig referred to this as another example of the Claimant gossiping. However I accept the Claimant's assertion that the text message shown in its proper context shows that it was the Respondent asking the Claimant whether a rumour she had heard was true.

15.52. On an occasion in June 2021, Mr Atig says that his wife heard the Claimant shouting at their daughter while they were preparing to leave in the morning, and that evening, their daughter told him that the Claimant had told her not to tell her parents that she had shouted at her, otherwise the Claimant would be fired and nobody would take her to the park. The Claimant is adamant that she never shouted at the Child. She says that while at tennis, the Child said "*Mummy said you shouted at me"* and that she clarified that she did not. She says that the Respondent and Mr Atig never said anything to her about their concerns that she had shouted at the Child.

15.53. In relation to this final incident, I find on the balance of probabilities that something may have been said by the Claimant to the Child in a moment of irritation which was perceived by the Child as "shouting" even if the Claimant did not see it as such. I note that the allegation is that this happened in the course of getting ready to go to school, and it would not be unusual for parents or carers of children to experience moments of irritation or frustration in that context. It seems to me that there would be no reason for the Child to say to the Claimant "*Mummy says you shouted at me"* if nothing whatsoever had happened. It is equally plausible, in my view, that the Claimant would then, in denying that it have happened, wished to have impress on the Child that a false accusation of shouting could get her into trouble. Again, therefore, I find on the balance of

probabilities that it is likely that a conversation along those lines occurred, although the nature and extent of both the original incident and the subsequent conversation with the Child may well have been exaggerated by either the Child or Mr Atig in the way they have subsequently been described.

15.54. All these alleged incidents were explored at length during the hearing because of the Respondent's assertion that they were the reason for the termination of the contract of employment. I will consider the reason for the termination of the contract below.

15.55. In terms of findings of fact, however, I accept the Claimant's evidence that none of these incidents, save for the one involving the concierge in May 2021, was ever discussed with her in any meaningful way. By this I mean that while a passing comment or text message may have been made to seek more information, express momentary irritation or dissatisfaction, I find that there was no formal discussion of these incidents, certainly not such that the Claimant would understand that they were incidents of significant concern to the Respondent or that they were putting her employment in jeopardy. I find that no form of warning or reprimand, whether verbal or written, formal or informal, was ever issued to the Claimant in relation to any of these incidents.

The termination of the contract

16. In late June 2021 the Respondent and Mr Atig signed a contract on a new rental property in the West End of London. The Respondent was at the time pregnant with their second child, which was born in August 2021.

17. On 1 July 2021 a conversation took place in which the Claimant was informed of the decision to terminate her contract. Again, there is a factual dispute in relation to this conversation which I need to resolve.

17.1. The Claimant says that the conversation was between her and the Respondent, and took place as she was putting on her coat to leave that afternoon. She says that the Respondent said that they would be moving at the end of the month and that she would no longer be needed. The Child's school was about 2 minutes' walk from their new address and Mr Atig would be taking her to school while the Respondent was on maternity leave and caring for their second child. The Claimant denies that she was invited to sit down for a meeting or even for a chat. She says that the Respondent looked "sheepish". She says that Mr Atig was next door in the family's other flat.

17.2. The Claimant says that the Respondent had made her aware in the past that it was always the family's intention to move, but that their plans had been delayed because of Covid. She says that the Respondent had told her that she planned to engage a maternity nurse to care for the new baby and to look after her children herself during her maternity leave.

17.3. The Claimant received a text message from the Respondent the following day, on 2 July 2021. This message said "*Thank you for your understanding of the change in our circumstances which led us to take this difficult decision. Please consider this email as an official notification of the start of the notice at the end of which the contract will be terminated".*

17.4. Mr Atig says that he was present for the conversation between the Respondent and the Claimant. In his witness statement he said "*We sat down with the Claimant, and we explained that we will have to part ways… We parted way in a cordial way… The Claimant was not involved in our move; she did not know the location… First time she heard our address was 1 day before delivery and the first time she sees the place was 25th August 2021…".* In his oral evidence, Mr Atig said that the Claimant was told that they were parting ways and giving her one month's notice, but that no details of the family's plans were shared with her.

17.5. I have not heard evidence from the Respondent in relation to this issue. I accept the Claimant's evidence in relation to the termination conversation. It seems to me that it is possible that Mr Atig had a conversation with the Claimant on another day during the notice period and referred to parting ways. However I find the Claimant's recollection of the detail of this conversation persuasive, including her description of the Respondent looking "sheepish" and her recollection of having just put on her coat. In addition, it seems to me that if, as Mr Atig asserts, the conversation simply referred to a parting of the ways without any explanation of why or of where the family was going, the text message sent by the Respondent the following day would not have made sense.

17.6. On the balance of probabilities, I therefore accept that this was a brief conversation with the Respondent as the Claimant was about to leave, and that the Claimant was informed of the family's plans to move to a home close to the Child's school (even if she was not provided with the address at that time) and of the Respondent's intention to care for the children herself whilst on maternity leave. She had evidently disclosed something of those plans to the Claimant in the past, and there seems to be no reason why she would not have done so on this occasion. I find that the Claimant was told that her services would no longer be needed.

18. On 16 August 2021 the Respondent provided the Claimant with a reference. That reference included the following: "*… We strongly recommend her as a great and trustworthy nanny… Alison has an excellent work ethic and acts with professionalism and transparency… I cannot stress Alison reliability strongly enough… In summary, Alison is equipped with many exceptional childcare qualities that would make her thrive in any nanny position…"*.

19. In late August 2021 the Respondent and Mr Atig engaged the Claimant on a temporary basis to care for their Child for three days and nights while the Respondent was in hospital for the birth of their second child. In the messages in which they discussed fees for this temporary engagement, the

Respondent said "*[By the way] we will probably have more in the company account by then so we will potentially give you bit more than £300"* (the fee previously agreed).

20. The Respondent and Mr Atig planned, when they moved, for Mr Atig to take the Child to school himself. Mr Atig said in his oral evidence that they only really needed the Claimant for the school run. His wife was not working and was able to look after their children. They have not engaged another nanny, although they had short-term help from a maternity nanny after the second child was born.

21. The Respondent and the Claimant continued to exchange cordial text messages throughout the notice period and beyond, extending into 2022.

22. In addition, there are some messages exchanged between the Claimant and Mr Atig in July 2021. On 31 July Mr Atig sent the Claimant a message saying that the Child "*just saw her new bedroom and the first thing she said is that she wants to show it to you".*

23. The Claimant wrote to the Respondent in relation to her claim for a redundancy payment in late July 2022.

24. In response to that letter the Respondent and Mr Atig wrote to the Claimant on 16 August indicating their belief that the Claimant was "*mistaken about the reasons why we mutually and cordially parted way"* and setting out a number of the incidents of alleged concern which have been referred to in these proceedings.

25. The matter was then put in the hands of the Respondent's representatives, who wrote to the Claimant on 22 August 2022 saying amongst other things, "*Your employment ended mutually after concerns in relation to a succession of events were raised to you".*

Law

26. It is clear that the statutory right to a redundancy payment is capable of arising on the dismissal of a domestic servant, provided that the employee is not closely related to the employer. Section 161 ERA provides that:

"(1) A person does not have the right to a redundancy payment in respect of employment as a domestic servant in a private household where the employer is the parent (or step-parent), grandparent, child (or step-child), grandchild or brother or sister (or half-brother or half-sister) of the employee.

(2) Subject to that, the provisions of this Part apply to an employee who is employed as a domestic servant in a private household as if –

(a) the household were a business, and
(b) the maintenance of the household were the carrying on of that business by the employer."

27. The right to a redundancy payment is set out in Part XI Chapters 1 & 2 ERA.

28. Section 135 ERA sets out the right to the payment. It provides as follows:

"(1) An employer shall pay a redundancy payment to any employee of his if the employee –
(a) Is dismissed by the employer by reason of redundancy…"

29. Section 136 ERA sets out the circumstances in which an employee is dismissed. It provides as follows:

"(1) Subject to the provisions of this section…, for the purposes of this Part an employee is dismissed by his employer if (and only if) –
(a) The contract under which he is employed by the employer is terminated by the employer (whether with or without notice)…"

30. Section 139 ERA sets out the circumstances in which an employee is to be taken as being dismissed by reason of redundancy. It provides as follows:

"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) The fact that his employer has ceased or intends to cease –

(i) *To carry on the business for the purposes of which the employee was employed by him, or*
(ii) *To carry on that business in the place where the employee was so employed, or*

(b) The fact that the requirements of that business –

(i) For employees to carry out work of a particular kind, or
(ii) For employees to carry out work of a particular kind in the place where the employer was employed by the employer,
Have ceased or diminished or are expected to cease or diminish."

…

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently and temporarily and for whatever reason.

31. The burden is on the Claimant to prove on the balance of probabilities that she was dismissed. However Section 163(2) ERA provides that there is a statutory presumption that an employee who has been dismissed was dismissed for redundancy. If there was a dismissal, it is therefore for the Respondent to prove on the balance of probabilities that the dismissal was not for redundancy.

32. Section 140(1) ERA provides that an employee "*is not entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct, terminates it … (c) by giving notice which includes, or is accompanied by, a statement in writing that the employer would, by*

reason of the employee's conduct, be entitled to terminate the contract without notice".

33. In the case of *Watters v Thomas Kelly and Sons Ltd* EAT/626/81, the employer closed the business down because she believed this was the only effective way of getting rid of the employee, of whom she was frightened because of his conduct. The EAT considered that the reason for the dismissal in those circumstances was the closure of the premises, and was therefore redundancy. It pointed out that Section 140(1) might in some circumstances reduce or eliminate the right to a redundancy payment in such a situation.

34. In terms of the amount of any redundancy payment, Section 162(2) ERA is clear that this is calculated by reference to the amount of a "week's pay". The amount of a week's pay is calculated according to the provisions set out in Chapter II, Part XIV ERA, at Sections 220 to 229.

35. Section 221 applies where an employee has normal working hours. Section 221(2) states that "*…. If the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week".*

36. Section 224 applies where an employee has no normal working hours. Section 224(2) provides that the amount of a week's pay in those circumstances is "*the amount of the employee's average weekly remuneration in the period of twelve weeks ending - … (b) with the last complete week before the calculation date"*.

37. There is a statutory cap on a week's pay, set out at Section 277 ERA.

38. In terms of the doctrine of illegality, the case of *Patel v Mirza* [2017] AC 467, SC, reminds me that that the essential rationale of the doctrine is that it would be contrary to the public interest to enforce a claim if to do so would harm the integrity of the legal system. In assessing whether this would be the case, it will be necessary to consider:

    38.1. The underlying purpose of the law that has been breached, and whether that purpose would be enhanced by the claim being refused;

    38.2. Any other relevant public policy which might be affected by the denial of the claim; and

    38.3. Whether denial of the claim would be a proportionate response to the illegality (bearing in mind that punishment is a matter for the criminal courts).

39. In assessing proportionality, a range of factors will be relevant, including:

39.1. The seriousness of the illegal conduct;

39.2. Its centrality to the contract;

39.3. Whether it was intentional; and

39.4. Whether there was a marked disparity in the parties' respective culpability.

39.5. It may also be relevant to consider whether the party seeking enforcement knew of the illegal conduct.

40. The key issue is therefore not whether the contract is "tainted" by illegality, but whether it would be contrary to the public interest for a claim to be enforced because to do so would harm the integrity of the legal system.

41. The approach I should take to this issue, as set out in *Stoffel and Co v Grondona* [2020] UKSC 42, SC, is to start by identifying the policy considerations referred to above at a general level (but not evaluating them) in order to determine whether enforcing a claim tainted by illegality would be inconsistent with those policies or, if there are competing policies, where the overall balance lies. If I conclude that the claim should not be barred, I do not need to go on to consider proportionality. If I conclude that the balancing of policies suggests a denial of the claim, I should then go on to consider the issue of proportionality.

Conclusions

Was there a dismissal?

42. It is not in dispute that the Claimant was an employee and had been employed for approximately 4 years and 10 months at the effective date of termination on 30 July 2023.

43. The parties both say that a conversation took place on 1 July 2021 between the Claimant and the Respondent (Mr Atig says that he was also present but I have found that he was not present at this conversation) in which the Claimant was told that the Respondent was dispensing with her services at the end of the month. I have found as a fact that such a conversation occurred.

44. I have accepted the Claimant's account of that conversation, and have found that the Claimant was told that because of the family's change of circumstances (their move to a new home near the Child's school and the Respondent's intention to care for her children during her maternity leave), her services would no longer be required.

45. That conversation, in my judgment, amounts to unequivocal notice of the employer's intention to terminate the contract of employment, and therefore amounts to dismissal.

46. I should point out that even if I had accepted Mr Atig's account of the conversation, which I did not, the language he used of a "parting of the ways" would in my judgment have been sufficient to convey to the Claimant

that the Respondent had taken the decision to terminate the contract for her services, and would therefore amount to a dismissal.

47. I note that in response to the Claimant's letter before bringing this claim, the Respondent's representative sought to assert that this was a mutual agreement to terminate the contract. The ET3 is ambiguous as to whether or not the Respondent accepts that there was a dismissal, but states that "*The Respondent met with the Claimant and explained that they will "have to part ways" and the Claimant's contract was terminated*". That appears to be an acknowledgment, albeit not an express one, that there was a dismissal. In his submissions on behalf of the Respondent, the Respondent's representative expressly concedes (in the preamble and in paragraph 1) that the Claimant was dismissed from her role with notice.

48. In all the circumstances I consider that there was a dismissal, effective on 31 July 2021, with notice given orally on 1 July 2021 and in writing on 2 July 2021.

Was that dismissal by reason of redundancy?

49. This being a claim for a redundancy payment, the statutory presumption of redundancy arises because the Claimant was dismissed. It is therefore for the Respondent to prove on the balance of probabilities that the dismissal was not wholly or mainly attributable to redundancy, for the purposes of Section 139 ERA.

50. The Respondent raises various points about the Claimant's knowledge or otherwise about the reason for her dismissal which are relied on to support the argument that the dismissal was not by reason of redundancy. These are that:

    50.1. No redundancy process was followed, no written reasons for dismissal were given, and the Claimant did not seek an explanation at the time;

    50.2. The Claimant only took the view that she had been made redundant after speaking to another nanny in July 2022;

    50.3. Prior to this the Claimant "*had no reason to believe she was made redundant"*;

    50.4. Since July 2022, she "*has simulated a view that redundancy must have occurred as she was aware after her employment ended that the Respondents had moved from their home to a rented accommodation in order to facilitate schooling requirements".*

51. I do not accept any of these points.

    51.1. First, I do not consider that an employer can rely on its own failure to follow proper employment law process as a basis for saying that an employee has "simulated" a claim after the event. The fact that no redundancy process (or indeed any dismissal process) was followed,

or that written reasons were not provided at the time, goes to the issue of whether or not the Claimant would have realised that she had a right to a redundancy payment; it cannot, in my view, go to the issue of whether or not that right existed in the first place.

51.2. Second, I have already found that the Claimant was told at the time notice was given on 1 July 2021 that the reason for the termination was that the family was moving to a location near the children's school and that the Respondent (and Mr Atig) intended to care for the children themselves, so her services were no longer required. That "change of circumstances" was alluded to in the written notice the following day. Those plans on the part of the family were already known to her, although the timing may have come as a surprise. In the circumstances, I do not consider that she would have needed to seek a further explanation of the reason for the dismissal.

51.3. What the Claimant has consistently said, however, and what was accepted by Employment Judge Bartlett at the Preliminary Hearing in this case, was that she was not aware until she spoke to another nanny in July 2022 that, as a nanny, those circumstances entitled her to a redundancy payment. Again, knowledge of an employment law right should not be conflated with whether or not that right exists in the first place.

51.4. Finally, these arguments ignore the statutory presumption of redundancy. Whether or not the Respondent cited redundancy as the reason at the time, once it dismissed the Claimant, there is a presumption (for the purposes of this claim) that the reason was redundancy unless the Respondent proves otherwise.

52. The Respondent invites me to find that the dismissal was "*due to ongoing concerns regarding her conduct/performance in her role"*. These are described as "*multiple issues over a sustained period of time"*.

53. I do not accept that the dismissal was wholly or mainly attributable to the alleged concerns about the Claimant's conduct or performance.

54. I have set out within my findings of fact the 10 or so incidents on which the Respondents relied in support of their assertion that the dismissal was by reason of conduct.

55. In my judgment, many of these alleged concerns were minor, in some cases even trivial issues. The vast majority of them were issues which on any reasonable, objective view fell far below the threshold of requiring any form of managerial action, let alone dismissal. In this category it seems to me that it would be possible to group the alleged concerns set out at paragraphs 15.45, 15.46, 15.47, 15.48, 15.49, 15.50 and 15.51 above, which include issues such as allowing a child to forget to take an item of clothing to school, engaging in conversation with other parents or carers outside in the context of taking children to school or activities which were at the time allowed to take place, talking about other pupils or families at the school, or smoking cigarettes outside a school.

56. I have found that the majority of these alleged concerns were never raised with the Claimant, whether formally or informally, as issues of significant concern. Inevitably in a role which involves an employee being present in the employer's home and caring for their employer's child, there may be occasional moments of minor irritation at a particular behaviour, as there would be in any domestic setting or relationship. Those moments of irritation were, in some instances, marked by a text message or passing comment challenging or querying the actions. However in other instances not even that was done, and there was no subsequent action taken.

57. If these were genuinely issues of significant concern to the Respondent and her husband from a managerial perspective, then in my judgment they ought to have made that clear and set out their expectations, following up with an informal or even formal warning or reprimand if there was any recurrence. That was not done.

58. I note, in this regard, that the Respondent appears to have had access to Human Resources advice and assistance through Nannytax. Nannytax had provided a written contract of employment which included a disciplinary policy setting out the various stages which could be followed. That policy also included a section where any specific requirements of the employer could be set out under the heading of "House Rules" at Schedule 2. Mr Atig said in evidence that he had not read the policy until he did so in the course of these proceedings, however he thought that his wife would have been familiar with it. The Respondent did not provide any evidence at the hearing.

59. The two incidents which were arguably more serious were the issue in relation to the concierge, and the allegation that the Claimant had shouted at the Child and then told her not to say that it had happened. The first of these had already been dealt with by way of an informal, undocumented conversation in which the Claimant was told that if her partner attended the premises again, the police would be called. There was no suggestion of any recurrence of a similar issue.

60. In relation to the alleged shouting incident in June 2021, Mr Atig's evidence was that this incident was "*the last blow"* and that *"things touched a red line when my daughter's wellbeing became impacted. We suspected that the Claimant had started telling [the Child] off whenever she irritated her…"*. He says that at this point they decided to stop using the Claimant's services and to "*find a different solution for the school run"*.

61. However, no investigation had been carried out by the Respondent in relation to this incident. There appears to have been no enquiry about the context in which the shouting was said to have occurred, or the reason for it. In preparing children to set off for school, it would not be unusual for moments of irritation to occur. If the incident was genuinely regarded by the Respondent as being as serious as is now suggested, it is in my judgment likely that formal steps would have been taken to issue a warning or reprimand or take some other action under the disciplinary procedure available to the Respondent. That was not done.

62. Mr Atig says that he and his wife were people who avoided confrontation and preferred to keep things amicable. However I note that he was, on his own account, prepared to confront the Claimant in relation to the concierge incident some time previously.

63. What Mr Atig asks me to accept in his evidence is that the cumulative effect of these incidents, with the alleged shouting as the "final blow", was such that he saw no alternative but to move his entire family to a new home across London, at a time when his wife was 8 months pregnant, rather than taking disciplinary action against the Claimant, or to dismiss her for misconduct and recruit a new nanny.

64. In my judgment this evidence is inherently implausible and I do not find it credible. Mr Atig accepts that the family had planned to move prior to the Covid pandemic, although he says those plans had fallen through. I have found that the Respondent had told the Claimant, before notice was given, that it was her intention to relocate to somewhere closer to the Child's school and care for the children herself during her maternity leave.

65. I also note that Mr Atig's witness statement says that the family were planning to move, although not until after the second child was born. They had been searching for a property to purchase but had put that search to a stop in mid-May 2021. At its highest, his evidence therefore appears to be that the alleged concerns in relation to the Claimant brought forward the plan to move – a plan which was already in place prior to those concerns.

66. Contrary to what appears in the submissions prepared by the Respondent's representative, Mr Atig told me that he and his wife have been caring for their children and taking them to school. That is a state of affairs which continues, and they have not recruited another permanent nanny (although they had one to help with the newborn child on a temporary basis after that child was born).

67. I further consider that the Respondent's actions at the time of and subsequent to the dismissal are inconsistent with them having lost confidence in the Claimant to the point of dismissing her. I say that for a number of reasons:

    67.1. If that was the case, then nothing would be lost by explaining to the Claimant at the time of the dismissal that the reason for the dismissal was her conduct. They did not do so. They cited their own change of circumstances as the reason.

    67.2. If that was the case, then I do not accept that the Respondent would have been willing to invite the Claimant into their home and leave her, unaccompanied, with their Child for several days and nights while the Respondent was giving birth to their second child. If they genuinely believed that she presented a risk of harm to their Child, that would be a very surprising decision to make.

    67.3. If that was the case, then I do not accept that the Respondent would have provided a glowing reference in relation to the Claimant within a couple of weeks of the dismissal. It is one thing to decide not to

give a negative reference. It is quite another to give such a positive one, speaking in glowing terms of her trustworthiness, work ethic, professionalism and "exceptional childcare qualities".

67.4. If that was the case, then I do not accept that the Respondent and Mr Atig would have maintained such positive and friendly correspondence with the Claimant after her dismissal, including Mr Atig commenting to the Claimant, apparently unprompted, that the Child was anxious to show the Claimant her new room. Only after the Claimant wrote in relation to a redundancy payment, a year after her dismissal, did the correspondence cease to be cordial, and only at that point did the Respondent and Mr Atig raise issues of alleged concern.

68. Having regard to all the evidence, and to all the points I have identified above, in my judgment the Respondent has failed to discharge the burden of proof required to displace the statutory presumption that the dismissal was wholly or mainly by reason of redundancy.

69. On the balance of probabilities, I consider that the reason for the dismissal was wholly or mainly on the basis that:

69.1. The family had decided to move to a location some distance away, but very close to the Child's school. They would therefore be able to carry out the school run themselves and, in the words of Mr Atig, they only really needed the Claimant for the school run;

69.2. Their intention was that the Respondent would care for the children herself while she was on maternity leave;

69.3. They therefore no longer required the Claimant's services.

70. In my judgment, those reasons fall fairly and squarely within the remit of Section 139. I remind myself that Section 161 provides that, in the case of a domestic servant, the provisions in respect of redundancy are to be applied as if the private household were a business, and as if the maintenance of the household was the carrying on of that business by the employer. Characterised in that way:

70.1. The Respondent had ceased, or intended to cease, to carry on the business (the maintenance of the household) in the place where the Claimant was employed (the home on the Isle of Dogs) – for the purposes of Section 139(1)(a)(ii); and/or

70.2. The requirements of the business (the household) for employees to carry out work of a particular kind (the school run), or for employees to carry out work of a particular kind (childcare more generally) in the place where the Claimant was employed, had ceased or diminished or were expected to cease or diminish.

71. Even if I am wrong about the reasons why the Respondent wished to terminate the Claimant's employment, and it was linked to the alleged

conduct, the Respondent still, as Mr Atig made clear in his evidence, decided that rather than take disciplinary action, they would move the entire family home (sooner than originally planned) precisely so that they would no longer need the Claimant's services. In my judgment that is analogous to the case of *Watters v Thomas Kelly & Sons Ltd* (supra), and I consider that the main reason for the dismissal continues to be redundancy rather than misconduct.

72. In that situation, I do not consider that the Respondent would be assisted by the provisions set out in Section 140 ERA which exclude the right to a redundancy payment when there has been gross misconduct and the employer gives notice *"which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice"*. For reasons I have already set out above, I do not consider that the alleged conduct in this case was capable of amounting to gross misconduct. In any event, the Respondent had not, when giving notice, served the requisite written notice in relation to its entitlement to dismiss by reason of gross misconduct.

73. I therefore find that the reason for the dismissal was redundancy.

Entitlement to a redundancy payment

74. It follows from my decision that the Claimant was dismissed by reason of redundancy that she was entitled to receive a redundancy payment pursuant to Section 135(1)(a) ERA.

Amount of the redundancy payment

75. I have already made a finding that the pay to which the Claimant was contractually entitled was £2,100 net per calendar month, or £25,200 net per annum. This equates to £485 per week.

76. I have not been provided with details of the Claimant's gross pay. Using an online conversion calculator, based on the standard 1257L tax code and assuming no pension payments and no student loan payments, this equates to gross pay of £31,141 per annum, £2,595 per calendar month, or £599 per week.

77. The relevant statutory cap on a week's pay as at July 2021 was £544. A week's pay for the purposes of Section 162 ERA is therefore £544.

78. Following the formula in Section 162:

    78.1. The Claimant had been continuously employed for four complete years at the Effective Date of Termination.

    78.2. The Claimant's date of birth is 23 November 1971. She was therefore over the age of 41 for each of the 4 years working back from the Effective Date of Termination.

    78.3. The Claimant is therefore entitled to 1.5 weeks' pay for each complete year of service.

78.4. The statutory redundancy payment in this case is therefore 4 x 1.5 x £544 = £3,264.

79. The Respondent asserts that I should deduct from that sum the sum of £2,200 which is said to have been paid to the Claimant as a final lump sum. I have not been provided with a payslip in relation to the final payment or any indication of the date on which it was paid. I note, however, that £2,200 appears to reflect a final payment of a month's salary at the conclusion of the notice period, possibly with the addition of £100 to reflect any accrued holiday which had not been taken. I am mindful that the Claimant was paid her salary in arrears. I see no basis for making a deduction from the statutory redundancy payment.

The Doctrine of Illegality

80. In my findings of fact in relation to the terms of the contract, I have found that the Claimant's contractual entitlement was to a salary of £2,100 per month net.

81. The contract drawn up by Nannytax reflects a different pay figure. From the limited Nannytax payslips available, it appears that the net pay Nannytax were advised of for the Claimant equated to just over £800 per month. The pay slip generated by the Respondent is silent as to gross pay and as to what if any tax was deducted prior to the net payment of £2,100 being made.

82. It appears to be accepted on behalf of the Respondent that tax and national insurance contributions were not paid on what was described by the Respondent as the "discretionary" payment made each month, which I have found forms part of the Claimant's contractual entitlement and part of her regular salary.

83. During the evidence, it became apparent to me that there might be an issue in relation to the legality of the terms and conditions operated between the parties in respect of pay. I therefore invited the parties to make submissions in relation to what, if any, consequences this should have for the outcome of the case in light of the doctrine of illegality. I have had regard to the submissions made by both parties in relation to this issue. I have also had regard to the principles set out in recent case law, identified above.

84. The contractual terms in this case were not of themselves illegal. The potential illegality arises from the way in which the contract was performed in respect of the arrangements for salary payments.

85. The Claimant is clear that she has always regarded herself as a PAYE employee and assumed that the Respondent was responsible for tax and national insurance payments made from her gross salary.

86. In my judgment, it was reasonable for the Claimant to make this assumption, given the express terminology used about net pay. Her total pay each month was made up from a variety of sources in varying proportions (bank transfer, cash and childcare vouchers), and it was not for her to know what arrangements had been made by the Respondent for the payment of tax. I find that she was not aware of, responsible for or complicit in any shortfall

there may have been in terms of the Respondent's tax liability on her salary. She certainly did not benefit from it, because she simply received the same net pay each month.

87. I have weighed the competing public interest considerations in this case, namely the need to ensure, on the one hand, that individuals pay the appropriate taxes on their earnings, and on the other hand, that businesses and employers make statutory redundancy payments which are intended to protect individual workers who are made redundant from their employment. Having weighed those competing considerations, I have had regard to my findings of fact and, in particular, my finding that it was reasonable for the Claimant to assume that the Respondent was responsible for tax payments.

88. In my judgment, the balancing exercise in this case weighs in favour of allowing the Claimant's claim to proceed. Refusing to allow her claim would be a disproportionate response to any potential illegality in all the circumstances. I consider that such an outcome would not serve the interests of justice.

89. I therefore consider that the Claimant should be permitted to enforce her right to a redundancy payment notwithstanding the fact that appropriate tax and national insurance contributions do not appear to have been made by the Respondent on her salary.

Additional matter raised in the Respondent's submissions

90. There is one final matter raised in the Respondent's submissions which I need to address. This relates to the jurisdiction of the Tribunal to hear the Claimant's complaint.

91. In his written submissions, the Respondent's representative said: "*The Tribunal has now heard contradictory information during the hearing in relation to the Claimant's access to legal support and representation available to her, which was the entire basis of the discretionary decision made to accept a claim into the Employment Tribunal system which was over a year out of time. It is the Respondent's case that in evidence that has since come to light that the Claimant, in presenting an entirely contradictory position, has misled the Employment Judge at the preliminary hearing into facilitating a full hearing which the Claimant should not have add [sic] the ability to attend".*

92. In essence, the Respondent is inviting me to revisit the decision taken by Employment Judge Bartlett at the Preliminary Hearing in relation to jurisdiction and to take a different view, on the basis of allegedly conflicting evidence given by the Claimant in relation to her access to legal support and representation.

93. I reject this invitation. I consider it inappropriate to go behind a decision which has been made and promulgated in this matter. If the Respondent considers that there is new evidence which undermines that decision, the appropriate course of action is to appeal against that earlier decision.

Conclusion

94. For the reasons set out above, I find that the Claimant was dismissed by the Respondent by reason of redundancy and is entitled to receive a redundancy payment from the Respondent in the sum of £3,264.

Employment Judge Suzanne Palmer
Dated: 25 August 2023