



EMPLOYMENT TRIBUNALS

Claimant: Miss G Boughen-Parkin
Respondent: Daniel May

AT A HEARING

Heard at: Leeds by CVP video conferencing **On:** 28th September 2023
Before: Employment Judge Lancaster

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT

1. Daniel May is added as a respondent in substitution for “Leeds Rebound Gymnastics Limited (company number 10254921) now known as AAW Holdings Limited following a name change”.
2. The Respondent has made an unauthorised deduction from the Claimant’s wages and is ordered to pay her compensation in the gross sum of £1270.00
3. The Respondent is further ordered to pay to the Claimant the additional sum of £400.00, which is the amount considered appropriate to compensate her for financial loss sustained by her and which attributable to the above unauthorised deduction.
4. The Respondent is further ordered to pay to the Claimant the sum of £560.00, which is the higher amount of 4 week’s pay which it is just and equitable to award to the Claimant in all the circumstances pursuant to section 38 of the Employment Act 2002.
5. It is declared that the Claimant was unfairly dismissed.
6. The complaints in respect of notice pay, holiday pay and a redundancy payment are all dismissed.

REASONS

1. Having heard evidence from the Claimant and having regard to the relevant information on the Companies House website and having considered the Tribunal file, I find as facts the following matters.

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2. The Claimant was employed continuously as a gymnastics coach, working at the club based at 6 West Vale, Hunslet, Leeds, from 27th July 2019 until 19th January 2023.
3. That club consistently traded under the name Leeds Rebound Gymnastics until about January 2023 when the name Leeds Gymnastics Academy started to be used.
4. The Claimant was initially engaged by Daniel May, and continued to be answerable to him throughout the whole of her employment.
5. The Claimant has never been given a written statement of the particular of employment, nor of any changes, as required by Part 1 of Employment Rights Act 1996, although there was at some stage an electronic version of the initial employment contract, which has now been deleted so that she does not have access to it.
6. The original contract was for a 36 hour week, but the Claimant accepts that this was subsequently varied at her request to 14 hours.
7. She did, however, consistently work more than 14 hours, usually averaging at least 20, but this has always been categorised as overtime, albeit at the same hourly rate.
8. The Claimant believed that she was employed by a company Leeds Rebound Gymnastics Limited.
9. The company, Leeds Rebound Gymnastics Limited, of which Daniel May was the sole director, was not however incorporated until 15th July 2020. It cannot, therefore have been the Claimant's employer when she first started.
10. Leeds Rebound Gymnastics Limited was dissolved on 12th January 2021. It cannot, therefore have been the Claimant's employer at any point after that date.
11. Daniel May, however, continued up until the end of employment to provide the Claimant with weekly timesheets to fill in/sign and which bore the name Leeds Rebound Gymnastics Ltd. That is the only documentation given to the Claimant which included the title of any limited company.
12. The Claimant was given no indication whatsoever, if indeed she had previously been employed by Leeds Rebound Gymnastics Ltd, as to the identity of her new employer once that company had ceased to exist.
13. There is a separate company, Leeds Rebound Gymnastics Club Limited, of which Daniel May has also been the sole director up to his resignation on 17th July 2023..
14. This company was incorporated as City of Leeds Trampoline Club Limited on 28th June 2018, but changed its name to Leeds Rebound Gymnastics Club Limited on 7th October 2019. It changed its name again to AAW Holdings Limited on 21st December 2022, and at the same time transferred its registered office from 6 West Vale to 86-90 St Paul's Street, London. It is still a active company, though its status is now shown as dormant.

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15. The Claimant only knew of the existence of AAW Holding Ltd. because it was referenced in an unrelated claim brought by another employee (1806486/2022), and which is noted in this ET1 at section 3.1. AAW Holdings Limited is not, of course, in fact the successor to Leeds Rebound Gymnastics Limited, which is the company originally named in the claim.
16. The Claimant received payments of wages not only from an account identified on her bank statements as Leeds Rebound (or Leeds Rebound Gymnastics), presumably a company account, but also from Daniel May personally. In particular she recalls that the October 2022 payment came from him personally.
17. This is corroborated by a letter obtained from HMRC which records that the Claimant did receive income in tax years 2019/2020, 2020/2021, 2021/2022 and 2022/2023 from Leeds Rebound Gymnastics Club Limited but only in a total period ending on 30th September 2022. It also records that the last three of those tax years she also received income from Daniel May.
18. On 23rd December 2022 the Claimant received what purported to be a conditional offer of employment to commence on 1st January 2023 with FR Sports Coaching (described as “the company” but not registered under that name with Companies House) and not preserving continuity of employment.
19. There has never at any time been any notification of any transfer of the Claimant’s employment under TUPE, and it is not known whether there has in fact been any transfer of undertaking in relation to this club.
20. On 19th January 2023 the Claimant received notice of termination with immediate effect by reason of redundancy. This came from an email address “info@leeds gymnastics academy.com “ but was signed “LGA”, with no indication of who had sent it nor on behalf of whom. There was no prior warning of or consultation on termination.
21. Following further exchanges of email correspondence to that address, all similarly anonymous, identified only as coming from “administration support” at LGA”, the Claimant received payments of pay in lieu of notice £410.00, holiday pay £41.00 and a redundancy payment of £210.00. The source of those payments is not known.
22. The Claimant submitted her properly completed time sheets for December 2022 and January 2023 for 89 hours and 38 hours respectively at £10 per hour. The total owing of £1,270.00 remains outstanding.
23. Having not been paid for this work done and with her rent owing before having to move back in with her parents, the Claimant had to take out a loan of £1100.00 on her credit card. That remains outstanding, and to date has accrued interest payments of £288.71 which will continue so long as the Claimant is only able to make the minimum monthly repayments.
24. On 23rd May 2023 Daniel May requested that any papers in this case be sent to the correct companies(sic) registered address at 86-90 St Paul’s Street, London. An invalid ET3 was then submitted by Daniel May on 7th June 2023, and resubmitted again by him on 17th July 2023 (the same date on which he resigned as director of AWW Holdings Limited). Both ET3 forms identified the named Respondent on whose

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behalf they was submitted only as Leeds Rebound Gymnastics Limited and gave Daniel May's personal email address as the contact.

25. The Response to this claim simply asserts "the company was non-operational at the time of the alleged dismissal and the company did not dismiss the employee. We are not the company which she alleges she was employed by at the time of the dismissal, but we did employ Miss Boughan-Parkin until October 2022".
26. When submitting the first invalid ET3 Daniel May had described himself as "the sole director and only employee the now dissolved company". Whilst it is correct that Leeds Rebound Gymnastics Limited had indeed been dissolved, that had been in January 2021, so that company could not also have employed the Claimant until October 2022. Leeds Rebound Gymnastics Club Limited has not been dissolved.
27. The ET3 also purports to raise an employer's contract claim alleging breach of covenant, though on behalf of which company or under what employment agreement is not made clear. It also appears, even if it were theoretically enforceable, to be spurious as neither company Leeds Rebound Gymnastics Limited or Leeds Rebound Gymnastics Club Limited is said to be still operational and will therefore have no competitors. However this is not material because the Tribunal has no jurisdiction to entertain a contract claim which relates to a term imposing an obligation of confidence or which is a covenant in restraint of trade: Employment Tribunals (Extension of Jurisdiction) (England and Wales) Order 1994
28. From these facts I draw the following conclusions.
29. Daniel May has conducted both himself throughout the Claimant's employment and in the course of these proceedings wholly without candour or transparency as to the true legal identity of the employer.
30. Both on the facts and applying the assumption in section 210 (5) of the Employment Rights Act 1996 the Claimant was continuously employed throughout.
31. Whatever the position prior to that date, after October 2022 - given that the Respondent's pleaded case is that she ceased to be employed by any active company from that time - the only possible conclusion is that the Claimant was personally employed by Daniel May at the material dates. He is of course the one constant presence throughout the entirety of the period of employment, and may well have actually been the employer at all stages.
32. Daniel May is therefore properly now identified as the respondent, and is personally liable for the sums claimed both as unpaid wages and consequential financial loss.
33. I assess the additional award payable under section 24 (2) of the Employment Rights Act 1996 at £400.00 to reflect the amount interest already paid and to make some compensation for the fact that interest will continue to accrue at least until such time as the arrears of pay are made good.
34. Although the redundancy dismissal was procedurally unfair, this part of the claim is covered by the redundancy and notice payments, and the Claimant soon secured alternative employment.

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35. The failure to provide written particulars, correctly identifying the employer, has been a significant factor in creating difficulties for the Claimant in presenting her claim and is therefore a particular serious default, clearly justifying the higher award of compensation.
36. The payments for statutory redundancy, notice pay and holiday already made are however correct.
37. The Claimant had three years continuous employment up to the date of termination, all below the age of 22. She is therefore entitled to 3 times $\frac{1}{2}$ week's pay. Applying section 234 of the Employment Rights Act 1996 that is calculated on normal hours excluding overtime. That is 14 hours at £10 per hour, of which $\frac{1}{2}$ week's pay is £70.
38. Similarly the 3 week's notice pay to which she was entitled in lieu is to be assessed on contractual hours, so £420.00
39. The holiday year is the calendar year, the Claimant had taken some holiday in January (payment for which is already included in the claim for deduction from wages) and there is no reason to doubt the pro-rata calculation of a further 4.1 hours outstanding for the short period up to the date of termination.

EMPLOYMENT JU DGE LANCASTER

DATE 28th September 2023

JUDGMENT SENT TO THE PARTIES ON

AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS

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