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EMPLOYMENT TRIBUNALS

Claimants: Ms Maria Arnold
Ms Kerrie Cowley
Ms Caitlin Francis
Ms Jennifer Hutchings
Ms Lisa Watson
Ms Emma Wenglorz

Respondent: Classic Lines (CASTLE CARY) Ltd

Heard at: Remotely **On:** 7 September 2023

Before: EJ Bradford

Representation

Claimants: In person
Respondent: Not present or represented

CORRECTED JUDGMENT

1. The Respondent acted in breach of contract by dismissing the Claimants without notice.
2. The Respondent is ordered to pay the Claimants the gross sums set out below, being damages for the breach of contract (pay in lieu of notice):

a) Ms Maria Arnold	£450.00
b) Ms Kerrie Cowley	£5,940.00
c) Ms Caitlin Francis	£175.00
d) Ms Jennifer Hutchings	£5,424.00
e) Ms Lisa Watson	£472.00
f) Ms Emma Wenglorz	£892.00
3. The complaints of unauthorised deductions from pay contrary to Part II Employment Rights Act 1996 are well-founded. The Respondent failed to pay the Claimants' salary between 3 and 9 October 2022, and failed to pay holiday pay in respect of the Claimants' accrued but untaken holiday.

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4. The Respondent is ordered to pay the Claimants the following gross sums:

a)	Ms Maria Arnold	£1,755.00
b)	Ms Kerrie Cowley	£1,930.50
c)	Ms Caitlin Francis	£682.50
d)	Ms Jennifer Hutchings	£1,762.80
e)	Ms Lisa Watson	£413.00
f)	Ms Emma Wenglorz	£708.50

5. The Claimants were dismissed by reason of redundancy. Those who had over 2 years continuous service are awarded a redundancy payment in accordance with ERA s136.

6. The Respondent is ordered to pay the qualifying Claimants the sums set out:

a)	Ms Kerrie Cowley	£13,365.00
b)	Ms Jennifer Hutchings	£11,300.00
c)	Ms Lisa Watson	£708.00
d)	Ms Emma Wenglorz	£557.50

7. The Respondent is ordered to compensate the Claimants in respect of employers contributions to the pension scheme for the notice period of their employment as follows:

a)	Ms Maria Arnold	£13.92
b)	Ms Kerrie Cowley	£141.72
c)	Ms Jennifer Hutchings	£146.52
d)	Ms Emma Wenglorz	£14.04

REASONS

1. By ET1 Claim Forms filed with the Employment Tribunal on 12 and 13 December 2022, the six Claimants brought claims for losses arising out of the Respondent's hairdressing business closing on 9 October 2022. The ET1s indicated claims were brought in respect of notice pay, unpaid salary, unpaid holiday pay and, for those who had been working at the salon more than two years, for a redundancy payment.
2. Notice of the claims was served on the Respondent, who did not respond. By letter of 23 March 2023 the Respondent was notified that judgment may be issued. With no contact from the Respondent thereafter, the matter was listed for a remedy hearing, which took place remotely on 7 September 2023.

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3. There was no documentary evidence of the losses claimed before the Tribunal. The Claimants were litigants in person and had not been directed by the Tribunal to provide evidence of the losses claimed. In response to the Tribunal's request that the Claimants provide calculations of their losses, they had contacted a local solicitor, who had, I was informed, had sight of pay slips and assisted the Claimants with their calculations. An email was sent setting out the sums claimed under each key head of loss. The figures for weekly earnings, as confirmed by the Claimant's at the hearing, was consistent with the figures used in those calculations, and therefore formed the basis of the remedy calculation set out below.
4. Since the Respondent's business closed, the dismissals would have been made in any event. The procedural steps which are normally required in order for an employer to act reasonably, would not have altered the decision to dismiss all the employees. Therefore, whilst a fair procedure was not followed, the redundancies were inevitable and the dismissals were not unfair in themselves, redundancy being a potentially fair reason for dismissal in accordance with s98 Employment Rights Act 1996. As such, qualifying employees are awarded a redundancy payment. However, no compensatory award in respect of ongoing losses is made as there was no unfair dismissal.
5. All the Claimants gave evidence that they had not been paid their final week's salary and that they had received no notice that their employment would end. They all received a phone call on Sunday 9 October 2022 telling them that the salon was closing and they would not be working there again.
6. The Respondent did not pay the Claimants all the monies owed to them, and the remedy awarded in respect of pay in lieu of notice and unauthorised deductions from wages are calculated as set out below. As the employees did not (because they had no opportunity to) raise grievances about these matters, there can be no ACAS uplift to the awards
7. Calculations have been made on the following basis:
8. All Claimants had been given no notice that their employment would terminate. Whilst I did not have sight of their written contracts, I am satisfied that they were entitled to reasonable notice, which I have determined is the period set out at s86 Employment Rights Act 1996. These claims have been dealt with as breach of contract claims. I am conscious that this loss is usually calculated on a net basis. Figures were not available. I have therefore calculated gross loss, which will be subject to tax and national insurance.
9. No contract was available to me, and I was informed that the contract did not set out the annual leave that the employees were entitled to. This has therefore been calculated in accordance with the 5.6 week entitlement set out in the Working Time Regulations and calculated pro-rata as 14.5 days

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due for the period 1 April 2022 – 9 October 2022. In addition, all employees said that they had been allowed to carry over 3 days from December 2021 due to COVID. For part time employees that too has been calculated pro-rata.

10. As the basis upon which the claims have been brought was not stated, I have treated the unpaid holiday pay and unpaid salary claims as unauthorised deductions from wages in accordance with the Employment Rights Act 1996.
11. Four of the Claimants were enrolled in the employer's pension scheme. Employer's contributions for the period of notice have been awarded, as the employees were dismissed in breach of their contracts; they did not receive the statutory minimum period of notice. The figure for contributions as a percentage of salary was not available. The Claimants had their last two payslips (earlier ones remained with the solicitor). I was give the figures for employers contributions and used the average to calculate the loss.

12. Maria Arnold, DoB 10.05.69

Gross weekly salary £450

Start date 19.10.20

End date 09.10.22

Period of employment: 1 year 11 months

3 days holiday taken in leave year commencing 1 April 2022.

Pro-rata leave = 14.5 days

3 days carried over due to COVID

Pay in lieu of notice	1 week x 450	<u>£450.00</u>
Unauthorised deduction from salary	1 week x 450	£450
Holiday pay 17.5 days – 3 taken	14.5 x 90	£1305
Total unauthorised deductions		<u>£1,795.00</u>

Pension loss

Only information was from last 2 payslips

Employer payments were £15.91 and 11.94 respectively

Average £13.92/week

1 week of employer contributions £13.92

Total – Maria Arnold **£2,218.092**

Ms Kerrie Cowley, DOB 18.08.67

Gross weekly salary £495

Start date 01.02.02

End date 09.10.22

Period of employment 20 years 9 months

3 days holiday taken in leave year commencing 1 April 2022.

Pro-rata leave = 14.5 days

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3 days carried over due to COVID

Pay in lieu of notice	12 weeks x 495	<u>£5,940</u>
Unauthorised deduction from salary	1 week x 495	£495
Holiday pay 17.5 days – 3	14.5 x 99	£1,435.50
Total unauthorised deductions		<u>£1,930.50</u>

Redundancy/Unfair dismissal basic award
 Age at dismissal: 55
 14 years aged 41+ x 1.5 weeks
 6 years below 41 x 1 week
 27 weeks x £495 £13,365.00

Pension loss
 Only information was from last 2 payslips
 Employer payments were £14.32 and 9.30 respectively
 Average £11.81/week
 12 weeks employer's contributions £141.72

Total Kerrie Cowley £21,377.22

Caitlin Francis

Gross weekly salary £175 (apprentice)
 Start date 01.06.21
 End date 09.10.22 Period of employment: 1 year 4 months
 3 days holiday taken in leave year commencing 1 April 2022.
 Pro-rata leave = 14.5 days
 3 days carried over due to COVID

Pay in lieu of notice	1 weeks x 175	<u>£175.00</u>
Unauthorised deduction from salary	1 week x 175	£175
Holiday pay 17.5 days – 3	14.5 x £35	£507.50
Total unauthorised deductions		<u>£682.50</u>

Total Caitlin Francis £857.50

Jennifer Hutchings DOB 21.02.71

Gross weekly salary £452
 Start date 02.02.02
 End date 09.10.22 Period of employment 20 years 9 months
 3 days holiday taken in leave year commencing 1 April 2022.
 Pro-rata leave = 14.5 days
 3 days carried over due to COVID

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Pay in lieu of notice	12 weeks x 452	<u>£5,424.00</u>
Unauthorised deduction from salary	1 week x 452	£452
Holiday pay 17.5 days – 3	14.5 x 90.4	£1,310.80
Total unauthorised deductions		<u>£1,762.80</u>
Redundancy/Unfair dismissal basic award		
Age at dismissal: 51		
10 years aged 41+ x 1.5 weeks		
10 years below 41 x 1 week		
25 weeks x £452		
<u>£11,300.00</u>		
Pension loss		
Only information was from last 2 payslips		
Employer payments were £10.92 and 13.20 respectively		
Average £12.21/week		
12 weeks x £12.21		
<u>£146.52</u>		
Total Jennifer Hutchings		£18,633.32

Ms Lisa Watson DOB 20.07.70

Gross weekly salary £118
 Start date 21.07.2018
 End date 09.10.22 Period of employment 4 years 3 months
 2 days holiday taken in leave year commencing 1 April 2022.
 Pro-rata leave = 5.8 days
 1.2 days carried over due to COVID

Pay in lieu of notice	4 weeks x 118	<u>£472.00</u>
Unauthorised deduction from salary	1 week x 118	£118
Holiday pay 7 days – 2 taken	5 x 59	£295
Total unauthorised deductions		<u>£413.00</u>

Redundancy/Unfair dismissal basic award
 Age at dismissal: 52
 4 years aged 41+ x 1.5 weeks
 6 weeks x £118

£708.00

Total Lisa Watson **£1,593.00**

Ms Emma Wenglorz DOB 15.11.99

Gross weekly salary £223 (worked 2.5 days/week)
 Start date 14.05.2018
 End date 09.10.22 Period of employment 4 years 4 months
 4 days holiday taken in leave year commencing 1 April 2022.
 Pro-rata leave = 7.25 days

