



# THE EMPLOYMENT TRIBUNAL

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SITTING: at London South (By CVP)

BEFORE: Employment Judge Tueje

BETWEEN:

Elena Bolotina

Claimant

and

Friendship Society Limited

Respondent

ON: 23<sup>rd</sup> and 24<sup>th</sup> August 2023

**Appearances:**

**For the Claimant:** Mr Giuseppe Tomaselli (lay representative)

**For the Respondent:** Mr John Brotherton (consultant)

## **JUDGMENT**

1. The claim for unfair dismissal is well-founded. Contrary to section 104(4)(a) of the Employment Rights Act 1996 ("1996 Act"), Ms Bolotina was dismissed because she asserted the following statutory rights.

1.1 Her statutory right under section 1 of the 1996 Act to a written statement of employment particulars; and

1.2 Her statutory right under section 8 of the 1996 Act to a pay slip.

Therefore, her dismissal was automatically unfair.

2. The claim for breach of contract in respect of notice pay is well-founded. The Respondent is ordered to pay a sum to be decided at the remedies hearing on 22<sup>nd</sup> November 2023.

3. The claim for unauthorised deductions from pay is well-founded. Contrary to Part II of the 1996 Act, the Respondent made unlawful deductions from Ms Bolotina's pay for the period 14<sup>th</sup> December 2018 to 1<sup>st</sup> December 2019.

4. Additionally, and contrary to Part II of the 1996 Act, the Respondent unlawfully deducted £1,337.00 from Ms Bolotina's January 2019 pay, which consists of the following:
  - 4.1 Certificate of Sponsorship - £149.00
  - 4.2 Immigration Skills Charge - £1,092.00
  - 4.3 Application fee for national insurance number - £96.00
- 5 The claim for holiday pay is to be decided at the hearing on 22<sup>nd</sup> November 2023. That hearing will deal with whether the Respondent failed to pay Ms Bolotina for annual leave accrued but not taken when her employment ended, and if so, the amount of holiday pay due to her.

## **REASONS**

### **INTRODUCTION**

1. Ms Bolotina was employed by the Respondent as a gymnastics coach until she was summarily dismissed by a letter dated 1<sup>st</sup> December 2019.
2. Ms Bolotina claims she was dismissed for asserting various statutory rights. Firstly, for asserting her statutory right to pay slips for December 2018 and January 2019. Secondly, for asserting her statutory right to a written contract which accurately reflected her start date, which according to her, was 14<sup>th</sup> December 2018. She claims unlawful deductions were made from her monthly wages. She also claims she was contractually entitled to 4 weeks' notice and therefore claims her summary dismissal is a wrongful dismissal. Finally, she claims she is entitled to a payment for annual leave accrued but not taken when her employment ended.
3. The Respondent contests the claim. It argues Ms Bolotina's employment began on 1<sup>st</sup> February 2019 as reflected in the written employment contract. The Respondent denies making unlawful deductions from her wages. It also argues she was dismissed due to gross misconduct.

### **THE HEARING**

4. I heard the claim on 22<sup>nd</sup> and 23<sup>rd</sup> August 2023. The Respondent prepared a 223-page indexed and paginated bundle of documents. Page references below relate to this bundle unless otherwise stated.
5. Ms Bolotina prepared a witness statement, attaching documents consisting of 50 pages described as "EB Bundle".
6. The Respondent provided the following witness statements:
  - 6.1 Galina Clark, the Respondent's Managing Director, who is also on its board of trustees;
  - 6.2 Alina Sales, the Respondent's treasurer and a member of its board of trustees;
  - 6.3 Lucy Enever an employee; and
  - 6.4 Iryna Klymenko, previously employed by the Respondent as head coach.
7. Except for Ms Klymenko, all of those who provided witness statements gave evidence at the final hearing.

## PROCEDURAL MATTERS

### Claim for Unlawful Deduction made from January 2019 Wages

8. Paragraph 12 of the case management order dated 26<sup>th</sup> September 2022 required Ms Bolotina to provide clarification by 24<sup>th</sup> October 2022 regarding the following:
  - 8.1 Whether she intends to pursue the claim for January 2019 unlawful deduction from wages.
  - 8.2 If so, the basis for arguing it was not reasonably practicable to submit this claim in time.
9. Pursuant to this direction, on 24<sup>th</sup> October 2022, Ms Bolotina e-mailed a document to the Tribunal titled: "*CLAIMANT'S CLAIM FOR UNLAWFUL DEDUCTION MADE IN JANUARY 2019*" attaching various documents. This document was not in the hearing bundle, but the Tribunal's file shows it was sent on 24<sup>th</sup> October 2022. The attachments included a WhatsApp message from Ms Clark to Ms Bolotina stating the latter should repay the Respondent the Home Office fees it incurred relating to Ms Bolotina's sponsorship. The 24<sup>th</sup> October document explains Ms Bolotina initially accepted the Respondent was entitled to seek repayment of these fees, as requested by Ms Clark in the attached WhatsApp message. The document continues, Ms Bolotina only found out after carrying out her own research in November 2019, that these fees must be paid by the employer. Therefore, she said it was not reasonably practicable to submit this claim in time, because at the relevant time, she was unaware the deduction was unlawful.
10. Mr Brotherton does not dispute an employer must pay the Home Office's fees. But he argued it was for Ms Bolotina's to carry out timely research to establish who was responsible for the charges. Therefore, her failure to investigate this prior to November 2019 did not justify her late claim for the alleged unlawful deduction from wages.
11. In my judgement, Mr Brotherton's argument is undermined by Ms Clark's misinformation. Ms Clark held a senior position, Ms Bolotina had limited experience of the UK employment market. Therefore, at the time of Ms Clark's WhatsApp message, Ms Bolotina had no reason to doubt its accuracy, so it was reasonable for her to rely on it, which she did. Her reliance on Ms Clark's statement caused, or at least substantially contributed, to the delay in Ms Bolotina making her own enquiries. Consequently, that led to the delay in her claiming an unlawful deduction from her January 2019 wages. To refuse Ms Bolotina an extension of time to claim for this unlawful deduction, would deprive her the opportunity of pursuing this aspect of the claim. Thus effectively allowing the Respondent to benefit from Ms Clark's misinformation. I consider that would be unjust, and therefore grant an extension of time to allow Ms Bolotina to pursue this claim. I also take into account that the Respondent, who is legally represented, has had sufficient notice of this claim which was included in the ET1 claim form.

### Claim for Injury to Feelings

12. Ms Bolotina's claim form and schedule of loss (see page 39) included a claim for injury to feeling, based on the Respondent allegedly using her image in its publicity material, without her consent. The Tribunal ruled it does not have jurisdiction to award damages for this head of loss.

## **ISSUES FOR THE TRIBUNAL**

13. Before hearing evidence, I clarified with the parties the issues in this claim. Those issues were as follows:

### **Automatically Unfair Dismissal claim**

14. Was the reason or the principal reason for dismissal that Ms Bolotina asserted her statutory right to a written statement of the main terms of her employment and/or her right to written pay slips.

### **Unauthorised Deduction from Wages claim**

15. What were the amount of wages properly payable to Ms Bolotina for the following periods:

- 15.1 14<sup>th</sup> December 2018 to 31<sup>st</sup> December 2018
- 15.2 1<sup>st</sup> January 2019 to 31<sup>st</sup> January 2019; and
- 15.3 1<sup>st</sup> February 2019 to 1<sup>st</sup> December 2019.

16. During the above periods, was Ms Bolotina paid the amount of wages properly payable to her.

### **Breach of Contract claim**

17. What, if any, notice period was Ms Bolotina entitled to.
18. If she was entitled to notice, was she given proper notice or paid in lieu of notice.

### **Holiday Pay**

19. Did the Respondent fail to pay Ms Bolotina for annual leave she had accrued but not taken when her employment ended?

## **FINDINGS OF FACT**

### **Background**

20. The following findings of fact were reached on a balance of probabilities, having considered the witnesses' evidence, including documents referred to in that evidence, and taking into account my assessment of the evidence. I will first set out the background facts, before giving my findings of facts.
21. Only findings of fact relevant to the issues, and those necessary to determine the issues, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. I have not referred to every document that I read and/or was taken to in the findings below, but that does not mean it was not considered if it was referred to in the evidence and was relevant to an issue.
22. The Respondent is a registered charity affiliated to British Gymnastics, the UK's National Governing Body for gymnastics. It provides gymnastics' coaching at a number of sites. The Respondent is managed by a board of trustees consisting of the following:
- Mariya Tarabasa, chair;
  - Tanya Bevan, secretary;
  - Galina Clark; and

- Alina Sales.
23. I understand the Trustees met monthly. Ms Clark's oral evidence was that a handwritten contemporaneous minute of the meetings is taken, but I have not seen any of those records. Instead, the hearing bundle contains a typed record of the meetings where relevant issues regarding Ms Bolotina were discussed. These records are referred to as the outcome of trustees' meetings.
  24. Ms Bolotina was born on 23<sup>rd</sup> September 1997 in Belarus. She came to the UK in around March 2017 to work as a volunteer for the Respondent, for which she was paid travel and living expenses in cash. She then obtained a one-year tier 5 visa, and so volunteered for the Respondent from September 2017 to September 2018.

#### The Arrangements Made Between the Parties

25. The Respondent's witnesses say up to this point, Ms Bolotina was enthusiastic and eager to learn. Therefore, the Respondent agreed British Gymnastics should sponsor Ms Bolotina's application for a tier 2 sportsperson's visa so that she could be employed as coach by the Respondent under a 3-year fixed term contract. Ms Bolotina returned to Belarus in October 2018 while waiting for the tier 2 visa to be granted.
26. The relevant sponsorship endorsement, issued by British Gymnastics, is dated 8<sup>th</sup> November 2018. It states (page 55):  
  
*"The issue of this endorsement confirms that at the time of the request the club/migrant met all the Points Based System Governing Body endorsement requirements for the tier listed below:"*
27. Those requirements included that Ms Bolotina's annual salary would be £31,200, which I calculate would equate to £2,600 per month.
28. The Respondent had legal assistance from Mr Christopher Fysh to deal with Ms Bolotina's sponsorship. While completing the application, on 14<sup>th</sup> November 2019, Mr Fysh asked Ms Clark how many hours Ms Bolotina would be working per week. Ms Clark e-mailed back the same day confirming Ms Bolotina would be working 40 hours per week. These e-mails are at page 61.
29. The costs associated with Ms Bolotina's sponsorship included fees for the certificate of sponsorship and immigration skills charge, which were paid by the Respondent. It also paid for a national insurance number card, which was in fact unnecessary as the biometric residence permit issued to Ms Bolotina included her national insurance number. The Respondent nonetheless paid for this too.
30. Ms Bolotina's oral evidence that she was provided with a copy of British Gymnastics' endorsement dated 8<sup>th</sup> November 2018 was unchallenged. She also said prior to December 2018 there had been minimal discussion regarding the terms of her employment. Ms Clark's evidence supports this. For instance, at paragraph 6 of her witness statement, Ms Clark says due to uncertainty around how long it would take for Ms Bolotina to obtain a visa, prior to Ms Bolotina obtaining her visa, the Respondent did not stipulate a start date.
31. On 7<sup>th</sup> December 2018, Ms Bolotina informed Ms Clark that she had been granted a visa and was due to arrive in the UK on 13<sup>th</sup> December 2018. That date was a Thursday.
32. Ms Clarke said she hadn't expected arrangements to be completed so soon. Although

the timing was unexpected, Ms Clark nonetheless exchanged the following messages with Ms Bolotina (see page 70):

07 Dec 2018

*Elena: "Galina, I received the visa! My flight ticket is booked for the 13<sup>th</sup>."*

*Galina: Lena, what a wonderful news! I will be in Russia in Kazan on the 13<sup>th</sup>, will you get here from the airport by yourself? And where are you planning to live? On Friday I will put you to work. We will be back in London on the 15<sup>th</sup>."*

...

13 Dec 2018

*Galina: "Lena, did you arrive? Is everything alright."*

*Elena: "Yes, I have arrived. Everything is wonderful!"*

*Galina: "Wonderful! Then, on Friday you come to the training. Anna has started the dance for Sunday's performance. I think it is better to finish the dance together with Anna. Children have a strong desire to perform this Sunday. That's why I put you to work with the same group as Anna. On Saturday – squad A3."*

33. At paragraph 9 of her witness statement, Ms Clark explains when Ms Bolotina started in December 2018 this was as a volunteer. She states:

*"The reference of working (helping in the club) is for voluntary work for which expenses and living costs would be paid, but she could not be paid as an employee before the 1 February 2019 as that was when her contract for employment would begin with her NI number in place, bank account and charity was able to put Elena on its PAYE system."*

34. However, Ms Bolotina says her understanding was that in December 2018 she would be starting as a paid employee under the 3-year fixed term contract. And the terms of her employment would be as previously discussed between the parties and as reflected in the endorsement she had been given. Furthermore, she was not informed of any changes to what had previously been discussed.
35. On page 74 is a screenshot of the Respondent's rota for various coaches, showing that Ms Bolotina was scheduled to coach on Friday 14<sup>th</sup> December 2018, Saturday 15<sup>th</sup> December 2018, and Monday 17<sup>th</sup> December 2018. In January 2019 she sent Ms Bolotina the coaches' rota for that month, which included Ms Bolotina's name.

#### The Home Office Fees/Charges

36. By an e-mail sent to Ms Bolotina on 13<sup>th</sup> January 2019 (page 96), Ms Clark queried what instalments would suit Ms Bolotina for reimbursing the Home Office fees paid by the Respondent. Ms Bolotina responded by e-mail the same day requesting clarification from Ms Clark (see page 97).
37. In a further e-mail sent on 14<sup>th</sup> January 2019, Ms Clark explained:

*Elena,  
I already told you how much you owe.  
I paid £1000 for your room.*

*Immigration Skill charge £1,092*

*Cos Assignments £149*

*National insurance card £96.00*

*(+£3,689 fees which we have not asked to repay, however it was a good will as I believed you was offering Skype lessons as good will too)*

*We owe you December and I ask for an invoice for the week of January). You also need money to live. Therefore I ask how much you want to return per week or month, what would be enough for you to live.*

*You can spread the payment over several months.*

38. On 14<sup>th</sup> January 2019, Ms Bolotina answered that she had sufficient money to live on, so agreed to the amount being deducted from her January 2019 wages.
39. When cross examining Ms Bolotina, Mr Brotherton challenged whether any deductions were in fact made. He pointed out that because Ms Clark had requested the sums be repaid, doesn't mean that they were, and he asked Ms Bolotina to point to the pay slip which showed these deductions. Ms Bolotina responded she couldn't do so because the deductions were made from her January 2019 pay, and she was never given a pay slip for that month.
40. Paragraph 7 of Ms Clark's witness statements claims these fees would be deducted. But in cross examination Ms Clark denied the sums were ever deducted from Ms Bolotina's wages. When I later asked Ms Clark whether she had written the note addressed to Ms Bolotina at page 50, which sets out the deductions, Ms Clark accepted she had. When I asked when it was written, she couldn't recall. At this point, Ms Clark said because the events happened some time ago, she wasn't sure whether the fees referred to in her note were in fact deducted from Ms Bolotina's wages. When asked again during re-examination, Ms Clark said no deductions were made.
41. Irrespective of whether Ms Bolotina should have been paid living expenses or wages in December 2018 and January 2019, I have not been referred to any documents provided by the Respondent showing what amounts were paid to Ms Bolotina during this period. There is a January 2019 NatWest bank statement in the bundle (at page 160), which is listed in the index as Ms Bolotina's bank statement. This is presumably an error because Ms Bolotina did not have a UK bank account until March 2019. In any event, this statement seems to show the Respondent paid Ms Bolotina £1,000, which I understand was for a deposit for rented accommodation. That amount is not being claimed or reclaimed in these proceedings. Therefore, I have not seen any documents showing what living expenses (or wages) the Respondent says Ms Bolotina was paid in December 2018 and January 2019.

### Wages

42. The Respondent relies on a written contract relating to Ms Bolotina's employment (pages 105 to 121). The contract states Ms Bolotina's employment began on 1<sup>st</sup> February 2019, that her pay was £15.00 per hour, pro rata of the annual salary of £31,200 based on a 40-hour week. It is signed by Ms Clark; her signature is dated 22<sup>nd</sup> January 2019. Which Ms Clark says, is around the time she gave a printed copy to Ms Bolotina. Ms Bolotina did not sign the contract, and denies being given this in January 2019 (see paragraph 47 below).
43. Ms Bolotina says she requested her written contract in September 2019 because she became concerned her earnings were less than her agreed annual earnings, being the £31,200 stated in the sponsorship endorsement. She says when she received the

contract in early October 2019 the start date was incorrectly stated as 1<sup>st</sup> February 2019, and she asked Ms Clark to correct this, but Ms Clark reassured her there was no need to worry. This is dealt with at paragraphs 23 to 27 and 31 of Ms Bolotina's witness statement. The disagreement about her start date is also referred to in a number of e-mail exchanges. Ms Bolotina also says prior to receiving the written contract, there had been no discussion or agreement about her being paid on a pro rata basis of £15.00 per hour.

44. I've been provided with most pay slips for the period February 2019 to November 2019 (pages 164 to 172), although the August 2019 pay slip was not provided. The pay slips show the following gross earnings:

28 <sup>th</sup> February 2019	-	£1,323.00
31 <sup>st</sup> March 2019	-	£2,746.88
30 <sup>th</sup> April 2019	-	£1,457.00
31 <sup>st</sup> May 2019	-	£1,463.00
30 <sup>th</sup> June 2019	-	£1,698.00
31 <sup>st</sup> July 2019	-	£677.00
30 <sup>th</sup> September 2019	-	£2,193.68
31 <sup>st</sup> October 2019	-	£1,550.00
30 <sup>th</sup> November 2019	-	£2,024.96

45. The above payments amount to £13,670.52 in the 9 months that pay slips are provided for. These amounts equate to an annual salary of approximately £18,227.36, so less than the £31,200 per annum stated in the sponsorship endorsement. Ms Bolotina therefore claims that for most months she was being underpaid. In her e-mail sent to Ms Clark on 24<sup>th</sup> October 2019 (pages 136 to 138), Ms Bolotina requested payment of the shortfall. Her e-mail also cited various parts of the British Gymnastics endorsement, including the stated salary, which Ms Bolotina claimed were part of the terms of her employment contract.
46. The Respondent's position regarding Ms Bolotina's salary is that it would be £31,200 per annum based on her working a 40-hour week. Otherwise, she was entitled to be paid pro rata at £15.00 per hour for each hour worked, which is what she was paid. Therefore, the Respondent says she was not underpaid.
47. Ms Bolotina says that following her request for her written employment contract, Ms Clark gave her a written contract in early October 2019, which stated her employment start date was 1<sup>st</sup> February 2019. Ms Bolotina says she twice spoke to Ms Clark asking her to amend the incorrect start date from 1<sup>st</sup> February 2019 to 14<sup>th</sup> December 2018. She then e-mailed Ms Clark on 24<sup>th</sup> October 2019 about this (see paragraphs 56 and 57 below).

#### Ms Bolotina's Conduct

48. Ms Clark states Ms Bolotina was dismissed due to her conduct, including due to various complaints and other incidents that arose during her employment. Ms Clark and Ms Sales say Ms Bolotina's previous eager and cooperative attitude vanished when she returned to the UK on the 3-year visa. For instance, Ms Clark relies on an e-mail exchange between her and a parent, Iryna Sukhostavska on page 130 of the bundle. The contents of Ms Sukhostavska's initial e-mail sent on 24<sup>th</sup> May 2019 are not included. The bundle contains Ms Clark's response to Ms Sukhostavska, that her request for her daughter to change her gymnastics group has been accommodated. This is followed by an e-mail from Ms Sukhostavska thanking Ms Clark. It is unclear why Ms Sukhostavska's initial e-mail was not provided, and the e-mails contained in the bundle give no reason



for Ms Sukhostavska's request for a change groups. So it's unclear whether the reason was because of complaints about Ms Bolotina.

49. Shortly afterwards, the written record contained in the typed "Outcome of Trustees meeting", was produced, dated 29<sup>th</sup> May 2019 (see page 131). Paragraph 8 of that document describes complaints from parents that Ms Bolotina has called children names and been unfriendly towards them. Consequently, parents have requested their children are moved to a different group. No information is provided about when or which sites these incidents took place at, or who had complained. It records the trustees recommend Ms Clark asks the head coach to speak to Ms Bolotina about these complaints.
50. Some months later, a typed "Outcome of Trustees meeting" dated 23<sup>rd</sup> September 2019 (see paragraph 7 on page 133) records Ms Clark reported Ms Bolotina was using force to overstretch gymnasts. The trustees decided Ms Clark and Ms Klymenko should speak to Ms Bolotina about this. Again, no information is recorded regarding when or which site the overstretching took place, or which children it relates to.
51. In her oral evidence, Ms Clark explained that while she was unaware of any child being injured as a result of Ms Bolotina's alleged overstretching, resulting injuries could develop in later years. Ms Clark also explained that overstretching was contrary to British Gymnastics guidelines, and such conduct could result in British Gymnastics disqualifying a coach.
52. To support the allegation that Ms Bolotina overstretched gymnasts, in her oral evidence Ms Clark relied on a photograph at page 200. The photograph is taken from behind, so only one of Ms Bolotina's arms is partially visible, her hands are not visible. From what can be seen, it appears to show Ms Bolotina's hands on a gymnast's leg while the gymnast performs an exercise. Ms Bolotina said she was using her hands to support the gymnast's hips so that they would be stable while she performed the exercise. She denies she is overstretching the gymnast in the photograph, and denies ever doing so.
53. In the October 2019 rota Ms Bolotina was originally required to provide coaching at Townley Grammar School on 18<sup>th</sup> October 2019 between 6-9pm. Ms Bolotina said she doublechecked the rota at around lunchtime on 18<sup>th</sup> October, and saw no changes had been made. She therefore travelled to the school for the evening coaching session. However, when she arrived, the venue had been changed to the Canada Water Docklands Settlement. Therefore, the Canada Water session could not go ahead. Neither the original nor updated October 2019 rota were in the bundle.
54. Ms Clark says she believes she would have changed the rota the day before, i.e. on 17<sup>th</sup> October, because she was not in London on 18<sup>th</sup> October, so wouldn't have been able to change it that day. Therefore, Ms Clark considers the change of venue was notified in time, Ms Bolotina should have checked the rota for any changes. Ms Clark says, if she had done so, she wouldn't have travelled to the wrong venue and the coaching session would have proceeded as planned.
55. Ms Clark says she initially raised Ms Bolotina missing the 18<sup>th</sup> October session in a conversation with her on 21<sup>st</sup> October 2019. She also claims Ms Bolotina only queried her employment start date, pay slips and deductions after being reprimanded for this incident. In other words, Ms Clark claims Ms Bolotina raised these points in retaliation for being reprimanded. Ms Bolotina denied the cancelled 18<sup>th</sup> October session was raised with her prior to receiving a written warning.
56. At 3:22 am on 24<sup>th</sup> October 2019 Ms Bolotina e-mailed Ms Clark and copied in Ms Sales; part of the e-mail addressed Ms Sales directly. To Ms Clark, Ms Bolotina wrote:

*“Galina, I am very sorry that we had some kind of misunderstanding.  
Let’s strictly follow UK labor law.*

*Since December 14, 2018, I have been a legal worker and pay taxes.  
I still didn’t understand why the deductions were made (or rather, the salary was not paid  
in full) for December 2018 and January 2019.  
Please give me a link to the labor law norm on the basis of which these deductions were  
made.*

*In the UK, a contract is considered concluded as soon as the employee accepts the  
offer.*

57. Ms Bolotina’s e-mail continues by setting out what she understands to be the terms of her employment, including that her annual salary is £31,200.
58. By a letter dated 24<sup>th</sup> October 2019, the Respondent gave Ms Bolotina a written warning due the cancelled session at Canada Water on 18<sup>th</sup> October 2019. Ms Clark said she handed a copy of the letter to Ms Bolotina on 24<sup>th</sup> October 2019. I also see the letter was e-mailed to Ms Bolotina at 3:28pm on 25<sup>th</sup> October 2019 (pages 140). After receiving the written warning, Ms Bolotina responded that she was “flabbergasted” to receive it and did not accept it as she had not been provided with adequate notice of a change of venue (see page 142).
59. The Outcomes of Trustees meeting dated 28<sup>th</sup> October 2019 shows the Trustees discussed Ms Bolotina at that meeting. Their discussion included the following points:
  4. *Decision was made that gymnasts who are preparing for the Espoir test would be trained by head-coach Iryna Klymenko, Miss E. Bolotina would have to read all the test requirements and be ready to prepare gymnasts for next year test.*
  5. *G Clark was requested to insure Miss E. Bolotina knows all the test requirements and follows the British Gymnastics Development programme.*
60. These paragraphs did not contain any express criticism regarding Ms Bolotina’s past preparation of gymnasts prior to tests, but focuses on what should be done in the future. However, Ms Clark’s evidence was that the trustees made the above recommendations after being informed Ms Bolotina had not adequately prepared her squad for a gymnastics competition.
61. Ms Bolotina again raised the issue of her start date in an e-mail to Ms Clark sent on 3<sup>rd</sup> November 2019 (page 143), explaining she started on 14<sup>th</sup> December 2018. Ms Bolotina also states she should not have been required to repay the Home Office fees. On 13<sup>th</sup> November 2019 Ms Bolotina chased Ms Clark for a response to her e-mail. Ms Clark responded the same day saying she would raise the matter at the trustees meeting (see page 145).
62. Then on 28<sup>th</sup> November 2019, the Outcomes of the Trustees meeting records (page 147):
  1. ...
  2. *G Clark reported that A&V coach – Miss E. Bolotina verbally put all coaches and club down in conversation with parents and advised gymnasts to leave the club.*

3. *Two gymnasts – Talanataites left A & V Rhythmic Club for Rhythmic Gymnastics School of Elegance. Head coach of RG School of elegance confirmed that above named gymnasts asked to join her club.*
  4. *Trustees have approved immediate dismissal of Miss E. Bolotina due to her serious misconduct as coach and employee of A & V Rhythmic Club/Friendship Society.*
63. In her oral evidence, Ms Clark stated this was the main reason Ms Bolotina was instantly dismissed: she refers to this as a serious breach of contract because Ms Bolotina undermined the Respondent's reputation by publicly criticising its coaches and encouraging two gymnasts to leave the club.
64. Ms Clark provides a written record of her telephone conversation with Ingrida, from the Elegance School, about this issue. It reads as if it is a record of Ms Bolotina's conversation with Ingrida, but Ms Clark describes it in her witness statement as a conversation between herself and Ingrida. The record is as follows:
- "Ingrida: "Hello, Lena! Sisters Olivia and Evelina moved to me. You prepared Evelina very well, well done! I'm sorry that this happened. Their father was really asking me to take them. They seem nice people and I agreed."*
- Elena: "Hello, Inga! Thank you for letting me know! I knew they would be moving to you. We've talked a lot with parents. I'm sure they are in good hands."*
- Ingrida: "Thank you! I talked with Galina, she was very calm, said, they were going to go to dance. I think she is angry. They spoke highly of you. And I see there's definitely a work done with Evelina. You enhanced this group really great."*
65. On 1<sup>st</sup> December 2019 Ms Bolotina realised she no longer had access to the coaches' Facebook page, so contacted Ms Clark about this. Ms Clark asked her to go work as usual. When they met that day, Ms Clark handed Ms Bolotina the dismissal letter dated 1<sup>st</sup> December 2019 (see page 148). Ms Clark did not provide any verbal reasons for the dismissal, nor are any contained in the dismissal letter, which reads:
- Dear Miss Bolotina,*
- I have to inform you that board of trustees have come to the decision to dismiss you with immediate effect.*
- Please find enclosed P45 and November pay slip.*
- We would therefore have no choice but to withdraw our sponsorship towards Tier 2 visa and therefore it is my obligation to tell you that you have to return to Belarus.*
- Please make sure you return the key from A&V storage unit at Townley Grammar School.*
- Regards*
66. Exhibited to Ms Clark's witness statement is a typed document on the Respondent's headed paper, which details the problems encountered with Ms Bolotina which led to her dismissal. It concludes by stating (typed): *"Signed by the trustees"*. However, there are no signatures, nor names, nor is it clear on what date the document was prepared.

67. Essentially, the Respondent says Ms Bolotina was dismissed due to her poor conduct. In her statement, Ms Klymenko says Ms Bolotina refused to accept advice and guidance from her and Ms Clark, and failed to follow British Gymnastics guidance on training. Ms Klymenko says Ms Bolotina gave some children unkind nicknames causing them to leave gymnastics or them requesting to be moved to another coach.
68. Ms Enever's statement makes similar criticisms of Ms Bolotina, although unlike the other statements, she provides a specific example, which she elaborated on in her oral evidence. Her witness statement says:
- “One particular situation that comes to mind straight away, is a class where Elena was shouting aggressively at a student in Russian, the student who then burst into tears, was told to leave the class and sit out. The student who was under the age of 10 then sat out for the rest of training (1-2 hours) and made to sit and watch her class mates get praise, help and understanding from her coach that she never received. No follow up, consoling or understanding from Elena, who as her coach and responsible adult, should have known this behaviour was not acceptable in an educational setting. From across the gym, I couldn't tell what had happened but the situation felt uncomfortable. I even tried to console the student myself seeing that they were in distress.”*
69. In her oral evidence, Ms Enever explained she witnessed this incident while coaching her own group on the other side of the gymnasium. About this incident, Ms Bolotina states this child was upset because she was unable to perform her routine, and it was decided this gymnast would not participate in an upcoming competition which she had been entered into.
70. When giving oral evidence Ms Clark relied on documents in the bundle allegedly showing that the group allocated to Ms Bolotina after her employment began, had substantially reduced in number as a result of complaints made against her. Ms Clark referred to a photograph on page 175, taken on 24<sup>th</sup> January 2018, showing Ms Bolotina with squad D consisting of 12 gymnasts. Ms Clark says that by 11<sup>th</sup> August 2019 there were only around 7 left in the group, and some of the remaining gymnasts also intended to leave (see the e-mail on page 132).
71. Ms Bolotina denies any misconduct, she states she received only compliments from parents and colleagues, and the Respondent never informed her of any complaints, or gave any negative feedback about her conduct. The bundle includes testimonials from various individuals which Ms Bolotina relies on. One is from Ms Clark dated 6<sup>th</sup> June 2018 (see page 173), so was written before Ms Bolotina's 3-year fixed term employment. There are others which relate to Ms Bolotina's coaching prior to December 2018. As to later testimonials, these are provided by:
- 71.1 Daria Biryuknova dated 29<sup>th</sup> November 2019 (at page 192) which states she was always happy personally and professionally with Ms Bolotina's coaching, but her daughter left to concentrate on the 11+.
- 71.2 Yana Sharova described Ms Bolotina as an excellent coach, whose daughter stopped attending due to 11+ exams (see page 193).
- 71.3 Wendy Ng who said she was an excellent coach who her daughter enjoyed training with (page 194).
- 71.4 Jurgita Talentiene dated 6<sup>th</sup> December 2019 who said her daughter loved Ms Bolotina's classes, but stopped attending for personal reasons (page 195).
72. Ms Bolotina denies criticising other coaches, and said Evelina and her sister who left to join the Elegance School, did so for personal reasons. She said that other students who left did so for a variety of reasons such as to concentrate on 11+ examinations, or they stopped doing gymnastics.

73. Finally, the Respondent argues that the trustees reached the collective decision to dismiss Ms Bolotina at their meeting on 28<sup>th</sup> November 2019, as evidenced by their joint statement exhibited to Ms Clark's witness statement. The Respondent's argument continues, the joint decision could not be due to Ms Bolotina asserting a statutory right because most trustees were unaware she had done so. That is because the exchanges about her contract start date, pay slips and deductions, were between Ms Clark and Ms Bolotina.

### **Findings on the Issues**

74. Based on the above background, my findings of fact are as follows.

#### **The Contractual Terms**

75. There are two factual disputes regarding Ms Bolotina's contractual terms. Firstly, whether the start date of her employment was 14<sup>th</sup> December 2018, as she claims. Or whether she was instead engaged as a volunteer from December 2018 to 31<sup>st</sup> January 2019, before her employment began on 1<sup>st</sup> February 2019, as the Respondent claims. The second dispute is whether Ms Bolotina salary was £31,200 per annum as she claims, or £15 per hour paid only for the hours worked as the Respondent claims.
76. Firstly, my conclusion regarding Ms Bolotina's start date is that her employment began on 14<sup>th</sup> December 2018.
77. This conclusion is based on the following findings. Prior to December 2018, the parties had not agreed a specific start date. Both Ms Bolotina and Ms Clark agreed on this point. The parties' e-mail exchanges on 7<sup>th</sup> and 13<sup>th</sup> December 2018 support my finding that Ms Bolotina's employment began on 14<sup>th</sup> December 2018. This is because on 7<sup>th</sup> December 2018 Ms Bolotina informed Ms Clark she was flying to the UK on Thursday 13<sup>th</sup> December, Ms Clark responded that she would put her to work on the Friday. Then on 13<sup>th</sup> December 2018, after Ms Bolotina told Ms Clark she had arrived as planned, Ms Clark repeated Ms Bolotina would be put to work on the Friday. Furthermore, the message from Ms Clark at page 74 shows Ms Bolotina was scheduled to work on Friday 14<sup>th</sup> December 2018 in accordance with their earlier e-mail exchanges.
78. Ms Clark does not mention in their communications that Ms Bolotina would be put to work as a volunteer in December 2018 or January 2019. Instead, Ms Bolotina was put on the same rota as the other coaches. So, the position was the parties had agreed in around October 2018 that Ms Bolotina would come to the UK to work for the Respondent as an employee under a tier 2 visa, she obtained that visa and arrived in the UK in December 2018, and Ms Clark told her she would be put to work. Therefore, in the absence of documentary evidence of any other agreement or arrangement, I find Ms Bolotina was entitled to proceed on the basis when she started coaching on 14<sup>th</sup> December 2018 it was as an employee not a volunteer.
79. Secondly, as to Ms Bolotina's pay, the parties evidently envisaged Ms Bolotina would receive a salary during her employment. I again find that in 2018 there was little if any discussion regarding Ms Bolotina's pay, which is consistent with the parties' evidence. In the absence of any express discussion, I find that the annual salary of £31,200 stated in the endorsement to be the salary payable. That salary is consistent with the 40-hour week which Ms Clark informed Mr Fysh, would be Ms Bolotina's working hours. And the Respondent accepts £31,200 is the amount payable annually for a 40-hour week.
80. I accept the endorsement was completed by British Gymnastics, which was not a party to the contract of employment. However, the Respondent is affiliated to British

Gymnastics, and British Gymnastics completed prepared the endorsement pursuant to Ms Bolotina's upcoming employment by the Respondent. Ms Bolotina was provided with a copy of the endorsement, and in 2018 was given no other information regarding her salary. Therefore, I find that although the endorsement was not a contract of employment, it is evidence of the salary agreed between the parties by implication, and in the absence of any other amount being agreed.

81. I also take into account that the endorsement is an official document, which the Home Office would rely on when considering Ms Bolotina's visa application. British Gymnastics would be aware of this and its importance, so would endeavour to provide accurate information. Furthermore, the endorsement expressly stated, British Gymnastics requirements to sponsor Ms Bolotina's visa included a requirement that she would receive the stated salary. Therefore, without express evidence to the contrary, I'm not prepared to accept that this governing body would have submitted the document to a government department, without ensuring the contents were accurate. And as there is no evidence to the contrary, I find that the requirements set out in the endorsement reflected the arrangements between Ms Bolotina and the Respondent, including regarding her pay.
82. Therefore, irrespective of whether Ms Clark gave Ms Bolotina the written "contract" in January 2019 as she claims, or in October 2019 as Ms Bolotina claims, by the end of 2018, a contract of employment already existed between the parties.

#### The January 2019 Deductions

83. I find the Respondent deducted £1,337.00 from Ms Bolotina's January 2019 wages.
84. Mr Brotherton argued, in the absence of documentary evidence showing this deduction, Ms Bolotina's claim should be dismissed. I don't accept that argument. Both parties accept Ms Bolotina was not given a pay slip for January 2019, and she did not yet have a bank account. Therefore, she cannot produce either of these to show deductions were made. I nonetheless find Ms Bolotina discharged the burden of proving these deductions were made for the reasons set out at paragraphs 85 to 90 below.
85. Firstly, there are numerous communications demonstrating the Respondent intended to deduct £1,337.00 from Ms Bolotina's wages. For instance, Ms Clark provided a breakdown of the sums due (see page 50), she messaged her on 8<sup>th</sup> November 2018 (see page 57), and Ms Clark's e-mails sent on 13<sup>th</sup> January 2019 (page 96) and 14<sup>th</sup> January 2019 (page 98) requested Ms Bolotina repay the Respondent.
86. Furthermore, at the time, Ms Bolotina did not object to the deductions being made. In her e-mail to Ms Clark sent on 14<sup>th</sup> January 2019, she agrees to this sum being deducted in January 2019. So, there was nothing stopping the Respondent making the deductions it wished to make, and which Ms Bolotina at that point agreed to.
87. Having repeatedly sought payment of these charges from Ms Bolotina, there are no contemporaneous messages or records indicating the Respondent changed its mind about the deductions.
88. By 3<sup>rd</sup> November 2019, having carried out her own research, Ms Bolotina requested reimbursement for these deductions. If, as the Respondent now claims, these sums were never deducted, Ms Clark would have explained this in response to Ms Bolotina's request. However, in her e-mail sent on 13<sup>th</sup> November 2019, Ms Clark didn't dispute the deductions had been made.

89. In her witness statement, Ms Clark says these deductions would be made from Ms Bolotina's wages. But she contradicted that statement in her oral evidence, and her oral evidence was inherently inconsistent. During cross examination, Ms Clark denied the deductions were made. However, during my questioning she said, due to the time that had elapsed, she couldn't remember whether deductions were made. Then in re-examination she denied the deductions were made.
90. In contrast, Ms Bolotina's evidence has consistently maintained the deductions were made in January 2019, and this is supported by the contemporaneous documentary evidence referred to above.

#### Reasons for Dismissal

91. On a balance of probability, I find the reason or principal reason Ms Bolotina was dismissed was because she requested a contract showing her start date as 1<sup>st</sup> February 2019 and pay slips for December 2018 and January 2019.
92. In my judgment, Ms Bolotina has discharged the burden of proof because her account is supported by the available contemporaneous documentary evidence. In particular, in her conversations with Ms Clark in October 2019, Ms Bolotina requested an amended written employment contract showing her correct start date. This is supported by the October and November 2019 e-mail exchanges discussing Ms Bolotina's start date. And in her e-mail sent to Ms Clark on 3<sup>rd</sup> November 2019, Ms Bolotina expressly requests her December 2018 and January 2019 pay slips. Ms Bolotina was dismissed a few weeks later.
93. Mr Brotherton argued Ms Bolotina could not have been dismissed because of the points she raised regarding her contract and pay. This is because the decision to dismiss her was taken by the board of trustees who, except for Ms Clark, were unaware that she had raised these issues. However, I do not accept the trustees were unaware of the issues. Ms Bolotina's e-mail's sent to Ms Clark on 24<sup>th</sup> October 2019 was also copied to Ms Sales, the treasurer and a trustee. Part of that e-mail specifically addressed Ms Sales. So Ms Sales would have been aware that Ms Bolotina was claiming her employment began on 14<sup>th</sup> December 2018 and was asserting the terms of her employment were different to what the Respondent was claiming. Furthermore, in her e-mail to Ms Bolotina sent on 13<sup>th</sup> November 2019, Ms Clark stated she would refer these issues to the trustees.
94. I do not accept that Ms Bolotina raised these issues in retaliation for being reprimanded about the 18<sup>th</sup> October Canada Water session. Ms Bolotina's e-mail of 24<sup>th</sup> October 2019 was sent before the written warning. And Ms Bolotina denies being verbally reprimanded before the written warning was given. As Ms Clark accepts her recollection is unclear regarding certain other matters (the January 2019 deductions), I prefer Ms Bolotina's recollection that she was not reprimanded before receiving the warning letter. Ms Bolotina's evidence on this point is also consistent with her e-mail sent on 25<sup>th</sup> October 2019 stating she was flabbergasted to receive the warning. That expression is consistent with her being surprised by the warning, which would be unlikely if she'd been previously reprimanded as Ms Clark claims.
95. In her oral evidence, Ms Clark said the main reason Ms Bolotina was dismissed was she allegedly undermined the Respondent's reputation by criticising the club and other coaches, and encouraging two students to leave. However, the documentary evidence does not support this, in particular, the documentary evidence Ms Clark relied on doesn't assist. The record of the telephone conversation with Inga from the Elegance School the girls' father said they were leaving for personal reasons. That is consistent with Ms

Bolotina's evidence that gymnasts left for a variety of personal reason. This is also supported by Ms Bolotina's testimonials; these are inconsistent with gymnasts leaving due to Ms Bolotina's allegedly poor coaching. Furthermore, Ms Clark's May 2019 e-mail exchange with Ms Sukhostavska also does not support the Respondent's case that gymnasts were leaving or changing groups because of Ms Bolotina.

96. As to the allegation that complaints were made about Ms Bolotina, and that she failed to follow guidance and advice, this is also unsupported by documentary evidence. In fact, Ms Bolotina has provided some written testimonials from parents and others commending her. I also note the vague nature of the most of the Respondent's assertions, and the absence of any written complaints or written records of when Ms Bolotina was given guidance and advice. The absence of this information is even more surprising when considering the Respondent claims Ms Bolotina was repeatedly given advice which she repeatedly ignored.
97. Ms Enever's account of the incident where a gymnast in Ms Bolotina's group was distressed, on the surface appears to be poor coaching, particularly as she says Ms Bolotina did not make any effort to support or console her. However, I take into account that the main focus of Ms Enever's attention was on her own group, so Ms Bolotina may have tried to console the gymnast without Ms Enever seeing this. I've also considered that the conversation between Ms Bolotina and the gymnast was in Russian, and Ms Enever doesn't know what caused the gymnast to become upset, because she didn't tell Ms Enever when the latter enquired. Ms Enever also does not appear to have either discussed this incident with Ms Bolotina directly or reported it to anyone. Therefore, this incident may have been as Ms Bolotina described it, namely a gymnast who was upset at her own performance.
98. There is also no supporting evidence that gymnasts left Ms Bolotina's group because of her coaching. The June 2018 photograph was taken when while Ms Bolotina was a volunteer, and she was only allocated her own group after her return in December 2018. Therefore, the June 2018 photograph is not evidence of a reduction in the number of gymnasts in Ms Bolotina's allocated group when compared to the numbers in her group in August 2019.
99. My final reason for rejecting the Respondent's allegation that Ms Bolotina was dismissed for misconduct relates to the allegation that she overstretched gymnasts. The photographs Ms Clark relied on to show Ms Bolotina allegedly overstressing gymnasts were not conclusive. They could equally be showing Ms Bolotina supporting gymnasts in their exercises, as Ms Bolotina says she was doing. Overstretching gymnasts is a serious allegation. According to Ms Clark, overstretching could cause injury to the gymnasts in later life, and would provide grounds for British Gymnastics to disqualify Ms Bolotina as a coach. So, it's surprising that at the time the allegations were made, the Respondent failed to take any formal disciplinary action against Ms Bolotina such as reporting her to British Gymnastics or issuing a written warning. Instead, and despite the severity, informal advice was considered an adequate measure. Therefore, I conclude it's unlikely the Respondent had serious concerns about Ms Bolotina's coaching as would have been the case if she was overstressing gymnasts.
100. Having rejected the Respondent's evidence of Ms Bolotina's misconduct, it follows I do not consider misconduct was the reason or principal she was dismissed. Furthermore, in light of the matters stated at paragraphs 95 to 99 above, these lead me to conclude she was dismissed because she asserted her statutory rights.



## **THE LAW**

101. The following law applies in this case.

- 101.1 To create a binding contract of employment the terms of the contract must be sufficiently clear and certain. Those terms may be agreed in a single transaction or a series of transactions.
- 101.2 The terms of the contract of employment may be express, implied term or a combination of both.
- 101.3 A contractual term may only be implied in limited circumstances, such as for business efficacy, in other words, where it is necessary to imply a term in order to make sense of the agreement.
- 101.4 Varying the terms of a contract requires the mutual agreement of the parties.
- 101.5 The contract may be in writing or oral. In the latter case, by section 1 of the 1996 Act an employee is entitled to a written statement of the main terms of employment, including the date on which employment began.
- 101.6 By section 13 of the 1996 Act, where an employer fails to pay an employee the amount of wages properly payable, the shortfall amounts to and unlawful deduction from wages.
- 101.7 The amount of wages properly payable to an employee is governed by the terms of the employee's contract.
- 101.8 The amount of notice an employee must be given on termination of their employment depends on the express terms of their contract, or on the terms implied by section 86 of the 1996 Act.
- 101.9 In most cases, an employee must have at least two years continuous service before they are entitled to bring a claim for unfair dismissal. There are some exceptions to the two-year qualifying period. The exceptions to the qualifying period include where an employee claims the reason or principal reason for dismissal was because they asserted a certain statutory rights.
- 101.10 By section 104 of the 1996 Act, this exception applies where the employee asserts their statutory right under section 1 of the 1996 Act to a written statement of the main employment terms, or asserts their statutory right under section 8 of that Act to a written pay slip.
- 101.11 Where a claimant satisfies the Tribunal that was the reason or primary reason for the dismissal, the dismissal is automatically unfair.

## **CONCLUSIONS**

102. I have applied my findings of fact to the relevant law to reach the conclusions set out below.

### **The Employment Contract**

103. I find that the parties entered into an oral contract of employment, in which the terms were agreed over a period of time.

104. Firstly, it is common ground that in around September 2018 the parties expressly agreed the Respondent would employ Ms Bolotina as a gymnastics coach.
105. Secondly, it was an implied term Ms Bolotina would be a paid employee, as distinct from her previous status as a volunteer, so as to satisfy the tier 2 requirements stated in the endorsement. Thirdly, on or after 8<sup>th</sup> November 2018, when British Gymnastics, in its capacity as the Respondent's governing body, completed the endorsement, and Ms Bolotina received a copy. At that point there was an implied term that her agreed salary would be £31,200 per annum as stated in the endorsement.
106. Fourthly, it was an expressly agreed term that Ms Bolotina's employment began on 14<sup>th</sup> December 2018. This term was agreed between the parties in their exchanges on 7<sup>th</sup> and 13<sup>th</sup> December 2018, when Ms Bolotina informed Ms Clark she would be arriving in the UK on 13<sup>th</sup> December 2018, and Ms Clark informed her she would be put to work on 14<sup>th</sup> December 2018. This agreement is further reflected by Ms Bolotina turning up for work on 14<sup>th</sup> December 2018, by which point at the latest, there was a clear and certain agreement between the parties regarding the fundamental terms of Ms Bolotina's employment.

#### Automatically Unfair Dismissal claim

107. I have found that Ms Bolotina's employment began on 14<sup>th</sup> December 2018. Therefore, the start date of 1<sup>st</sup> February 2019 in the written contract of employment given to her was incorrect. I have also found that Ms Bolotina requested a written contract with the correct start date. In so doing, she asserted her statutory right under section 1 of the 1996 Act to a written statement of that term of her employment, namely the start date.
108. It is common ground that Ms Bolotina was not given any written pay slips for December 2018 and January 2019. The Respondent seeks to justify this by arguing her employment began later, on 1<sup>st</sup> February 2019. However, I have rejected the Respondent's argument on this point. It follows that as Ms Bolotina's employment began on 14<sup>th</sup> December 2018, she was entitled to pay slips for those months as she requested, and in requesting them, she was asserting her statutory right under section 8 of the 1996 Act.
109. I have found that Ms Bolotina was not dismissed due to misconduct. Instead, I've found that the reason or principal reason was because she asserted her statutory rights under sections 1 and 8 of the 1996 Act. Accordingly, I find her dismissal was automatically unfair, in breach of section 104 of the 1996 Act.

#### Unauthorised Deductions from Wages

110. As Ms Bolotina's employment began on 14<sup>th</sup> December 2018, and was based on an annual salary of £31,200, the written employment contract which post-dated her employment, would only be binding if it effectively varied the terms of her employment. I find there was no variation of Ms Bolotina's terms of employment because there was no mutual agreement between the parties: Ms Bolotina refused to sign the new contract because amongst other reasons, she disputed the start date.
111. Paragraph 105 above deals with my conclusion regarding Ms Bolotina's agreed annual salary, and I conclude that is the amount properly payable. That salary equates to £2,600 per month. I find that except for August 2019, when Ms Bolotina's earnings are not known, and March 2019 when she earned £2,746.88, her monthly earnings were less than the amount properly payable. Therefore my conclusion regarding the unlawful

deduction of wages is as follows:

December 2018 – a shortfall, the amount is to be determined  
January 2019 - a shortfall to be determined (see also paragraph 112 below)  
February 2019 - a shortfall, the amount is to be determined  
March 2019 - No shortfall  
April 2019 - a shortfall, the amount is to be determined  
May 2019 - a shortfall, the amount is to be determined  
June 2019 - a shortfall, the amount is to be determined  
July 2019 - a shortfall, the amount is to be determined  
August 2019 - Unknown, details of pay are required in order to determine  
Sept 2019 - a shortfall, the amount is to be determined  
October 2019 - a shortfall, the amount is to be determined  
November 2019 - a shortfall, the amount is to be determined

112. Having found that £1,337.00 was in fact deducted from Ms Bolotina's January 2019 wages, I consider this was an additional unlawful deduction. The Respondent's didn't claim it was entitled to deduct that amount. It's defence was that the amount was not deducted. However, as I have rejected the Respondent's evidence on that point, it follows the £1,337.00 was deducted, and that deduction was unlawful.

#### Breach of Contract (Notice Pay)

113. Having found the dismissal was automatically unfair, and was not due to Ms Bolotina's conduct, I also find that she was entitled to notice. As she was summarily dismissed, it follows she neither received notice or payment in lieu of notice. This means her dismissal was in breach of her entitlement to notice.
114. I find that there were no express contractually agreed notice terms. Any notice provision in the written contract of employment would not be binding on the parties because Ms Bolotina did not accept that agreement, as evidenced by her refusal to sign it.
115. Therefore, Ms Bolotina is entitled to the statutorily implied notice period at section 86(1)(a) of the 1996 Act, which for an individual who has been employed for more than one month, but less than 2 years, is one week's notice.

#### Holiday Pay

116. Ms Bolotina's claim for holiday pay will be determined at the hearing listed on 22<sup>nd</sup> November 2023.

Employment Judge Tueje Date: 20<sup>th</sup> September 2023