



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Iushchuk

**Respondent:** Lewag Limited

**Heard at** London Central (by CVP)

**On:** 11 December 2023

**Before** Employment Judge Shukla (sitting alone)

## **Representation**

Claimant Mr Sahmurov (friend of claimant)

Respondent Ms Ralph

## **JUDGMENT**

1. The claimant's complaint of unauthorised deduction from wages is well founded. The respondent is ordered to pay the claimant salary and holiday pay for 1 April 2023 to 18 April 2023 inclusive, on the basis of no overtime.

## **WRITTEN REASONS FOR JUDGMENT**

2. I gave judgment and oral reasons at the hearing. As requested by the respondent at the hearing, I set out written reasons below. Page references are to the 54-page hearing bundle. I heard evidence from the claimant, and Ms Bertagnon (owner and director of respondent company). Both had also filed witness statements.

### Findings of fact

3. The relevant facts are as follows. The claimant began employment on 9 November 2021 with the respondent as a senior dog groomer. Her contract of employment is at pages 27-35, and the terms and conditions were as follows:
  - a. The claimant's normal hours of work were 31 hours per week, from 10am to 6pm on Tuesday, Wednesday and Friday and 10am to 5pm on Saturday (clause 4.1), and her salary was £2,418 per month (clause 5.1).
  - b. There was a probationary period of 3 months (clause 3.1).

- c. She was entitled to 28 days paid holiday in each holiday year, which ran from 1 April to 31 March, including bank and public holidays (clause 7.1). Carrying forward was not permitted (clause 7.4).
  - d. At the end of her probationary period, the respondent or claimant could terminate the claimant's employment on one month's prior notice (clause 14.1).
  - e. The employer could terminate the claimant's employment without notice or payment in lieu of notice, in a case of gross misconduct (clause 14.2).
  - f. The employer could in its sole and absolute discretion pay in lieu of notice for the notice period or part of it (clause 14.4).
  - g. If the claimant or the respondent have given notice to terminate employment, the respondent could at any time require the claimant not to attend at her place of work (clause 14.5). During that time, the claimant would be entitled to salary and contractual benefits, would remain an employee of the respondent and could not work for any other person (clause 14.5).
4. The claimant resigned by email sent on 18 March 2023. That email said that "since my notice period is one month, I believe my last day will be 18.04.2023". The claimant said that she resigned because she had developed differences with Ms Bertagnon about opening another dog grooming salon.
5. The claimant's next day at work was 21 March 2023. There is a conflict of evidence about what happened on that day. Ms Bertagnon said:
  - a. The claimant arrived half an hour late, and took about 3 to 4 times longer to complete an individual task than she should have done. There had been previous instances of lateness on the part of the claimant.
  - b. When Ms Bertagnon asked whether the claimant would be behaving like this for the rest of her notice period, the claimant laughed at Ms Bertagnon's face, and said "this is your problem".
  - c. There was a mutual agreement that the claimant's contract of employment would terminate on that day.
6. The claimant said:
  - a. She did not arrive late, did not delay in carrying out her tasks, and did not laugh at Ms Bertagnon's face or say "this is your problem".
  - b. Ms Bertagnon asked why the claimant was leaving, and the claimant replied it was because of disagreements about the new dog grooming salon.
  - c. Ms Bertagnon told her "I don't want to see you anymore in my salon" and said the claimant should leave.
  - d. There was no discussion about the claimant's contract of employment.
7. The claimant left the respondent's premises on 21 March 2023, and did not return to work. The claimant received a payslip at the end of March, which was for £2,418 gross, ie her full monthly pay.
8. The claimant emailed the respondent on March 28, 2023, saying:
  - a. The claimant wished her resignation to be acknowledged.

- b. The claimant wished to confirm in writing that the respondent did not want the claimant to attend at her usual location of work, as the claimant had been told to leave the premises on 21 March.
  - c. As such the claimant expected to be paid in the usual manner even if not working her notice period, as she would assume she had been put on “gardening leave”.
9. Ms Bertagnon replied by email on 6 April 2023, saying:
- a. During their conversation on 21 March 2023, Ms Bertagnon outlined concerns in relation to the claimant’s performance and conduct, and offered to release the claimant from her notice period, if the claimant chose.
  - b. The claimant had left work and not returned since.
  - c. The claimant’s notice period was brought to an end by mutual agreement on 21 March 2023, and that was the last day of her employment.
  - d. The conversation on 21 March 2023 was not an instruction to leave, but an offer which was accepted by the claimant.
  - e. The claimant had been overpaid by 11 days (because the claimant had been paid for all of March), as payroll for March 2023 had already been processed by 21 March 2023. The claimant should outline to the respondent how this amount should be repaid.

Conclusions on claimant’s complaints

10. Although the respondent has raised performance and conduct issues (which are denied by the claimant), the respondent is **not** arguing that the claimant was summarily dismissed because of misconduct. Instead, the respondent argues that the claimant agreed to terminate her contract on 21 March 2023, and to forego her notice period.
11. I find that the claimant did not agree to terminate her contract on 21 March 2023, and to forego her notice period (or to forego her pay during that period). I accept the claimant’s account that she was simply asked to leave the respondent’s premises on 21 March 2023, and there was no discussion about her contract of employment.
12. I find that, on an objective interpretation of what was said on 21 March 2023, and in the context of the claimant’s resignation letter on 18 March 2023, these facts fall within clause 14.5 of the contract of employment (once notice has been given, respondent may require the claimant to leave the premises, but claimant will continue to be entitled to salary and contractual benefits, and would remain an employee of the respondent, and could not work for any other person). I accept the claimant’s evidence that she did not work for any other employer from 21 March 2023 to 18 April 2023.
13. I find the claimant was in effect given garden leave. It was recognised by the House of Lords in **Delaney v Staples [1992] 1 AC 687, at 697**, that payment in respect of garden leave constitutes wages. I find the respondent’s failure to pay salary from 1-18 April 2023 (inclusive) was an unauthorised deduction from wages.

14. The claimant's leave year began from 1 April, and she was not entitled to carry forward leave. I find that the claimant was entitled to holiday pay for leave accrued from 1 April 2023 to 18 April 2023 (inclusive), and the respondent's failure to pay holiday pay for that period was an unauthorised deduction from wages.
15. It is usual for the tribunal to order the respondent to pay specific amounts of salary and holiday pay. However, both parties stated they would be content for an order that the respondent pay the claimant salary and holiday pay for 1 April 2023 to 18 April 2023 inclusive, on the basis of no overtime. (The claimant's payslips in the bundle indicate the claimant's overtime payments averaged at less than £50 per month for the year preceding her resignation.)
16. Accordingly, I find the claimant's claim for unauthorised deduction from wages is well-founded. The respondent is ordered to pay the claimant salary and holiday pay for 1 April 2023 to 18 April 2023 inclusive, on the basis of no overtime.

*EJ Shukla*  
Employment Judge Shukla  
15/12/2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
15/12/2023

FOR THE TRIBUNALS