



# THE EMPLOYMENT TRIBUNAL

**SITTING AT:** London South (by CVP)

**BEFORE:** Employment Judge Tueje

**BETWEEN:**

**Selma Wiltza Munich Lopez**

**Claimant**

**and**

**Caroline Hodgkins**

**Respondent**

**ON:** 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> November 2023.

**APPEARANCES:**

**For the Claimant:**

Mr T Ogg (Counsel)

Also assisted by a Spanish interpreter

**For the Respondent:**

Ms J David (lay representative)

## JUDGMENT

1. The complaint of unauthorised deductions from wages is well-founded. Ms Hodgkins made unauthorised deductions from Ms Munich's wages during the period 23<sup>rd</sup> May 2020 to 26<sup>th</sup> January 2022.
2. Ms Hodgkins shall pay Ms Munich an amount representing the above deductions, as determined at the remedy hearing on 12<sup>th</sup> December 2023.
3. The complaint of breach of contract in relation to notice pay is well founded.
4. The complaint of breach of contract in relation to Ms Hodgkins's failure to pay Ms Munich the wages she was contractually entitled to during the period 12<sup>th</sup> July 2019 to 26<sup>th</sup> January 2022 is well founded.
5. Ms Hodgkins shall pay Ms Munich damages in respect of the breaches of contract referred to at paragraphs 3 and 4 above, as determined at the remedy hearing on 12<sup>th</sup> December 2023.
6. Under section 163 of the Employment Rights Act 1996 it is determined that Ms Munich is entitled to a redundancy payment at an amount to be assessed

at the remedy hearing on 12<sup>th</sup> December 2023.

7. The complaint for unpaid holiday pay is struck out following withdrawal.

# **REASONS**

## **Introduction**

1. In summary, this claim relates to whether, during any part or all of the period from 12<sup>th</sup> July 2019 to 26<sup>th</sup> January 2022, Ms Hodgkins employed Ms Munich as a housekeeper and nanny. If so, what the terms of that employment were, and whether Ms Hodgkins breached any terms of the employment contract, if there was one between the parties.
2. ACAS issued its certificate on 27<sup>th</sup> March 2022. Ms Munich's claim was presented to the Tribunal on 26<sup>th</sup> April 2022, comprising complaints for breach of contract, unlawful deduction from wages, redundancy and holiday pay. At the remedy hearing on 12<sup>th</sup> December 2023, Ms Munich withdrew her claim for holiday pay.
3. The Tribunal accepted Ms Hodgkins's response form on 31<sup>st</sup> October 2022; the accompanying grounds of resistance break down the period from 12<sup>th</sup> July 2019 to 26<sup>th</sup> January 2022 into three phases as follows:
  - Phase 1 runs from 12<sup>th</sup> July 2019 to 22<sup>nd</sup> May 2020;
  - Phase 2 runs from 23<sup>rd</sup> May 2020 to 7<sup>th</sup> November 2021; and
  - Phase 3 runs from 8<sup>th</sup> November 2021 to 26<sup>th</sup> January 2022.

## **Preliminary Matters**

4. The final hearing took place on 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> November 2023. It was to have been listed for four days, to allow sufficient breaks as a reasonable adjustment. However due to a shortage of available judges, the listing was amended to three days.
5. In an e-mail sent on 24<sup>th</sup> November 2023 Ms Hodgkins raised some procedural matters. Those matters, how they were dealt with, and the reasons for doing so, are set out below:
  - 5.1 Firstly, Ms Hodgkins requested the claim be struck out because Ms Hodgkins argued she was not Ms Munich's employer, the claim should not be against her, she disputed Ms Munich had two years' service, and the claim was presented outside the statutory time limit. I refused this request because these are all issues to be determined as part of the claim, making summary disposal inappropriate.
  - 5.2 Ms Hodgkins complained Ms Munich's 33-page witness statement was excessive, but did not request any sanction be imposed. Ms Munich's statement was comprehensive, but the contents were relevant, and no page limit had been imposed. Furthermore, Ms Hodgkins had received

the witness statement over two weeks before the final hearing, which should be sufficient time to consider it. Therefore, it would have been disproportionate to impose any sanction.

- 5.3 The hearing bundle was served after close of business on Thursday 23<sup>rd</sup> November, and not two working days before the final hearing as directed. In response, Mr Ogg relied on an e-mail sent to Ms Hodgkins on 25<sup>th</sup> August 2023 providing a link to the bundle (page 682). He argued Ms Hodgkins requested additional documents be added, and as recently as an e-mail sent at 7pm on 23<sup>rd</sup> November 2023, Ms Hodgkins was requesting more time to consider whether additional documents should be added to the bundle (page 860). In the circumstances, I concluded for some time Ms Hodgkins was aware of most of the bundle's contents, recent additions were her documents, and it was her request to include these in the bundle that caused or contributed to the bundle being sent on 23<sup>rd</sup> November 2023.
- 5.4 Ms Munich's solicitors prepared a chronology which they labelled as agreed, but Ms Hodgkins didn't agree the contents. I observed the text in the tramlines was: "[AGREED /CLAIMANT'S] CHRONOLOGY", so it wasn't necessarily being presented as agreed. Ms Hodgkins annotations were clearly shown, presenting her additional/alternative comments to various items on the chronology. I therefore treated it as a joint chronology rather than an agreed one.

### **The hearing**

6. Despite the revised time estimate, as a reasonable adjustment for Ms Hodgkins, we took regular breaks, generally this was a 10-minute break approximately every 50 minutes.
7. In addition to Ms Munich's evidence given through a Spanish interpreter, I heard evidence on her behalf from:
  - 7.1 Ms Heidi Waywell (her daughter);
  - 7.2 Ms Lesley Tascon via a remote link from the United States (her daughter);
  - 7.3 Mr Jurgen Moquete (her son).
8. I heard oral evidence from Ms Hodgkins and her father, Mr John Hodgkins.
9. Ms Hodgkins also submitted statements from Ms Danielle Jackson and Toby Jewell, whose evidence was relied on as hearsay evidence.
10. In addition to the above evidence, the following documents were provided to the Tribunal:
  - 10.1 An 882-page hearing bundle (including pages added on 27<sup>th</sup> November 2023 at Ms Hodgkins's request);
  - 10.2 An 102-page witness bundle;
  - 10.3 A chronology covering 23<sup>rd</sup> May 2019 to 26<sup>th</sup> April 2022;
  - 10.4 A list of individuals prepared on Ms Munich's behalf;

- 10.5 A trial timetable;
- 10.6 A 5-page opening note prepared on Ms Munich's behalf.
- 11. On 29<sup>th</sup> November 2023, Mr Ogg provided additional documents as follows:
  - 11.1 Closing written submissions; and
  - 11.2 A bundle containing authorities (consisting of those cited in the closing submissions).
- 12. In closing Mr Ogg relied primarily on his written submissions, followed by closing submissions from Ms David made on Ms Hodgkins's behalf.
- 13. I announced judgment orally on 29<sup>th</sup> November 2023. By e-mails from Ms Hodgkins sent to the Tribunal on 4<sup>th</sup> and 11<sup>th</sup> December 2023, she requested written reasons. These are my written reasons.
- 14. Unless otherwise stated, page references relate to the hearing bundle at paragraph 10.1 above.

**Issues for the Tribunal**

- 15. At a case management hearing on 14<sup>th</sup> April 2023, the parties agreed a list of issues which are set out below.
- 16. Employer Identity
  - 16.1 Who was Ms Munich's employer during phase 1?
  - 16.2 Was Ms Munich an employee during phase 2?
  - 16.3 If so, who was Ms Munich's employer during phase 2?
  - 16.4 Was Ms Munich an employee during phase 3?
  - 16.5 If so, who was Ms Munich's employer during phase 3?
- 17. Breach of contract (wages)
  - 17.1 For any of the phases 1, 2 and 3 that Ms Munich was employed, what were the terms of her employment regarding:
    - (i) Ms Munich's gross annual salary?
    - (ii) Ms Munich's annual leave entitlement?
    - (iii) Ms Munich's hours of work?
    - (iv) Ms Munich's hourly rate of overtime pay?
    - (v) Were any of the contractual terms at paragraphs 17.1(i) to 17.1(iv) above breached.
    - (vi) If so, did Ms Munich suffer any loss as a consequence?
- 18. Unlawful deduction from wages
  - 18.1 Did Ms Hodgkins make unauthorised deductions from Ms Munich's wages contrary to Part II of the Employment Rights Act 1996?
  - 18.2 Is Ms Munich entitled to:
    - (i) A declaration that there were unauthorised deductions?

- (ii) An order for payment of the amount deducted without authorisation?
- (iii) Interest on the sums deducted?

19. Wrongful dismissal

- 19.1 Was Ms Munich entitled to notice (or payment in lieu) on termination of her employment?
- 19.2 If so, what period of notice was she entitled to?
- 19.3 Did Ms Munich receive the notice she was entitled to?
- 19.4 Is Ms Munich entitled to:
  - (i) An order for notice pay?
  - (ii) Interest on the above sum?

20. Redundancy

- 20.1 Was Ms Munich dismissed?
- 20.2 If so, was redundancy the reason or principal for her dismissal?
- 20.3 If so, was Ms Munich entitled to a redundancy payment?
- 20.4 If so, did Ms Munich receive a redundancy payment.

**Findings of Fact**

- 21. 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.
- 22. 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.

Background

- 23. The initial facts were agreed or not challenged by the parties. Firstly, on 23<sup>rd</sup> May 2019, Ms Hodgkins and Mr Riftin, her now late partner, signed a cohabitation deed. Under its terms Mr Riftin agreed to pay for a full-time nanny for their child, who will be referred to in this judgment as child A.<sup>1</sup>
- 24. Ms Hodgkins and Mr Riftin did not live together: Ms Hodgkins and child A lived in a house which was owned by Mr Riftin. Mr Riftin lived in an apartment elsewhere.
- 25. In June 2019, while Mr Riftin was in Israel, Ms Hodgkins interviewed Ms Munich for a full-time live-in housekeeper and nanny position. The interview

---

<sup>1</sup> This is further to the order made by Employment Judge Wright on 10<sup>th</sup> November 2023 in response to Ms Hodgkins's application for an anonymity order in respect of child A.

was arranged by Ms Debbie Barrett, the director of Home Organisers, a company matching those wishing to employ household staff with candidates seeking such employment. Following the interview, Ms Hodgkins invited Ms Munich for a 2-day trial; on both days Ms Munich carried out household tasks in Ms Hodgkins's home, and Ms Hodgkins paid her for this.

26. Home Organisers subsequently prepared an offer of engagement for the position: the material parts state (pages 104 – 105):
- 26.1 Ms Hodgkins is the employer;
  - 26.2 Ms Munich's employment start date was 12<sup>th</sup> July 2019;
  - 26.3 Ms Hodgkins's home address is given;
  - 26.4 Gross annual salary was £38,776.44 paid monthly in arrears on the last day of each month;
  - 26.5 Hours of work were Monday to Friday 7am to 7pm, Saturdays 7am to 12 noon, with 3 night babysitting being included;
  - 26.6 Ms Munich may be required to work additional hours, subject to being paid for this (however the rate of overtime pay is not specified);
  - 26.7 Holiday entitlement was 28 days paid annual leave including bank holidays;
  - 26.8 On satisfactory completion of a 3-month probationary period, Ms Munich would be entitled to 4 weeks' notice of termination of her employment; and
  - 26.9 Ms Hodgkins would provide a contract of employment as soon as possible.
27. In her schedule of loss, Ms Munich calculates her salary for her contractual working hours (as set out at paragraph 26.4 above) to be:
- |                  |            |
|------------------|------------|
| Gross annual pay | £38,776.44 |
| Gross weekly pay | £745.70    |
| Net annual pay   | £29,903.82 |
| Net weekly pay   | £575.08    |
28. The annual gross pay reflects the amount stated in the offer of engagement letter. Ms Hodgkins doesn't dispute that is the contractual amount agreed as at 12<sup>th</sup> July 2019. The gross weekly pay is merely the pro rata calculation of the gross annual pay. Ms Hodgkins has not provided a counter schedule of loss, nor proposed different amounts for either the gross or annual pay, I therefore accept Ms Munich's calculations, in the absence of any evidence to the contrary.
29. The offer of engagement stated the offer was conditional upon Ms Munich providing various documents including satisfactory references, confirming her right to work in the UK, DBS check, any relevant qualifications, and a driving licence if applicable.
30. Ms Hodgkins's evidence that Ms Munich did not provide all of the above documentation was unchallenged. I therefore find that Ms Munich did not provide some or all of the documentation referred to in the offer of engagement letter.

31. On 19<sup>th</sup> June 2019 Mr Riftin and Ms Hodgkins exchanged e-mails discussing the terms of the offer of engagement, Mr Riftin suggested they could both be named as employers if Ms Hodgkins wished (page 79). However, I have not been provided with an offer of engagement or a similar document containing both Ms Hodgkins and Mr Riftin's names. I therefore find that the only offer of engagement was one referred to at paragraph 26 above.

### Phase One

32. Ms Munich's says she accepted the terms in the offer of engagement letter. However, Ms Hodgkins says this was a conditional offer, Ms Munich did not fulfil the conditions, therefore it was not legally binding. My legal conclusions on this issue are at paragraphs 75 to 75.8 below.
33. It is common ground that Ms Munich's employment as a live-in housekeeper and nanny began on 12<sup>th</sup> July 2019, that the house she kept was the home Ms Hodgkins lived in, that's where child A lived, and is where Ms Munich looked after child A, and where Ms Munich also lived. It is also agreed that Mr Riftin usually looked after child A at weekends.
34. Although neither party gave evidence as to the exact date the two first met, it was agreed Ms Munich first met Mr Riftin some days after she began working; she accompanied him and child A to the nursery, Mr Riftin introduced Ms Munich to nursery staff, giving permission for nursery staff to allow Ms Munich to collect child A when required.
35. On 24<sup>th</sup> July 2019 Ms Munich e-mailed Home Organisers explaining she hadn't yet received an employment contract, and asking whether Home Organisers or her employer would provide this (page 88). Ms Barrett told her the employer provides it. Some months later, on 7<sup>th</sup> January 2020, Ms Munich messaged Mr Riftin asking for a written contract, and querying the amount she was getting paid (page 260). He responded by e-mail on 31<sup>st</sup> January 2020, also copied to Ms Hodgkins (page 103). These events are recorded in the documentary evidence, and they are not disputed.
36. It is also accepted that Mr Riftin's 31<sup>st</sup> January 2020 e-mail attached an employment contract. It stated Ms Munich's employer, and that Ms Munich would be paid £8.33 net per hour for any overtime. It's agreed Ms Munich never signed the contract. Ms Munich states she did not sign the contract because the employer was incorrectly stated to be Mr Riftin, instead of Ms Hodgkins. Ms Hodgkins says Mr Riftin was named as the employer in the written contract because he was Ms Munich's employer.
37. There is a dispute between the parties about what, if anything, was said in the first few months about Mr Riftin being Ms Munich's employer.
38. Ms Hodgkins says she told Ms Munich from the start that Mr Riftin was her employer, and that she couldn't afford to pay Ms Munich's salary. Ms Hodgkins said on occasions when Ms Munich asked her about her pay and

a written contract, she told Ms Munich to speak to Mr Riftin. And Ms Hodgkins notes it was Mr Riftin that Ms Munich wrote to about a written employment contract (see paragraph 36 above).

39. Ms Munich says Ms Hodgkins was always her employer, however when she asked Ms Hodgkins about a written contract or her pay, Ms Hodgkins would either tell her to ask Mr Riftin about this, or gave indirect answers.
40. Contrary to what Ms Hodgkins states, I find she did not tell Ms Munich that Mr Riftin was her employer. My reasons are as follows:
  - 40.1 Firstly, it was evident Ms Munich wanted a written contract: she e-mailed Ms Barrett about this less than a fortnight after her employment began. She also said she asked Ms Hodgkins about a written contract a number of times, which I accept. Although there is no written record that Ms Munich asked Ms Hodgkins, they lived in the same house, therefore the lack of any record is unsurprising. Furthermore, that she asked Ms Hodgkins would explains the time that elapsed between her e-mail to Ms Barrett in July 2019, and her message to Mr Riftin months later. It's less likely Ms Munich simply dropped the issue, and more likely she was asking Ms Hodgkins about her contract during the intervening period. The fact that she was asking Ms Hodgkins about the contract is also consistent with her regarding Ms Hodgkins as her employer.
  - 40.2 Secondly, despite repeatedly asking for a written contract, when Mr Riftin sent her a written contract she didn't sign it. I accept her explanation that she didn't sign it because it stated Mr Riftin was her employer, when she believed her employer was Ms Hodgkins. I find it unlikely that Ms Munich, who over several months was asking for a written contract, would have failed to sign the contract when it was provided, unless, as she says, she thought the contract was inaccurate.
41. Accordingly, I accept Ms Munich's evidence that she considered Ms Hodgkins to be her employer. I will deal later (see paragraphs 75 to 79.1 below) with my legal conclusions on this point.
42. It is agreed Mr Riftin paid Ms Munich's monthly salary; the amounts paid varied between £2,000 to £2,300 per month (pages 376 to 385), which Ms Munich understood to be her net pay. Mr Riftin continued paying her salary until he died on 22<sup>nd</sup> May 2020, at which date the last payment he made was on 5<sup>th</sup> May 2020.
43. The parties describe the period from 12<sup>th</sup> July 2019 to 22<sup>nd</sup> May 2020 as phase 1.
44. Ms Munich claims Ms Hodgkins was her employer during phase 1 and remained her employer until 26<sup>th</sup> January 2022. Ms Hodgkins claims Mr Riftin employed Ms Munich.



Phase Two

45. Phase 2, which began on 23<sup>rd</sup> May 2020, is the period following Mr Riftin's death.
46. Ms Munich e-mailed Ms Barrett on 26<sup>th</sup> May 2020 telling her Mr Riftin had died, Ms Barrett responded by asking who he was. Ms Munich explained (page 123):  
  
*"Mr Amon was my boss caroline's husband."*
47. I take this to be Ms Munich saying her boss was Caroline and Amnon was Caroline's husband. This exchange was said prior to the current legal dispute about who Ms Munich's employer was.
48. Ms Munich claims that her employment with Ms Hodgkins continued from phase 1 into phase 2.
49. Ms Hodgkins denies she employed or continued to employ Ms Munich during phase 2. Ms Hodgkins contends that Ms Munich's employment contract ended when her employer, Mr Riftin, died. Therefore, Ms Hodgkins says, any claims Ms Munich may have regarding her employment are not claims Ms Hodgkins is liable for, and in any event, those claims are out of time. This is a legal question dealt with at paragraphs 87 and 88 below.
50. However, I will now deal with the conflicting accounts about what agreement, if any, Ms Munich and Ms Hodgson reached after Mr Riftin died.
51. Ms Hodgkins says she allowed Ms Munich to continue living in her home, supplied food, but states she they did not enter into an employment contract, and there was no intention to enter into a legal relationship. Instead, Ms Hodgkins explains, this was a mutually suitable and informal arrangement, because Ms Hodgkins believed Ms Munich had nowhere else to stay. She would pay Ms Munich occasional sums of money to reflect the help and support she provided, but this was not an employer/employee relationship.
52. Ms Munich's evidence is that she did have somewhere else to go: she stays with her daughter, Ms Waywell, in between jobs. Ms Waywell's evidence supports this: she confirmed Ms Munich has her own room at her house, and said without question her mother would have been welcome to return there during lockdown.
53. Ms Munich states that following Mr Riftin's death, she continued to work as usual, except that because the country had been in lockdown for two months, child A wasn't attending nursery. Ms Munich states she continued to clean, work as child A's nanny, attending to his, Ms Hodgkins's and her house guests' needs. She also says that her hours increased as she would look after child A at weekends because Mr Riftin no longer did so.
54. Ms Munich accepted in cross examination that it was her decision to continue

looking after the house and child A, rather than because Ms Hodgkins expressly asked her to. **[But if she considers she's always been employed by CEH, why wouldn't she??]** But she says Ms Hodgkins also asked her to do various tasks, and to work at weekends. At paragraphs 55(a) to 55(o) of her witness statement, with cross references to the bundle, Ms Munich cites messages between her and Ms Hodgkins from October 2020 to June 2021 where the latter asks Ms Munich to carry out various tasks.

55. Ms Munich did not receive her salary in June 2020, saying Ms Hodgkins reassured her she would be paid eventually, and everything would remain unchanged. Ms Munich says they didn't specifically discuss Ms Munich's increased weekend working, except Ms Hodgkins told her to keep a record of the additional days worked, so she could be paid in due course. Ms Munich says she did so, and a copy of that record was in the hearing bundle (pages 234 to 240). Ms Munich recorded overtime on Saturday 23<sup>rd</sup> May 2020, Sunday 21<sup>st</sup> June 2020, and then overtime on every weekend from 27<sup>th</sup> June 2020 until 7<sup>th</sup> November 2021. I have no reason to the accuracy of this record, and she was not cross examined about it. I therefore accept Ms Munich worked on the weekends as stated in those records.
56. Ms Munich claims during phase 2 she regularly asked Ms Hodgkins about being paid; Ms Hodgkins would respond saying she couldn't afford to pay Ms Munich, but Ms Munich would receive her salary when Mr Riftin's life insurance was paid out. Although from August 2020 Ms Hodgkins paid Ms Munich some sums, Ms Munich says the amounts varied and did not cover her salary nor overtime.
57. My findings regarding the arrangement between the parties in the period following Mr Riftin's death is that I find Ms Hodgkins did not make clear to Ms Munich that there had been any change to Ms Munich's employment status. To the contrary, I consider Ms Hodgkins reassured Ms Munich that nothing had changed.
58. I preferred Ms Munich's evidence regarding their arrangement after Mr Riftin's death. My reasons are as follows.
  - 58.1 Firstly, Ms Munich's written and oral evidence were consistent. Ms Munich demonstrated a clear recollection of these events: her oral evidence was detailed, and she remained consistent despite close questioning by Ms David. In contrast, Ms Hodgkins's written evidence dealt briefly and somewhat vaguely with the discussions between her and Ms Munich regarding the latter's role after Mr Riftin died. And during cross examination, Ms Hodgkins's response to a number of questions regarding phase 2 was that she could not remember.
  - 58.2 Secondly, Ms Hodgkins's payments to Ms Munich on 18<sup>th</sup> August 2020 and 18<sup>th</sup> November 2020 were for £3,263.33. This is a precise amount, and Ms Hodgkins could provide no clear explanation for how she calculated that exact figure. In the absence of any other explanation from Ms Hodgkins, I accept Mr Ogg's submission that Ms Hodgkins paid that amount believing (incorrectly) that was Ms Munich's contractual gross monthly salary. It seems unless likely that

such an exact payment of that amount was paid twice pursuant to an informal arrangement that Ms Hodgkins says she had reached with Ms Munich.

- 58.3 In September 2020 Ms Hodgkins and child A moved to Manchester from the London property so it could be rented out. Ms Munich says she also moved from London to Manchester, and subsequently moved with them to other locations, and she did so because it was her job. The fact that Ms Munich followed Ms Hodgkins and child A when they moved to Manchester and to other locations, is also more consistent with Ms Munich's account that she regarded herself as Ms Hodgkins's employee. I find it less likely that Ms Munich would do so as part of an informal arrangement which did not oblige her to do so.
- 58.4 Ms Munich exchanged a number of messages with her granddaughter between April 2021 to October 2021 in which Ms Munich discusses waiting for her wages, and her expectations of starting to receive her wages (pages 367 to 375). These are contemporaneous and private communications; I therefore consider they reflected Ms Munich's genuine understanding of the situation.
- 58.5 Ms Munich's witness statement (see paragraph 54 above) cites examples when Ms Hodgkins asks her to carry out various household tasks. These support Ms Munich's claim that she was Ms Hodgkins's employee, rather than providing informal help and support. Furthermore, Ms Munich's unchallenged evidence that she attended to Ms Hodgkins's house guests is again consistent with Ms Munich's account that she was still employed as a nanny and housekeeper during phase 2. Ms Munich admitted she continued with her tasks as before, rather than Ms Hodgkins expressly asking her to do so. And Ms Hodgkins's position was that as Ms Munich's decided to carry out these tasks, they were not carried out on instructions from Ms Hodgkins as Ms Munich's employer. But this shows Ms Munich was carrying out domestic duties, and in a number of instances these were at Ms Hodgkins's express request, as shown by her messages.
- 58.6 On 12<sup>th</sup> October 2020 Ms Hodgkins e-mailed Mr Riftin's Member of Parliament, about various matters (page 161). In the e-mail she describes her financial difficulties, which she says mean she is no longer able pay for the home she lives in or the nanny. This gives the impression that she is obliged to pay Ms Munich, rather than the arrangement Ms Hodgkins describes of informally paying sums as and when she was able to do so.
- 58.7 Shortly afterwards, on 22<sup>nd</sup> October 2020 Ms Munich messages Ms Hodgkins requesting £500, saying this can be deducted from her salary when it's paid. Ms Hodgkins's response did not seek any clarification about what Ms Munich meant when she said the amount should be deducted from her salary. Again, this communication supports Ms Munich's account that Ms Hodgkins would be paying her salary in due course.
- 58.8 I reject Ms Hodgkins's oral evidence that as time passed, Ms Munich was trying to exploit her. To support her assertion, Ms Hodgkins says Ms Munich asked for a loan to buy a property in Colombia. Ms Munich accepts she considered buying a property in Colombia, but says she

didn't ask Ms Hodgkins for a loan, instead asked Ms Hodgkins to provide a reference to help her secure a loan. Ms Hodgkins's reference is more consistent with Ms Munich's account of being employed since 2019, rather than the informal arrangement of mutual support that Ms Hodgkins describes from 2020 onwards. The reference reads (page 172):

*"I can confirm that Selma Munich Lopez has worked for my family for three years and will be taking a vacation in Colombia."*

59. I accept Ms Waywell's evidence that Ms Munich could have returned to stay at her house during lockdown (see paragraph 52 above). This is consistent with her and Ms Munich's evidence that the latter lived with her between jobs. It follows I do not accept Ms Hodgkins's account that Ms Munich had nowhere else to go. Therefore, as there was no compulsion to do so, I consider it unlikely that Ms Munich would agree to the arrangement that Ms Hodgkins describes, whereby Ms Munich carried out various domestic duties in exchange for food, accommodation, and whatever unspecified payments Ms Hodgkins could make whenever she was able to do so.
60. In around September 2021 Ms Munich planned a trip to Colombia where she intended to have surgery. Ms Hodgkins was considering having cosmetic surgery treatment in Colombia too.
61. Prior to Ms Munich's trip, Ms Hodgkins's paid her £20,000. This is a substantial sum which I find to be inconsistent with an informal arrangement to pay what sums she could. I also do not accept Ms Hodgkins's claim that the sum was to help Ms Munich with the cost of her surgery. Ms Munich has provided the bill confirming the cost was £3,354.81, which is considerably less. Therefore, I find it more likely Ms Hodgkins paid this sum hoping Ms Munich would accept it as full payment for the outstanding wages Ms Munich was owed as Mr Ogg argued.
62. In the circumstances, I find the weight of the documentary and witness evidence, together with the matters dealt with at paragraphs 45 to 61 above, support Ms Munich's account that she was led to believe that her employment terms did not change when Mr Riftin died.
63. Phase 2 ended on 7<sup>th</sup> November 2021, when Ms Munich travelled to Columbia.
64. Ms Hodgkins's alternative case is if the Tribunal finds she did employ Ms Munich during phase 2, that employment ended on 7<sup>th</sup> November 2021, because Ms Munich carried out no work for her after 7<sup>th</sup> November 2021.
65. As stated at paragraph ... above, during phase 2, Ms Hodgkins paid varying sums to Ms Munich. The hearing bundle contains bank print outs showing the following payments (pages 386 to 391):

18<sup>th</sup> August 2020            - £3,263.33

22 <sup>nd</sup> October 2020	- £1,500.00
18 <sup>th</sup> November 2020	- £3,263.33
15 <sup>th</sup> March 2021	- £750.00
19 <sup>th</sup> April 2021	- £850.00
3 <sup>rd</sup> November 2021	- £20,000.00

66. In light of the supporting bank print outs, I find the above amounts, were the sums Ms Hodgkins paid Ms Munich during phase 2.
67. The parties agree Ms Hodgkins also paid Ms Munich £63.00 (to cover bank overdraft fees) although the date of that payment is unclear.

### Phase Three

68. Phase 3 started on 8<sup>th</sup> November 2021, after Ms Munich arrived in Colombia; it ended on 26<sup>th</sup> January 2022, being the day she returned to the UK.
69. There is no material dispute of fact about what took place during this period, most of which is documented and in the hearing bundle.
70. Ms Munich unchallenged account of events during phase 3 are as follows:
- 70.1 Ms Munich had a return ticket to Colombia: she intended to return on 24<sup>th</sup> November 2021. But she says this plan changed when Ms Hodgkins also arranged to have surgery in Colombia on 15<sup>th</sup> December 2021, so Ms Hodgkins asked Ms Munich to extend her own trip and to arrange accommodation for both of them and child A. However, Ms Hodgkins cancelled her Colombian trip because some family members, including child A, were involved in a serious car accident.
- 70.2 Ms Munich had her surgery as planned, she was discharged from hospital, but was subsequently re-admitted to hospital while still in Colombia because she became seriously ill. Ms Hodgkins messaged Ms Munich on 1<sup>st</sup> December, but Ms Munich was too ill to respond. Ms Hodgkins said she was unaware Ms Munich was ill.
- 70.3 Later, Ms Munich was well enough to travel, so returned to the UK on 26<sup>th</sup> January 2022. She says she called Ms Hodgkins who didn't answer, consequently Ms Munich did not go to Ms Hodgkins home. Ms Hodgkins subsequently messaged Ms Munich offering to purchase Ms Munich's return ticket; Ms Munich explained she had already returned to the UK.
- 70.4 Ms Hodgkins then asked Ms Munich to call her later that day, but Ms Munich didn't because she had to attend hospital urgently: she was discharged at 3am the following day. So instead, on 27<sup>th</sup> January, Ms Munich sent Ms Hodgkins a number of messages. In fact, apart from Ms Hodgkins telling her about mediation, Ms Munich did not have any further direct communication with Ms Hodgkins after she returned to the UK.
- 70.5 As to mediation, Ms Munich received an e-mail from Mr Johnson, a mediator, who explained Ms Hodgkins had asked him to mediate between them. Ms Munich instructed solicitors who wrote to Ms

Hodgkins on 18<sup>th</sup> February 2022 informing her they had referred the matter to ACAS. Ms Hodgkins did not respond to that letter.

71. In the meantime, the documents disclosed by Ms Hodgkins show she e-mailed Ms Barrett on 11<sup>th</sup> November 2021 (page 174) saying, amongst other things, *“I can absolutely no longer offer her a home, feed her, cover her bills and have it cost me more than I pay myself in a salary!”* Ms Hodgkins continues: *“I really had no need for Selma this year, she stayed because I felt badly she would have nowhere to go and I appreciated her bond with Jayden.”*
72. In her oral evidence, Ms Hodgkins confirmed she did not employ anyone to fill Ms Munich’s position.

### **The Law**

73. I have applied the following law in this case.
  - 73.1 The essential elements to create a binding contract of employment include one party making a firm offer, which the other party accepts, and the terms of the contract must be sufficiently clear and certain.
  - 73.2 However, an offer of employment may also be a conditional offer. If so, but the parties agree the contract shall begin before the conditions are fulfilled, the contract becomes legally binding.
  - 73.3 The terms of the contract may be express, implied, or a combination of both.
  - 73.4 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.
  - 73.5 The terms of a contract may be varied by an express and mutual agreement between the parties. Or if one party seeks to unilaterally vary the terms of the contract, if the other party’s conduct shows they acquiesced, the contract may also be varied.
  - 73.6 To imply a variation of terms, the acquiescing party’s conduct must only be referable to them accepting the new terms.
  - 73.7 An employee may bring a claim for breach of contract where their employer has breached the express and/or implied terms of a contract, and the breach is outstanding on the termination of employment.
  - 73.8 By section 139 of the Employment Rights Act 1996, a dismissal may amount to a redundancy where the dismissal is entirely or mainly due to the employer’s requirements for the employee to carry out their work has ceased or diminished.
  - 73.9 By section 163 of the 1996 Act, where an employee has been dismissed, there is a presumption that the dismissal is due to redundancy.
  - 73.10 By section 13 of the 1996 Act, where an employer fails to pay a worker the amount of wages properly payable, the shortfall amounts to an unlawful deduction from wages.
  - 73.11 Where an employee is dismissed, they are entitled to the notice period set out in their contract of employment, providing the contractual

period is not less than the notice period at section 86 of the Employment Rights Act 1996.

- 73.12 If there is no contractual provision or it is less than the notice period at section 86 of the 1996 Act, the employee is entitled to the notice period in that section.

## **Conclusions**

74. I have applied the above law to the findings of fact that I have made in order to answer the questions raised by the issues, and in so doing, I provide my conclusions on those issues as set out below.

### Employer Identity

75. Who was Ms Munich's employer during phase 1?

75.1 In my judgment, Ms Hodgkins was Ms Munich's employer during phase 1. Ms Hodgkins interviewed Ms Munich, arranged for and assessed her trial, and was named as Ms Munich's employer on the offer of engagement document. Mr Riftin had no direct involvement in that process, he wasn't actually in the UK at the time, and didn't meet Ms Munich until after her employment began.

75.2 It was Ms Hodgkins that Ms Barrett of Home Organisers liaised with, and Ms Barrett didn't even know who Mr Riftin was until after he had died. That reinforces my conclusion that Ms Hodgkins was responsible for Ms Munich's recruitment arranged through Home Organisers. That is consistent with Ms Hodgkins being Ms Munich's employer.

75.3 It appears to have been a conscious decision that Ms Hodgkins alone would be named as Ms Munich's employer in the offer of engagement. In Mr Riftin's e-mail sent to Ms Hodgkins on 19<sup>th</sup> June 2019, Mr Riftin suggested they could both be named as Ms Munich's employer, if Ms Hodgson wished. But as the offer of engagement wasn't amended to include Mr Riftin's name, that suggests Ms Hodgkins didn't want him to be Ms Munich's employer.

75.4 Ms Munich says she accepted the offer of engagement, which is evidenced by her turning up for work on 12<sup>th</sup> July 2019, being the start date contained in the offer of engagement. On Ms Munich accepting the offer of engagement and/or by turning up for work, I consider Ms Hodgkins and Ms Munich entered into a contract of employment on the terms set out in the offer of engagement letter.

75.5 Ms Hodgkins argues the offer of engagement was a conditional offer, the conditions or some of the conditions were not fulfilled, therefore it could not form the basis of a legally binding contract. However, I consider Ms Munich and Ms Hodgkins agreed the contract should begin even though the conditions were not fulfilled. That they agreed to do so is demonstrated by the fact that Ms Munich turned up for work and Ms Hodgkins provided work for her.

75.6 Further reasons why I consider Ms Hodgkins was Ms Munich's employer are that Ms Munich worked in the home Ms Hodgkins lived in, Mr Riftin did not live there. Ms Munich was a nanny to child A who

lived in Ms Hodgkins's home. This shows that it was Ms Hodgkins who gave Ms Munich any day-to-day instructions. I consider it is not relevant that Mr Riftin owned the property Ms Hodgkins lived in: irrespective of ownership, the property was Ms Hodgkins home, and that is the home Ms Munich kept.

- 75.7 The January 2020 written contract naming Mr Riftin as Ms Munich's employer does not alter my view. Based on my above conclusion, by the date Mr Riftin sent Ms Munich that contract, I've found Ms Munich was already employed by Ms Hodgkins. Mr Riftin could not unilaterally vary Ms Munich's employment contract, and Ms Munich did not agree to such a variation, as evidenced by her refusal to sign the written contract.
- 75.8 Accordingly, I find Ms Hodgkins was Ms Munich's employer during phase 1.
76. Was Ms Munich an employee during phase 2?
- 76.1 As Ms Hodgkins was Ms Munich's employer during phase 1, on its own, Mr Riftin's death would not have ended Ms Munich's employment.
- 76.2 At paragraphs 57 to 58.8 above, and for the reasons stated there, I find that after Mr Riftin's death, Ms Hodgkins reassured Ms Munich that her position would remain the same. I also found that Ms Munich continued with her duties: she remained child A's nanny, she attended to Ms Hodgkins needs and looked after their home. I have also rejected Ms Hodgkins's account that there was an informal arrangement that Ms Munich would help and support the family while Ms Hodgkins would provide accommodation, food, and make whatever payment she could.
- 76.3 Ms Hodgkins argues Ms Munich decided herself to carry out household tasks during phase 2, and this wasn't done at Ms Hodgkins instruction. But if, as I've found, Ms Hodgkins employed Ms Munich during phase 1, and as I've also found, Ms Hodgkins reassured Ms Munich her position would remain the same, that explains why Ms Munich was still carrying out her duties even if there was no express instruction from Ms Hodgkins to do so. In any event, I have also found that on at least some occasions Ms Hodgkins did ask Ms Munich to carry out tasks, as cited in Ms Munich's witness statement.
77. If so, who was Ms Munich's employer during phase 2?
- 77.1 In light of the above, I do not consider there was any mutually agreed variation to Ms Munich's employment contract; consequently, Ms Munich remained an employee of Ms Hodgkins during phase 2.
78. Was Ms Munich an employee during phase 3?
- 78.1 As an employee, Ms Munich was statutorily entitled to annual leave. Ms Hodgkins was aware Ms Munich intended to return to the UK, and at one point offered to pay for Ms Munich's return flight.
- 78.2 Ms Munich stayed in Colombia longer than anticipated because she was admitted to hospital, and so she was effectively on sick leave. Ms Hodgkins was not aware that Ms Munich was ill, and Ms Munich was



not in continuous contact with Ms Hodgkins because she was so ill. Nonetheless, neither party took any steps that would formally terminate Ms Munich employment during phase 3: Ms Munich did not resign and Ms Hodgkins did not give Ms Munich notice terminating her employment.

- 78.3 Therefore, even though Ms Munich was abroad and carried out no work during phase 3, I find she was still an employee.
79. If so, who was Ms Munich's employer during phase 3?
- 79.1 I have found Ms Hodgkins was Ms Munich's employer during phase 2. Ms Munich taking annual leave, and then extending that for around one month due to ill-health, would not terminate her employment. Therefore, I therefore find that Ms Munich continued to be Ms Hodgkins's employee during phase 3.

Breach of contract (wages)

80. I have found that Ms Munich was employed during phase 1, 2 and 3 by Ms Hodgkins, after Ms Munich accepted the offer of engagement. I therefore consider the terms of Ms Munich's employment are as set out in the offer of engagement, which so far as is relevant are as follows.
- 80.1 Gross annual salary: £38,776.44;
- 80.2 Annual leave entitlement: 28 days paid leave, including bank holidays;
- 80.3 Hours of work:
- (i) Monday to Friday 7am to 7pm
  - (ii) Saturday 8am to 12 noon
  - (iii) Plus 3-night babysitting per week.
81. Although the offer of engagement provides for Ms Munich to do paid overtime, it doesn't state the rate of overtime pay. Ms Munich argues the appropriate rate is £8.33 net per hour, being the rate stated in the written agreement Mr Riftin e-mailed to her in January 2020.
82. I find it is appropriate to imply a term regarding the rate of overtime pay. It is evident the parties envisaged Ms Munich may do overtime, and that she would have to be paid for doing so. Accordingly, to make sense of the existing provisions in the offer of engagement regarding overtime, it is necessary to imply a term dealing with the rate of overtime pay. Furthermore, in the absence of any other rate being proposed, I consider £8.33 net per hour is an appropriate term that needs to be implied in Ms Munich's employment contract.
83. I find that Ms Hodgkins breached two terms of the employment contract. Firstly, she did not pay Ms Munich the contractually agreed rate of pay. The amounts paid during the 2½ period Ms Munich was employed, fall short of that figure.
84. It follows that the amounts Ms Hodgkins paid to Ms Munich during her employment also did not include overtime payments for the overtime worked between May 2020 to November 2021.

85. The amount due to Ms Munich as a result of my conclusions at paragraphs 83 and 84 above are to be assessed at the remedy hearing on 12<sup>th</sup> December 2023, and in the judgment on remedy issued after that hearing.

Unlawful deduction from wages

86. Under the terms of the employment contract that I have found to exist between Ms Munich and Ms Hodgkins, I find that the wages properly payable would be £38,776.44, gross per annum, plus overtime paid at £8.33 net per hour.
87. I have found Ms Munich was employed by Ms Hodgkins under the terms set out in the offer of engagement, stating she would be paid monthly in arrears. Ms Hodgkins and Ms Munich agreed on the payments made during phase 2, show there was a repeated shortfall on Ms Munich's contractual pay. The dates of the payments also show there is not a 3 month gap between the reduced payments. Therefore the claim was presented within the required two year period.
88. To the extent it's in issue, I find Ms Munich also brought this complaint within the 3-month time limit prescribed by section 23(2) of the 1996, allowing for early conciliation, which ended on 26<sup>th</sup> March 2022.
89. As to whether Ms Munich is entitled to a declaration that there were unauthorised deductions, and order for payment of the deductions and interest, that will be dealt with at the remedy hearing, following which, the judgment on remedy will be issued.

Wrongful dismissal

90. The offer of engagement states Ms Munich is entitled to 4 weeks' notice following completion of a 3-month probationary period. As I have found Ms Munich was employed by Ms Hodgkins from 12<sup>th</sup> July 2019 until 26<sup>th</sup> January 2022, she was entitled to the 4 weeks' contractual notice period, as this is more than the statutory notice period.
91. Ms Munich did not receive any notice at all before her employment was terminated. She was not given notice before she left for Colombia. The communications she had with Ms Hodgkins while she was in Colombia and on her return to the UK are summarised at paragraphs 70.1 to 70.5 above. These show Ms Hodgkins did not give her notice while she was away or on her return.
92. As to the amount of any pay in lieu of notice Ms Munich may be entitled to, and any interest, that will be dealt with at the remedy hearing, following which, the judgment on remedy will be issued.

Redundancy

93. Based on the evidence before the Tribunal, I find Ms Hodgkins dismissed Ms Munich by failing to inform Ms Munich about when she could resume work after the latter returned to the UK. This prevented Ms Munich resuming her employment.
94. Ms Munich called Ms Hodgkins a number of times when she returned to the UK, but her calls were unanswered. She also sent messages to Ms Hodgkins. However, the only direct communication from Ms Hodgkins was when she informed Ms Munich about mediation.
95. Ms Munich did not resign from her position, and was trying to make contact with Hodgkins, as described above. It was Ms Hodgkins who was largely uncommunicative, and when she did respond, she dealt only with mediation and not how or when Ms Munich would resume work.
96. There are further reasons why I consider the reason or principal reason for Ms Munich's dismissal was redundancy. I take into account it is presumed an employee who is dismissed is dismissed due to redundancy. I also take into account that no evidence has been adduced to rebut that presumption. Furthermore, Ms Hodgkins's 11<sup>th</sup> November 2021 e-mail to Ms Barrett supports a finding that Ms Munich was made redundant because Ms Hodgkins stated she no longer requires her services.
97. As Ms Munich had two years' continuous service at the date she was dismissed, I find that she is entitled to statutory redundancy pay, in the amount determined at the remedy hearing.

---

Employment Judge Tueje  
Date: 29 December 2023