



EMPLOYMENT TRIBUNALS

Claimant: Mrs P Mehat

Respondent: Mehat Six Bells Limited

Heard at: Remotely, by video **On:** 16, 17 and 18 October 2023

Before: Employment Judge S Moore

Members: Ms M Farley
Ms P Humphreys

Representation:
Claimant: Ms Firth (Counsel)
Respondent: Mr Rigby (Counsel)

JUDGMENT having been sent to the parties on 23 October 2023 and reasons having been requested by the Respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Background and Introduction

1. The claim was presented on 26 February 2023. The date of receipt by Acas of the early conciliation notification ("Day A") was 7 January 2023. The date of issue of the certificate ("Day B") was 18 February 2023.
2. A preliminary hearing took place on 11 August 2023. The draft claims and issues were set out in that order and the Claimant and Respondent were required to provide further information. A final list of issues drafted by Counsel for the Claimant was agreed before the evidence began.
3. The Tribunal heard the case remotely by CVP. There was an agreed bundle of 101 pages and CCTV footage. A further 47 pages of Companies

House documents were admitted with permission of the Tribunal and on basis there was no objection. The Tribunal refused permission to admit documents containing text messages between Mr Mehat's sister and son as they were not relevant to the issues in the claim and had been disclosed late. The Tribunal heard from the following witnesses:

4. For the Claimant:
 - Shelby Edge;
 - The Claimant;
 - Jamie Harray;
 - Claire Paggett;
 - Leanna Combstock;
 - Ms M Thandi;
 - Mr R Mehat;

5. In addition to the witness above there were signed witness statements from Ms A Howells, Ms C Dobbins, Mr C Phipps and Ms H Stokes. These witnesses did not present oral evidence and we did not attach any weight to their witness statements.

6. For the Respondent:
 - Mr S Mehat

7. The Respondent also relied upon two witness statements from Ms Nethercott who is a Body Shop consultant and from whom the Claimant had ordered Body Shop products, but she did not attend the hearing to give oral evidence.

8. During Mr Mehat's evidence there were two occasions on which it appeared he was being prompted by a person in the same room but not on camera. He was warned on both occasions that this must desist. On the third occasion, a third person could be heard whispering. Mr Mehat confirmed his mother had entered the room. Mr Mehat was warned that if there were any further incidents the hearing would be stopped and he would be required to attend the hearing in person.

9. On the afternoon of 17 October 2023 the Claimant applied to admit further documents namely Mr I Mehat's (father in law of the Claimant) bank statements. The parties had disputed whether they should be in the bundle and as such they were supposed to be in the disputed section of the bundle for a decision by the Tribunal but Ms Firth told the Tribunal the Respondent had refused to include them.

10. At this stage the Respondent's evidence had concluded. As the Respondent had changed representation the week before, time was provided for Mr Rigby to take instructions.
11. Mr Rigby then objected to their inclusion on basis they were bank statements disclosed in the divorce proceedings and further they were not relevant as they were dated after the dismissal.
12. Ms Firth submitted they were relevant as they showed payments into Mr I Mehat's account from Mr S Mehat.
13. The Tribunal decided to admit the documents as they were relevant and necessary to the fair disposal of the claim. This was because the Respondent's case was that no-one within the family had received wages from the business yet showed payments being made to Mr Mehat. Mr Mehat was sworn back in to give evidence about these documents.
14. Oral judgment on liability only was given on the afternoon of 18 October 2023. A written record of the judgment was promulgated on 23 October 2023 in accordance with Rule 61 of the ET Rules of Procedure. On 19 October 2023 the Respondent requested written reasons. This request was overlooked by the administration and not brought to the attention of Judge Moore until 3 January 2024.

Findings of Fact

15. We have made the following findings of fact on the balance of probabilities.
16. The Respondent operates a Premier convenience store in Six Bells, Abertillery, Blaenau Gwent. This is a small close knit community. Prior to 2008 the business was operated as a sole trader or partnership by Mr S Mehat and his parents; Mrs K Mehat and Mr I Mehat. The Claimant is married to Mr S Mehat and they have two children. In 2017 the Claimant, her husband and the two children moved into the Claimant's in-laws house, which is known as Suki House, where they stayed apart from a brief return to the marital home 3 Llun Lan Road shortly prior to the termination of her employment in October 2022.
17. The Claimant had worked in the shop since 2002. She never received any wages until February 2022 (see below). The Claimant asked over the years many times to be paid wages but this was refused. The Claimant was unable to raise any formal complaint as the business was owned by her parents in law. When she did raise complaints she was told there was something "inherently wrong with her" or the issue of family honor or her parenting skills would be raised.

18. On 24 April 2018 the Respondent became a limited company. The Claimant and her husband were both shareholders and directors of that limited company. The Claimant did not have any involvement in running the business insofar as financial decisions or business decisions, her role was limited to working in the shop, undertaking various shop assistant duties such as assisting with deliveries, working on the till, some ordering of goods and serving customers.
19. From 2018 until the Claimant's termination of her employment, or for the relevant tax years, the Respondent made declarations to HMRC that the Claimant was earning a wage around £12,500. The amounts declared were consistently just below the personal tax-free allowance for the relevant tax years. The Claimant was unaware of this state of affairs, she was not provided either with the wages that the Respondent said she was being paid, nor was she provided with any pay slips or records that would have informed her of these actions.
20. We find that this was done by the Respondent as they were aware from incorporation that the Claimant was likely to be entitled to receive the National Minimum Wage for the following reasons.
21. The Respondent was advised by accountants. Mr Mehat was asked about paragraph 8 of his witness statement. This stated as follows:

Neither the Claimant nor myself received a regular salary or pay slips. We did not have a separate income or receive separate wages from the Respondent. Monies used to fund ourselves and our family were taken from the business takings and the accountant recorded a sum of money by way of salary from both of us in the accounts."
22. Mr Mehat was asked where the accounting documents were, to which he was not prepared to answer. Mr Mehat told the Tribunal that the accountant sent them PAYE slips and pay slips were created and sent to him and "I did my thing and destroyed them". He then went onto to say he had never seen his pay slip. This evidence was contradictory and we find that Mr Mehat was being evasive in his answers to these questions. He then told the Tribunal that every month he would pay what had to be paid to a pay roll department. No documents pertaining to a pay roll had been disclosed other than P60's.
23. Most significantly Mr Mehat also told the Tribunal that when there was a later agreement to pay the Claimant the sum of £250 per week (see below), this was the sum needed "to comply with the accountant". The money was not paid to the Claimant despite the declaration to HMRC, until March 2022.

24. We make the following findings in respect of the hours worked by the Claimant. It was agreed that the Claimant worked Mondays to Saturdays. It was the Claimant's case that she worked in the region of 40 hours a week at least, sometimes more. In the response filed to the claim, the Respondent stated that the Claimant worked no more than 29 hours. It was the Claimant's case that generally she worked between 9am and 3pm every day, Monday to Saturday, she would then return to tend to household chores and her children and then return to the shop between 5pm and 7.30pm when the shop closed.
25. The Claimant did the school run on occasions she would take the children to and from school but they also tended to occasionally walk to school as well and walk home from school.
26. It was common ground, and Mr Mehat accepted, that he took a nap every day between 12 noon and 4pm. Mr Mehat told the Tribunal that during this period the shop was covered not by the Claimant but by his father who did also work in the shop but this was on a Tuesday, Wednesday, Thursday. There was no explanation as to who covered Mr Mehat's nap on a Monday and a Friday.
27. Mr Mehat also accepted there were periods when both his father and mother were not in the shop due to taking holidays and also Mr Mehat's mother was increasingly unable to work for long periods of time in the shop due to her poor health.
28. There was a shop assistant also employed by the Respondent called Rachel who worked for 4 hours on a Monday, Wednesday and Friday and another individual called Magda who worked only on Saturday for 3 or 4 hours.
29. The Respondent says that the Claimant worked for 2 hours in the morning and then returned to the shop between 5pm and 7.30pm in the evenings. It was Mr Mehat's evidence that she did not work on a Friday morning at all and it was common ground that she worked on Saturday although the Respondent said this was between 10am and 3pm and 6pm and 7.30pm. The main period in dispute was the time in the middle of the day, give or take some hours, when by Mr Mehat's own admission he was taking his nap.
30. In regards to the evidence given by the Claimant's sister-in-law and cousin we did not find that evidence of assistance as by their own admission they had not personally visited the shop or seen the Claimant at work for many years.

31. The Tribunal heard from a number of witnesses in regards to the hours the Claimant worked. The Tribunal knew from our industrial knowledge of the small community in which the shop was located. The Tribunal heard from a number of witnesses from the local community that saw for themselves the Claimant in the shop at different times, not just in the morning or the afternoon. They were in close proximity of the shop at different times of the day.
32. Ms Pagett lived six doors away from the shop until 2015 when she moved and then lived 5 minutes away. She witnessed the Claimant working in the shop working across shifts from late mornings to early evenings. She regarded the Claimant as a full time member of the shop.
33. Ms Combstock's parents were neighbours of the Claimant's family home. She saw the Claimant in the shop on many occasions, usually daily for many hours at a time usually around the needs of her children. Ms Combstock also told the Tribunal that Mr I Mehat also worked there constantly.
34. Ms Harry is a close friend of the Claimant. she saw the Claimant regularly working seven days per week, opening and closing the shop. She knew the Claimant was not paid a wage and had confided in Ms Harry that she had no financial independence and had to request time to socialise with friends or visit her family.
35. Ms Edge worked in the local beauty salon where the Claimant was a customer. She told the Tribunal she would struggle to find an appointment for the Claimant as she spent most days working and had little time off.
36. There were no records kept by the Respondent of the Claimant's working hours.
37. Having taken all of that into account we prefer the Claimant's evidence about the hours that she worked and we find that she worked consistently a minimum of 40 hours per week within the business.
38. The Respondent produced documents including photos of the Claimant's clothes and make up and the Claimant's statements for her account with Next Retail.
39. Mr Mehat's evidence was that the Claimant was allowed to take money from the till whenever she wished to do so. We were invited to find that that the Claimant's clothes and make up corroborated this account because otherwise how would she have purchased these items?

40. The Claimant disputed that she was permitted to take money from the till without express permission. The Claimant told the Tribunal she occasionally could fund items for herself from gifts from her family and she was given small sums of money by her husband or her father-in-law. The Claimant agrees that she was given money but she had to ask for the money. The Claimant did not dispute that she had an account with Next Retail which she used to purchase clothes for the family.
41. The Claimant was permitted to take items from the shop but if she needed toiletries that were not available from the shop range she had to ask her husband to pay for the items.
42. We had no evidence as to how much money the Claimant was said to have been permitted to take from the till when or the frequency. We preferred the Claimant's account was not able to take cash from the till without express permission. Given the other evidence we have heard during these proceedings we find it wholly implausible that the Claimant would have been granted this access to cash from the business in this way.
43. Prior to February 2022 the Claimant had made a number of requests to be paid for the work in the shop but these were consistently refused. We find that the Respondent considered that the Claimant was not entitled to be paid and it was sufficient for her to take items she needed from the shop or be given small sums of cash when requested to purchase items for herself and her children.
44. By February 2022 the Claimant decided that she wanted to be able to fund a better lifestyle for herself and her children. The marriage had deteriorated and this had spilt over into the employment relationship. We had sight of a number of videos from a Ring App recording an argument between the Claimant, her father-in-law and her husband. There were transcripts available to the Tribunal of the video. The video was not dated but Mr Mehat told the Tribunal it was around 16 February 2022 and this ties in with other evidence regarding when the Claimant had been asking to visit her father following his cancer diagnosis.
45. We find from the content of the transcripts that the argument was not about the Claimant asking for wages but it was about the Claimant wanting to visit her family and also for them to visit her and stay in the family home. Mr Mehat was frank in that he accepted he did not get on with the Claimant's family as there had been an argument some years previously. For those reasons he did not want them to visit or to stay in the matrimonial home. Mr Mehat informed the Claimant that his decision was her family could not visit the matrimonial home. The transcript and video also recorded that the Claimant had said to her father in law and husband *"I don't want anything. Tell me please do I mistreat you? Do I do anything bad to you? I just was to*

- spend a bit of time with my parents? To which Mr I Mehat then replied “This is it. Now I’m saying (term of endearment in Punjabi). If I’m being honest, the way it’s carrying on. I would say my limit has been...I had lots of patience, a lot of it before. Manjit finished it..practically..now I’m getting that like with you both” (R version), C says the word “both” was not used).*
46. During this video Mr Mehat can be heard shouting at the Claimant when she walks out of the room and also repeated the phrase “there is something inherently wrong with you”.
47. Shortly after this disagreement the Claimant left the marital home in Six Bells and went to her maternal family home in Huddersfield. Mr Mehat soon after visited the Claimant and they had a discussion about their situation and it was agreed to start paying the Claimant a wage of £250 per week. It was on this basis and that time off would be permitted, the Claimant agreed to return to work and the family home. We find that the £250 figure was not the Claimant’s suggestion. Mr Mehat told the Tribunal that the “amount had to be compatible with the accountant” which we find was referencing the personal allowance declarations that had already been being made to HMRC since 2019.
48. Thereafter the Claimant returned to the store and the family home and the Respondent began to pay the Claimant £250 from the beginning of March 2022. This was paid weekly in cash, there were no pay slips, there are no records of the payments and the accounts of the Respondent have not been disclosed. The Claimant had to ask for her wages and it would be given in a begrudging way or left in different places for her to collect. Other employees had their wages prepared in pay packets with pay slips. The Claimant felt this was done deliberately and found it hugely degrading. We find that the wages were provided to the Claimant in this way given the previous conduct of the Respondent in declaring they were paying her wages when they had not, and the long and difficult process the Claimant had experienced in getting this amount agreed at all.
49. The Claimant paid some of her earnings into her own bank account and kept some back to be able to buy herself things or her children things. It was suggested that the reason that the Claimant agreed to a payment of £250 for wages was that because this reflected the hours that she worked. We accepted what the Claimant said about this when asked in cross examination. The reason she accepted the £250 was not because that reflected the hours she worked at minimum wage. It was because even though she was working more hours it meant that she got a wage which would lead her to have some independence. The Claimant told the Tribunal receiving £250 was like having £5000; it meant she could buy things without having to ask for permission to make those purchases either for herself or her children.

50. On 1 March 2022, Mr Mehat's mother, Mrs K Mehat became a person of significant control and company director. Mr Mehat was removed as a person with significant control on the same date. On 12 April 2022 Mr S Mehat's shares in the Respondent were transferred to Mrs K Mehat.

Detriments

51. The Claimant says that when she asked to receive the minimum wage both pre and post February 2022 she was made to clean the toilets, clean the stockroom floor and deal with large deliveries on her own in punishment for having asked for wages at all. She also she was denied time off, the agreed wages were either not given to her or were given to her in a begrudging way and that also she had to ask for them.

52. This was disputed by the Respondent. Mr Mehat was passionate in his denial about all of these matters.

53. We considered what the Respondent said about this. Mr Mehat was indignant about the suggestions and said that he felt that it was his responsibility to help with the heavy deliveries. Further there was another assistant there to help and that he would not punish his wife in this way. No other witnesses were called by the Respondent, the shop staff were not called, they may have been able to corroborate the Respondent's case regarding the hours the Claimant worked and the delivery situation. The Claimant was criticised for not producing video evidence of her managing big deliveries on her own. We did not find this to be of assistance in assessing credibility as neither did the Respondent and they were the ones with access to the video system.

54. In cases where there is little or no corroborating evidence it may be necessary to assess the differing accounts based on the credibility of the witnesses. In respect of these matters we found the Claimant to be a reliable and credible witness, more so than Mr Mehat. The Claimant has been consistent in her account in both her ET1, further and better particulars and witness testimony. Whilst the Claimant was not able to point to date on which these matters happened she told the Tribunal it was regular and always coincided when she had asked for a wage. In respect of deliveries, we also took into account that Mr Mehat was absent from the shop for 4 hours each day, in the middle of the day, sleeping and therefore it is plausible that the Claimant was on her own when deliveries were made, in particular the big delivery that was made every Monday.

55. In assessing credibility we also took into account the behaviour of the Respondent. They have made declarations to HMRC about paying the

Claimant wages that were never paid. During Mr Mehat's evidence he had to be warned three times by the Tribunal because he was evidently being prompted by people in the room, the first time it was his father, the second time it was his mother. Further, there were important documents that had not been disclosed and in some answers we found Mr Mehat was being evasive or refused to answer questions.

56. In respect of being denied time off the Claimant says that she was refused time off as follows:

- to visit her father who was ill from November 2021;
- to take her daughter to stay with her maternal family in April 2022 and the summer school holidays in 2022 and;
- to see her sister do a skydive in July 2022.

57. We had sight of a report from a counsellor the Claimant had seen between October 2021 to September 2022. This counsellor was funded by a relative of the Claimant who did not have the financial means to pay for it herself. She was not called as a witness so we treated the evidence with a degree of caution and approached it with an open mind. The report stated that the Claimant had sought therapy presenting for the following issues:

58. Anxiety, depression, emotional, psychological, financial and verbal abuse by her in laws and husband, separation from parents, low self esteem and concerns about her father's health. She reported the Claimant had discussed with her ongoing abuse from her in laws, recounting instances where she had been humiliated such as cleaning toilets and receiving abuse when requesting wages. She also detailed lack of breaks and that she was denied a request to visit her father who was very ill.

59. We looked to see if any of this account was corroborated elsewhere.

60. Ms Harry corroborated that the Claimant had to request time off to socialize with friends and family. We also took into account the big argument that ensued between the Claimant and Mr Mehat evidence in the Ring video when the Claimant was asking for time off to see her family and for her family to visit the matrimonial home. Whilst the Claimant had been permitted to visit the maternal family home in November 2021 the Ring video corroborated that she had been previously denied. This was around the time her father had been diagnosed with a serious illness. We find that the Claimant was denied time off on the above occasions save for November 2021.

61. For these reasons we have accepted the Claimant's evidence regarding the detriments save where we say specifically to the contrary.

62. A further detriment relied upon was that the Claimant was harassed into handing over her shares in the company from February 2022 onwards. We find that the Claimant was put under pressure to transfer her shares. Around this time there was a realisation on the part of the Respondent that things were going quite wrong within the marital relationship and given her status as a shareholder and director that that was going to be an issue for the Respondent and the status of the limited company. This coincided with Mrs K Mehat becoming a director of the company.
63. A further detriment was that the Claimant alleges she was labelled as greedy or a gold digger. In respect of the gold digger comments and the Claimant's own accounts it was her son sadly that has used this term. Mr Mehat accepts that he called the Claimant greedy but this was after the end of the employment relationship in the course of the divorce proceedings.
64. In between 4 March – 30 September 2022 the Claimant's bank account shows that she paid an average of £214.00 into her account each week.
65. The Claimant says she was not paid wages at all in October 2022. It was suggested that because the Claimant's bank statement showed that she had made some payments into her account in October 2022 that this was evidence that she had, contrary to her evidence, been paid. We prefer the Claimant's account in this regard for the following reasons. Firstly, the Respondent has no records or pay slips to evidence what was paid to the Claimant and when. Further, this is corroborated by the following events. The Claimant told the Tribunal that having received the agreed wage from February the money was stopped in October. The Claimant found this decision to be very difficult to accept and was extremely upset; a significant argument ensued between the Claimant and Mr Mehat that resulted in a third party calling the police.
66. This culminated in the Claimant leaving both the marital home and her employment on or around 15 October 2022 with a police presence. We make no findings about any the marital situation at that time or whether the police presence was necessary or justified. It is common ground that a third party called the police and the police then escorted and assisted the Claimant to leave and she subsequently returned to her maternal family home in Huddersfield and has not returned except to collect her belongings. Divorce proceedings followed.
67. We do find that the Claimant was not paid the agreed wages in October 2022. The last payment was made on or around 30 September 2022 as evidenced by the consistent and regular payments that the Claimant had made into her bank account which ceased as of that date.

68. We find that the effective date of termination was 15 October 2022. This is also the date the Claimant became aware that she was not going to be paid any more wages.
69. On 10 October 2022 the Claimant's son was appointed as a director of the Respondent. On 12 November 2022 the Claimant was removed as a director without her knowledge or approval. On 13 December 2022 the Claimant's shares were transferred to her son without her knowledge or approval (this was reversed on 22 March 2023).
70. The Claimant subsequently discovered after she left employment by logging into her government gateway that's since 1 May 2018 it had falsely been reported to HMRC that she had been paid wages (see above).

The Law

Constructive Unfair Dismissal

71. The relevant law is contained in Section 95 (1) c) ERA 1996 which sets out circumstances in which the Claimant will be dismissed if the employee terminates the contract.
72. Following **Western Excavating (ECC) v Sharp [1978] IRLR 27**, the employee must establish:
- that there was a fundamental breach of contract by the employer;
 - that the employer's breach caused the Claimant to resign;
 - the employee must not delay too long before resigning or he will have affirmed the breach and lose the right to be discharged from the contract.
73. In **Malik & Mahmud v Bank of Credit & Commerce International SA [1997] 3 W.L.R 95** the implied term of mutual trust and confidence was held to be as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

National Minimum Wage claims

74. s 1(1) of the National Minimum Wage Act 1998 ('NMWA 1998') provides: 'A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage'. The legislation implies a term into the worker's contract to the effect that they will be paid at a rate

which is no lower than the national minimum wage rate for their age or circumstances.

75. S 23 provides:

- 1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that—
 - (a) any action was taken, or was proposed to be taken, by or on behalf of the worker with a view to enforcing, or otherwise securing the benefit of, a right of the worker's to which this section applies; or
 - (b) (excluded as not relevant); or
 - (c) the worker qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—
 - (a) whether or not the worker has the right, or
 - (b) whether or not the right has been infringed,but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

76. S24 provides that the provisions of s48 (2) – 4A and s49 ERA 1996 apply. This provides that the burden of proof is on the Claimant to show she took action under s23 (1) (a) or might qualify for the NMW under s23 (1) (c).¹ The burden then shifts to the Respondent to show the reason for the treatment and that it was not on the grounds of asserting the right. The time limits are in s48 (3) and (4).

77. S28 reverses the burden of proof in relation to the question as to whether the Claimant qualified for the NMW. This provides that where a complaint is made to an employment tribunal under S23 (1) (a) ERA 1996, it shall be presumed for the purposes of the complaint, so far as relating to the deduction of that amount, that the worker in question was remunerated at a rate less than the national minimum wage unless the contrary is established.

78. Reg 58 of the National Minimum Wage Regulations 2015 (“NMWR 2015”) provides:

“Work” does not include any work done by a worker in relation to an employer’s family business if the worker—

- (a) is a member of the employer’s family,
- (b) resides in the family home of the employer, and

¹ It is agreed that S23 (1) (b) does not apply in this case.

(c) participates in the running of the family business.

79. There are no reported authorities we were aware of in respect of Regulation 58. There are a number of authorities in respect of Regulation 57 which provides that work does not include work done by a worker in relation to a family household provided the requirements in Ss 2 and 3 are met. Paragraph 2 of Reg 57 is the same wording as Reg 58 set out above.

80. Reg 59 of the NMWR 2015 provides that the employer of a worker who qualifies for the national minimum wage must keep in respect of that worker records sufficient to establish that the employer is remunerating the worker at a rate at least equal to the national minimum wage.

81. Ms Firth drew our attention to the HMRC NMW Manual and in particular, what it says about Regulation 58. It states:

“A limited company is a legal entity in its own right and cannot be considered to have a family, to be a member of a family or to own a family home.”

82. S104A ERA 1996 provides:

- 1) **An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—**
 - (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employee’s to which this section applies; or
 - (b) excluded as not relevant); or
 - (c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.
- (2) **It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—**
 - (a) whether or not the employee has the right, or
 - (b) whether or not the right has been infringed, but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Conclusions

National Minimum Wage claim

83. We firstly consider whether Regulation 58 of the NMWR 2015 applies in this case.

84. Mr Rigby submitted that there was no reason why a limited company cannot be regarded as a family business, run by the family for the family and it would be a reasonable interpretation of Reg 58 to apply to the Respondent in this case. The Tribunal ought to use common sense in interpretation.
85. Ms Firth submitted that the HMRC booklet reflected common sense. A company is a separate legal entity and cannot be considered to have a family, be a member of a family or own a family home.
86. We were unable to find any authorities on this point. There are authorities for claims brought under regulation 57 against individuals and not limited companies (see **Nambalat v Taher [2012] IRLR** and **Thukalil v Puthenveetil [2023] EAT 47**). We noted the following passage in Harveys:

The provisions now in this regulation and reg 58 were added to the original draft 1999 Regulations at the consultation stage, in order to exempt au pairs, nannies and companions who live in the house, are provided with accommodation and are treated as a member of the family; likewise with family members helping with household chores and family members living at home and participating in the family business. In Nambalat v Taher [2012] IRLR 1004, CA it was accepted that this exception is to be interpreted narrowly and that it must be shown that the individual was genuinely being treated as a member of the family unit. Accommodation may be a factor (though no particular standard is necessary) but there is no formal requirement of 'equivalence' with the tasks performed by other family members. In considering the sharing of 'tasks' (which is to be given a straightforward meaning) it is not necessary to exclude work done under the contract of employment. As a matter of policy, Pill LJ added that 'Tribunals will have to be astute when assessing whether an exception designed for the mutual benefit of employer and worker is, or is not, being used as a device for obtaining cheap domestic labour.'

87. Having regard to the authorities that such exceptions should be narrowly interpreted. We do not consider that the exception can be relied upon by an employer who is a limited company. The Respondent chose to incorporate the family business and made the Claimant a director and shareholder although in reality this was on paper only. She had no say in the running of the business a position soundly proven when she was removed as director and shareholder without her consent when the marriage between her and Mr Mehat broke down. We agree that the common sense approach is in fact the one adopted in the HMRC guidance namely that a legal entity cannot be a family. Accordingly we have concluded that the exception does not apply from the date of the incorporation of the Respondent which was 24 April 2018.

88. In respect of the period between 24 April 2018 and March 2022 the National Minimum Wage claim succeeds because the Claimant did not receive any wages at all, contrary to what was being declared to HMRC by the Respondent. We have no hesitation in rejecting the various propositions put forward by the Respondent to try and assert the Claimant was paid wages such as having money to buy clothes from Next or the Body Shop. Money provided on an ad hoc basis that had to be asked for cannot be deemed as wages. The onus is on the Respondent to have kept records and there are none. The Respondent cannot begin to meet the reverse burden of proof.
89. In relation to the period between 4 March – 30 September 2022 the claim succeeds as the Claimant received less than the National Minimum Wage for the number of hours that she worked. Applying a broad brush approach we find that the Claimant worked 40 hours per week. At £250 per week this equates to £6.25 per hour.

Detriment claim

90. We firstly discuss under which sub section the Claimant could potentially fall under S23 NMWA. The Claimant relied upon either s23 (1) (a) or s23 (1) (c). The Claimant had made numerous requests to be paid during the time she worked for the family business and then the incorporate company. She had left home and work in February 2022 and only agreed to return if she would be paid a wage. In our judgment this amounts to her taking action with a view to enforcing or otherwise securing the benefit of the right to the NMW under S23 (1) (a). Further, we found that the Respondent was aware on incorporation that the Claimant would qualify for the NMW and as such, this also falls within s23 (1) (c).
91. The burden therefore has shifted to the Respondent to show the reason for the treatment, where a detriment is made out. Ms Firth submitted that the appropriate test for considering the reason for the detriment should be analogous to the material influence test for whistleblowing claims (**NHS Manchester v Fecitt & Others [2012] IRLR 64 (CA)**). We consider this to be the appropriate test given that S24 MNWA provides that the provisions of s48 (2) ERA 1996 apply. We now consider each detriment as follows.

From 2018 onwards, Kamaljit Kaur Mehat (“Kamaljit”), C’s mother-in-law and the controlling director of R declaring to HMRC that a wage has been paid to C. C discovered this post-dismissal. C believes she used that declaration to reduce R’s business tax liability and kept C’s salary for personal use.

92. See findings of fact at paragraphs 18-22. The Respondent did not deny that these declarations had been made and moreover that no wages had been

paid to the Claimant at all until March 2022. We found that the Respondent was aware on incorporation that the Claimant would qualify for the NMW and as such, this also falls within s23 (1) (c).

93. We consider that this must have amounted to a detriment to the Claimant. It was being declared that she was receiving wages when none were in fact paid to her. This was an unfavourable position to be in. We have concluded that this was done on the ground that the Respondent realised upon incorporation that the Claimant qualified, or will or might have qualified, for the national minimum wage. This is plainly evidenced by the Respondent's actions in declaring to the HMRC that the Claimant was being paid wages just below the personal allowance. We consider this to be significant that they settled on declaring an amount just below the personal allowance which must have been on the basis of informed advice from their accountants. We know there was a pay roll procedure once a month as Mr Mehat told the Tribunal yet no documents were disclosed.

94. For these reasons this detriment claim is well founded and succeeds.

Sukhdeep Singh Mehat ("Sukhdeep"), C's husband told the Claimant that that she should not be taking money from the business and that she was greedy for money or similar.

95. See findings of fact at paragraph 63. Whilst this was factually made out we do not consider that it was done on the grounds under S104A rather than as a consequence of deteriorating relations following the divorce proceedings. This detriment claim is not well-founded and does not succeed.

When C raised the topic of being paid, making her scrub the toilets, floors and stock room. When C raised the topic of being paid, making her take large deliveries on her own

96. See findings of fact at paragraphs 51-61 above. We found that factually these events did occur and that they took place when the Claimant had asked to be paid wages. These detriments are well founded.

Refusing C time off work, despite repeated requests

97. See findings of fact at 45, 56-60. We found the Claimant was refused time off and had, by these times both taken action to enforce her rights and the Respondent knew she qualified for the NMW. The burden of proof has therefore shifted to the Respondent to show the reason for the treatment. The Respondent denied that the Claimant had been refused time off so has not advanced a reason for the treatment.

98. It is unfavourable treatment to be refused leave from employment and it has been established this was a detriment. We considered whether this was done on the grounds set out under S104A. In our judgment there were a number of different reasons why the Claimant was refused time off. The Respondent did not consider the Claimant was entitled to take time off from both her family and employment duties without express permission. We are conscious of the overlap between the personal and employment relationship and remind ourselves that we must look at the employment relationship in that context. However in our judgment it is plain that the catalyst for the Respondent's behaviour was that the Claimant had started to ask for wages and repeatedly asked to be paid or be paid properly and this materially influenced the Respondent's treatment of the Claimant. For these reasons we find that this detriment is well founded and succeeds.

Between February 2022 until October 2022; making C ask for the £250, upon asking, leaving the £250 somewhere for C to collect it, making C scrub the toilets, floors and stock room, making C take large deliveries on her own.

99. See findings of fact at paragraphs 48, 51-61. We found that factually these events did occur and that they took place when the Claimant had asked to be paid wages. These detriments are well founded.

Sukhdeep and Iqbal Singh Mehat ("Iqbal"), C's father-in-law pressurising C (and her maternal family) to hand over her share of the business and in November 2022 amending the records at Companies House to state that C had resigned as a director of R and on 13 December 2022, without C's consent, amending the records at Companies House to state that C was no longer a shareholder. This was reversed on 22 March 2023.

100. See findings of fact at paragraph 50 and 69. We have considered these detriments together. Such actions would amount to a detriment but we have concluded it was not done on the necessary grounds. The grounds were that the Respondents wanted to resume control of the limited company given the deteriorating and eventual breakdown in the marriage of the Claimant and Mr Mehat. There was no evidence that it was motivated by the necessary grounds apart from the timing of the pressure to transfer the shares. The Respondent's conduct around the removal and appointment of directors at this time and later in our judgment shows that this action was the motivation for the behaviour. This claim is not well founded.

Telling C that she would have to cover more hours as her parents-in-law were getting old.

101. The Claimant did not address this in her witness statement and as such this complaint is not well founded.

In October 2022, failing even to pay C the £250.

102. See findings of fact at paragraphs 65 – 67. We found that the Claimant was not paid wages in October 2022 and became aware of that on 15 October 2022 when the argument ensued between the Claimant and Mr Mehat which resulted in her leaving her home and place of work. The Respondent asserted that she had been paid and has not provided any reason for her not being paid. In our judgment the Respondent withheld the wages on the grounds that the Claimant had sought to be paid wages which was evidenced by the behaviour in how the wages were provided in the begrudging manner. This claim is well founded.

Time limits

103. The Claimant told the Tribunal and we accepted that on many occasions since 2002 she asked for wages and when she did she was made to clean the toilets and scrub the floor. The allegations became more specific in terms of dates from October 2021 as corroborated by the report from the counsellor, as at this time the Claimant had reported to her counsellor that between the period October 2021 - September 2022 those matters set out at paragraph 58. Detriments occurred between February 2022 - 15 October 2022. The reason we say 15 October 2022 is that the Claimant was not paid wages after 30 September 2022 and by 15 October 2022 realised she would not be paid wages (see paragraph 65). We find 15 October 2022 to be the date from which limitation starts for the purpose of the NMW detriment claim giving a primary limitation date of 14 January 2023. We find that this was the last date (being a failure to act) in a series of similar acts and failures under s48 (3) (a) ERA 1996. The Claimant initiated ACAS early conciliation on 7 January 2023 as such the claim is in time. In the alternative we do not know the exact date when the Respondent decided not to pay the Claimant after 30 September 2022 as the Respondent denied they had failed to do so. In such circumstances, under S48 (4) (b) we find that the Respondent should be taken as deciding on the failure to pay the wages on 15 October 2022 which is the date by which they might reasonably have been expected to do the failed act.

Constructive Unfair Dismissal S98 and s104A ERA 1996

104. In light of our conclusions on the detriment claims we have no hesitation in concluding the Claimant was constructively unfairly dismissed for the reason or principal reason that she took action to enforce her right to the NMW and / or she qualified for the NMW.

105. The actions she took have already been discussed above.
106. There have been multiple fundamental breaches of contract by the Respondent. The well founded detriment claims amounted to breaches of the implied terms of mutual trust and confidence. In our judgment failing to pay the NMW alone would amount to a fundamental breach of contract. In particular then failing to pay wages at all between 30 September – 15 October 2022.
107. The breaches caused the Claimant to resign. This is evidenced by the Claimant's actions upon realising the February 2022 agreement was being reneged upon which she described as "the last straw".
108. There was no delay in resigning. The Claimant left the family home and her place of work that day, with a police escort.
109. No fair reason has been advanced for the reason for dismissal. The ordinary unfair dismissal claim is also well founded.

Breach of Contract

110. The Claimant did not receive notice pay and her claim for wrongful dismissal is well founded.

Schedule 5 Employment Act 2002

111. The Claimant has never been provided with a written statement of employment particulars. As such when these proceedings were begun the Respondent was in breach of its duty to give the Claimant a written statement of employment particulars.

Employment Judge S Moore
Dated: 18 January 2024

REASONS SENT TO THE PARTIES On 23 January 2024

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS
Mr N Roche