



EMPLOYMENT TRIBUNALS

Claimant: Evalina Mukasa

Respondent: St George's University Hospital NHS Foundation Trust

Heard: By CVP **On:** 3rd-5th January 2024

Before: EJ P Mason

Representation

Claimant: in person

Respondent: Ms K Lorain, Counsel

JUDGMENT having been sent to the parties on **5th January 2024** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. In a claim form received 30th August 2022, Ms Evalina Mukasa, the Claimant brought a claim against the Respondent, St George's University Hospital NHS Foundation Trust for constructive unfair dismissal, unpaid wages, notice pay and holiday pay.
2. In its ET3 response form dated 18th October 2022, the Respondent resisted the complaint. They contended that there was no breach of any express or implied term of the Claimant's contract; and no outstanding holiday pay or wages owed to the Claimant. They deny also that the Claimant was entitled to any notice pay.
3. The hearing was conducted by CVP. The Claimant represented herself, the Respondent was represented by Ms Loraine of Counsel.
4. There was an agreed bundle of documents, and an agreed bundle of witness statements. The witness bundle comprised statements from Ms Mukasa and Ms Ekendu for the Claimant; and from Ms Sabar, and Mr Jones for the Respondent.

5. I heard evidence from the Claimant. It was agreed between the parties that Ms Ekendu was not required as the matters in her statement had been resolved. I heard from Ms Sabar and Mr Jones for the Respondent.
6. I heard closing submissions from both parties also and short written submissions regarding annual leave were provided to me today, for which I am grateful.

The Hearing

7. Both parties accepted that the issues before the Tribunal remained those agreed in the list of issues dated 18th October 2023 [564]. These can be summarised as follows:

Constructive Dismissal

1. Was there an implied term of mutual trust and confidence in the Claimant's contract?
2. Did the Respondent commit a fundamental breach of the Claimant's contract by ignoring the Claimant's complaints from December 2020?
3. Did the Respondent commit a fundamental breach of the Claimant's contract by failing to conduct the Claimant's appraisal for two years which resulted the Claimant not progressed up the pay scale, as alleged or at all?
4. Did the Respondent commit a fundamental breach of the Claimant's contract changing the Claimant's start date on ESR from 1st December 2020 to 14th September 2021 which consequently impacted the Claimant's pay as alleged or at all?
5. Did the Respondent commit a fundamental breach of the Claimant's contract by telling the Claimant that the only way she could be paid her annual leave in a lump sum was if she were to resign, as alleged or at all?
6. Did the Respondent commit a fundamental breach of the Claimant's contract by providing false information to the Claimant's prospective employer which resulted her missing out on an opportunity for a promotion in different organisation, as alleged or at all?
7. Did the Respondent commit a fundamental breach of the Claimant's contract by not supporting her sickness absence with long Covid including by not notifying the Claimant of the Associate HR Business Partner role?
8. Did the Respondent commit a fundamental breach of the Claimant's contract by not allowing the Claimant to take her holiday entitlement whilst off sick and cancelling her annual leave?
9. Was the Claimant entitled to resign in all the circumstances, in response to such breaches?

10 If so, did the Claimant resign in response to that fundamental breach or did the Claimant waive the right to resign?

11 If the Claimant was constructively dismissed, was the dismissal any case fair?

Notice Pay

12. What is the source relied on for the Claimant's notice and what, in fact, was the Claimant's contractual (including statutory) notice?

13. Was the Claimant entitled to notice pay in all the circumstances and, so did the Respondent in fact fail to pay the Claimant's notice pay as alleged?

Holiday Pay

14. What is the source relied on for the Claimant's annual leave and what, in fact, was the Claimant's contractual (including statutory) annual leave?

15. Did the Respondent fail to pay the Claimant's accrued annual leave in accordance with her contract of employment as alleged?

Arrears of Pay

16. What is the source relied on for the Claimant's arrears of pay and what, in fact, was the Claimant's contractual pay?

17. Did the Respondent fail to pay the Claimant accordance with her contract of employment as alleged?

Relevant Legal Framework

8. Under s.95(1)(c) of the Employment Rights Act 1996, an employee is dismissed by their employer when they terminate their employment contract in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct.
9. As set out in the case of *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, if an employer is guilty of conduct amounting to a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract and the the employee then terminates the contract by reason of the employer's conduct, they are constructively dismissed.
10. Consequently, there must be a fundamental breach of the contract of employment by the employer; termination of the contract by the employee because of that breach; and the employee must not have lost the right to resign by affirming the contract after the breach.
11. The implied term of trust and confidence was formulated in the case of *Malik and Mahmud v BCCI* [1997] ICR 606 as an obligation that the employer shall not "*Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.*"

12. Unreasonable conduct by an employer is insufficient by itself to establish a breach of the implied term. Further, as noted in *Frenkel Topping Limited v King* UKEAT/0106/15/LA, an implied term of trust and confidence is only breached if the employer demonstrates objectively by its behaviour that it is abandoning and altogether refusing to perform the contract.

Findings of Fact

13. I do not seek to address every point on which the parties disagree. I deal with the issues the Tribunal must consider in order to decide whether the claim succeeds or fails. If I do not mention a particular point, it does not mean that I have overlooked it, it is because it is not relevant to the issues. Where there is a dispute over the facts, I set out my findings and reasoning.
14. The Respondent is an NHS Foundation Trust hospital in London.
15. The Claimant began working for the Respondent on 23rd April 2018 as a Human Resources Assistant at Band 2 on the Respondent's pay scale. In May 2020 during the Covid pandemic, she was appointed as a Band 4 administrator.
16. On 1st December 2020, the Claimant was successful in her application to a Band 6 role. This was a development role. The NHS provides roles under what is called Annex 21 to its *Agenda For Change*, where an individual undertakes their training while in the role [426].
17. In the Claimant's case that training was up to 12 months, during which she would receive 75% of the pay band maximum of the fully qualified rate. At the end of the training period, which was for a maximum of a year, pay would then revert to 100% of the bottom of the Band 6 scale.
18. The Claimant's training was completed in less than a year, and she began her role as a substantive Band 6 on 14th September 2021 [132]. This included receiving 100% of the Band 6 pay scale at spine point 322 [133], namely £32,306.
19. The Claimant says she was due an increment on the pay scale in December 2021 as that was a year from the date, she started her development role. The Respondent says any increment would be 12 months from 14th September 2021 as that was a year from the full time role.
20. I find that the pay step date was due on 14th September 2022 that is set out in the change form completed by Ms Sanghera on 14th September 2021 [133] and also in the confirmation email sent by Mr Thirunavukarasu on 28th June 2022 which states that no training contract service could count toward the substantive qualified increment [269].
21. On 19th November 2021, the Claimant emailed Ms Sabar [134], her line manager to discuss the Claimant's salary. A meeting took place on 25th November. The Claimant raised a complaint about a newly recruited

Employment Relations Adviser who had been appointed on the ESR Pay Scale Point 352 (or Step point 3) [173]. This was at the time just over £34,000, £2000 above the Claimant's pay, while doing the same role, the Claimant contended.

22. The Claimant's complaint was that the newly appointed colleague was less experienced than the Claimant and was not carrying out the additional duties that she was. This she said included holding the corporate card to pay invoices, and Covid-related projects and leadership tasks.
23. There followed numerous emails after November 2021 between the Claimant and Ms Sabar and from Claimant to Richard Jones. Mr Jones is the Respondent's Interim Head of Operations for Employee Relations and HR General Office. He is also Ms Sabar's line manager.
24. In an email, dated 7th December 2021 [146] the Claimant set out two complaints which she asked to be dealt with separately. First, repeating the inequality between her pay and that of the newly appointed colleague whom Claimant said had less experience. Further, requesting that "*the pay gap is closed*" and that she should not be paid less than her colleague, a position she requested be rectified.
25. Second, the Claimant pointed out the additional duties that she undertook compared with other ER advisers as she said Mr Jones had requested in an earlier email.
26. On 25th December 2021, the Claimant contracted Covid, which developed into Long Covid. She did not return to work again before her resignation on 13th July 2022.
27. Ms Sabar remained in contact with the Claimant throughout this period. There are numerous text messages and emails between them [191-195;199-201]. It is right to say that these messages do concern work related matters in part, but not exclusively. There are enquiries from Ms Sabar about the Claimant's well-being and emails requesting that the Claimant cease processing invoices and agreeing that the Claimant should delay her appraisal.
28. On 28th December 2021, the Claimant received an automated notification for a development review which was due by 27th January 2022. Having acknowledge follow up emails from the Claimant regarding her 7th December 2021 complaints, Mr Jones emailed Ms Sabar on 4th January 2022 to discuss the matter with her. On 6th January 2022, Mr Jones emailed the Claimant dealing with six points raised by the Claimant. He concluded his email by stating he would move the Claimant up one step point, backdated to 1st November 2021 [150].
29. On 11th January, Ms Sabar emailed the Claimant to confirm that she has been moved up one step point to ESR Step Point 2 (or Point 342). The same day, the Claimant raised a complaint with Ms Sabar and Mr Jones that the move up did not result in any actual increase in her pay. She emailed Mr Jones on

18th January stating that issue of her pay remained unresolved and that she still was the registered card holder for the Respondent's corporate card.

30. Following further emails, the Claimant requested that she be moved to Step Point 3 "*to reflect the change we are both aiming for*" as she put in in email 21st January 2022 [181]. Further, that she may need to raise the matter as a formal grievance should there be further delay.
31. On 21st January 2022, Ms Sabar sent the Claimant a Microsoft Teams link for the Claimant's appraisal [180]. There followed a number of text messages between Claimant and Ms Sabar that the Claimant was unable to attend any appraisal while she was ill [194]. It was agreed this would be postponed until the Claimant was well.
32. In cross-examination, the Claimant accepted that her December 2021 appraisal due by January 2022 could not take place because of her illness rather than because it was not offered to her by the Respondent.
33. The year before, 27th January 2021 there had been an Objective Setting Meeting. Ms Sabar agreed that this was not a formal appraisal [114]. This was because the Claimant was in her development role which had only begin in December 2020.
34. On 30th January 2022, the Claimant emailed Ms Sabar asking for her maximum 20 days leave accrued from 2020/2021 to be carried over to 2022/2023 [198]. Ms Sabar authorised that but noted that a maximum of ten days a year could be carried over in any one year but that a portion of that leave could also be sold back to the Respondent.
35. Subsequently, Ms Sabar informed the Claimant that she could not take annual leave while she was off sick and that she would support carrying leave over to the next financial year. The Respondent now accepts that leave could be taken when an employee was sick but that it was better to remain on sick leave and carry over annual leave.
36. In my view, the Claimant characterisation of this as the Respondent "*cancelling the Claimant's request for leave*" is to omit the central reason that Ms Sabar refused the leave request. I deal with that under the issue of breach of the implied term of trust and confidence further below.
37. On 3rd February 2022, Ms Sabar completed a change a form to uplift Claimant's pay to ESR Step Point 3 (Point 352). This was £34,172.

The Pay Roll Change

38. At 1257 on 3rd February 2022, Ms Sabar made a salary change on the ESR system. It changed the Claimant's pay to £34,172. The reason for that change was noted on the ESR as "job evaluation" which Ms Sabar accepts was the closest thing on the drop down menu in the ESR system to describe the Claimant's pay rise [209].

39. Ms Sabar added that the uplift should take effect from 1st November 2021 and her increment date should move to “*1st December 2022 as this was the date she commenced Band 6*”.
40. Following further email exchanges, at 13:02 on the same day, 3rd February Ms Sabar emailed the Claimant to say that she would backdate the Claimant’s new increased pay to 1st November 2021, having mistakenly told the Claimant earlier that it would be backdated to 1st December 2021.
41. Further, Ms Sabar said that the increment date would now be 1st December each year, to reflect the anniversary of her beginning her original developmental role as a Band 6 on 1st December 2020.
42. The Claimant ‘s case on this point is a little confusing. The List of Issues refers to the ESR change made by Kelly Sanghera moving the Claimant from a development role to substantive Band 6 role, dated 14th September 2021 [565]. This is repeated in the Claimant’s resignation letter also [289].
43. Further, in her text message to Ms Sabar on 13th June 2022 the Claimant also complains that she was stressed by her start date being changed to 14th September 2021 [251]. However in cross-examination, she accepted that she had no issues with the start date change on ESR made by Ms Sanghera.
44. The Claimant said in cross-examination that her complaint was about the change made by Ms Sabar [203] on 3rd February 2022 entering a start date as 1st November 2021. The Claimant says that change suggested that the Claimant started in her substantive Band 6 role on 1st Nov 2021, when she started on 14th September 2021.
45. The Respondent argues that looking at the broader context of this entry, the Claimant has misunderstood the change form. On 3rd February 2022, Ms Sabar was trying to get the start date for the Claimant to be 1st December 2020. This is reflected further in the email from Ms Sabar on 28th June 2022, to Mr Thirunavukarasu as noted above.
46. In my view, Ms Sabar was attempting to get the increment date moved back to November 2021. I accept her evidence that her description of the change itself in the “Additional Comments” box on the ESR could have been clearer, but that she took the simplest option to avoid further delays and questions from payroll. I deal with the impact of this on the issue of trust and confidence in my conclusions.

The Job Advertisement

47. Around May 2022, an Associate HR Business Partner role was advertised at Claimant’s hospital. The closing date was 20th May 2022 [244]. There is no evidence on when the role was first advertised beyond a date in the bundle index, which I do not rely upon.
48. The Claimant says that she was only made aware of the role by a colleague on 19th May 2022. She said that colleague had received an email about the role, which Claimant says she had not received. The Claimant says that she

spoke to Ms Sabar about the job on 19th May 2022. The Claimant says also she was unable therefore to apply for the role, given the late notice.

49. Ms Sabar does not accept that the first time she spoke to Claimant about the role was the day before the deadline. She asserts that she informed the Claimant about the role in an oral update some time earlier. In the evidence Ms Sabar gave during the grievance investigation on 10th August 2022, Ms Sabar said she didn't recall reaching out to colleagues to say the post had been advertised but that the Head of Business Partnering (the team in which the post lay) and may have emailed ERAs to advise that the post had been advertised.
50. I have not been provided with any email sent to ERAs regarding that the Associate HR Business Partner role. Nor do I have any witness statements from colleagues saying that they received or did not receive such an email.
51. I am not persuaded that the Claimant was omitted from an email advertising the role. I note also that in her evidence, the Claimant said that she was told by Ms Sabar that "*there were only a few days left*" to apply not that it was the next day. I accept Ms Sabar's evidence that she told the Claimant some time earlier than 19th May 2022.

The "Resign To Get Paid Your Annual Leave" Statement

52. By June 2022, there were further discussions about how much leave the Claimant could sell back to the Respondent, which was confirmed as five days. On 8th July 2022, the Claimant emailed Ms Sabar clarifying a number of issues. This included suggesting that Ms Sabar had said the Claimant could only be paid for her annual leave if she resigned. Ms Sabar rejected this both in her email and in cross-examination.
53. I accept Ms Sabar's evidence that she did not make that suggestion, and that such a contention is to misunderstand the nature of selling accrued leave. Ms Sabar makes this clear in her response to the Claimant's email dated 8th July 2022 [286];

Secondly, there appears to be a misunderstanding, as I have not stated that you will need to resign in order for you to be paid your outstanding accrued annual leave. I have discussed the above with Richard and following a potential resignation and upon completion of your contractual notice period, any outstanding accrued annual leave will be added to the termination form and as such paid.

54. On 22nd and 23rd June, the Respondent received requests for two references from two potential new employers of the Claimant. Those references included, incorrectly the Claimant's Covid absence as sick days due to a coding error. One potential employer at Barts Hospital rang Ms Sabar to query the sick days, and the matter was corrected following discussions with Ms Sian Weller, Head of Rostering [280-282]. The Claimant took the other job as it was offered to her before the job at Barts.

55. The Claimant resigned on 13th July 2022. Her last day was calculated as 17th August 2022 [305]. On 13th July 2022, the Claimant raised a grievance with Paul De Gama, Group Chief People Officer. The outcome of the Grievance Investigation Report dated “October 2022” was emailed to the Claimant on 25th November [333]. None of the grievances were upheld and the Claimant did not choose to appeal.

Conclusions

1. Constructive Dismissal

56. The alleged breaches of the implied term of trust and confidence are set out in the agreed List of Issues, and I shall deal with them in turn

1. Ignoring The Claimant’s Complaints Concerning A Number Of Matters:

a) equal pay and additional duties

57. I do not accept that the Respondent ignored the Claimant’s complaints about either her receiving less pay than a recently employed colleague or concerning her additional duties.
58. It is clear from the email trails in the bundle that both Ms Sabar and Mr Jones took the time to deal adequately with the Claimant’s concerns about pay. Even on a generous view that the Claimant really means “inadequately dealt with or not resolved” rather than “ignored”, I do not accept that Respondent’s conduct can be characterised in that way.
59. In my view it is hard to see how the pay increase that the Claimant received after consideration by Ms Sabar and Mr Jones can be construed as ignoring the Claimant’s complaint.
60. There was no formal grievance raised. The Claimant suggested she would raise one if her request was not deal with, in her email to Richard Jones 21st January 2022 but the Claimant was moved to Spine Point 3 and no further grievance was raised until her resignation some 6 months later.

b. no appraisal not being conducted two years

61. The Claimant is correct when she says that she did not have an appraisal in two years. Ms Sabar accepted that the objective setting on 27th January 2021 did not amount to an appraisal but that was because of the developmental role the Claimant had at the time.
62. However, the Claimant accepted in her evidence, quite fairly that the reason for there being no appraisal by 27th January 2022 was not due to the Respondent’s failure to offer one, but because she was ill with long Covid.
63. Again, I do not find that Respondent ignored the complaints about Claimant not having an appraisal.

c. start date on ESR being changed without the claimant's knowledge

64. Even putting to one side the confusion about the claim set out above, I do not find that Respondent ignored the complaints about the ESR date change. There are text messages between Ms Sabar and the Claimant and email exchanges between Ms Sabar and Mr Thirunavukarasu which discuss the issue.

d. not being supported during her long-term sickness absence

65. It cannot be said either that the Respondent ignored complaints about not being supported. I have not seen any explicit grievance raised by the Claimant before 12th July 2022 which Respondent can be said to have ignored

e. not notifying the Claimant of the Associate Business Partner role;

66. Similarly, the Claimant has not provided evidence to persuade me that the Respondent ignored any complaint about not being informed about the Associate Business Partner role in good time. The Claimant did not raise any grievance.

67. In her evidence, she asserted that she was being excluded by the Respondent. There is no evidence that I have seen to support that, beyond her being off from work sick which by definition would remove her from her usual daily contact with colleagues, including the duty rota. In my view, it would not prevent her from raising a grievance on the matter, as she had done with her other issues while off sick.

f. her annual leave being cancelled whilst on sickness absence

68. In my view, there were numerous email exchanges between Ms Sabar and the Claimant about both annual leave and sickness absence as I have set out already. It cannot be said that the Claimant's claims were ignored on this issue either.

g. providing incorrect information on her reference

69. This is also true of the discussions about the incorrect sickness days on the reference. This was discussed and corrected by Ms Sabar after the issue was discovered in June 2022. It was not ignored but raised by Ms Sabar with Ms Weller in early July 2022

70. I turn then to the substantive matters themselves and whether they amounted to a breach of implied term of trust and confidence.

2. Failing To Conduct The Claimant's Appraisal For Two Years Which Resulted In The Claimant Not Being Progressed Up The Pay Scale

71. I have dealt with the substantive issue already. In my view an appraisal in December 2020 or January 2021 would have been meaningless given the

Claimant had only been in the role a few weeks. Further, it is accepted by the Claimant that no appraisal took place the following year because she was suffering with Long Covid.

72. For those reasons I do not find that the lack of appraisal breaches the implied term of trust and confidence.

3. Changing The Claimant's Start Date On ESR 1st December 2020 To 14th September 2021 Which Impacted On The Claimant's Pay

73. As I have noted above, there was some confusion by the Claimant about what act she contends amounts to a breach of trust and confidence regarding her date change. The issue set out in her resignation letter and in the List of Issues concerns the Kelly Sanghera change on 14th September 2021, rather than the change she now cites, of Ms Sabar on 3rd February 2022.

74. In cross-examination, the Claimant accepted that she had no issue with Ms Sanghera's date change. On that basis there is no claim that Ms Sanghera's actions amounted to a breach of implied term of trust and confidence.

75. In any event., I do not find that the change of start date on the ESR by Ms Sabar breaches that implied term either. Ms Sabar accepted that her reasons for doing so could have been more clearly set out on the ESR. However, in my view this was done for the Claimant's benefit. As I have explained already, the broader context is that Ms Sabar was attempting to help the Claimant in both her increment date and the backdating of her pay. This issue was discussed between Ms Sabar and the Claimant in emails on 3rd February 2022.

76. While in cross-examination the Claimant suggested that there might have been an impact on future pay, there is no evidence to support that.

4. Telling The Claimant That The Only Way She Could Be Paid Her Annual Leave As A Lump Sum Was If She Were To Resign

77. I have noted already in my summary of the facts that I accept Ms Sabar's evidence that she did not make that suggestion and I find that Claimant's allegation is to misunderstand what Ms Sabar said. She makes this clear in her response to the Claimant's email dated 8th July 2022 [286] and I have set that out in my paragraph 52 above.

78. Consequently, I do not find there has been a breach of the implied term of trust and confidence.

5. Providing False Information In A Reference To A Prospective Employer Which Resulted In Her Missing Out On A Promotion

79. It is accepted by the Respondent that the sickness days were incorrectly included in the job reference. This was an error and while it could be described as "false" this implies some intention to deceive which I do not accept. In my view, this was a genuine error in coding of sickness during the

Pandemic when resources were stretched to breaking point, particularly in NHS. The matter was corrected. That error did not prevent the Claimant from being successful in both job applications.

80. The Claimant argued that the delay the Respondent took in rectifying the sickness code error meant she took the first job she was offered which was further away and that she missed out on the London job. I have seen no evidence to support that.
81. Further, I accept the Respondent's submission that the Claimant had begun looking for another job in June 2022. Consequently, the Claimant's contention that her failure to get one of the two jobs was a reason for her resignation is not arguable.

6. Not Supporting Claimant During Her Long-Term Sickness Including By Not Notifying The Claimant Of The Associate Business Partner Role

82. As I have said, there is evidence in emails and text messages between Ms Sabar and the Claimant from December 2021, when the Claimant was on sick leave. There are enquiries about the Claimant's well-being and emails about her not processing invoices and delaying her appraisal. It is accepted that these messages also deal with work related matters but in my view not exclusively so.
83. Consequently, I do not accept the Claimant was not supported during her sickness. I do not accept that the Covid Sickness Absence Guidance [465] referred to by the Claimant can be read as a tick box exercise or a rigid set of rules. It is Guidance, which notes that a 'bespoke' or individually tailored approach should apply to the management of Long Covid. I find that the Respondent's approach to the Claimant's sickness was flexible and considered, as the Guidance suggests.
84. I do not find there has been any breach of an implied term of breach of trust and confidence.
85. I have set out also my findings on when the Claimant was or was not notified of the Associate Business Partner Role. I have not been provided with any evidence which demonstrates that Ms Sabar only informed the Claimant the day before the closing date.

7. Not Allowing Claimant To Take Her Holiday Whilst On Sick Leave / Cancelling Sick Leave

86. Ms Sabar accepts that she was wrong to tell Claimant that she could not take annual leave while on sick leave. She also accepts that she cancelled the Claimant's annual leave whilst the Claimant was on sick leave.
87. As noted above, the Claimant characterisation of this as the Respondent "cancelling Claimant's request for leave" and "not permitting" the Claimant to take leave is, in my view to ignore the principal reason that Ms Sabar refused

the leave request. It was intended to assist the Claimant in not using up leave that she did not need to.

- 88. I find that this was not conduct calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
- 89. Consequently, I find none of the matters raised amount to a fundamental breach of an implied term of trust and confidence. Nor do I find that even if they were, the Claimant resignation was in response to them given she was already seeking to leave her job at least six weeks earlier.
- 90. The Constructive Dismissal claim is not well-founded and is dismissed.

2. Notice Pay

- 91. I have heard no evidence from the Claimant why she is entitled to Notice Pay. Nothing has been put before me. That claim is not well-founded and dismissed also.

3. Arrears Of Pay

- 92. Similarly, I have heard no evidence from the Claimant why she is entitled to any arrears in her pay. Nothing has been out before me. That claim is not well-founded and is dismissed also.

4. Holiday Pay

- 93. I had the benefit of further written submissions during the hearing on the question of holiday pay from both parties, for which I am grateful.
- 94. The Claimant argues that she is entitled to 52 days and sets out her calculations as follows:

A/L YEAR	HOURS	DAYS
2020 carried over	90	12
20 -21	105	14
21 - 22	127.5	17
22 -23	68	9
TOTAL	390.5	52

95. The Respondent argues that the number of days is 30 in total. This is based on 21 days having accrued by 1st April 2022 and a further nine days between 1st April 2022 and the termination of the contract on 17th August 2022.

- 96. In the alternative, the Respondent argues the maximum number of days is 42, if I am minded to find that the Claimant was entitled to carry over a further 12 days from 2020/2021, which the Respondent denies.

97. It is not clear whether Ms Sabar's agreement with the Claimant for 21 days as including, superseding or excluding the 12 days from 2020/21. There is reference in emails around the time of the grievance procedure to "*12 days being sat in the Claimant's account*" [317] and there being some manual record keeping which "*did not reflect the Healthroster records*".
98. On that basis and looking at the evidence in the round I find that the total number of days is 12+21+9, making 42 days.
99. The Claimant accepts she took leave from 27th June to 17th August 2022. That amounts to 38 days. At this stage there is a shortfall of four days. However, there are two further payments made to Claimant of £640 gross made on 26th September 2022, and a further payment made on 26th April 2023 for £114.76 both described as "Basic Pay arrears".
100. Mr Jones's evidence, which I accept is that the 26th April payment represented a day's pay. I agree with the Respondent that the £640 payment made on 26th September amounts to 5.58 days, when divided by the daily rate set out in the 26th April 2023 pay slip. When added to the 26th April payment of 1 day, equates to 6 ½ days holiday pay.
101. This is 2 ½ days more than the four days the Claimant was entitled to.
102. For that reason I find that there is no outstanding holiday pay, and that claim is not well-founded and is also dismissed.

Employment Judge P Mason
Date: 24 January 2024