



EMPLOYMENT TRIBUNALS

Claimant: Mr Tasleem Tasab
Respondent: Serene Sleep Group Limited
Heard at: Birmingham
On: 15 January 2024
Before: Employment Judge Flood

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT having been sent to the parties on 17 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

The Complaints and preliminary matters

1. The claimant presented a claim form on 11 July 2023 following early conciliation from 1 June 2023 until 6 July 2023. The claim form brought complaints of unfair (constructive) dismissal, breach of contract (notice pay), unpaid wages, holiday pay and also claimed a redundancy payment. The claim was accepted by the Tribunal and served on the respondent on 14 July 2023 at its registered office address, Unit 1D The Top Hill Estate Shaw Street, West Bromwich, Birmingham B70 0TX. The matter was listed at the same time and the parties were sent a notice informing them that a hearing would take place on 15 and 16 January 2024. The respondent failed to present a response within the required timeframe or at all. On 8 January 2024 the respondent was notified in writing by the Tribunal that as it had failed to present a response that under rule 21 of the Employment Tribunal Rules of Procedure 2013 ('ET Rules') that judgment may now be issued and that whilst notification of any hearing would still be provided that they would only be able to participate in any hearing to the extent permitted by the Judge conducting the hearing. On this date the time estimate was reduced to 3 hours and the parties were notified that this was the case.

2. The matter came before me on 15 January 2024. The respondent did not attend or send a representative. The claimant attended in person and submitted a Bundle of Documents (references to page numbers below are to pages in that bundle) in support of his case which included a case summary and chronology which stood as his evidence to the Tribunal. I went on to address questions to the claimant on this evidence and to assist in determining the issues. Oral judgment with summary reasons was then given. The claimant succeeded in his constructive unfair dismissal complaint and also his complaints for unlawful deduction of wages, breach of contract (notice pay) and unpaid holiday pay. This claim for the payment of a redundancy payment was dismissed.
3. The parties were sent a copy of the written judgment on 17 January 2024 and on 29 January 2024, the respondent made a request for written reasons for the judgment. These are now provided. In preparing the written reasons, it became apparent that an accidental omission had been made in that the sum received by the claimant by way of pay from 1 to 12 May 2023 was not deducted from the award made for unlawful deduction of wages. I have issued a certificate of correction under rule 69 and new judgment to correct this accidental omission.

The Issues

1. Unfair (constructive) dismissal

1.1 Was the claimant dismissed?

1.1.1 Did the respondent do the following things:

1.1.1.1 Inform the claimant that he had been overpaid in April 2023 and accused him of authorising a rate of pay and paying this to himself without the respondent's approval

1.1.1.2 Inform the claimant that his pay from May 2023 onwards would be at a lower rate than the one agreed

1.1.1.3 Refuse the claimant access to the respondent's premises to attend work on 11 and 12 May 2023

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.1.4 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal - i.e., what was the reason for the breach of contract?

1.3 Was it a potentially fair reason?

1.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

2. Holiday Pay

2.1 Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

3. Unauthorised deductions

3.1 Were the wages paid to the claimant on 31 May 2023 less than the wages they should have been paid?

3.2 If so, how much is the claimant owed?

4. Wrongful dismissal / Notice pay

4.1 What was the claimant's notice period?

4.2 Was the claimant paid for that notice period?

5. Redundancy payment

5.1 Is the claimant entitled to a redundancy payment under section 163 Employment Rights Act 1996?

6. Remedy for unfair dismissal

6.1 What basic award is payable to the claimant, if any?

6.2 If there is a compensatory award, how much should it be? The Tribunal will decide:

6.2.1 What financial losses has the dismissal caused the claimant?

6.2.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

6.2.3 If not, for what period of loss should the claimant be compensated?

Findings of Fact.

4. I made the following findings of fact on the balance of probabilities:

- 4.1. The respondent is a company which sells bedding, beds and furniture. On 1 June 2005 the claimant started a previous company, Serene Furnishings Limited ('Serene Furnishings'), of which he was employed as a director and was also a shareholder along with his wife. Serene Furnishings was placed into administration on 19 December 2019 with the business being acquired by a different company, Serene Beds & Furniture Limited ('Serene Beds and Furniture').
- 4.2. The claimant continued to be employed by Serene Beds and Furniture as Managing Director and was also director and shareholder. He held a shareholding of 85% and was remunerated by way of a monthly salary of £1000 (which was subject to deductions for tax and national insurance) but also received monthly dividends as a result of his shareholding, which would be reconciled on a year end basis by the company's accountants. Serene Beds and Furniture had experiencing financial difficulties since 2019 with the impact of the Covid pandemic and the rising cost of materials. In December 2022, a rent increase was notified and the claimant was struggling to keep the business viable and keep the staff of 35-40 people employed so started to look for solutions.
- 4.3. On 20 January 2023, the claimant was approached by Mohammed Naveed to acquire the business retail website British Beds Direct which was owned by Serene Beds and Furniture. Mr Naveed operated a similar business as director and shareholder of the respondent, and the discussions then moved to discuss a way for the two business to merge. It was agreed that the best way to undertake this was that Serene Beds and Furniture would be placed into administration and that the respondent would then purchase the business of Serene Beds and Furniture from the administrators by way of the respondent currently trading as a bedding company under the name of Sleep Revolution.
- 4.4. There were several meetings and verbal conversations about how this would be structured and on 20 March 2023, the claimant sent an e mail to Mr Naveed (page 33 of Bundle) attaching a document which he described as Business Agreement which was described as being "*the parameters that we have discussed and agreed to in general*". He asked that this be signed before Serene Beds and Furniture was placed into administration and that a shareholders agreement be put in place reflecting an agreement that the claimant would hold a 20% shareholding in the respondent.

- 4.5. The Business Sale Agreement sent (pages 35-38) set out a number of the commercial terms and essentially recorded that the business be transferred with the claimant as its owner receiving a 20% share in the new company; a 20% share in a new combined logistics business; would have a personal debt of £165,000 settled and would be employed full time by the new company.
- 4.6. The terms of this employment with the respondent were stated as being that the claimant would remain employed as the Managing Director, on an initial annual salary of £80,000 rising to £100,000 in the second and third year. It also included provision for benefits such as car allowance, pension, health insurance etc. It noted that there would be a minimum notice period of 6 months. The claimant sent a Whatsapp message the same day stating that he had just sent the agreement which had been spoken about the previous Thursday (page 39). He sent a follow up message on 21 March 2023 (page 40) with Mr Naveed responding that he had not reviewed it yet. I accepted the claimant's evidence which was unchallenged that this document represented the verbal agreement in place between himself and Mr Naveed of the respondent on or around 20 March 2023 as to what his terms of employment would be from 1 April 2023 onwards. In particular that he would be remunerated at the annual salary of £80,000.
- 4.7. On 31 March 2023, Serene Beds and Furniture filed for administration and on 1 April 2023, the business of Serene Beds and Furniture was acquired by the respondent and the employment of the claimant transferred by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE'). The respondent issued a statement to its customers, sales agents and the trade press on 4 April 2023 (page 41-43) confirming that Serene Beds and Furniture and had been placed into administration but had been acquired by a third party and would continue to operate from its current site and "*retain the management team and all of its staff*". This statement was signed off as coming from the claimant, as Managing Director of the respondent. This was reported in an article in Furniture News on 5 April 2023 (page 45-46).
- 4.8. The respondent began to operate and the claimant spent much of his time coordinating the merger of the two businesses, which also included separate logistics businesses previously run by the respondent and the claimant separately. Towards the end of the month the claimant prepared information about the payroll run that needed to be made to ensure the respondent's staff were paid as per usual pay day on 28th of the month. At page 27 the Tribunal saw the document the claimant produced and submitted to the respondent which indicated that he was employed on a salary of £80,000 per annum which was ticked. We accepted the evidence of the claimant that this was submitted to the Finance Director of the respondent, Ayesha Begum and her assistant, Sujad Asif and the ticks shown indicated the respondent's agreement with and approval of with the information provided. This was recorded in a summary of pay for April 2023

at page 28 including the claimant's salary at this rate and required deductions. The claimant was then paid the net sum of £4,621.33 on 28 April 2023 representing the gross monthly sum of £666.66 less deductions for tax and National Insurance contributions (payslip at page 32).

4.9. On 2 May 2023 the claimant attended a meeting with Mr Naveed who was accompanied by Ms Khalid Zaman who was introduced by Mr Naveed as the new Chief Financial Officer. During this meeting Mr Naveed and Mr Zaman informed the claimant that they would not longer be prepared to give him the 20% share of the joint logistics business (mentioning that a 10% share was appropriate) and he was also told that the respondent did not feel he was playing an active role in the new business. The claimant left the meeting as he was angry and upset that Mr Naveed was going back on what had been agreed verbally before the business had been transferred. At page 47 the Tribunal saw an e mail from the claimant to Mr Naveed on the morning of 3 May 2023 informing him that he could not attend work that day putting this down to the conversation that took place the day before.

4.10. On 4 May 2023 the claimant e mailed Mr Naveed and Mr Zaman referencing the meeting and noting he was "*extremely dismayed that a business agreement between myself and Naveed is being withdrawn*". He went on to challenge the contention that he was not contributing to the business setting out what activities had been carried out over the preceding weeks. He concluded that he felt that Mr Naveed was going back on his word and he would not agree to a 10% share in a business which was not what had already been agreed. He put forward a proposal to resolve the matter with Mr Naveed paying a cash sum of £50,000 as an alternative to the share of the business.

4.11. There was a further meeting that took place around this time and again the issue discussed with the share that the claimant should receive in the business. There was an exchange of text messages between the claimant and Mr Zaman on 8 May 2023 (pages 57 and 58) where further discussions took place during which time, Mr Zaman stated:

"Point 3 - new salary as you mentioned was a condition of the new agreement, on the basis that this was paid to you, it's reasonable to assume you have agreed the terms, one can't take the benefits and then claim to be in disagreement of the terms - that's just my opinion - In the meantime, I will advise the CEO on how to move forward for the good of the business with you on board as a senior member of the team. If you feel I can help any further, please let me know".

4.12. On 11 May 2023, the claimant attended site and collected some vehicles that related to one of his other businesses. He was told by the security guard on site that he had received clear instructions not to let the claimant in and there was an announcement that afternoon by Mr Naveed to staff stating that the claimant no longer worked for the company and that

employees should not communicate with him, mentioning that he had made losses and had multiple failed businesses.

- 4.13. On 11 May 2023, the claimant received an e mail from Mr Naveed on behalf of the respondent informing him that Mr Zaman had identified a discrepancy with his wages having reconciled the payroll against existing contracts and TUPE arrangements. It went on to state:

“It seems that you have authorised a rate of pay for yourself based on a draft agreement that has not been signed or approved. For that reason please return this overpayment to Serene Sleep Group with immediate effect.”

and went on to state that his salary would be paid going forward as per the TUPE obligation until the alternative pay rate had been approved.

- 4.14. The claimant attended site on 12 May 2023 and was refused access to the premises.

- 4.15. He attended an off site meeting with Mr Naveed and Mr Zaman where he indicated that he wished to resign as he did not trust the respondent. It was suggested to him that the business still needed him and he was asked to consider working as a consultant on a consultancy fee of £10,000 per month for 18 months. The claimant said he was reluctantly prepared to agree to this and on 14 May 2023 sent an e mail to the respondent with proposed terms of engagement (pages 61-63). He also submitted his resignation with effect from 12 May 2023 on this date (page 65).

- 4.16. The claimant met with Mr Zaman and Mr Mo Nawaz (an adviser to Mr Naveed) on 15 May 2023 which meeting was arranged to discuss the terms of an ongoing consultancy arrangement. The claimant said he decided before arriving that he could not continue with a proposed consultancy arrangement as he did not trust the respondent. He informed the respondent of this during this meeting.

- 4.17. The claimant was paid the gross sum of £500 in respect of pay for May 2023. His payslip issued to him also indicated that an overpayment had been made in the sum of £5666.66 and a request was made for repayment of the sum (pages 69-70).

- 4.18. I accepted the claimant’s unchallenged evidence that he had not worked since his dismissal and had been unfit for work at all until December 2023 due to ongoing health issues. He has lived off his wife’s earnings and from borrowing money from family. He expected to remain employed by the respondent for a further 12-18 months after dismissal when he expected to have moved on to a different position.

Relevant legal provisions

Constructive unfair dismissal claim

5. Section 94 of the Employment Rights Act 1996 ('ERA') sets out the right not to be unfairly dismissed.
6. Section 95 (1) (c) ERA said that an employee is taken to have been dismissed by his employer if the employee terminates his contract of employment (with or without notice) in the circumstances in which he is entitled to terminate if not notice by reason of the employer's conduct i.e. constructive dismissal.
7. If dismissal is established, then the Tribunal must also consider the fairness of the dismissal under Section 98 ERA. This requires the employer to show the reason for the dismissal (i.e.: the reason why the employer breached the contract of employment) and that it is a potentially fair reason under sections 98 (1) and (2) and where the employer has established a potentially fair reason then the Tribunal will consider the fairness of the dismissal under section 98 (4), that is:
 - 7.1. did the employer act reasonably or unreasonably in treating it as a sufficient reason for dismissal; and
 - 7.2. was it fair bearing in mind equity and the merits of the case.
8. It was established in the case of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 that the employer's conduct which can give rise to a constructive dismissal must involve a "*significant breach of contract going to the root of the contract of employment*", sometimes referred to as a repudiatory breach. Therefore, to claim constructive dismissal, the employee must show:-
 - 8.1. that there was a fundamental breach by the employer;
 - 8.2. that the employer's breach caused the employee to resign;
 - 8.3. that the employee did not delay too long before resigning, thus affirming the contract of employment.
9. Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, [1997] ICR 606. The implied term of trust and confidence was summarised as follows:

"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."
10. If the act of the employer that caused resignation was not by itself a fundamental breach of contract, the employee may on a course of conduct considered as a whole in establishing constructive dismissal. The 'last straw' must contribute, however slightly, to the breach of trust and confidence (Omilaju v Waltham Forest London Borough Council [2004] EWCA Civ 1493, [2005] IRLR 35, [2005] 1 All ER 75).

11. It was confirmed by the Court of Appeal in the case of Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, [2018] IRLR 833 in an ordinary case of constructive dismissal tribunals should ask themselves:

11.1. What was the most recent act (or omission) on the part of the employer which the employee said caused, or triggered, his or her resignation?

11.2. Has he or she affirmed the contract since that act?

11.3. If not, was that act (or omission) by itself a repudiatory breach of contract?

11.4. If not, was it nevertheless a part...of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?

11.5. Did the employee resign in response (or partly in response) to that breach?

Unlawful deduction from wages claim

12. Section 13 ERA provides that a worker has the right not to suffer unauthorised deductions from their wages. The relevant sections are set out in full below:

“13. Right not to suffer unauthorised deductions.

- (1) *An employer shall not make a deduction from wages of a worker employed by him unless—*
 - (a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or*
 - (b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*
- (2) *In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—*
 - (3) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
 - (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*
- (3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.*

Holiday Pay claim

13. Regulation 13 Working Time Regulations 1998 ('WTR') provides:

13(1) Subject to paragraphs (5) and (7), a worker is entitled in each leave year to a period of leave determined in accordance with paragraph (2).

*(2) The period of leave to which a worker is entitled under paragraph (1) is—
.....*

(c) in any leave year beginning after 23rd November 1999, four weeks.

and

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

*(a) it may only be taken in the leave year in respect of which it is due, and
(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.*

and

13A 1) Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).

(2) The period of additional leave to which a worker is entitled under paragraph (1) is—.....

(e) in any leave year beginning on or after 1st April 2009, 1.6 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.

Regulation 14 WTR provides....

14(2) (2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

Breach of contract claim

14. Section 86 ERA provides:

- (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—
 - (a) *is* not less than one week's notice if his period of continuous employment is less than two years,
 - (b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and
 - (c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.
- (2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

Redundancy payment claim

15. Section 135 ERA provides:

- (1) An employer shall pay a redundancy payment to any employee of his if the employee—
 - (a) is dismissed by the employer by reason of redundancy,.....

Conclusion

Constructive Unfair Dismissal claim

16. I firstly considered whether the claimant had established that he was dismissed by virtue of section 95 (1) (c) ERA in that he resigned in circumstances in which he was entitled to treat himself as dismissed. I have considered each of the matters relied upon as being a fundamental breach of contract (set out at paragraph 1.1.1 of the list of issues above), looking at whether such events happened as alleged (issue 1.1.1) and then whether there was a breach of the implied term of trust and confidence on each allegation individually and also on all cumulatively (issue 1.1.1.2). I then considered whether the claimant affirmed or waived any such breaches (issue 1.1.4) and whether the claimant resigned in response to any breach that was found (issue 1.1.3). My conclusions on each matter are as follows:

- 16.1. The first matter that was relied upon is the respondent informing the claimant that he had been overpaid in April 2023 and accusing him of authorising a rate of pay and paying this to himself without the respondent's approval. The claimant also pointed to the communication of the same date when he was informed that he would be paid from May 2023 at a rate lower than the one agreed. As per findings of fact made at paragraph 4.13 above, this did take place as alleged. I was also satisfied that this did amount to conduct which was calculated and likely to destroy or seriously damage the trust and confidence between the claimant and the respondent and that the respondent had no reasonable and proper cause for behaving in that

manner (not such argument having been advanced by the respondent). The claimant and the respondent had agreed verbally that the claimant would perform the role of Managing Director of the respondent from 1 April 2023 onwards at an annual rate of pay of £80,000 (see paragraph 4.6 above). At the end of April 2023, the claimant submitted the schedule of pay rates to those responsible for the respondent's payroll and the sums due to him were authorised and paid to him at this rate (see paragraph 4.8). The respondent's Chief Financial Office acknowledged that this rate of pay was an agreed term on 8 May 2023 (see paragraph 4.11). Accordingly by stating incorrectly that the claimant had been overpaid and accusing him of effectively administering such an overpayment without due authority, the respondent did act in a way that I was satisfied was calculated and likely to destroy trust and confidence. The respondent has not defended the claim and suggested any possible reasonable and proper cause for doing this.

- 16.2. The claimant further contended that he was refused access to the respondent's premises on 11 and 12 May 2023. This is plainly conduct likely to destroy or seriously damage trust and confidence in the employment relationship and I was unable to conclude in the absence of any explanation as to why this was done that there was any reasonable or proper cause.
17. On the next issues at 1.1.3 and 1.1.4 above of whether the claimant affirmed or waived any breaches and if not, whether he resigned in response to the breach I was satisfied on the findings of fact above that the claimant resigned in response to breaches outlined. He submitted his resignation on 14 May 2023 at a meeting and this was expressly stated as taking effect on 12 May 2023. This was the day after he was notified of the issue regarding his wages and the same date of the second occasion he was refused access to the respondent's premises. I accepted the claimant's submission that the conduct of the respondent from 2 May 2023 when the claimant was informed that the respondent did not intend to honour the terms of the agreement related to the business sale led to him to be extremely concerned about the ethics of the respondent. However it was when he was notified that he would not be paid at the agreed rate and effectively shut out of the business that he decided he no longer had any trust and confidence in the respondent.
18. I considered whether the claimant affirmed his contract following the breaches identified by entering into discussions about a possible future consultancy agreement. The claimant had already resigned at this point and he chose not to retract his resignation as part of these discussions. Therefore his decision has already crystallised and he had not affirmed the breach by choosing to briefly explore the possibility of an ongoing consultancy. The claimant also informed the respondent just one day later that he had decided he was not prepared to discuss terms for an ongoing consultancy
19. Therefore in considering the five questions the Kaur case required me to ask I concluded that firstly the most recent act (or omission) on the part of the

employer that caused, or triggered, the claimant's resignation was the e mail sent to him on 11 May 2023 and being refused access to work on that date and the day after. Secondly, I concluded that as the claimant resigned with effect on 12 May 2023, that he did not affirm the contract since that act by exploring possible future consultancy. There was a clear course of conduct comprising several acts and omissions which, viewed individually and cumulatively, amounted to a (repudiatory) breach of the Malik term. Lastly for the reasons already explained I was satisfied that the claimant resigned in response (or partly in response) to that breach of contract.

20. I then went on to consider whether the dismissal was nonetheless fair in all the circumstances under section 98 (4) ERA. The respondent did not defend the claim and did not plead any positive case as to the reason for any dismissal. Therefore as the claimant was dismissed and the respondent has not shown a reason for dismissal, it is an unfair dismissal and I therefore concluded that the claimant was constructively unfairly dismissed.

21. Dealing with issues of remedy, the claimant was entitled to a basic award of £11,574. The claimant was 43 years old at the date of his dismissal on 12 May 2023 and had completed 17 complete years of service, having commenced employment on 1 June 2005. He was entitled to 1 week's pay for each full year worked between the ages of 22 and 41 and 1.5 week's pay for each full year worked when he was 41 or older. His gross weekly pay as at the date of dismissal was £1538.46 but this was capped at the limit in force at the time of £643.

22. As to the level of a compensatory award I determined that the claimant should be compensated in respect of loss of earnings from the date of dismissal up until the date of the hearing i.e until 15 January 2024 in light of the findings of fact made above about his ability to seek work. The claimant was awarded a sum in respect of breach of contract for the first 12 weeks of this period – see below, so his financial losses started on 4 August 2023 and ended on 15 January 2024. This was a period of 23 weeks and the claimant's net weekly pay for this period was £1066.46 leading to a total loss of earnings awarded of £24,528. I also awarded the claimant the sum of £500 in respect of loss of statutory rights leaving a total compensatory award of £25,028.

Unlawful deduction from wages claim

23. I accepted that the claimant had been underpaid for the period 1 to 12 May 2023. He had worked 2 full weeks and should have been paid the gross sum of £3,076.92 by the claimant. However the claimant was in fact paid the sum of £500 for this period so was underpaid by £2576.92, not the full amount of £3,076.92 as per the written judgment issued. I have issued a certificate of correction and revised judgment under the slip rule to correct this miscalculation.

Breach of contract claim

24. As the claimant was constructively dismissed he was necessarily dismissed in breach of contract. The only question I had to determine was what the claimant’s period of notice period. The verbal agreement between the claimant and the respondent as to period of notice was that the claimant would be entitled to a minimum period of notice of 6 months (see paragraph 4.6) but as the precise period of notice was not finalised, I have determined that the relevant period of notice that the claimant was entitled to was the statutory minimum period of notice as determined under section 86 ERA. The claimant had been continuously employed for 17 years as at the date of dismissal and thus was entitled to a statutory minimum period of notice of 12 weeks. I have therefore awarded damages for breach of contract of £18,461.54 representing 12 weeks gross pay. As the claimant will be taxed on this sum as this is post employment notice pay, I have therefore made this award on a gross basis.

Holiday pay claim

25. I accepted the unchallenged submission of the claimant that at the time of dismissal he had accrued but untaken annual leave of 11 days. Therefore the gross sum of £3,384.61 was awarded in respect of accrued but untaken holiday pay under the provisions of Regulations 13, 13A and 14 WTR.

Claim for a redundancy payment

26. The claimant was constructively dismissed but he did not in fact contend that his dismissal was by reason of redundancy. The role he had performed at the respondent still existed at the time of his dismissal. He is therefore not eligible for a redundancy payment as he was not dismissed by the respondent by reason of redundancy as required by section 135 ERA. This claim was therefore dismissed.

Employment Judge Flood

Date: 14 March 2023

WRITTEN REASONS SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS

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