



EMPLOYMENT TRIBUNALS

Claimant: Mr B Gareche
Respondent: Brunswick East Limited
Heard at: East London Hearing Centre (by CVP)
On: 16 November 2023
Before: Employment Judge J Jones

Representation

For the Claimant: Ms Hamilton (Claimant's wife)
For the Respondent: Ms Hall (Litigation Consultant)

JUDGMENT

1. The complaint of breach of contract in relation to notice pay is well-founded.
2. The Respondent shall pay the Claimant £1,200 (12 days x £100 per day) to the Claimant as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the Claimant will have to pay tax on it as post-employment notice pay.
3. The complaint of a failure to pay holiday is well-founded. The Claimant is owed half day holiday pay. The Claimant is entitled to £50.00 outstanding holiday pay.
4. The complaint of a failure to pay pension contributions failed.
5. The complaint of unlawful deduction of wages for 29 December failed.
6. The Tribunal awards the Claimant an uplift of 20% to reflect the Respondent's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
7. The Claimant's remedy is $\pounds 1,200 + \pounds 50 = \pounds 1250 \times 20\% = 250$. $\pounds 1250 + 250 = \pounds 1,500$.
8. The Claimant is entitled to a remedy of £1,500.

9. **The Respondent is ordered to pay the Claimant the sum of £1,500 as is remedy for his successful claims.**

REASONS

History of this Litigation

1. In this claim the Claimant complained of unlawful deduction of wages, failure to pay holiday pay, failure to make pension contributions and for a un uplift for failure to comply with the ACAS Code of Practice. If he succeeds, the Claimant also sought a preparation time order, in respect of time and costs incurred in bringing his claim.
2. On 4 June 2023 the Claimant issued this complaint in this Employment Tribunal. The address for the Respondent which the Claimant entered on his ET1 was 29a Sigdon Road, London E8 1AP. He also put the business address at 17 Amhurst Terrace, E8 2BT. The Respondent was served with the claim at the Sigdon Road address on 6 June 2023 and given until 4 July to send in its response.
3. On 26 June the Respondent wrote to the Tribunal to say that they had been told by ACAS that they had a claim against them from the Claimant but that they had not received it. Ms Shaunae England, one of the Respondent's directors asked for the claim to be posted to her at 27 Ridley Road, E7 0LU. At the same time, the Respondent submitted its Response on 28 June 2023, in which it denied all of the complaints. In the Response form the Respondent confirmed that its address was 27 Ridley Road.
4. The Tribunal sent a copy of the ET1 to the Respondent on 12 July 2023.
5. The matter was set down for a 1hour hearing on 2 October 2023. A Notice of Hearing dated 12 July was sent to the Respondent at 29a Sigdon Road and the Bakehouse, 17 Amhurst Terrace. The Notice included orders for the preparation of the case for the Hearing. The Claimant was to write to the Respondent within 4 weeks of the date of the letter to set out how much he is claiming together with copies of all supporting documents and evidence. The Respondent was ordered to send its relevant documents and evidence to the Claimant within 6 weeks of the date of the letter. Both parties were ordered to prepare witness statements and to send the Tribunal copies of all documents and evidence.
6. On 24 July the Claimant wrote to the Court requesting summary judgment as he had not been told that the Respondent had submitted in its Response. The Claimant also set out the details of his claim and attached supporting documents, in compliance with the 12 July order.
7. EJ Russell made a default judgment against the Respondent dated 19 August 2023.

8. On 14 September, EJ Russell wrote to the parties and stated that as the Response had been sent to the Tribunal on 28 June, it had been submitted in time. She confirmed that the default judgment would be revoked.
9. The Claimant notified the Tribunal that the Respondent had not complied with the order to send its documents within 6 weeks of the date of the 12 July letter. The Respondent did not provide the documents as ordered. Some documents were produced on the morning of the hearing.
10. The matter came for hearing in this court on 2 October 2023. The Respondent initially denied receipt of the Notice of Hearing but as it had been sent to the Respondent's business address and Ms Hamilton had also sent it to the Respondent's official email address set out on its website; the Tribunal deemed it to have been properly served. The Claimant applied to have the response struck out as the Respondent had not complied with the disclosure orders set out in the 12 July Notice of Hearing. The orders and matters addressed at that hearing are set out in a separate document and will not be repeated here. The hearing was adjourned to 16 November 2023, as there was insufficient time to hear evidence and address the Claimant's complaints.
11. The Respondent sent the bundle of documents to the Claimant outside of the time set out in the case management orders made on 3 October. The email attachment was sent on 9 November rather than 23 October, which was the date of the order.
12. The Tribunal apologises to the parties for the delay in the promulgation of these reasons and judgment. This was due to the pressure of work on the judge.

Evidence

13. At the hearing on 16 November, the Tribunal had a bundle of all documents. The Tribunal also heard sworn evidence from the Claimant, Ms Shaunae England, a director in the Respondent and from Ms Natasha Bacon, her sister, who was also a director in the Respondent. The Tribunal also heard from Ms Carol Puttussery, head baker and the Claimant's line manager.
14. During the preparation of the case for hearing, the Respondent sent a letter to the Tribunal which was derogatory of the Claimant and his character. The Claimant was upset about this. The Respondent made it clear at the start of the hearing that they were not relying on the letter in the hearing. It raised matters which were never raised with the Claimant during his employment or subsequently. It was a complete shock to the Claimant and both he and his representative were upset about it. We did not deal with this letter in any detail in the hearing because the Respondent did not rely on it.
15. From the evidence presented to the Tribunal at the hearing, which the parties relied on, the Tribunal make the following findings of fact.

Findings of Fact

16. The Respondent is a cafe and bakehouse which was established by sisters Shaunae England and Natasha Bacon in 2015 in Dalston.

17. The Claimant began working for the Respondent On 5 December 2022. He was employed as a Baker at the Hackney Downs location. He was contracted to work 45 hours per week; these hours were worked across five days, whilst the other two days were rostered days off. The Claimant usually took his days off on Thursday and Friday.
18. The Respondent was aware that English was not the Claimant's first language. The Claimant also spoke Arabic and French. This was the Claimant's first job in the UK as the Respondent would have known from his CV, which referred to his last job in France. Ms England confirmed in her evidence that the Claimant struggles with English and that in her experience, he does not always understand what is being said to him.
19. The Respondent also confirmed that most people working in the business did not have English as their first language. Some members of staff spoke Italian, others French and others Spanish and they were therefore used to dealing with people for whom English was not their first language.
20. The Claimant's contract of employment with the Respondent was in the bundle of documents. The relevant clauses of the contract were:-

Clause 2.1 - In which it was stated that the Claimant's employment was subject to a trial period of 3 months.

Clauses 6.1 and 6.2 - In which it was stated that the Claimant's normal hours of work are between 6am and 3pm, Monday to Saturday – a total of 45 hours. The Claimant was entitled to a lunch break of half hour at a time to be agreed.

Clause 7.1 setting out his salary as the sum of £26,000 gross per annum, to be paid on the last working day of the month.

Clause 9 – In which the Claimant's holiday entitlement of 28 days per annum was set out. The Respondent's holiday year ran from 1 April to 31 March. Clause 9 also set out the arrangements for taking leave. For example, paragraph 9.4. stated '*You must agree the dates of your holidays at least 28 days in advance with your manager. Request can be made through our online rota system, Find my shift.*'

Clause 12 – which stated: '*We shall enrol you automatically in the Workplace Pension Scheme with Smart Pension*'. The Respondent would pay 3% into the Scheme and the Claimant as employee was expected to contribute 5% by deductions from his salary.

Clause 19 – which set out the notice period that either the Claimant or the Respondent had to give each other to terminate the contract. After four weeks of employment, the notice period was four weeks.

Clause 20 – which stated that the Respondent expected the employee to be available to work during the notice period. It also states that the Respondent reserved the right, entirely at their discretion to terminate the employee's employment before the expiration of the notice period and

pay him the money in place of the salary that he would have earned during the unworked balance of the notice period. The Respondent also reserved the right to require the employee to remain at home during all or part of the notice period.

21. There were no problems with the Claimant's performance.
22. It is likely that the business was shut between 25 and 27 December 2022, inclusive. I find it also likely that Ms Puthessary, the Head Baker and the Claimant's line manager, was at work on 27 December but that she was there on her own. It is highly unlikely that the Claimant worked on 27 December 2022. This was not a leave day but was a rostered day off, in lieu of him working on 29 December. The Claimant was supposed to have his usual Thursday off on 29 December. Instead, Spencer Woods, the General Manager, called the Claimant and asked him to work on 29 December and take 27 December as his rostered day off. The Claimant agreed and the Tribunal finds that the Claimant did work on 29 December.
23. It is likely that in December, the Claimant spoke to Ms Puthessary, his direct line manager, about taking annual leave and she advised him to use www.findmyshift.co.uk which was the website the Respondent used to log/manage shifts and annual leave for its employees. She explained to him how he could use the site. However, I find it unlikely that he was shown by Ms England or Ms Puthessary how to use the site. Also, the Claimant did not book any leave during his short employment with the Respondent. This Tribunal did not have any evidence that the Claimant ever used the site to book leave or change shifts.
24. Shortly after, the Claimant also asked Ms Puthessary about leaving the Respondent's employment.
25. On 5 February, the Claimant also spoke to Ms England, told her that he wanted to resign. He told her that he was fatigued and tired and that he wanted to leave. It is also likely that given his fatigue, the Claimant stated that he wanted to be released as soon as possible. However, I find it unlikely that he stated that he did not want to work his notice. If he had said that I find it likely that the Respondent would have told him that it was not possible to leave without working his notice, as they would need time to find a replacement for him. Ms Puthessary's evidence was that the team in the bakery was small and that they were overstretched.
26. He was asked to put his resignation in writing and on the same day, 5 February, he wrote a resignation letter to Ms England which is at page 116. It stated as follows:

'As per our conversation today, I am writing to officially hand in my resignation and am giving you four weeks' notice as per my employment contract.

Since starting on 5 December, I have not used any of my annual leave entitlement and would like to use this at the end of my notice period. Please confirm my leave entitlement, so we can confirm my last day in post.'

27. It is highly unlikely that the Claimant said to the Respondent that he did not want to work his notice. It is likely that as he had given his notice, he intended to work it. However, it is also likely that he made it clear to Ms England in their conversation that he wanted to stop working for the Respondent as soon as possible.
28. The Claimant's written resignation gave the indication that the Claimant wanted to use his annual leave as part of his notice, to enable him to stop working sooner than he would do if he worked the full four weeks of his notice. The Tribunal finds that this is what the Claimant meant when he said in his resignation email that once the Respondent has confirmed the number of annual leave days that had been accrued; then they could agree his last day in post. If the Claimant's intention was to work until 5 March, which was exactly 4 weeks after the date of his notice, and get paid for his accrued but untaken leave, then the last day of employment would not have altered no matter how many leave days he had accrued. It would only alter if he used some of the days at the end of his notice period as annual leave and this is more likely to be what he meant.
29. The Respondent did not discuss garden leave with the Claimant. The Claimant asked Ms Puthessary on many occasions about his annual leave and how many days he had accrued. Ms Puthessary was unable to help him. In January, before his resignation, the Claimant asked Spencer how many annual leave days he had accrued, he was told that he had 7 days leave available to him. This was never confirmed in writing. He was also never told that Spencer had been wrong and that he had less leave accumulated because of the bakery being closed on some days over Christmas.
30. The Respondent never had a discussion with the Claimant about his outstanding leave and how this may or may not affect his date of termination. He did not get a written response to his letter of resignation.
31. I find it unlikely that the Claimant would have told anyone at the Respondent that he did not want to work his notice. The resignation letter suggested that he intended to work his notice and use his outstanding leave on some of the days of his notice period.
32. The Claimant had 25, 26 December and 1 January as annual leave, because the bakery was shut on those days. The Claimant confirmed that he was paid for those days. As the Claimant worked on 29 December, it is likely that the Respondent changed his rest day to 27 December so that he could come in and work the 29 December shift.
33. The Claimant's hourly rate works out at £12.50 per hour (gross). In December 2022, the Claimant worked 16 9-hour shifts, totalling 144 hours. 144 hours of work paid at £12.50 per hour amounts to £1,800. The Claimant was paid £1,800 in his December payslip.
34. The Claimant asked for the Respondent to put in writing, the situation in writing with regard to his notice period and his final pay, but the Respondent failed to do so until after the end of the Claimant's employment.

35. After the Claimant submitted his resignation, Ms England and Ms Puthessary discussed the Claimant's resignation and that he wanted to use his outstanding leave in his notice period because of him being tired. Ms Puthessary assumed that the Claimant did not want to work his notice because he stated that he wanted to finish working as soon as possible. It is highly unlikely that the Claimant stated to Ms Puthessary that he did not want to work his notice.
36. In their conversation Ms Puthessary asked the Claimant why he wanted to leave and if there was anything the Respondent could do to help. He confirmed that he wanted to leave as early as possible. Her evidence to the Tribunal was that he would have known that his outstanding annual leave would not have covered his notice period, but she did not mention this in their discussion. No one wrote to the Claimant to tell him that his holiday pay did not cover the notice period and that he would be unpaid for the other days.
37. Ms England confirmed in evidence that the Claimant had not asked to take unpaid leave. She also confirmed that in his letter of resignation he had expressed an intention to work his notice.
38. Ms Puthessary and the Directors rejigged the rotas to allow the Claimant to leave in February, without discussing this with him. Ms Puthessary offered to work the Claimant's shifts and shared the remaining shifts among other staff. She inputted 7 days leave into the system for the Claimant, but she did not check with him before doing so. It was not agreed with him. The Claimant had not asked for leave. He had asked to be told how many days leave he had left and to discuss his last working day.
39. At the end of the shift on 14 February, Ms Puthessary told the Claimant that Ms England had asked her to tell him that he had worked his last shift and that he should not come to work again apart from covering a shift on 22 February. This was a surprise to the Claimant as he was not expecting this to be his last day. She did not tell the Claimant that some days would be unpaid. She also assumed that the Claimant had looked on www.findmyshift.co.uk and was happy with the way that his shifts had been changed.
40. The Respondent had not written to the Claimant to confirm his last shift or to confirm how many annual leave days he had accrued - as he had asked or how his final salary might be affected if he did not work out his full notice. The Claimant was clearly not familiar with the site www.findmyshift.co.uk which the Respondent says would have shown him all this information. It is clear that he logged on to the site on many occasions as shown on page 184 but those were all after 14 February.
41. The Claimant did as he was instructed on 14 February. He went home and did not return to work until 22 February to work the shift he had been told to do.
42. The Claimant was not aware of what had happened until he received his pay on 28 February. He was paid £1,450 gross or £1,401.76 net. His usual monthly take-home pay was £2,166.66 gross or £2,032.42 net. The Claimant immediately began telephoning the Respondent for an explanation.

43. The Claimant emailed Ms Bacon on 28 February to ask for an explanation of his salary, how much leave he had been paid for and for confirmation of his leave entitlement. Ms Bacon responded also by email on the same day to confirm that the Claimant's monthly salary based on a 5-day week, would usually be £2,166.66. She stated that from his start date to the end of his employment, the Claimant had accrued 6.5 days leave. She confirmed that two days leave had been taken in December, one in January, which meant that the Claimant only had 3.5 days remaining. The days in February which he did not work were counted against his leave days but as his leave was only 3.5 days and there were 7 days during which he did not work, he was only paid for the 3.5 days.
44. The Claimant replied to say that he never requested any leave. He had asked how many days were outstanding with the intention to ask for leave, but as he was never told how many days there were in writing, he had never requested any leave. The Claimant had been told by Spencer Woods, in January that he had 7 days outstanding, then on 28 February, Corina Stratulat, the Respondent's Payroll Manager, told him in writing, in answer to his email; that he had accrued 6.3 days. This was also stated by Ms Bacon in her email.
45. The Claimant had not asked for or booked leave or requested leave in the www.findmyshift.co.uk site.
46. In his email of 4 March, the Claimant informed the Respondent that as there was a clause in his contract which gave the Respondent the right to terminate his employment earlier than the expiration of the notice period, he thought that they were exercising this right when he was sent home on 14 February. Clause 20 of the contract also states, as quoted above, that if the Respondent terminates the contract earlier than the termination date, it will pay the employee the balance that he would have earned during the balance of the notice period. The Claimant asked to be paid up to 5 March and the outstanding leave balance and the extra day that he worked on 27 December. He also asked to be paid the full amount of leave accrued to the end of his employment.
47. The Claimant and the Respondent continued to correspond about these matters, but they did not resolve these issues between them. He wrote to the Respondent on 9, 14 and 17 March and submitted a grievance for breach of contract and unlawful deduction of wages on 22 March. On the same day, 22 March, Ms England replied to the Claimant confirming that he told both her and Ms Puthessary that he wanted to '*finish as soon as possible*' and '*finish early*' and that he should have said something if they had misunderstood him. The Respondent did not write to the Claimant to inform him of the arrangements the Respondent had made or that his employment would end in February. The Claimant would not have known that he had been misunderstood until he received his pay.
48. The Respondent was inconsistent about the Claimant's last day of employment. In the ET3 form, the Respondent stated that his last day of employment was 14 February 2023. In the original bundle of documents which the Respondent sent to the Tribunal on 1 October, the Respondent stated that the Claimant was employed at the bakery until 15 February 2023. Elsewhere in the same bundle, the Respondent stated that the Claimant's last official day had been 22 February 2023.

49. Although the Claimant's contract stated that he would be automatically auto enrolled in a pension, the Respondent never wrote to the Claimant to confirm that enrolment. There were no deductions ever taken from his wages for his pension. Once his employment ended, the Claimant wrote to the Respondent on 4 April to enquire after his pension contributions.
50. On 10 April, the Claimant submitted a grievance about his pension contributions. The Respondent replied on the same day to inform him that the auto-enrolment had been postponed to the end of his three-month probation period. The Respondent also sent him a letter like the one he should have received informing of the three-month postponement. At the time, the Respondent believed that it had failed to send him the letter at the start of his employment. Ms England told the Claimant in correspondence that no letter had been sent to him informing him that his enrolment into the Respondent's pension scheme would be deferred for three months. No letter was disclosed in the response to the Claimant's subject access request in March 2023.
51. On 27 September, Ms England wrote to Corina Stratulat to ask her whether she had a copy of the pension postponement letter and any evidence that it had been sent. Ms Stratulat sent Ms England a copy of a letter that had been sent to the Claimant on 22 December 2022, which informed him that if he was still in post on 4 March, he would be entitled to be enrolled into the Respondent's workplace pension scheme. This is why in the Respondent's ET3 form (page 29), it stated

'Bilal was not auto enrolled as his enrolment was postponed until after his 3 month probation period. Our accountants who process payroll sent him a letter explaining this. His payslips show that no deductions were made, and the payments to his bank account match his payslips.'

52. Just before this hearing, the Claimant's representative contacted the Respondent's external payroll who confirmed that a pension deferral letter had been sent to the Claimant via Xero's automated service. It was only then that the Claimant's representative found the letter in the Claimant's junk mail. During the hearing the Claimant's representative confirmed that the Claimant had subsequently found the letter that had been sent to him on 22 December in his junk mail. It was not clear when this was discovered but it is likely that it was in preparation for this hearing.
53. Since neither party presented the Tribunal with the relevant information, the Tribunal consulted the GOV.UK website at '*Workplace Pensions – what your employer can and cannot do*' which stated as follows:-

'What employers can do

Delay the enrolment date

Your employer can delay the date they must enrol you into a pension scheme by up to 3 months.

Your employer must:

- *tell you about the delay in writing*
- *let you join in the meantime if you ask to*

First payments

Your employer can pay the first 3 months of contributions as a lump sum on the 22nd of the fourth month.'

54. The Claimant submitted a grievance about the way his employment ended and about the pension issue. The Claimant's contract stated at Clause 18.2 that the Respondent encouraged employee to speak to their manager, or a more senior manager, if there was a concern about a work-related problem. It also stated that if a concern is presented to the business in writing, they will assume that it is a grievance and that the employee is invoking the grievance procedure. The Claimant did not have a copy of the Respondent's grievance procedure. He had to write twice to the Respondent before it was sent to him. The Respondent did not treat the Claimant's letters as grievances.
55. Ms Bacon gave evidence about an investigation she undertook into the Claimant's grievance. She looked at www.findmyshift.co.uk, she spoke to Ms England, Mr Woods and Ms Puthessary. She did not speak to the Claimant or arrange a grievance meeting. She replied to the Claimant on 9 March. In her response, Ms Bacon stated that it was clear to Ms England and Ms Puthessary that the Claimant had asked to use his annual leave as part of his notice period. She stated that gardening leave would not happen unless the Respondent went through a formal set of procedures. She also stated that the holiday requests from him had been completed on www.findmyshift.co.uk on 17 February, following his conversation with Ms Puthessary on 14 February. It is likely that this was what Ms Puthessary told her. In his response, the Claimant pointed out that the leave had been added to his records on the site on 22 February, which was after he had been told that he was to go home.
56. In one of her letters to the Claimant she stated the following:
- "Your February pay is broken down as follows: - 11 days paid, pro rata based on your salary plus 3.5 days holiday. In total you requested 7 days holiday for February, however as you only have 3.5 days remaining, this is what you have been paid. I hope this helps, should you have any further questions please do not hesitate to contact me."*
57. As the issues remained unresolved after further correspondence, the Claimant contacted ACAS on 29 March 2023 to begin the early conciliation process. The ACAS certificate was issued on 10 May 2023. The employment tribunal claim was issued on 4 June 2023.

Law

58. Section 13(1) of the Employment Rights Act 1996 (ERA) states that an employer shall not make any deductions from wages of a worker employed by him unless the deduction is required or authorised by a statutory provision or a relevant provision of the worker's contract.

59. Section 13(2) defines “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised –
- (a) 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.

60. The relevant clauses in the Working time Regulations 1998 are as follows:-

Regulation 13 which states that a worker is entitled to 4 weeks’ annual leave in each leave year. Regulation 13A gives an employee an additional 1.6 weeks.

Regulation 15 which states that a worker may take leave to which he is entitled on such days as he may elect by giving notice to his employer in accordance with paragraph (3) subject to any requirement imposed on him by his employer under paragraph (2).

Regulation 15, Subsection (2), which gives an employer the right to say when a worker must take leave or cannot take leave, by giving notice to the worker in accordance with subsection (3).

Regulation 15, subsection (3) states that such notice as referred to above can cover all of the worker’s leave or parts of it, and must be given by either the employer or the employee, before the relevant date.

Regulation 15, Subsection (4) defines the relevant date as different depending on who is giving the notice. If a worker giving notice of taking leave, the notice must be given twice as many days in advance of the earliest date set out in the notice as the number of days or part-days to which the notice relates. If the notice is being given by an employer requiring a worker to take leave, then the relevant date is as many days in advance of the earliest day specified as the number of days or part-days to which the notice relates.

Regulation 13 states that if a worker’s employment is terminated during the course of his leave year, he is entitled to be paid any accrued leave that has not been taken. The worker should be paid in lieu of the leave.

61. The Tribunal’s jurisdiction in relation to complaints of breach of contract stem from the Extension of Jurisdiction (England & Wales) Order 1994. Article 3 from that Order states that proceedings may be brought before an employment tribunal in respect of a claim of an employee for recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine; (b) the

claim is not one to which article 5 applies; and (c) the claim arises or is outstanding on the termination of the employee's employment.

62. Subsection (1) of Section 207A Trade Union & Labour Relations (Consolidation) Act 1992 (TUL(C)RA) states that if, in a case of proceedings to which the section applies, it appears to an employment tribunal that the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, the employer has failed to comply with that Code in relation to that matter, and that failure was unreasonable; then the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes by no more than 25%. The Claimant applied for an ACAS uplift in this case.
63. The Section states that it only applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.
64. Schedule A2 of the TUL(C)RA does not include complaints of failure to pay holiday pay but does refer to unlawful deduction of wages and of breach of contract. ACAS has a Code of Practice on Disciplinary and Grievance Procedures (2015). It states that employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. The Code sets out arrangements for setting up the meeting and then states that after the meeting, the employer has to decide what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should also be informed of any appeal process that exists.

Applying Law to Facts

65. In this section of the judgment, the Tribunal will apply the relevant law set out above to the Claimant's complaint and the facts found above. The Tribunal will then set out the judgment at the end.
66. The issues in this case as set out in the case management orders from 2 October were as follows:-
 - (1) A claim for unpaid wages in respect of 14 days (15 February-5 March), after the Claimant was told to go home after he gave his notice.
 - (2) A claim for 4 days annual leave, which the Claimant says was earned but not paid.
 - (3) A claim for unpaid wages in respect of a shift on 29 December 2022 which both parties agree that he worked by which the Respondent says was exchanged for another shift that he was paid for.
 - (4) A claim for pension contributions that the Claimant did not receive and should have had from the start of his employment and not when his probation period ended.

- (5) ACAS uplift for the Respondent's failure to address any complaints the Claimant made about this and his attempts to resolve issues with them before bringing this claim.
- (6) The Claimant is also claiming for a preparation time order.
67. Both parties agreed that the Claimant sent the Respondent a written resignation letter in which he gave the Respondent the correct amount of notice for his contract, which was 4 weeks. The Claimant's employment was due to end on 5 March.
68. In the resignation letter, the Claimant expressed an intention to leave earlier, depending on the number of days of annual leave he had accrued. He did not ask for unpaid leave and he did not express an intention to not work his notice.
69. Although the Claimant asked in his resignation letter to be told how many annual leave days he had accrued, no one answered him. He did not have a response to his letter. He had been told earlier, in January that he had 7 days leave outstanding, which was incorrect because the days on which the business was closed, 25 and 26 December, and 1 January, had not yet been taken into account. It is likely that, when he gave his notice on 5 February, the Claimant had accrued 4 days annual leave.
70. It is this Tribunal's judgment that the Claimant never agreed with the Respondent that he would cease work on 14 February. The Claimant's notice was due to expire on 5 March. He never agreed a variation to the notice. The Claimant was told that he had to return and work a shift on 22 February, which he did.
71. It is this Tribunal's judgment that the Respondent made assumptions that the Claimant wanted to stop working as early as possible, even if it meant taking unpaid leave. That was not what the Claimant intended. The Respondent did not check this assumption with the Claimant.
72. It is also this Tribunal's judgment that the Respondent did not make sure that the Claimant agreed the holiday dates that they booked for him. He had not made a request on www.findmyshift.co.uk for any holiday and he had not asked Ms Puthessary to book leave for him. The Claimant had not done so because he did not know how many annual leave days he had left.
73. The Respondent assumed that he wanted to use all his leave as part of his notice. They also assumed that he wanted to take unpaid leave. They made these assumptions from the Claimant expressing a desire to leave work as early as possible because of being tired. It was not reasonable, in this Tribunal's judgment, for the Respondent to assume from him asking to be released as early as possible that this was an indication that he did not want to work his notice and that he wanted to take unpaid leave. No one checked this with him before he was told on 14 February that he was to go home and not return until 22 February for one day.
74. The Respondent did not ensure that the Claimant agreed the holiday dates. They did not check any of this with him. They acted based on his statement that he wanted to leave as early as possible and made changes to his contract

and his entitlement, without checking that he was aware of the consequences of leaving earlier than 5 March and that he wanted to take unpaid leave, when he had not asked to do so.

75. The Respondent's contract with the Claimant stated at Clause 9 that dates of annual leave have to be agreed in advance, with the manager. Ms Puthessary did not agree the leave dates with the Claimant and the Claimant made no request for leave.
76. There was no agreement to end the Claimant's employment on 14 February. The Respondent could not point to any document, email, telephone call or entry on www.findmyshift.co.uk in which the Claimant expressed his agreement to moving the end of his contract from 5 March back to 14 February.
77. The Claimant complied with Clause 20 and gave 4 weeks' notice of the end of his employment.
78. When the Claimant was asked to leave on 14 February, he did as he was told. He believed that the Respondent was exercising the right, which it reserved in Clause 20 of the contract, even if there are no issues with an employee's performance, *"to terminate the employee's employment before the expiration of the notice period and pay him the money in place of the salary that he would have earned during the unworked balance of the notice period. The Respondent also reserved the right to require the employee to remain at home during all or part of the notice period."*
79. The Respondent denied that the Claimant had been placed on garden leave and stated that it was a busy period for the bakery and that they would rather have had him work his notice that be at home. However, it was undisputed that on 14 February, Ms Puthessary told him that Ms England had said that he had to go home and remain there, apart from one shift on 22 February. The Respondent did not agree a variation to the notice period with the Claimant. To be told on 14 February that this was his last day was a surprise to the Claimant as he knew nothing about it.
80. The Respondent entered the leave dates on to www.findmyshift.co.uk after 14 February and the Claimant did not view his shifts on there, until after that date.
81. It is also this Tribunal's judgment that if the Respondent wishes to vary the Claimant's notice period, especially if the Claimant is someone known not to be a fluent English speaker and who has difficulty understanding what is said to him, the Respondent should have made sure that any variation to his contract or to his notice period was done following an agreement with the Claimant. This was particularly so if the variation would mean that the Claimant would be unpaid for some of his notice period. There was nothing in the resignation letter or in anything the Claimant said to the directors or to his line manager which indicated that he was prepared to take some of his notice as unpaid leave.

Judgment

82. The Tribunal's judgment on the issues in the case as set out above are as follows: -

83. Issue (1) - It is therefore this Tribunal's judgment that the Respondent breached the Claimant's contract by sending him home on 14 February and not paying him for the period 14 February to 5 March. It is likely that he was paid for 22 February. The Claimant is entitled to the wages that he would have earned during his notice period. The Claimant's final wage included an amount for 3.5 days annual leave. He is owed wages for the remainder of the days he would have worked, between 14 February and 5 March.
84. Issue (2) – It is this Tribunal's judgment that the Claimant was paid 3.5 days holiday in his February pay. He had already been paid for 2 days in December 2022 and 1 day in January 2023. The Claimant was entitled to 28 days holiday per year, (5.6 weeks) as set out in his written contract. This means that he earns 2.33 days leave for each month he was employed. The Claimant worked with the Respondent from 5 December to 5 March. He would have accrued 7 days in the period 5 December to 5 March ($2.33 \times 3 = 7$). As he has already been paid for 6.5 days ($3.5 + 3$), the Claimant is owed half a day's leave, which was outstanding on the termination of his employment on 5 March.
85. Issue (3) – It is this Tribunal's judgment that the Claimant worked on 29 December. This was on a Thursday, which would have been the Claimant's rostered day off. Instead of treating the 27 December as a holiday, the Respondent treated it as a rostered day off for the Claimant. His day off on 29 December was moved to 27 December and the Claimant worked on 29 December. It is this Tribunal's judgment that it is highly unlikely that the Claimant worked on both 27 and 29 December. Ms Puthessary gave clear evidence that she worked alone on 27 December. The Claimant is not owed for 29 December. Whereas everyone else was paid for leave on 25, 26, 27 December and 1 January (4 days). The Claimant was paid for three days (25, 26 December and 1 January) and although he was off on 27 December, that was not subtracted from his annual leave but was treated as a rostered day off. He therefore saved a day's holiday, while still having the day off. 27 December was not treated as annual leave for the Claimant but as a usual rostered day off i.e., as a Thursday or Friday. That was the way he was paid for working on 29 December. It is this Tribunal's judgment that the Claimant is not owed pay for 27 or 29 December.
86. Issue (4) – As stated on the Gov.UK website, the Respondent is able to postpone enrolment in the workplace pension scheme for 3 months. The Respondent must inform the employee of its decision to postpone their enrolment. The Respondent wrote the Claimant to inform him of the enrolment postponement. The letter was sent by the Respondent's payroll manager and unfortunately went into the Claimant's junk mail so that he did not read it until near this hearing. It is this Tribunal's judgment that the Respondent wrote to the Claimant on 22 December to notify him that his enrolment into the pension scheme was going to be delayed during his probation period. This letter was sent well before any disputes arose between the parties. It is this Tribunal's judgment that the postponement was genuine. It is likely that Ms England and Ms Bacon delegated the act of sending the letter to the Claimant to their payroll manager and that Ms England was not aware of whether or not the letter had been sent when she first answered the Claimant's query about it. She subsequently found out that the letter had been sent and was able to put the correct information in the Respondent's ET3 form. The Claimant resigned and

his resignation would have taken effect on 5 March. The Claimant would not have had his outstanding pension contributions unless his employment had continued beyond 5 March, being three months after his start date. It is therefore this Tribunal's judgment that the Claimant is not owed any employer pension contributions.

87. Issue (5) – the Claimant's application for an uplift for the Respondent's failure to address his complaints before he issued this claim.
88. It is this Tribunal's judgment that it can apply an uplift if the Respondent failed to comply with a relevant ACAS Code of practice, in certain circumstances.
89. Firstly, the Claimant's grievance which he raised on 22 March, concerned breach of contract and his complaint that he had suffered unlawful deduction of wages. Those are complaints which come under the ACAS Code of Practice on Disciplinary and Grievance Procedures. A relevant Code of Practice applies. The Respondent failed to set up a meeting to discuss the Claimant's grievance with him. Although it was Ms Bacon's evidence that she investigated the grievance, she failed to talk to the Claimant about it before doing so.
90. In relation to the grievance the Claimant raised about his holiday pay, although she did not speak to the Claimant, Ms Bacon spoke to people who would have relevant information about the issues the Claimant complained about, such as his manager – Ms Puthessary, and Ms England. The ACAS Code does not apply to complaints/grievances about annual leave.
91. The Claimant also complained on 22 March about the Respondent breaching his contract and about their unlawful deduction of his wages. The Respondent conducted no investigation of this. Ms England replied on the same day to tell him that that because he had told Ms Puthessary and herself that he wanted to finish early, they were right to shorten his notice period, terminate his employment early and put him on unpaid leave. The Claimant wrote many letters to the Respondent to try to resolve the issues of the notice period and notice pay and the wages. The complaints of breach of contract and unlawful deduction of wages concerns matters coming within the ambit of a relevant Code of Practice. The Respondent's failure to properly investigate these matters, to hold a grievance meeting with the Claimant to try to understand his complaint and the Respondent's failure to properly consider his complaint for any length of time, means that the Respondent has failed to comply with that Code in relation to those complaints. Ms Bacon made an attempt to investigate the complaints about holiday entitlement, but Ms England made no attempt to investigate the Claimant's grievance about breach of contract and unlawful deduction of wages. It does not appear that the Respondent considered the Claimant's complaint at all.
92. The Tribunal takes into account that this was a business run by two sisters, which meant that there were only a few people in the business apart from the Claimant and the partners, Ms Bacon and Ms England. There would have been only a few people who Ms Bacon and Ms England could have appointed to consider the Claimant's grievance, separate from themselves. Out of the people referred to in the hearing, they could have appointed Ms Statulat, or Mr Spencer. There may have been others not referred to in the hearing. The Respondent made no effort to properly address the grievance themselves or

find someone else to deal with it. Ms England dismissed the Claimant's grievance on the same day it was sent to her. If the Respondent did not want it addressed in the business, they could have appointed an external person to conduct the grievance process. The Respondent's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures was not reasonable.

93. It is this Tribunal's judgment that it is just and equitable for the Claimant to have an uplift to his award because of the Respondent's unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Claimant made every effort to resolve these matters with the Respondent by raising a grievance before he issued employment tribunal proceedings. Had the Respondent properly investigated the grievance raised on 22 March, these matters might have been resolved. The Tribunal considers it just and equitable in all the circumstances to uplift the Claimant's award by 20%.

Remedy

94. The Claimant is entitled to a remedy for his successful complaints.
95. The Claimant's annual salary was £26,000 gross. The Claimant's gross pay was £2,166 per month. His gross pay works out at £100 per day.
96. The Claimant's complaint of breach of contract is successful. The Respondent broke the Claimant's contract by terminating his contract earlier than the day his notice was due to expire, without any agreement with the Claimant to do so. The Claimant's remedy for breach of contract is as follows. The Claimant's pay at the end of February was for 11 days work plus 3.5 days leave. The 11 days that he was paid for were the following: - 1, 4, 5, 6, 7, 8, 11, 12, 13, 14 and 22 February. He was also paid for 3.5 days accrued holiday. The Claimant is entitled to pay for 15, 18, 19, 20, 21, 25, 26, 27, 28 February, 1, 4 and 5 March 2023 = 12 days pay. The Claimant is owed £1,200. The Claimant's remedy for breach of contract is £1,200.
97. The Claimant is owed ½ day's pay as his outstanding annual leave entitlement. This is a remedy of £50.00.
98. The Claimant is not entitled to pension contributions.
99. The Claimant did not explain his claim for expenses in the hearing.
100. The Claimant is entitled to a remedy of £1,200 + £50 = £1,250.
101. The Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. It was not reasonable for them fail to consider the Claimant's grievance. The Tribunal awards the Claimant a 20% uplift on the remedy to reflect the Respondent's failure to comply with the relevant code.
102. The Tribunal will also apply a 20% uplift for the Respondent's failure to comply with the relevant ACAS Code of Practice. £1,250 x 20% = £250.

103. The Claimant is entitled to a remedy of £1,500.

Preparation Time Order

104. The Claimant made submissions related to an application for costs in the submissions relating to the liability in this matter.

105. The Tribunal is unable to make a judgment on the issue of costs without giving both parties an opportunity to make the appropriate representations on the matter. The Claimant is advised to look at Rules 74 – 84 of the Employment Tribunals Rules of Procedure 2013 to see the particular circumstances in which an order for costs would be made in the employment tribunals. An order for costs would not be made against a party to litigation in the employment tribunal simply because the other party won. There would need to be conduct as described in Rule 76. The Claimant is also to consider that not all of his complaints have succeeded.

106. If, after due consideration of the relevant Rules the Claimant wishes to pursue his application for a preparation time order, he must write to the Tribunal making an application for such an order, addressing the points in the Rules. He must write to the Tribunal by Wednesday 1 May 2024. The Claimant may also wish to seek legal advice about this. The Respondent can also write to the Tribunal, if it so wishes. The Tribunal will give both parties the opportunity to comment on any application made.

Employment Judge J Jones
Date: 10 April 2024