



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Saunders  
Mr N Langdale  
Mrs L Hopkins

**Respondent:** The Sandgate Hotel Folkestone Limited

**Heard at:** Remotely via CVP for London South Employment Tribunal

**On:** 5 and 22 March 2024

**Before:** Employment Judge L Robertson

## **Representation**

Claimant: in person

Respondent: Mr A Martin of Goldmind Resourcery (legal representative)

**JUDGMENT** having been sent to the parties on 10 April 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. The respondent requested written reasons for these judgments the day after the judgments were sent to the parties.

### ***The Claimants' Claims***

2. The claimants claimed that they were employed by the respondent and that, upon the termination of their employment, they were owed unpaid wages, notice pay and holiday pay. Mrs Hopkins also brought an unfair dismissal claim which was subsequently dismissed on withdrawal. The respondent denied that the claimants were its employees and denied that it owed the claimants any unpaid monies.

### ***Tribunal proceedings***

3. At a public preliminary hearing on 11 August 2023, the claimants attended but the respondent did not (and nor was it represented). Employment Judge B Smith amended the name of the respondent to the name set out above and

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gave judgment that the claimants were employed by the respondent (ie The Sandgate Hotel Folkestone Limited) at all material times. Case Management Orders were made on the same date (which I shall refer to as “the August Case Management Orders”).

4. The case came before me for a final Hearing on 5 March 2024. Mr Martin of Goldmind Resourcery represented the respondent at the hearings on 5 and 22 March 2024. At the start of the hearing on 5 March, Mr Martin confirmed that Mrs Edwards would not be attending the hearing. There was no postponement application and Mr Martin was content to proceed in her absence.
5. It was necessary to adjourn the hearing part-heard after Mr Langdale’s evidence due to delays and difficulties in receiving documents and a late application to admit documents. The hearing was subsequently re-listed for 22 March 2024.
6. At the start of the hearing on 22 March, Mr Martin confirmed that Mrs Edwards would not be attending the hearing as she was away attending to her health, but he was content for the hearing to proceed in her absence.

***Evidence considered***

7. The parties presented witness evidence from the following witnesses:
  - 7.1. **Claimants** – each of the claimants and an unsigned letter from Dean Saunders-Finch.
  - 7.2. **Respondent** – an unsigned witness statement from Mrs Edwards, sole director and shareholder of the respondent. Although it is described as a summary of her defence, no application had been made to amend the Grounds of Resistance and this was treated therefore solely as a witness statement.
8. As Mrs Edwards and Dean Saunders-Finch had not signed their statement or letter, did not attend the hearing and could not be cross-examined, I gave limited weight to their evidence.
9. In addition to the pleadings, I also considered the following documents:
  - 9.1. Email from Mr Langdale (19 July 2023 at 11:41) attaching contract of employment; termination letter; payslips relating to September 2022, October 2022; draft payslip relating to November 2022;
  - 9.2. Email from Mrs Saunders (20 July 2023 at 15:39) attaching contract of employment; termination letter; payslips relating to September 2022 and October 2022; email from Mrs Edwards to Dean Saunders-Finch (10 November 2022 at 17:55) and letter from Dean Saunders-Finch referred to above.
  - 9.3. Email from Mr Langdale (5 February 2024 at 15:31, resent on 5 March 2024 at 10:08) – attaching schedule of loss for each claimant and documents referred to above.

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9.4. Email from Mrs Hopkins (5 March 2024 at 10:46, previously sent on or around 10 August 2023) attaching termination letter; payslips relating to September and October 2022; draft payslip relating to November 2022.

**CLAIMS AND ISSUES**

10. The claims and issues to be determined were set out in Employment Judge B Smith's Orders of 11 August 2023.

***Claims***

11. Each claimant's claims are as follows:

11.1. A claim of breach of contract, which is a claim for breach of contract under s3 of the Employment Tribunals Act 1996 (and subject to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994);

11.2. A claim of unlawful deduction from wages (arrears of pay) under Part II of the Employment Rights Act 1996 ("the ERA"); and

11.3. A claim for failure to pay holiday pay on termination of employment under the Working Time Regulations 1998 ("the WTR").

***Issues***

12. As noted above, Employment Judge B Smith had already decided that the claimants were employees of the respondent at all material times and so that was no longer an issue before me.

13. Mr Martin initially indicated that the issue of whether the claimants were employees of the respondent ought to be revisited. Mr Martin confirmed that no application had been made for a reconsideration of Employment Judge B Smith's judgment nor had any appeal been made and both would now be out of time. Mr Martin ultimately accepted that the claimants had been found to be employees of the respondent at all material times and therefore were also workers. All parties were content to proceed on this basis.

14. The issues for the Tribunal to determine were set out as follows:

***Notice Pay***

14.1. What was the claimants' notice period?

14.2. Was the claimant paid for that notice period?

***Holiday Pay (Working Time Regulations 1998)***

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

***Unauthorised deductions***

14.4. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

*Remedy – Consequential losses*

14.5. What consequential losses are claimed by the claimants?

14.6. Did the claimant, as a question of fact, suffer that consequential loss?

14.7. To the extent that any of the claims are successful, is the claimant entitled a sum in respect of consequential losses as a remedy?

**RELEVANT LAW**

***Unlawful deduction from wages***

15. The relevant statutory provisions are set out within the ERA as follows:

*Section 13*

*(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—*

*(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.*

*(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.*

16. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the ERA.

17. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early

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conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

***Breach of contract***

18. An employer will be in breach of contract if they terminate an employee's contract without the contractual notice to which the employee is entitled, unless the employee has committed a fundamental breach of contract which would entitle the employer to dismiss without notice.
19. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in section 86 ERA. For someone who has been employed at least one month but less than two years, this is one week's notice.
20. The aim of damages for breach of contract is to put the claimant in the position they would have been in had the contract been performed in accordance with its terms. Damages for breach of contract are, therefore, calculated on a net basis, but may need to be grossed up to take account of any tax that may be payable on the damages. Damages relating to notice pay are subject to tax.
21. A claim of breach of contract must be presented within 3 months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonably practicable to do so, in which case it must be submitted within what the Tribunal considers to be a reasonable period thereafter.

***Holiday pay***

22. The WTR provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The WTR provide for 5.6 weeks leave per annum.
23. Regulation 14 of the WTR provides, so far as relevant:
  - (1) *Paragraphs (1) to (4) of this regulation apply where—*
    - (a) *a worker's employment is terminated during the course of his leave year, and*
    - (b) *on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.*
  - (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).*
  - (3) *The payment due under paragraph (2) shall be—*

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- (a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or
- (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—

*A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;*

*B is the proportion of the worker's leave year which expired before the termination date, and*

*C is the period of leave taken by the worker between the start of the leave year and the termination date.*

24. Pursuant to Regulation 16 of the WTR, a worker is entitled to be paid a week's pay for each week of leave. A week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996, with some modifications.

## **FINDINGS OF FACT**

### *Context and General Findings*

25. As noted above, it had already been determined that the three claimants were employees of the respondent at all material times.
26. Mrs Edwards' statement and the letter from Dean Saunders-Finch were consistent as to the existence of a management contract between the respondent and a contractor, namely Hospitality and Leisure Management Limited, which commenced on 10 June 2022. The management contract was not before me but its existence was not disputed and I accept that it existed. The directors of the contractor are Dean Saunders-Finch and David Saunders-Finch; this was not disputed.
27. It was common ground that the claimants' employment was terminated following a disagreement between the respondent and Hospitality and Leisure Management Limited.
28. Although the respondent persisted with the argument that it had no knowledge of the claimants as its employees or that the contractor had no authority to dismiss the claimants because the management contract did not give that authority or had ended, the 10 November 2022 e-mail from Mrs Edwards to Dean Saunders-Finch confirms the opposite. In that email, Mrs Edwards referred to an agreement that the management contract would terminate with immediate effect and went on to say:

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*“The following steps have been agreed upon to facilitate an orderly handover of management responsibilities: ...2. Kindly prepare a notice to all remaining staff indicating that due to the financial situation concerning the hotel, all staff positions have been eliminated and staff contracts are terminated with a reasonable notice of 10 working days provided to staff.”*

29. The email refers to an agreement to meet again on 12 November 2022 to discuss those steps and the orderly transition. Mrs Edwards asked that Dean Saunders-Finch completed those steps prior to that meeting, and to have the letters ready for that meeting.
30. It was clear from this email that Mrs Edwards knew about the employees (the claimants). Further, Mrs Saunders had met Mrs Edwards and Precious Atkins after her interview with Dean Saunders-Finch and had had discussions about the business with Mrs Edwards throughout her employment.
31. It is also clear from this email that Mrs Edwards specifically asked and authorised Dean Saunders-Finch to give notice to terminate the claimants' employment and understood the claimants to be the respondent's employees – she would not have needed to make that request if she had believed that the employees were the contractor's employees as that would have been a matter for the contractor.
32. Dean Saunders-Finch's letter states that the contracts of employment were put together by the Hotel Business Manager, Ms Atkins. Mrs Edwards, Ms Atkins and Dean Saunders-Finch did not give oral evidence. However, taking into account Mrs Edwards' involvement in the details of the handover process and her request that the employees be given “reasonable notice” of two weeks, I find on the balance of probabilities that she had also been involved in and aware of the terms of their employment. If she had not been aware of the contractual terms, she would not have asked that a longer notice period than the statutory minimum be given in circumstances in which, as she put it in her 10 November email, there was a financial situation concerning the hotel. For these reasons, together with the earlier conclusion that the claimants were employees of the respondent at all material times, I am satisfied that the contractor had authority to enter into written contracts of employment with the claimants on its behalf and to terminate their employment.
33. Although it was the respondent's position that the documents produced by the claimants during these proceedings were not created ‘in real time’ and they were created afterwards, and Mrs Saunders could not explain how she had an earlier draft of the dismissal letter dated 10 November, I accepted the claimants' clear and persuasive evidence that the signed dismissal letters were the correct ones. The understanding of Mr Langdale and Mrs Saunders was that Mrs Edwards had a bookkeeper and/or an accountant and that Dean Saunders-Finch had passed the information about the termination payments to them and expected that they would arrange the payments in the usual way. Mrs Saunders had chased the payments with Mrs Edwards directly, within hours of the payments being due. I found that Mrs Hopkins was given her letter on the 12 November 2022; Mr Langdale was given his on 11 November 2022 and Mrs Saunders was given hers on 11 November 2022.

*Mr Langdale*

34. I accepted his evidence that he was employed from 1 September 2022 – although he helped out with flood restoration work before that, 1 September 2022 was the date on which his employment started. This included painting and refitting the kitchen after the hotel was flooded.
35. Although the respondent's position was that the contracts were not entered into at the time, I preferred Mr Langdale's persuasive evidence that the terms of his employment were set out in a written contract between the parties which was signed by Mr Langdale and Dean Saunders-Finch on 1 September 2022. The contract states that Mr Langdale's start date was 1 September 2022 and he was employed as Head Chef. Under the contract, he was entitled to a salary of £26,000 per annum.
36. Mr Langdale had been paid salary for 1-30 September on 25 September 2022. He had been paid salary for 1-31 October on 30 October 2022. Although the gross sums on the payslips differed from the contractual salary (one was slightly higher and another was slightly lower) and used an hourly rate of pay, Mr Langdale was not cross-examined about this and no claim had been made for the difference. I also note Mrs Saunders' evidence that she had queried the difference in her case with Dean Saunders-Finch at the time but had been told that the bookkeeper did the calculations. For reasons which are not clear, Mr Langdale's payslips were issued in the name of The Sandgate Hotel Ltd, a company which was dissolved on 13 April 2021.
37. On 11 November 2022, Mr Langdale attended for work. During his shift that day, he was told by Dean Saunders-Finch that, following a meeting with the hotel owner, the hotel would be closing with immediate effect. Although Mr Langdale thought that this discussion might have happened a day earlier - on 10 November – he was unsure and, taking into account that the meeting between Dean Saunders-Finch and Mrs Edwards had not taken place until the evening of 10 November 2022, I have found on balance that he was told on 11 November. He was given his dismissal letter on 11 November 2022 and told the same day not to attend work.
38. His employment ended on 25 November 2022 pursuant to the clear terms of that letter. Different dates were set out in the claim form (and subsequently quoted in the August Case Management Orders), but Mr Martin queried these and I made specific findings as to the dates.
39. On termination of his employment, Mr Langdale was sent a draft payslip for his salary for November 2022. However, I accept his cogent evidence that that was not paid any salary for work done during the month of November, nor was he paid any accrued holiday pay or notice pay. His evidence in this regard was consistent with the other claimants and, in essence, that of the respondent – which was saying that it had no obligation to pay the claimants and did not argue that it had made the payments. The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of Mr Langdale's contract, nor had Mr Langdale previously signified in writing his agreement or consent to the making of the deduction.
40. As to notice, the contract provides for 30 days' notice from the respondent. The reference to the probationary period is not relevant because that only applies



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when the company ends the employment because the employee is not the right fit and that was not applicable here. Mr Langdale was employed for 14 days of his notice period. He had been ready, willing and able to work throughout his employment and I was satisfied that he remained so during this period – the reason he did not attend for work was because he had been told not to in the dismissal letter. He did not receive any benefits in November or December 2022 and did not start alternative employment until February 2023.

41. As to holiday pay, Mr Langdale was entitled to 28 days of annual leave per year. He accrued holiday between 1 September and 25 November 2022. That equates to 1.32 working weeks' accrued holiday entitlement, based on an annual entitlement of 5.6 weeks' holiday pursuant to the WTR. I accept his uncontested evidence that he took no holiday during his employment.
42. There was no specific evidence that Mr Langdale had sustained financial loss which was attributable to non-payment.

*Mrs Saunders*

43. Mrs Saunders was employed by the respondent in the role of Front of House Manager between 4 July 2022 and 25 November 2022. Although different dates were set out in the claim form (and subsequently quoted in the August Case Management Orders), Mr Martin queried these dates and Mrs Saunders was unsure of her termination date. I have made specific findings in relation to the dates.
44. Although the respondent's position was that the contracts were not entered into at the time, I prefer Mrs Saunders' persuasive evidence that the terms of her employment were set out in a written contract between the parties which was given to her on 4 July 2022. The same day, it was signed by Mrs Saunders and Dean Saunders-Finch, the respondent's General Manager (Mrs Saunders' brother). That contract makes clear that her employment started on 4 July 2022 and her salary was £2,145 per month (which is £25,740 per annum).
45. Mrs Saunders had been paid salary for 1-30 September on 25 September 2022. She had been paid salary for 1-31 October on 30 October 2022. Although the gross sums on the payslips used an hourly rate of pay and were slightly lower than the contractual salary, she was not cross-examined about this. Further, Mrs Saunders had queried the difference with Dean Saunders-Finch at the time but had been told that the bookkeeper does the calculations, and no claim had been made for the difference. For reasons which are not clear, Mrs Saunders' payslips were also issued in the name of The Sandgate Hotel Ltd.
46. I accepted her cogent evidence that she worked as normal from 1 to 10 November 2022 inclusive. On 11 November 2022, Mrs Saunders met Dean Saunders-Finch who informed her that the hotel was to close immediately.
47. Although Mrs Saunders could not explain why she had submitted an earlier unsigned draft of the dismissal letter to the Tribunal, I prefer Mrs Saunders' persuasive evidence that she was given a dismissal letter on 11 November 2022 which was in the same terms as those of Mr Langdale and Mrs Hopkins. As such, I found that her employment ended on 25 November in accordance

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with the clear terms of the dismissal letter. I accept Mrs Saunders' cogent evidence that she had queried with Dean Saunders-Finch why she had not been given 30 days' notice in accordance with her contract and had been told that he had had to give the period of notice as instructed by Mrs Edwards.

48. I accepted her cogent evidence that she was not paid any salary in respect of the month of November, nor was she paid any accrued holiday pay or notice pay. Her evidence in this regard was consistent with that of the other claimants and, in essence, that of the respondent – which was saying that it had no obligation to pay the claimants and did not argue that it had made the payments. The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of Mrs Saunders' contract, nor had Mrs Saunders previously signified in writing her agreement or consent to the making of that deduction.
49. The contract provides for 30 days' notice from the respondent to terminate Mrs Saunders' employment. As with Mr Langdale, the reference to the probationary period is irrelevant because that only applies when the company ends the employment where the employee is not a right fit for the company and again that was not relevant here. Similarly to Mr Langdale, Mrs Saunders was employed for 14 days of her notice period.
50. She had been ready, willing and able to work throughout her employment and I have found that she remained so during this period – the only reason she did not attend for work was because she had been told that the hotel had closed. She did not start alternative work until 14 December 2022 and did not claim benefits in the intervening period.
51. As to holiday, Mrs Saunders was employed for 145 days of the holiday year (4 July 2022 to 25 November 2022). She had accrued 2.22 working weeks' holiday during that time, based on an annual holiday entitlement of 5.6 working weeks in the WTR. I accept her evidence that she had taken one week's holiday. As such, when her employment ended, she had 1.22 working weeks of accrued but untaken holiday entitlement.

*Mrs Hopkins*

52. Mrs Hopkins was employed as Housekeeper between 12 September and 25 November 2022. Although different dates were set out in the claim form (and subsequently quoted in the August Case Management Orders), Mr Martin queried these dates and Mrs Hopkins was unsure. Mrs Hopkins gave clear evidence, which I accept, that her first day of work was likely to have been 12 September 2022 as set out in her claim form.
53. Mrs Hopkins worked different hours each week. She was clear that she had been increasingly busy as her employment progressed, as it approached the Christmas period.
54. I accepted Mrs Hopkins' cogent evidence (which is consistent with the payslips and draft payslip for November) that she worked 43 hours in September, 62 hours in October and 89 hours in November, which is a total of 194 hours. Mrs Hopkins had been paid her wages for September on 25 September 2022. She had been paid her wages for October on 30 October 2022. In Mrs Hopkins'

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case, as she was paid hourly, there must have been a 'cut-off point' each month after which her shifts would have fallen to be paid in the next month and so the 89 hours in November is likely to have included some unpaid work for October (and similarly in relation to the previous month).

55. For reasons which are not clear, Mrs Hopkins' payslips were also issued in the name of The Sandgate Hotel Ltd. She was entitled to £10 per hour of work she carried out: this is clear from the payslips.
56. Mrs Hopkins was not given a written contract of employment at any time during her employment. There is therefore no evidence that an express agreement was reached as to the notice period which would apply. Had the matter been discussed at the start of Mrs Hopkins' employment, I found the terms that would have been agreed in relation to notice were those which applied to Mrs Saunders and Mr Langdale; that is, 30 days. There was no evidence of any other type of contract or different terms. Even if the contractual provisions relating to the probationary period were to apply to Mrs Hopkins as well as the other two claimants, for the same reasons that I have given in relation to the first two claimants, Mrs Hopkins would have been entitled to 30 days' notice under her contract.
57. On termination of her employment, she was sent a draft payslip for her wages for November 2022. However, I accept her cogent evidence that she was not paid any wages for the 89 hours of work due to be paid in November, nor was she paid any accrued holiday pay or notice pay. Her evidence in this regard was consistent with that of the other claimants and, in essence, that of the respondent – which was saying that it had no obligation to pay the claimants and did not argue that it had made the payments. The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of Mrs Hopkins' contract, nor had Mrs Hopkins previously signified in writing her agreement or consent to the making of that deduction.
58. In accordance with the clear terms of the dismissal letter, Mrs Hopkins' employment ended on 25 November 2022. She last worked on 10 November 2022 and, when she turned up for her shift on 11 November, she found the hotel to be closed. Mrs Hopkins then messaged Dean Saunders-Finch to ask what was happening - Mrs Hopkins could not recall the detail of those messages and they were not before me. She was not sure whether she was given the dismissal letter on 11 or 12 November, but thought that she received it the day after she had found the hotel to be closed – that is, on 12 November – and thought that that was the date on which her employment terminated. There being no evidence that Mrs Hopkins was given notice prior to being given the letter, I found that she was given notice by being given that letter and found on balance that she was given that letter on 12 November 2022. At one point in my oral judgment, I referred to Mrs Hopkins being given the letter on 11 December – this was in error and inconsistent with my clear earlier finding that she was given it on 12 November. The calculations set out below are accurate using the 12 November date.
59. Mrs Hopkins' employment terminated on 25 November 2022 in accordance with the clear terms of the dismissal letter.

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60. Mrs Hopkins was employed for 14 days of her notice period (12 to 25 November 2022). I accepted her evidence that she did not start alternative employment until around March 2023 and did not receive any benefits in November or December 2022.
61. Mrs Hopkins accrued holiday between 12 September and 25 November 2022. She was entitled to 5.6 working weeks' annual holiday entitlement under the WTR. During that period of her employment, she accrued 1.15 working weeks' holiday. I accept her cogent evidence that she took no holiday during that time.

**SUBMISSIONS**

62. The parties provided oral submissions. They are not set out in detail in these reasons but the parties can be assured that I considered all of the points made, even where there is no specific reference to them.
63. Mr Martin submitted that the respondent maintained that it did not know the claimants as its employees and therefore the claims had no grounds to stand on. He submitted that, because Mrs Hopkins had no written contract of employment setting out the terms she relied upon for her claim, her claims had no solid grounds to stand on and should be dismissed. He submitted that Dean Saunders-Finch had signed all of the documents relied upon by the claimants and there was no direct line of communication between them and Mrs Edwards, which supported the respondent's position that it did not know about the employees. He submitted that the documents relied upon by the claimants were not prepared in real time and the dates of Mr Langdale's employment were unclear.
64. He also submitted that, when Dean Saunders-Finch was writing the dismissal letters to the claimants, he had no power to employ them because the management contract had ended the day before. Mr Martin also conceded that, although the respondent's position was that the management contract did not give Dean Saunders-Finch those powers, the respondent could not rely upon it because it was not before the Tribunal. He also submitted that Mrs Edwards' position was that the hotel was closed due to a flood between 12 August and the end of September 2022 and so it was unclear what work the claimants were doing. Mr Martin also confirmed that the respondent's position was that it had no dealings with the claimants about payment or non-payment of money and is not aware of any payments or non-payments as Dean Saunders-Finch dealt with this in his capacity as a contractor.
65. The claimants each requested that their claims be upheld. Mrs Saunders responded to the respondent's position that Dean Saunders-Finch had no powers of employment at the time by submitting that Mrs Edwards had, in her 10 November email to Dean Saunders-Finch, instructed him to give notice to employees and that was an acknowledgement of their employment. Mrs Hopkins recognised that she did not have a written contract of employment but submitted that she had been honest and candid about how long she had worked there.

**CONCLUSIONS**

***Employee or worker status***

66. A claimant can only claim unauthorised deductions from wages and holiday pay if they were an employee or worker. They can only claim breach of contract if they were an employee. All employees are workers, but not all workers are employees.
67. As noted above, Employment Judge B Smith had already decided that the claimants were employees of the respondent at all material times.
68. Following discussion as noted above, Mr Martin ultimately accepted that the claimants had been found to be employees of the respondent at all material times and therefore were workers. As employees, the claimants were entitled to pursue all of their complaints.

## **MR LANGDALE**

### ***Time Limits***

69. I have found that Mr Langdale was employed by the respondent between 1 September 2022 and 25 November 2022.
70. The last payment of wages was payable to Mr Langdale on 28 November 2022, and the holiday pay and notice pay became payable to him on termination of employment.
71. Mr Langdale notified ACAS under the Early Conciliation Procedure on 30 November 2022 and the ACAS Early Conciliation Certificate was issued on 11 January 2023. The claim was presented on 11 January 2023. The claims of unlawful deductions from wages in respect of arrears of pay, notice pay and holiday pay were presented in time.

### ***Arrears of pay***

72. I found that Mr Langdale was employed and was entitled to salary for 1 to 11 November 2022 (when he was given notice) which was not paid to him. I found that his salary was £26,000 per annum. Dividing that by 365 calendar days in the year to obtain a daily rate, and multiplying that by 11 days, amounts to £783.56 due in respect of wages for this period.
73. Mr Langdale was employed for 14 days of his notice period before his employment ended by reason of his dismissal. This relates to 12-25 November 2022. I have found that he was not paid for any of his notice period. Taking the daily rate of his salary of £26,000 per annum (£26,000 divided by 365) and multiplying it by 14 gives a figure of £997.26 due in respect of wages for this period.
74. On 28 November 2022, £1,780.82 (being the total of £783.56 and £997.26) of wages was properly payable to Mr Langdale. As no payment of wages was paid on that date, in accordance with section 13(3) ERA that deficiency is treated as a deduction made by the respondent from Mr Langdale's wages on that occasion. The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of Mr Langdale's contract,

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nor had Mr Langdale previously signified in writing his agreement or consent to the making of the deduction.

75. I therefore concluded that the complaint of unauthorised deductions from wages under section 23 ERA is well-founded. The respondent made an unauthorised deduction from Mr Langdale's wages in the period 1-25 November 2022. The respondent shall pay the claimant £1,780.82, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

***Notice pay***

76. As to notice, I found that Mr Langdale was entitled to 30 days' notice of termination. Mr Langdale was employed for 14 days of his notice period before his employment ended by reason of his dismissal. I have found that he was not paid for any of his notice period.

77. I concluded that Mr Langdale is entitled to damages for the respondent's breach of contract by giving him insufficient notice. The intention is to put him in the position he would have been had the contract been performed correctly i.e. the position he would have been in had the respondent given him the 30 days' notice to which he was entitled. I awarded the remainder of the notice period as damages for breach of contract.

78. Although damages are calculated on a net basis, since Mr Langdale will be liable for tax on the notice pay, it was agreed that the gross daily rate of £71.23 would be used in the calculation. That is an award of 16 days' pay, which is 16 x £71.23 which is £1,139.68. The damages for breach of contract are, therefore, £1,139.68.

79. The complaint of breach of contract in relation to notice pay is well-founded. The respondent shall pay Mr Langdale £1,139.68 as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that Mr Langdale will have to pay tax on it as Post Employment Notice Pay.

***Holiday pay***

80. As to holiday pay, I have found that Mr Langdale did not take any holiday. He accrued holiday between 1 September and 25 November 2022. That equates to 1.32 working weeks' accrued holiday pursuant to the WTR. Taking the salary of £26,000 and dividing that by 52 weeks to obtain a weekly salary, and multiplying that by 1.32 weeks, gives a figure of £660.

81. The complaint in respect of holiday pay is well-founded. The respondent failed to pay Mr Langdale in accordance with regulation 14(2) of the Working Time Regulations 1998.

82. The respondent shall pay Mr Langdale £660. The claimant is responsible for paying any tax or National Insurance.

***Consequential losses***

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83. Mr Langdale indicated in his claim form that he had suffered consequential losses. There was no specific evidence that he had sustained financial loss which was attributable to non-payment and no award was therefore made in this respect.

***Interest***

84. The Tribunal does not have jurisdiction to award interest prior to the issue of the judgment in accordance with the Employment Tribunals (Interest) Order 1990.

***MRS SAUNDERS***

***Time Limits***

85. I have found that Mrs Saunders was employed by the respondent between 4 July 2022 and 25 November 2022.

86. The last payment of wages were payable to Mrs Saunders on 28 November 2022, and the payment of holiday pay and notice pay became payable to her on termination of employment.

87. Mrs Saunders notified ACAS under the Early Conciliation Procedure on 30 November 2022 and the ACAS Early Conciliation Certificate was issued on 15 December 2022. The claim was presented on 15 December 2022. The claims of unlawful deductions from wages in respect of arrears of pay, notice pay and holiday pay were presented in time.

***Arrears of pay***

88. I found that Mrs Saunders was employed and was entitled to salary for 1 to 11 November 2022 (when she was given notice) which was not paid to her. I found that her salary is £25,740. Dividing that by 365 calendar days in the year to obtain a daily rate, and multiplying that by 11 days, amounts to £775.72 due in respect of wages for this period.

89. Mrs Saunders was employed for 14 days of her notice period before her employment ended by reason of her dismissal. This relates to 12-25 November 2022. I have found that she was not paid for any of her notice period. Taking the daily rate of her salary of £25,740 per annum (£25,740 divided by 365) and multiplying it by 14 gives a figure of £987.29 which was due in respect of wages for this period.

90. On 28 November 2022, £1,763.01 (being the total of £775.72 and £987.29) of wages was properly payable to Mrs Saunders. As no payment of wages was paid on that date, in accordance with section 13(3) ERA that deficiency is treated as a deduction made by the respondent from Mrs Saunders' wages on that occasion. The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of Mrs Saunders' contract, nor had Mrs Saunders previously signified in writing her agreement or consent to the making of that deduction.

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91. I therefore concluded that the complaint of unauthorised deductions from wages under section 23 ERA is well-founded. The respondent made an unauthorised deduction from Mrs Saunders' wages in the period 1-25 November 2022. The respondent shall pay Mrs Saunders £1,763.01, which is the gross sum deducted. Mrs Saunders is responsible for the payment of any tax or National Insurance.

***Notice pay***

92. As to notice, I have found that Mrs Saunders was entitled to 30 days' notice of termination. Mrs Saunders was employed for 14 days of her notice period before her employment ended by reason of her dismissal. I have found that she was not paid for any of her notice period.

93. I concluded that Mrs Saunders is entitled to damages for the respondent's breach of contract by giving her insufficient notice. The intention is to put her in the position she would have been had the contract been performed correctly i.e. the position she would have been in had the respondent given her the 30 days' notice to which she was entitled. I awarded the remainder of the notice period as damages for breach of contract.

94. Although damages are calculated on a net basis, since Mrs Saunders will be liable for tax on the notice pay, it was agreed that the gross daily rate of £70.52 would be used in the calculation. That is an award of 16 days' pay, which is 16 x gross daily rate of £70.52 which is £1,128.32. The damages for breach of contract are, therefore, £1,128.32.

95. The complaint of breach of contract in relation to notice pay is well-founded. The respondent shall pay Mrs Saunders £1,128.32 as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that Mrs Saunders will have to pay tax on it as Post Employment Notice Pay.

***Holiday pay***

96. As to holiday pay, Mrs Saunders was entitled to 5.6 working weeks' holiday pursuant to the WTR each year. She accrued holiday between 4 July and 25 November 2022, which is 145 days of the holiday year. That equates to 2.22 working weeks' holiday. She had taken a week's holiday. That leaves 1.22 weeks accrued but untaken holiday as at the termination of her employment. Taking the salary of £25,740 and dividing that by 52 weeks to obtain a weekly salary, and multiplying that by 1.22 weeks, gives a figure of £603.90.

97. The complaint in respect of holiday pay is well-founded. The respondent failed to pay Mrs Saunders in accordance with regulation 14(2) of the Working Time Regulations 1998.

98. The respondent shall pay Mrs Saunders £603.90. Mrs Saunders is responsible for paying any tax or National Insurance.

***Consequential losses***



99. There was no specific evidence that Mrs Saunders had sustained financial loss which was attributable to non-payment and no award was therefore made in this respect.

***Interest***

100. The Tribunal does not have jurisdiction to award interest prior to the issue of the judgment in accordance with the Employment Tribunals (Interest) Order 1990.

***MRS HOPKINS***

***Time Limits***

101. I have found that Mrs Hopkins was employed by the respondent between 12 September 2022 and 25 November 2022.

102. The last payment of wages was payable to Mrs Hopkins on 28 November 2022, and the payment of holiday pay and notice pay became payable to her on termination of employment.

103. Mrs Hopkins notified ACAS under the Early Conciliation Procedure on 2 December 2022 and the ACAS Early Conciliation Certificate was issued on 13 January 2023. The claim was presented on 24 January 2023. The claims of unlawful deductions from wages in respect of unlawful deduction from wages, notice pay and holiday pay were presented in time.

***Arrears of pay***

104. I have found that Mrs Hopkins was employed and was entitled to wages for 89 hours of work done up to and including 10 November 2022 at £10 an hour. £890 was due in respect of wages for this period. This was not paid to her.

105. Mrs Hopkins was employed for 14 days of her notice period before her employment ended by reason of her dismissal. This relates to 12 to 25 November 2022; that is 2 weeks. I have found that she was not paid for any of her notice period. I found that Mrs Hopkins worked a total of 194 hours between 12 September and 10 November inclusive – which is 8.57 weeks. 194 hours divided by 8.57 weeks gave a weekly average of 22.64 hours per week. Using the hourly rate of pay of £10, that gives an average week's pay of £226.40 per week. It was agreed that this figure for the average week's wages would be used in the calculations. Multiplying the weekly figure by 2 (£226.40 x 2) gives £452.80 due in respect of wages for this period.

106. On 28 November 2022, £1,342.80 (being the total of £890 and £452.80) of wages was properly payable to Mrs Hopkins. As no payment of wages was paid on that date, in accordance with section 13(3) ERA that deficiency is treated as a deduction made by the respondent from Mrs Hopkins' wages on that occasion. The deduction was not required or authorised to be made by virtue of a statutory provision or a relevant provision of Mrs Hopkins' contract, nor had Mrs Hopkins previously signified in writing her agreement or consent to the making of that deduction.

107. I therefore concluded that the complaint of unauthorised deductions from wages under section 23 ERA is well-founded. The respondent made an unauthorised deduction from Mrs Hopkins' wages in the period to 25 November 2022. The respondent shall pay Mrs Hopkins £1,342.80, which is the gross sum deducted. Mrs Hopkins is responsible for the payment of any tax or National Insurance.

***Notice pay***

108. As to notice, Mrs Hopkins was not given a written contract of employment at any time during her employment. There is therefore no evidence that an express agreement was reached as to the notice period which would apply. In view of my findings, I concluded that Mrs Hopkins was entitled to 30 days' notice; that is, the same as the notice period which applied to Mrs Saunders and Mr Langdale. In reaching this conclusion, I took into account Mrs Hopkins' role and seniority. That was reasonable notice in her case. Notice was given on 12 November 2022.

109. I concluded that Mrs Hopkins is entitled to damages for the respondent's breach of contract by giving her insufficient notice. The intention is to put Mrs Hopkins in the position she would have been had the contract been performed correctly i.e. the position she would have been in had the respondent given her the 30 days' notice to which she was entitled. I awarded the remainder of the notice period as damages for breach of contract.

110. Although damages are calculated on a net basis, since Mrs Hopkins will be liable for tax on the notice pay, it was agreed that the gross daily rate of £32.34 (calculated by dividing the weekly average pay of £226.40 by 7) would be used in the calculation. She is entitled to the remaining 16 days of the notice period as damages. Multiplying the daily rate by 16 (16 x gross daily rate of £32.34) amounts to £517.49. The award for damages for breach of contract was, therefore, in the sum of £517.49.

111. The complaint of breach of contract in relation to notice pay is well-founded. The respondent shall pay the claimant £517.49 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.

***Holiday pay***

112. As to holiday pay, I have found that Mrs Hopkins was entitled to 5.6 working weeks' holiday pursuant to the WTR each year. She accrued holiday between 12 September and 25 November 2022, which is a 75 day period. She accrued 1.15 working weeks' holiday entitlement during that period. I accepted that she took no holiday during that time and was not paid holiday pay.

113. Multiplying the weekly rate of pay by 1.15 working weeks (£226.40 x 1.15) gives £260.36.

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114. The complaint in respect of holiday pay is well-founded. The respondent failed to pay Mrs Hopkins in accordance with regulation 14(2) of the Working Time Regulations 1998.

115. The respondent shall pay Mrs Hopkins £260.36. Mrs Hopkins is responsible for paying any tax or National Insurance.

***Consequential losses***

116. There was no specific evidence that Mrs Hopkins had sustained financial loss which was attributable to non-payment and no award was therefore made in this respect.

***Interest***

117. The Tribunal does not have jurisdiction to award interest prior to the issue of the judgment in accordance with the Employment Tribunals (Interest) Order 1990.

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Employment Judge L Robertson

Date signed: 9 May 2024