



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Judith Brown

v

Rhodsac Community Living Limited

Heard at: Cambridge

On: 11 April 2024

Before: Employment Judge Tynan

Appearances:

For the Claimant: Mr Rozycki, Counsel

For the Respondent: Mr Bhebhe, Consultant

JUDGMENT having been sent to the parties on 14 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant claims that she was unfairly dismissed and that she is owed arrears of pay, holiday pay and notice pay. She commenced employment with the Respondent on 27 April 2021, initially as a Support Worker for a young person in Aylesbury. The Claimant was dismissed with immediate effect on 14 June 2023 for alleged gross misconduct. By the time of her dismissal the Claimant had been promoted to the role of Assistant Deputy Manager.

The Hearing

2. The Claimant gave evidence at Tribunal. On behalf of the Respondent I heard evidence from Manyara Irene Muyenziwa and her sister, Irene Marunza. Both are qualified mental health nurses. Ms Muyenziwa owns the Respondent and is its sole director. Ms Marunza is the registered manager of one of the company's care homes, Manswick Care Home in Nottingham. Ms Marunza's evidence largely concerned alleged spot checks undertaken by her on 24 and 26 May 2023 at Kimwick Care Home in Milton Keynes, where the Claimant worked, alongside her other duties in Aylesbury. As I shall come back to, the stated concerns arising out of these alleged spot checks have only a limited bearing upon the issues in these proceedings as they did not ultimately inform the Respondent's decision to terminate the Claimant's employment.

3. There was an agreed Hearing Bundle running to 191 pages (main Bundle) and a Supplementary Bundle prepared by the Respondent running to 61 pages. The page references in these written reasons correspond to those Bundles.

Background

4. In her witness statement the Claimant has set out what I accept to be a fair and accurate summary of her history of employment with the Respondent, including regular issues with her pay, as well as that of her colleagues. In early 2022 it was necessary for the Claimant to contact ACAS because she was owed statutory sick pay and wages. The Respondent did not challenge the Claimant's evidence in respect of these matters. It is testament to the Claimant's commitment to her job that she remained with the Respondent notwithstanding the various pay issues she encountered during her employment. The issue extended to the Claimant not receiving pay slips during the last 10 months or so of her employment.
5. Ms Muyenziwa alleges that in April 2022 the Claimant called her to secure her authorisation for a payment that needed to be made. Ms Muyenziwa was in Africa at the time and says that the relevant manager, Selina Kearney would have been in a position to deal with the payment in question. Ms Muyenziwa alleges that in the course of their conversation the Claimant began to shout at her and demanded that the payment be made immediately. Ms Muyenziwa claims that she was obliged to end their call because of what she refers to as the Claimant's abusive and aggressive tone. She states that the Claimant was issued with a verbal warning in respect of her behaviour, something that is disputed by the Claimant. Ms Muyenziwa relies upon a supervision contract form document dated 21 April 2022 as evidence in this regard (pages 43 and 44 of the main Bundle).
6. The Claimant questions the provenance of the supervision contract form and certain other documents in the Bundles. I have not thought it necessary to make findings in relation to most of those other documents as they do not touch directly upon the issues in the case. However, as regards the supervision contract form, I accept the Claimant's evidence that she was not issued with a verbal warning during the supervision, which was conducted by Ms Kearney. I conclude that the document has been amended since it was completed, signed and dated by the Claimant and Ms Kearney as an accurate record of their discussion. Ms Kearney did not attend Tribunal to give evidence. However, putting aside that I found the Claimant to be a consistent and credible witness, the supervision contract form has the clear appearance of having been altered by being added to. The verbal warning is documented as the final matter that was discussed. However, whilst the handwriting appears to be consistent with the rest of the document, the comments are written in a darker or thicker ink. The handwriting is less spaced out than in the preceding four discussion themes, giving the appearance of the notes having been squeezed into the available space. Whereas the Claimant is referred to as 'she' and 'her' in the first four discussion themes, she is referred to as 'you' in the fifth discussion theme: that further supports my impression that the comments were written at a later date, after the

Claimant had signed the form.

7. The disputed notes in question are as follows,

“Verbal Warning

We need to discuss the verbal warning in relation to how you spoke to Irene. It is important Judy that this does not happen again as Irene doesn't expect to be spoken to like that. If you ever feel that you are getting frustrated please end the call and speak to Ida or myself.

Verbal Warning given to Judy on the issue.”

Those comments follow on from the fourth recorded discussion theme, headed “Any other issues?”. That further indicates to me that the fourth theme was originally the final matter discussed by the Claimant and Ms Kearney on 21 April 2022.

8. There is no evidence within the Hearing Bundles that the alleged verbal warning was issued at the conclusion of a disciplinary process. For example, there is no letter identifying concerns or drawing the Claimant's attention to the Respondent's disciplinary rules or policy. Nor is there any letter confirming the outcome of the alleged discussion, identifying how long the warning would remain live for, or offering the Claimant a right of appeal.
9. I find that no concerns were raised by Ms Kearney on 22 April 2022 as to how the Claimant had allegedly spoken to Ms Muyenziwa and that no verbal warning was issued to the Claimant. If she had been given a verbal warning one might expect this to have been mentioned by Ms Kearney at some point during her subsequent meetings with the Claimant on 2 and 9 June 2023 or in her letter of 14 June 2023 dismissing the Claimant for alleged similar rude and insubordinate behaviour. I find that the comments in question have been fabricated to support the Respondent's position in this litigation.
10. The other potentially relevant document is the contract of employment at pages 81 to 88 of the main Bundle which purports to be the Claimant's principal terms and conditions of employment as Team Leader. The Claimant says the document is fabricated. It is dated 3 April 2023: the Claimant highlights the fact that she ceased to be a Team Leader in July/August 2022 when she was promoted to Assistant Deputy Manager. Her promotion officially took effect on 1 August 2022, albeit she had been undertaking the role unofficially for about one month. At the same time her colleague Ida Manda was promoted to Deputy Manager, though continued to work exclusively at Rhodsac Care Home. The Respondent has not explained why the Claimant might have signed a contract in 2023 for a role she had ceased to perform some eight months or so earlier. I accept the Claimant's evidence that she did not sign the contract in question and that the first time she saw it was as a result of disclosure in these proceedings. In paragraph 6 of her witness statement, Ms Muyenziwa refers to the company's (unsigned) letter to the Claimant of 3 April 2023 appointing her to the Team Leader role (page 74 of the main Bundle): she makes no mention of any contract of employment and fails to

address the point above that the Claimant had been promoted some months earlier to the position of Assistant Deputy Manager. The signature page at page 88 of the Hearing Bundle only contains the Claimant's signature: this contrasts with the contract of employment that was signed by both parties following the Claimant's promotion to Assistant Deputy Manager in 2022 (page 54 of the main Bundle). I further note that the date has been typed onto the Team Leader contract signature page: both parties dated the 2022 contract by hand. As with the supervision contract form, the original of the purported 2023 contract was not available at Tribunal. Given I accept that the contract was never signed by the Claimant, I can only therefore conclude that the contract, or at least page 88 of the main Bundle, has been fabricated and that the unsigned letter at page 74 of the main Bundle was never issued.

11. Whilst this further undermines the Respondent's credibility in this matter, it would not ultimately matter had the Claimant been employed on the Team Leader contract instead of the Assistant Deputy Manager contract. Under the terms of both contracts (see respectively pages 49 and 85 of the main Bundle), the Claimant would be entitled to be paid overtime for hours worked beyond her normal hours at her basic rate of pay (unless the hours were worked on five named public holidays, when she would be paid at time and a half). She was not a salaried employee who agreed to work whatever hours were necessary to perform the duties of the job. This is relevant in terms of identifying what sums were properly payable to her.

Findings of Fact

12. The Claimant was paid late on 31 May 2023. She did not have a payslip but believed that she had been underpaid. She sent a WhatsApp message to Ms Muyenziwa as follows:-

"Hi Irene. I have received my wages late once again. Please can you send me my wage slips for the last six months and explain how my wages have gone down. Based on 40 hours per week you are only paying me £9.20 per hour which is well below minimum wage. Please can you send your calculations and rectify this by the end of the week. You haven't been paying me properly for my holidays either. So please can you look at this too. I have attached my calculations and look forward to hearing from you. Thanks Judy."

Her message was accompanied by two screen shots in which she endeavoured to explain why she believed she had been underpaid. The explanation and her calculations are straightforward and easy to understand: they were certainly immediately clear to me. In the absence of a payslip, the Claimant had used an online tool to work out her annual gross pay from the net wages she had received that month. Even on the basis of a basic 40-hour week, the Claimant calculated that she was being paid at the rate of £9.20 per hour, which was less than the relevant national minimum wage rate then in force, namely £10.42 per hour.

13. It was not suggested by Ms Muyenziwa that this was the first WhatsApp message she had ever received from the Claimant, such that she did not have a record of the Claimant's name and phone number on her own phone. In any event, the Claimant had signed off the message "*Judy*". Ms

Muyenziwa responded,

“Sorry who is this for? It is not making sense?”

14. This prompted the Claimant to further clarify what was, as I say, an essentially straight forward calculation. The Claimant encouraged Ms Muyenziwa to review her payslips, noting that she had not herself had a payslip since July the previous year.

15. If Ms Muyenziwa’s initial response was a little curt, the Claimant’s further messages prompted the following irritable, even rude response from Ms Muyenziwa:

“I haven’t got a clue what you are talking about because first of all Rhodsac pays above the minimum wage!!!”

16. Ms Muyenziwa’s response evidences to me not only her immediate irritation with the Claimant, but an unwillingness to engage with the pay issue that had been raised, indeed a refusal to countenance that there might be an issue. Her response prompted two further messages from the Claimant who referred Ms Muyenziwa back to the explanation and calculations previously provided. She also asked to be provided with her missing payslip (page 110 of the main Bundle).

17. Ms Muyenziwa and the Claimant then spoke by phone. I accept the Claimant’s evidence that Ms Muyenziwa immediately started shouting at her, telling her,

“How dare you accuse me of paying under minimum wage.”

18. When the Claimant asked Ms Muyenziwa why her pay was less than the previous month Ms Muyenziwa continued to shout at the Claimant, saying,

“How dare you question me.”

19. When the Claimant reiterated what she had said in her message, namely that she had not received a payslip since July 2022, Ms Muyenziwa blamed Ms Manda for this. I accept the Claimant’s evidence that she felt intimidated and bullied, particularly in circumstances where she was asking to be paid correctly and had provided calculations to support what she was saying.

20. Ms Muyenziwa provides only a basic account of the conversation at paragraph 8 of her witness statement. She says,

“On 31 May 2023 the Claimant called me again and acted in the same unprofessional and abusive manner, accusing me of paying her incorrectly. She made complaints about her holiday pay.”

She seeks to place the conversation in the context of the Claimant having been issued with a verbal warning in April 2022 (as to which I have already set out my findings).

21. It is noteworthy that Ms Muyenziwa fails to mention in her witness statement the messages which preceded their phone call on 31 May 2023.

I prefer the Claimant's account of the call, including that Ms Muyenziwa was hostile from the outset of the conversation and, as she had done in her initial messages, refused to countenance that there might be an issue with the Claimant's pay. I find that Ms Muyenziwa said a number of times to the Claimant,

"You need to be dismissed".

22. Ms Muyenziwa went on to accuse the Claimant of only coming to work between 11am and 2pm. This seems to have provoked the Claimant's ire, who in turn said words to the effect "how dare you accuse me of that". I find that at this point there were raised voices on each side, with Ms Muyenziwa continuing to say that the Claimant needed to be dismissed. The call ended with Ms Muyenziwa putting down the phone on the Claimant. In the particular circumstances I find those to be the actions of someone who was angry, unwilling to listen and asserting her authority rather than discontinuing a call because the other person was being abusive.
23. On 2 June 2023, Ms Kearney messaged the Claimant who was working in Aylesbury at the time, to ask if she "*fancied*" coming to Kimwick. When the Claimant asked her why, she replied,

"She is now texting me to ask if I have dismissed you as she is expecting me to dismiss, so we may have to have a meeting about what she wishes for me to discuss." (page 111 of the main Bundle).

Ms Kearney's reference to "*she*" is clearly a reference to Ms Muyenziwa. The fact she was expecting Ms Kearney to dismiss the Claimant corroborates that Ms Muyenziwa said repeatedly to the Claimant on 31 May 2023 that she needed to be dismissed. Ms Muyenziwa's text referred to by Ms Kearney has not been included in the Hearing Bundles, assuming it has even been disclosed to the Claimant.

24. When the Claimant met with Ms Kearney later that day she was suspended on full pay, purportedly whilst an investigation was undertaken regarding her work attendance and allegedly unprofessional conduct towards Ms Muyenziwa on 31 May 2023. Having been suspended the Claimant went to Rhodsac Care Home to ask Ms Manda to print off her missing payslips.
25. If the Claimant's suspension was confirmed in writing, there is no copy of any relevant email or letter in either Bundle.
26. The Claimant met with Ms Kearney again on 9 June 2023 for what was described as an investigation meeting. Ms Kearney's signed, handwritten notes of that meeting are at pages 117 – 123 of the main Bundle. They document that the Claimant was issued with a letter when she was suspended, but the notes do not clarify whether the letter invited the Claimant to the meeting on 9 June 2023 or offered any right to be accompanied.
27. Ms Kearney began the meeting on 9 June 2023 by discussing the events of 31 May 2023 with the Claimant. Ms Kearney said that "the Provider" i.e.

Ms Muyenziwa had called her to say there had been a conversation in relation to a wage query (I find this was the telephone call on 31 May 2023) and

“She stated that she wanted you to be dismissed based on the grounds of misconduct – in relation to how you spoke to her, she stated that you had shouted at her during the call and that she was no longer happy for you to continue your employment with RCL. So Judy, is there anything you would like to say in your defence?” (page 117 of the main Bundle)

28. Given that Ms Muyenziwa wanted the Claimant to be dismissed (as indeed she had already said to Ms Kearney), there was possibly little, if anything the Claimant could meaningfully say. However, she provided an account to Ms Kearney which is consistent with the account she has provided in her witness statement.

29. Having discussed the first of the two alleged matters with the Claimant, Ms Kearney went on to say that the second matter, namely whether the Claimant was working her contracted hours, “no longer stands” on the basis that the staff she had spoken with only had positive feedback about the Claimant and had verified that she arrived in Aylesbury first thing each day, often not leaving work until 6 or 7pm. The Claimant asked Ms Kearney whether she had any issues with her performance to which Ms Kearney replied,

“No I have never had any reason to question your professional conduct, you fulfill your job role very well, I have never had issues in relation to how you communicate with other, service users and family members.” (page 121 of the main Bundle)

30. Ms Kearney went on to apologise to the Claimant for the fact she had not been receiving her payslips, at which point the Claimant highlighted she had never had a pension nor had she been asked by Ms Muyenziwa if she wished to pay into one.

31. A disciplinary hearing was scheduled for 14 June 2023. It was chaired by Ms Kearney. Again, there is no invite letter in either Bundle. Ms Kearney’s handwritten meeting notes are at pages 124 – 126 of the main Bundle. Ms Kearney started by re-capping as to what had been discussed at the investigation meeting on 9 June 2023, including that Ms Muyenziwa no longer wanted the Claimant to work at the company. Having received copies of her payslips, the Claimant went on to explain why she believed she had been underpaid. She said it was not the first time that Ms Muyenziwa had spoken to her inappropriately and that she felt the need to defend herself. Ms Kearney responded,

“I am going to be completely honest Judy, I currently don’t have a statement. I have been given instruction from the Provider that she wants me to dismiss you based on your conversation with her. She feels the way you spoke to her is gross misconduct. I am very sorry to see you leave...” (page 125 of the main Bundle)

The final line of that page of Ms Kearney’s notes is not entirely legible, except for the words “appreciated” and “valued”.

32. I understand from Ms Kearney's handwritten notes Ms Muyenziwa had failed to provide Ms Kearney with a written statement setting out her version of what had happened on 31 May 2023. Instead, she had simply given a further clear instruction that the Claimant was to be dismissed.

33. Ms Kearney wrote to the Claimant on 14 June 2023 as follows,

"Dear Judith Brown,

On 08/06/2023 you were informed that Rhodsac Community Living Limited was considering dismissing OR taking disciplinary action against you.

This was discussed in a meeting on 08/06/2023, at this meeting, it was decided that a disciplinary meeting was to be held on 14/06/2023.

It was decided by the provider that your conduct was unsatisfactory and that the following disciplinary action would be taken against you, dismissal without notice.

The reasons for your dismissal are:

- The provider stated that she could no longer have you working for the company as a result of your unprofessional conduct towards her following a conversation that was held between the both of you on 31/05/2023.

I am therefore writing to you to confirm the decision that you be dismissed and that your last day of service with the company will be 14/06/2023.

You have the right of appeal against this decision, please send an email to... or write to... within 5 days of receiving this disciplinary decision.

Yours sincerely

Etc" (page 127 of the main Bundle)

34. The Claimant submitted a detailed grievance letter to Ms Kearney on 15 June 2023 on the basis, she said, that she did not want her job back but wished to prevent others having a similar experience to herself. Her letter was never acknowledged or responded to.

The Law

Implied Trust and Confidence

35. It is an implied term of all employment contracts that the parties will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to damage or destroy the essential trust and confidence of the employment relationship – Malik v Bank of Credit and Commerce International SA [1998] AC 20.

Unfair Dismissal

36. Subject to any relevant qualifying period of employment, an employee has the right not to be unfairly dismissed by his employer – Section 94 of the Employment Rights Act 1996 ("ERA" 1996). It is not disputed that the

Claimant qualified for that right.

37. Section 98 ERA 1996 provides:

98. General

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it-
 - (a) ...
 - (b) relates to the conduct of the employee,
 - (c) ...
 - (d) ...
- (3) ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

38. Where this is in dispute, an employer bears the burden of establishing that it had a potentially fair reason for dismissing its employee. The Claimant would seem to accept that the Respondent dismissed her for misconduct.

39. Where the reason for dismissal is misconduct, Tribunals should have regard to the long standing principles in British Home Stores v Burchell [1978] ICR 303 and Iceland Frozen Foods Ltd v Jones [1982] IRLR 439. I have not felt it necessary to include the often cited passage from Arnold J's Judgment in Burchell. Jones is similarly long-standing authority that reminds Tribunals that their function is to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. In Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23 CA, the Court of Appeal confirmed that the band of reasonable responses applies to both

the procedures adopted by the employer as well as the dismissal. Burchell and countless decisions since have served as a reminder that a Tribunal should be careful not to substitute its own view for that of the employer.

40. Pursuant to s.123(1) of the Employment Rights Act 1996 where a Tribunal upholds a complaint of unfair dismissal it may award compensation as it considers just and equitable in the circumstances, having regard to the losses sustained by the claimant in consequence of dismissal. In accordance with the well-established principles in Polkey v AE Dayton Services Ltd 1988 ICR 142, HL the Tribunal may make a just and equitable reduction in any compensatory award under s.123(1) to reflect the likelihood that the employee's employment would still have terminated in any event. The burden of proving that an employee would or might have been dismissed in any event rests with the employer. Nevertheless, Tribunals are required to actively consider whether a Polkey reduction is appropriate. In Software 2000 Limited v Andrews and Others the EAT reviewed the authorities at that time in relation to Polkey and confirmed that Tribunals must have regard to all relevant evidence including any evidence from the employee. The fact that a degree of speculation is involved is not a reason not to have regard to the available evidence unless that evidence is so inherently unreliable that no sensible prediction can be made. It is not an all or nothing exercise, rather it involves a broad assessment of matters of chance.
41. As well as a 'Polkey' reduction, Tribunals can reduce the basic and compensatory awards, as they consider just and equitable, to reflect any conduct on the part of the Claimant (sections 122(2) and 123(6) of ERA 1996). In the case of the basic award, the Tribunal may only consider conduct before dismissal and in the case of the compensatory award the conduct in question is must have caused or contributed to the dismissal.
42. Adjustments can also be made to the basic and compensatory awards where the employer or employee has unreasonably failed to comply with a material provision of the ACAS Code of Practice on Disciplinary and Grievance Procedures: section 207A of the Trade Union and Labour Relations (consolidation) Act 1992.

Deductions from Wages

43. Section 13 of the Employment Rights Act 1996 ("ERA" 1996) provides:
 13. Right not to suffer unauthorised deductions.
 - (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

...

- (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.

Conclusions (including in respect of remedy)

Unfair Dismissal

44. Ms Muyenziwa determined that the Claimant should be dismissed. Ms Kearney was notionally the investigating and disciplinary officer, but when she dismissed the Claimant she was plainly acting on instructions from Ms Muyenziwa. Ms Muyenziwa evidently believed the Claimant to be guilty of misconduct but she did not have reasonable grounds for her belief in that regard. She was angry with the Claimant on 31 May 2023 for questioning whether she was being paid correctly, was rude to her in their initial messages and thereafter shouted at her, berated her and threatened her with dismissal when they spoke. If the Claimant raised her voice or even shouted back at Ms Muyenziwa in response to being treated in that way, in my judgement this was a natural and understandable reaction on her part. It was entirely unreasonable for Ms Muyenziwa to regard the Claimant's reaction in such circumstances as amounting to misconduct, let alone gross misconduct warranting summary dismissal.
45. In my judgement, Ms Muyenziwa was affronted by the suggestion that the Respondent was not paying the Claimant correctly and was affronted when the Claimant would not be silenced or put in her place. The strength of her reaction was all the more unwarranted given there was a history of pay issues, which at one point necessitated the involvement of ACAS, and that the Claimant had not been receiving her payslips for many months.
46. It was unreasonable for Ms Muyenziwa to say repeatedly to the Claimant that she needed to be dismissed. I can understand why the Claimant felt that she was being bullied and intimidated. I conclude that Ms Muyenziwa had resolved by the end of their call on 31 May 2023 that the Claimant should be dismissed and that she hung up on the Claimant to indicate she was finished with her and their working relationship was over.
47. In my judgement the process that followed was meaningless. It was not with a view to establishing the facts or hearing what the Claimant had to say, before coming to a reasoned and objective decision. Instead, Ms Muyenziwa expected Ms Kearney to dismiss the Claimant, even if Ms Kearney's instinct was to at least afford the Claimant an opportunity to have her say. Ms Muyenziwa had an obvious conflict of interest in the matter given she was the person complaining about the Claimant's conduct and the Respondent's only witness on the issue of how the Claimant had allegedly conducted herself on 31 May 2023, yet she dictated the outcome. She would not even provide Ms Kearney with a statement setting out her account as to what had allegedly happened. Her

only concern was how she saw things and what she thought should happen.

48. The Claimant was unfairly dismissed. Not only did the Respondent not have reasonable grounds for its belief that the Claimant was guilty of gross misconduct, it failed to carry out a reasonable, or effectively any, investigation. Instead, Ms Muyenziwa had determined from the outset that the Claimant should be dismissed. The dismissal itself was outside the band of reasonable responses. The Claimant's conduct on 31 May 2023 was an entirely foreseeable, indeed predictable, response to being shouted at and indeed abused by her employer.
49. There are no facts from which I could sensibly conclude that the Claimant would or might have been dismissed had the Respondent not acted unreasonably in the matter. Had Ms Muyenziwa taken on board the Claimant's pay concerns and sought to address them, and not bullied and intimidated her, I consider there is no chance that the Claimant would have reacted as she did. For the same reason, it would not be just and equitable to have regard to the Claimant's conduct whether on 31 May 2023 or otherwise, in determining the amounts of the basic or compensatory awards. I make no deductions pursuant to sections 122(2) or 123(6) of the Employment Rights Act 1996.
50. It is not in dispute that the basic award to which the Claimant is entitled is £1,320.00. I additionally award her £500 in respect of the loss of her statutory employment rights. She was able to mitigate her losses and accordingly does not seek compensation for loss of earnings.
51. The Respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. In particular it breached the provisions of paragraphs 4, 5, 6, and 12 of the Code. If the Claimant's grievance letter of 15 June 2023 should have been treated as an appeal, the Respondent also breached paragraphs 26 to 29 of the Code. Whilst I make allowance for the fact this was a relatively small organisation, seemingly without a dedicated HR resource, nevertheless the breaches were material and impacted the entire process. There was a significant departure from the fundamental principles in paragraph 4 of the Code. I am satisfied that the Respondent's failure to adhere to the Code was unreasonable. In the exercise of my discretion it would just and equitable to increase the basic and compensatory awards payable to the Claimant by 15% in accordance with 207A Trade Union and Labour Relations (Consolidation) Act 1992. Accordingly, the Claimant is awarded a further sum of £613.94.

Notice Pay

52. In my judgement the Claimant was dismissed in breach of contract by not being given her contractual notice or payment in lieu thereof. It cannot be said that the Claimant acted without reasonable and proper cause on 31 May 2023 when she raised her voice in response to Ms Muyenziwa. Nor can it be suggested, on the facts as found by me, that her conduct on 31 May 2023 destroyed or seriously damaged essential trust and confidence such that the Respondent was entitled to terminate the relationship summarily. It was Ms Muyenziwa who breached trust and confidence by

acting as she did.

- 53. The Claimant was entitled to one month’s notice terminating her employment. I shall award her damages for breach of contract in the sum of £1,689.11, being one month’s net pay.

Unauthorised deduction from pay (including holiday pay)

- 54. Turning then to the question of whether the Respondent made unauthorised deductions from the Claimant’s wages, the alleged deductions in question are set out in the Claimant’s Schedule of Loss at pages 150 – 153 of the main Bundle. I accept and adopt the Claimant’s evidence and calculations as to the hours that were worked by her and for which she should have been paid, as opposed to what she was actually paid during the period July 2022 to April 2023, as well as her holiday pay calculations for the same period. For the sake of brevity, I do not repeat the calculations here. The Claimant has given credit for an overpayment to her of £176 for her final period of employment 1 June to 14 June 2023.

- 55. I might add that the Respondent has not addressed the claimed deductions in its witness statements, save that Ms Muyenziwa asserts in bare terms that the national minimum wage was paid and that the Respondent is not indebted to the Claimant. It has not set out its explanation or calculations as to what it says was properly payable to the Claimant over the period in question. There has been no engagement by the Respondent with the specific deductions identified by the Claimant. That is consistent with the Respondent’s failure since 31 May 2023 to engage with the Claimant’s concerns. The claims are not addressed in Mr Bhebhe’s Skeleton Argument.

- 56. I have already made clear that I consider the Claimant to be a consistent and credible witness. Her evidence on these matters is effectively unchallenged. I uphold her complaints that she was not paid that which was properly payable to her pursuant to her terms and conditions of employment. I shall make the appropriate declaration and order the Respondent to pay her £2,403.80 in respect of the unauthorised deductions from her wages.

Employment Judge Tynan

Date: ...12 July 2024.....

Judgment sent to the parties on
16 July 2024

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For the Tribunal office

Judgments and reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or Reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>