



## **EMPLOYMENT TRIBUNALS**

**CLAIMANT:** Ms Ajagbe

**RESPONDENT:** RCB Healthcare Group

**HELD AT:** London South (by CVP)

**ON:** 4 and 24 April 2024

**BEFORE:** Employment Judge Hart

### **REPRESENTATION:**

**Claimant:** Litigant in person

**Respondent:** Litigant in person

## **RESERVED JUDGMENT**

The Judgment of the Tribunal is that:

1. The claim for unlawful deduction of wages succeeds and the respondent is ordered to pay the claimant **£1,459.27 gross**.
2. The claim for outstanding holiday pay succeeds and the respondent is ordered to pay the claimant **£435.38 gross**.

## **REASONS**

### **INTRODUCTION**

1. This is a claim for unlawful deduction of wages and outstanding holiday pay following the termination of Ms Ajagbe's (the claimant) contract on 7 April 2023.

### **THE HEARING**

2. The hearing was conducted by CVP. Both parties represented themselves.

3. The hearing was initially listed for 4 April 2024 at 2pm. For the hearing the parties had not provided a hearing bundle or witness statements. The respondent had sent some documents to the tribunal whilst the claimant had not provided anything but confirmed that she had documents in her possession. I decided to put back the start of the hearing to 3pm to enable the parties to provide documents to the tribunal and each other.
4. At 3:05pm both Ms Ajagbe and Ms Sanghera (Director for the respondent) were sworn in and the claimant gave evidence on her own behalf and was asked questions by Ms Sanghera and myself. Whilst giving evidence Ms Ajagbe stated that she had received an email from HC One which had not been disclosed. During further questioning it became apparent that some of the respondent's documents had been sent to the tribunal but not forwarded to myself. I decided to adjourn the hearing, take the parties off oath and re-list for another hearing date. The date of the next hearing was agreed orally with the parties along with case management orders. This was confirmed in writing in a case management order, which unfortunately was never sent to the parties.
5. At the resumed hearing on 24 April 2024 the claimant did not attend. For the reasons provided at that hearing and set out in the case management order dated 24 April 2024 I decided to proceed in the claimant's absence, having already received sufficient evidence from her at the previous hearing.
6. The respondent had provided a witness statement and a hearing bundle totaling 31 pages. It contained documents provided at the previous hearing including the claimant's disclosure. Ms Sanghera was sworn back in and gave evidence on behalf of the respondent and was asked questions by me with reference to that bundle and the evidence that the claimant had provided at the previous hearing.
7. Following the hearing, in a case management order made on 24 April 2024, sent to the parties on the 17 May 2024, I set out my provisional view. I proposed making a determination on the papers and permitted both parties to check their positions and make any further written representations by 13 June 2024. On 10 June 2024 Ms Ajagbe submitted further representation; nothing further was received from the respondent. The totality of the evidence and representations from both hearings, along with the further written representations from Ms Ajagbe were taken into account in this judgment.

## **CLAIMS / ISSUES**

8. The claims and issues to be determined were as follows:

### **Unauthorised deductions of wages / breach of contract**

- 8.1 Were the wages paid to the claimant by the respondent less than the wages she should have been paid for the period 1 September 2022 to 7 April 2023? This involved consideration of two issues:
  - 8.1.1 Whether Ms Ajagbe had been underpaid £180 per month due to the transition from monthly payments to 4 weekly payments?

- 8.1.2 Whether the respondent were permitted to not pay Ms Ajagbe her wages for the week of 10 March 2023 of £430 due to her having taken excess annual leave? The answer to this question was dependent on the outcome of the holiday pay claim.

**Holiday Pay (Working Time Regulations 1998 / Breach of Contract)**

- 8.2 Was the claimant owed outstanding holiday pay on termination of her contract on 7 April 2024? This involves consideration of the following two issues:
- 8.2.1 How much paid leave had the claimant taken in the year 1 April 2022 to 31 March 2023 and 1 April 2023 to 7 April 2023 (when the claimant's contract terminated)?
- 8.2.2 Were any hours carried over from previous holiday years, if so how many?
- 8.2.3 If yes, was this by agreement?
- 8.2.4 If no, was it due to COVID 19 as the claimant claims?
- 8.2.5 If so does the Working Time (Coronavirus) (Amendment) Regulations 2020 apply? [This was an emergency provision permitting the 4 weeks' basic leave provided under regulation 13 of the WTR 1998 (but not the additional 1.6 weeks' leave under regulation 13A) to be carried over.]

**FINDINGS OF FACTS**

9. I have only made findings of fact in relation to those matters relevant to the issues to be determined. Where there were facts in dispute I have made findings on the balance of probabilities.
10. On 5 March 2012 Ms Ajagbe commenced work as a Home Administrator at Woodford House. She was initially employed by HC One. She worked 40 hours pw, Monday to Friday, and at the relevant time was paid £22,370 pa gross.
11. According to her contract of employment her annual leave entitlement was 28 days pa., and her leave year ran from 1 April to 31 March. It was a provision of the contract that employees were not permitted to carry over leave without the consent of the line manager. It was a further provision that holiday taken in excess of entitlement may be deducted on termination of the contract. The notice period was 4 weeks.
12. The claimant says that HC One agreed that she could carry over leave to the 2022/23 leave year due to COVID. At the hearing on the 4 April 2024 the claimant provided a redacted record from HC One which appeared to record that she was owed 397 hours of leave on 29 April 2022. The record was unclear as to what had been agreed and why. Ms Ajagbe explained in evidence that

this is what she was given by HC One when she asked her previous employer for evidence of her carried over leave. In the period between the two hearings, Ms Sanghera had separately contacted HC One for confirmation of the claimant's holiday entitlement and whether it had been carried over due to COVID. On 3 April 2024 Mr Bell, HC1 Group Payroll Manager, sent her an unredacted version of the same record. On receipt Ms Sanghera contacted HC One to ask for an explanation of this record but received no response. The HC One record appears to correlate with the annual leave entitlement recorded on Ms Ajagbe's Annual Leave Request Form which recorded her leave as 391 (224 + 167). Whilst it is noted that this was slightly lower than the 396 in the HC One printout I find on the basis of these two records, together with the claimant's evidence, that she was permitted to carry over annual leave to the 2022/23 leave year, and that her entitlement for 2022/23 was 391 (as was recorded on the Annual Leave Request Form).

13. On 30 August 2022 Woodford House was TUPE transferred to RCB Healthcare Group (the respondent). Ms Sanghera was the Director. I accept Ms Sanghera's evidence that she was not informed by HC One that it had agreed that Ms Ajagbe could carry over annual leave due to COVID. I also accept that no-one else had raised this issue with her.
14. As a result of the transfer Ms Ajagbe's pay period changed from monthly to 4-weekly.
15. On 10 March 2023 Ms Ajagbe handed in her notice. According to her own handwritten note on the Annual Leave Request Form she had taken 171 hours annual leave in the leave year 2022/23 leaving an outstanding 220 hours. She recorded that she intended to take the week of 13-17 March 2023 (40 hours) as leave. She further recorded that left 180 hours "to be taken".
16. Following the creation of this record Ms Ajagbe took a further 3 weeks' annual leave which ran for the rest of her notice period (amounting to 4 weeks leave in total) with her employment terminating on 7 April 2023.
17. ACAS early conciliation commenced on 26 May 2023, the certificate was issued on 7 July 2023 and the claim submitted on 7 August 2023.

## **DISCUSSION AND CONCLUSION**

### **Unlawful deduction of wages**

18. Ms Ajagbe claimed that from 1 September 2022 (the date that the respondent took over the claimant's employment under TUPE) to 7 April 2023 (the termination of her employment) she had been underpaid the sum of £180 per month amounting to £1261. She also claimed that she was not paid wages for the week of 10 March 2023 of £430.
19. Ms Sanghera said that the claimant was paid 4 weekly not monthly and that this explained the monthly discrepancy. She disputed that Ms Ajagbe was not

paid wages for the week of 10 March 2023 and said that some holiday pay was deducted from Ms Ajagbe's final salary because she had taken more leave than her entitlement, such deduction being permitted by the written contract. She accepted that this was done on the basis that Ms Ajagbe was not permitted to carry over leave from the previous years.

20. There was no dispute between the parties as to the amount that the claimant was supposed to be paid i.e. £22,370pa gross (£10.75 gross ph; £430 gross pm; £1864.17 gross pm). I have been provided with all the claimant's pay slips over this period. I have therefore calculated what the claimant should have been paid over that period and what she was in fact paid. The period of time between 1 September 2022 and 7 April 2023 was 31 weeks and 2 days. Therefore the claimant should have received £13,502 gross. The claimant should note that this calculation includes her claim for one week's pay of £430. However according to her pay slips over the same period she received £12,042.73 gross [calculated as: £1036.76 (30/9/22) + £1683.01 x 6 (21/10/22, 18/11/22, 15/12/22, 13/1/23, 15/2/23 and 15/3/23) + £827.75 (14/4/23) + £80.16 (15/5/23)]. Therefore, there is a shortfall of **£1,459.27 gross**, and the claimant's claim for unlawful deduction of wages succeeds.

#### Holiday pay

21. Since I have found that HC One agreed for Ms Ajagbe to carry over her leave, it is not necessary to consider if the provisions of the Coronavirus Amendment Regulations apply.
22. In her claim form the claimant claimed that she was owed 220 hours annual leave in the leave year 2022/23. In her representations dated 10 June 2024 she claimed that she was owed 225 hours. This is based on the hours in the HC One printout. However I have found that the amount owed at the time of her resignation was 220 hours, since this was based on her own records at the time.
23. From this sum is to be deducted the 4 weeks' annual leave that Ms Ajagbe took during the notice period which amounts to 160 hours leaving a difference of 60 hours.
24. Further, Ms Sanghera pointed out in her evidence that the claimant's annual leave requests, which formed the basis of her claim, did not take into account hours that should be deducted for the bank holidays on 26 and 27 December 2022 and 2 January 2023. In her representations of 10 June 2024 the claimant disputed this stating that her annual leave hours had 'always been deducted of bank holiday'. On the basis of the annual leave entitlement set out in the Annual Leave Request Form I noted that 224 hours is 28 days (reflecting her contractual entitlement). Therefore I concluded that bank holidays had not taken into account and that since Ms Ajagbe did not work those days a further 24 hours (3 x 8 hours pd) is to be deducted to provide a total of 36 hours
25. To this sum is to be added 4.5 hours for the 2023/24 leave year, since her contract was terminated on 7 April 2023. This provides a total of 40.5 hours

owed at the point that her employment came to an end. The claimant's hourly rate of pay was £10.75 ph providing a total outstanding of **£435.38**.

## **CONCLUSION**

- 29 Therefore I conclude that the claimant's claims for unlawful deduction of wages and holiday pay succeeds.

**Employment Judge Hart**  
**Date: 24 June 2024**

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### **Recording and Transcription**

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