



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs. R. Dengri  
**Respondent:** Star Kids Club Limited  
**Heard at:** London South Employment Tribunal  
**On:** 7<sup>th</sup> to 9<sup>th</sup> October 2024<sup>1</sup>  
**Before:** Employment Judge Sudra  
Sitting with non-legal members, Ms. Oldfield and Mrs. Williams

**Appearances:**

Claimant: Mr. I. Aziz (lay representative)  
Respondent: Mr. A. Adeniyi (solicitor)

*(References in the form [XX] are to page numbers in the Hearing bundle and references in the form [XX,para.X] are to the paragraph of the named witness' witness statement)*

## RESERVED JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's complaints of,

- (i) Automatically unfair dismissal (s.103A Employment Rights Act 1996) – protected disclosure is not well founded and dismissed.
- (ii) Automatically unfair dismissal (s.104 Employment Rights Act 1996) – assertion of a statutory right is upheld.
- (iii) Ordinary unfair dismissal is upheld.

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<sup>1</sup> 9<sup>th</sup> October 2024, deliberations in chambers.

- (iv) Unlawful deduction of wages (national minimum wage breach) is not well founded and dismissed.
- (iv) Unpaid holiday pay is upheld.

## **REASONS**

1. The Claimant began Acas early conciliation on 1<sup>st</sup> March 2022 ('Day A') and was issued with an Acas early conciliation certificate on 11<sup>th</sup> April 2022 ('Day B'). The Claimant presented her ET1 on 3<sup>rd</sup> June 2022. The Respondent defended the claims by way of an ET3 and Grounds of Resistance in July 2022.

### **The Issues**

2. The Claimant's claims are for:
  - (i) Ordinary unfair dismissal (s.98 Employment Rights Act 1996 ('ERA');
  - (ii) automatically unfair dismissal (s.103A ERA) – protected disclosure;
  - (iii) automatically unfair dismissal (s.104 ERA) – assertion of a statutory right;
  - (iv) Unlawful deduction of wages (national minimum wage breach) (s.13 ERA);
  - (v) Unpaid holiday pay.

### **'The Issues'<sup>2</sup>**

53. The issues the Tribunal will decide are set out below.

#### **1. Protected disclosure**

- 1.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

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<sup>2</sup> As per the Preliminary Hearing Order of EJ Smith on 15<sup>th</sup> March 2024.

1.1.1 What did the claimant say or write? When? To whom?

The claimant says they made disclosures on these occasions:

1.1.1.1 The claimant made oral disclosures to the respondent, namely **[claimant to identify named individual]**, on **[claimant to identify the date and time]**, that **[claimant to identify the content of the conversation]**

1.1.1.2 The claimant made oral disclosures to the respondent's accountant, namely, Global Challenge Ltd over the telephone on **[claimant to identify the name of individual]** on **[date]** that **[claimant to identify the content of conversation]**

1.1.1.3 The claimant made oral disclosures to HMRC over the telephone on **[date]** that **[claimant to identify the content of the conversation]**

1.1.2 Did they disclose information?

1.1.3 Did they believe the disclosure of information was made in the public interest?

1.1.4 Was that belief reasonable?

1.1.5 Did they believe it tended to show that:

1.1.5.1 a criminal offence had been, was being or was likely to be committed; or

1.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation?

1.1.6 Was that belief reasonable?

1.1.7 If the claimant made a qualifying disclosure, was it made:

1.1.7.1 To the respondent's employer? If so, it was a protected disclosure.

1.1.7.2 To the respondent's accountants?

If so, should the respondent's accountants be treated as the respondent's agent such that a disclosure to them should be treated as a disclosure to the respondent?

Alternatively, did the claimant reasonably believe that the relevant failure related solely or mainly to the conduct of a person other than her employer, or any other matter for which a person other than her employer had legal responsibility?

If so, it was a protected disclosure.

**1.1.7.3 To HMRC?**

If so, did the claimant reasonably believe that the relevant failure falls within the prescribed responsibilities of HMRC? And, did the claimant reasonably believe that the information disclosed and any information contained in it, were substantially true?

If so, it was a protected disclosure.

**2. Assertion of statutory right**

2.1 Did the claimant do the things in 1.1.1. above?

2.2 Did they amount to an assertion of a statutory right for the purposes of s.104 Employment Rights Act 1996?

3. The claimant says that the following statutory rights were asserted:

3.1 To provide particulars of employment;

3.2 Protection against unlawful deduction from wages and breaches of the National minimum wage; and

3.3 Paid annual leave.

4. Was the claim to the right and the assertion that it has been infringed made in good faith?

5. Did the claimant assert infringements of a statutory right before she was dismissed?

**6. Unfair dismissal**

6.1 Was the claimant dismissed?

6.2 If the claimant was dismissed, what was the reason or principal reason for dismissal?

The claimant says that she was dismissed because she made protected disclosures and or for asserting statutory rights.

The respondent says that the claimant resigned.

6.3 Was it a potentially fair reason?

6.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

6.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

6.6 Was the reason or principal reason for dismissal that the claimant made a protected disclosure and or asserted a statutory right?

If so, the claimant will be regarded as unfairly dismissed.

## **7. Remedy for unfair dismissal**

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

7.1.1 What financial losses has the dismissal caused the claimant?

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

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

7.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

7.1.5 If so, should the claimant's compensation be reduced? By how much?

7.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.1.7 Did the respondent or the claimant unreasonably fail to comply with it?

7.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

7.1.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

7.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

7.1.11 Does the statutory cap apply?

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

7.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

## **8. Holiday Pay**

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

**[To be provided by the claimant in schedule of loss. The claimant must provide detailed and clear calculations supported by evidence broken down by each relevant time period]**

## **9. Unauthorised deductions (breach of national minimum wage)**

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

The claimant says that she was not paid the minimum wage or her contracted rate of £9.22 per hour.

**[Claimant to specify in schedule of loss. The claimant must provide detailed and clear calculations supported by evidence broken down by each relevant time period]**

## Preliminary Matters

3. At the outset of the Hearing we discussed the List of Issues with both the Claimant and Respondent; they confirmed that the List of Issues [HB/84-87] was agreed. However, there appeared to be some information missing i.e. details of the Claimant's alleged qualifying disclosures. Mr. Aziz clarified that the Claimant relied upon six disclosures which were detailed at paragraphs 2, 3, 4, 7, 8, and 9 of her Further and Better Particulars of Claim [HB/88-91]; the Respondent agreed.

## Procedure and Documents

4. The Tribunal had before it:
  - (a) An agreed Hearing bundle consisting of 267 pages;
  - (b) an additional bundle of 14 pages from the Claimant; and
  - (c) a breakdown of holiday pay and National Insurance ('NI') contributions document from the Claimant.
5. The Tribunal also had written witness statements and heard live evidence from:

### For the Claimant

- (i) The Claimant; and

### For the Respondent

- (ii) Olayinka Thompson.

6. The Claimant provided written closing submissions, supplemented by oral submissions, and the Respondent made oral closing submissions at the conclusion of the evidence.
7. The Tribunal notified the parties at the outset of the Hearing that they would only read documents that they were specifically referred to and would only read documents referred to in witness statements insofar as they were relevant.

## Findings of Fact

8. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.
9. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.

### Background

10. The Respondent is a nursery for pre-school aged children based in Dartford, Kent. In addition to the unusual nursery services the Respondent also operates as a breakfast and after-school club. The Claimant began working for the Respondent as a nursery nurse on 3<sup>rd</sup> February 2020 and her employment terminated, on 18<sup>th</sup> March 2022. The Respondent's offer of employment letter sent to the Claimant on 3<sup>rd</sup> February 2020 stated that '*terms and conditions of engagement and employment*' was attached to the letter.
11. The Respondent believed that the Claimant was not its employee but a 'contractor.' However, following a Preliminary Hearing on 28<sup>th</sup> September 2023, Employment Judge T. Perry found that '*...that the Claimant was an employee and worker of the Respondent for the purposes of section 230 Employment Rights Act 1996.*' [HB/76 para.43]
12. The Claimant was employed on a zero hours contract and her working pattern was typically 110-111 hours per month, comprised of eight hour work days. The Claimant's 'Assignment Agreement' [94] stipulated that she would be paid £9.22p per hour worked and would work a minimum of 15 hours per week. That



agreement also specified that '1 calendar month(s)' notice was required by both parties to terminate the contract. The Claimant was paid by the Respondent via an umbrella company, 'Global Challenge Limited.' The Respondent's finances and payroll issues were dealt with by its accountant, Arnold Mudzengerere, upon whom the Respondent relied for advice and guidance.

13. Up until approximately February 2022, the Claimant's employment with the Respondent was unremarkable in that there were no issues or incidences of note.

Letter from HMRC

14. On or around 28<sup>th</sup> January 2022, the Claimant received a letter from His Majesty's Revenue and Customs ('HMRC') informing her that she had paid too little tax and owed HMRC £515.00p. This came as a shock to the Claimant as she was an employee and believed that the Respondent dealt with her tax deductions at source.

15. Shortly after receiving the letter from HMRC, the Claimant raised the issue with Olayinka Thompson (director) of the Respondent and also queried holiday pay which she said was owed to her. Mrs. Thompson asked the Claimant to discuss the matter with the Respondent's accountant, Arnold Mudzengerere, as he dealt with the respondent's financial matters and payroll.

16. The Claimant sought to contact Mr. Mudzengerere – via telephone – on several occasions to no avail. Therefore, on 3<sup>rd</sup> February 2022 the Claimant's husband, Pankaj Dagar, telephoned Mr. Mudzengerere who, on this occasion, answered the call. Mr. Mudzengerere was unable to sufficiently answer Mr. Dagar's queries and the telephone conversation was a short one. Mr. Dagar also brought to Mr. Mudzengerere's attention that the Respondent had deducted employer national insurance ('NI') contributions from the Claimant's gross pay as well as employee NI contributions. Following the telephone conversation,

Mr. Mudzengerere sent Mr. Dagar an email with a link for guidance regarding working through an umbrella company.

17. On 7<sup>th</sup> February 2022, Mr. Dagar emailed Mr. Mudzengerere inter alia, chasing him for a response to the matters he had raised when they had spoken several days before. Also on or around 7<sup>th</sup> February 2022, the Claimant received a P45 stating that her employment with the Respondent had ended on 31<sup>st</sup> January 2022. The Claimant made enquiries with HMRC whom confirmed that the Claimant had underpaid tax in the previous financial year and owed them £515.00p.

18. As the Claimant had not resigned from her employment she spoke with Mrs. Thompson (between 7<sup>th</sup> and 15<sup>th</sup> February 2022) and queried why she had been sent P45. Mrs. Thompson told the Claimant to ignore the P45 and to continue work as normal. The Respondent continued to rota the Claimant to work shifts after this discussion and the Claimant duly worked assigned shifts. When the Claimant raised the issues of holiday pay, deductions from pay and the £515.00p she owed to HMRC with Mrs. Thompson, she told the Claimant that a meeting had been arranged between staff and Mr. Mudzengerere and that all queries should be addressed to him.

19. On 15<sup>th</sup> February 2022, Mr. Mudzengerere met with the Respondent's staff and the Claimant was present at the meeting. Mr. Mudzengerere stated that the Respondent's staff were not employees but 'contractors.' In the Claimant's case this was incorrect; she was not a contractor but an employee of the Respondent. When the Claimant raised the issue of deductions from her pay and the need to accurately pay tax, Mr. Mudzengerere made light of the Claimant's concerns and said '*people save tax and you want to pay tax.*'

Termination of Employment

20. Post the 15<sup>th</sup> February 2022 meeting, the Claimant continued to work her shifts as per usual. On 18<sup>th</sup> March 2022, Mrs. Thompson told the Claimant that the respondent no longer needed the Claimant's services '*with immediate effect.*' The Claimant, understandably was taken aback by the abrupt termination of her employment and she protested that she was entitled to one month's notice. The Respondent terminated the Claimant's employment as there were not enough hours to cover her role and they summarily dismissed the claimant as they – erroneously – believed that she was a contractor and not an employee.
21. Also on 18<sup>th</sup> March 2022, Acas had contacted Mrs. Thompson as the Claimant had applied for Acas early conciliation on 1<sup>st</sup> March 2022. The Respondent's termination of the Claimant's employment was not coincidental and the telephone call from Acas was the catalyst for the Respondent's decision to end the Claimant's employment.
22. Mrs. Thompson, at some point between 19<sup>th</sup> and 23<sup>rd</sup> March 2022, arranged a meeting with the Claimant and invited her to attend a meeting to take place on 24<sup>th</sup> March 2022. The Claimant believed the purpose of the meeting was to discuss the issues she had raised about being underpaid. The real reason for the meeting was that the Respondent were anxious that the Claimant would be submitting an Employment Tribunal claim and wished to assuage her.
23. At the meeting on 24<sup>th</sup> March 2022, which was held at the Claimant's ex-place of work, Mrs. Thompson told the Claimant that the contact from Acas had upset her. She also told the Claimant that if she agreed to accept her former terms and conditions of employment she could return to work. However, Mrs. Thompson also told the Claimant that if she continued to pursue her concerns regarding her employment status and pay, she could not return to work as other staff may also raise similar concerns.

24. The Claimant then left the meeting and did not accept Mrs. Thompson's offer to return to her role.

## Relevant Law

### Unfair Dismissal

25. Under section 103A Employment Rights Act 1996 ('ERA'),

'An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.'

Under section 104 ERA (insofar as material),

#### **'104 Assertion of statutory right.**

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1)—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed;

but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.'

....

### Written Statement of Employment Particulars

26. Under section 1 ERA an employee is entitled to receive a written statement of particulars of employment. The required information is contained in that section. Under S.4, any changes need to be notified within one month. A reference can

be made to a Tribunal to determine which particulars ought to have been included under S.11 and under S.12, any such determination can confirm, amend or substitute particulars.

27. Employees are afforded various protections when they make a protected disclosure (commonly referred to as whistleblowing) and/or in relation to asserting certain rights.

#### Protected Disclosures

28. Any disclosure of information which in the reasonable belief of the worker making the disclosure tends to show one or more of the matters listed at section 43B(1) ERA and is reasonably believed to be made in the public interest (not defined), will be a qualifying disclosure. That list includes that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject and that the health and safety of any individual has been, is being or is likely to be endangered.

29. In order for a statement or disclosure to be a qualifying disclosure, it has to have a sufficient factual content and specificity such as is capable of tending to show one of those matters (*Kilraine v. LB of Wandsworth* ([2018] IRLR 846). This is a matter of fact for the Tribunal to determine on the evidence heard. It must identify, albeit not in strict legal language, the breach relied upon (*Fincham v. HM Prison Service* EAT 0925 & 0991/01).

30. Whether a worker had the required reasonable belief (of both what the information tended to show and whether the disclosure was being made in the public interest) is judged taking into account that worker's individual circumstances. Accordingly, whether belief is reasonable must be subject to what a person in their position would reasonably believe to be wrong doing. It is a mixed subjective/objective test.

31. The information does not have to be true but to be reasonably believed to be true, there must be some evidential basis for it. The worker must exercise some judgment on his or her own part consistent with the evidence and resources available (*Darnton v. University of Surrey* [2003] ICR 615).

32. To be protected a qualifying disclosure has to be made in accordance with one of six permitted methods of disclosure which include to the person's employer (section 43C(1)(a)).

33. Under s.13 ERA (insofar as material),

**'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.'

....

## **Conclusions and Analysis**

### Credibility of Evidence

34. We find that the Claimant's evidence was honest, and trustworthy.

35. We found the Respondent's witnesses' evidence to be measured but inconsistent. For example, in response to a Tribunal question, she unequivocally stated that the document at [185] was a verbatim typed copy of her manuscript notes taken at a meeting on 18<sup>th</sup> March 2022. However, this cannot be correct as the typed notes refer to events which had not yet taken place i.e.

'I therefore contacted her on the 22<sup>nd</sup> of March via a text message, to come and see me for a short meeting booked for 24<sup>th</sup> March 2022.'

When questioned on the discrepancy, Mrs. Thompson said that '*when the Claimant left on the 18<sup>th</sup>, I knew I had to contact her back.*' We do not accept this to have been the case as the notes read as if events have already occurred.

36. Where there was a dispute, we preferred the evidence of the Claimant.

*Automatic Unfair Dismissal: Protected Disclosures*

37. The Claimant's case is that she made the following protected disclosures:

- (i) On 31st Jan/ 1st Feb 2022, I spoke to Miss Thompson about the letter and Miss Thompson said if I can speak to Mr. Arnold (accountant) about this issue. I raised with her issues related to the reasons why my pay was incorrect particularly given the deductions that had been made and my holiday pay. It was these matters that had been highlighted by the HMRC letter of 28/1/22.
- (ii) I called to Mr. Arnold so many times, but he was not responding to my phone calls. On 3rd Feb 2022, Pankaj (my husband) called on my behalf from his number and Mr. Arnold picked up the call. My husband raised the same issues I had raised with Miss Thompson (31 Jan/1 Feb 2022) related to the deductions from my pay and holiday pay, Mr. Arnold was unable to provide any explanation, so he quickly disconnected the call.
- (iii) On 7th Feb, 2022, My husband wrote an email on my behalf to Mr. Arnold to again raise the same concerns about the deductions and holiday pay. The email asked him to respond it by 9th Feb, but no response came from him. After raising these issues in writing Star Kids issued me my P45.
- (iv) During the 2<sup>nd</sup> week of Feb 2022, I spoke again to Miss Thompson again about my issues related to my pay deductions and holiday pay that had been made and the fact that HMRC had informed me that I owed £515 in tax, I also raised with her the P45 she said to ignore the P45. She explained that she would be asking Mr. Arnold to attend a meeting for all the staff and staff can ask the questions to him. It was clear from her manner and tone that she was annoyed with me asking all these questions of her.
- (v) At or around 15<sup>th</sup> Feb 2022, Mr Arnold attended a staff meeting. When I asked Mr Arnold about the staff and my employment status, he told

the staff meeting that we were all contractors not an employee. When raised the fact there were issues with the deductions being made from my pay and I suspected other and the staff earning being declared to HMRC were not correct. His response was why do you want to pay more tax. I said to him I need to pay accurate tax on my income earned then was due, I wanted my pay to be correct his response was that people save tax and you want to pay tax and they started laughing on me.

- (vi) At or around 15<sup>th</sup> Feb 2022 I again asked to Mr. Arnold and Miss Thompson how Star Kids was going to resolve my pay issues and they said we will have all look whenever they get the time, they explained that in the meantime Star Kids would not be doing anything so pay deductions and holiday pay matters would not change. When Mr. Arnold again stated that you are a contractor not an employee, I again asserted That that I am an employee and I have a contract with Star Kids. [88-89]

38. We accept that the Claimant made protected disclosures as alleged and that she believed that a criminal offence had been, was being or likely to be committed; or a person had failed, was failing or likely to fail to comply with a legal obligation.

39. The question for us was whether the Claimant had a belief that the disclosure was made in the public interest (subjective test) and if so, was her belief that the disclosure was in the public interest, a reasonable one (objective test) Chesterons Global Ltd v. Nurmohammed [2018] ICR 731 CA and Babula v. Waltham Forest College [2007] EWCA Civ 174. In, Chesterton a four- factor test was approved as being a useful tool to analyse the second part of the public interest test.

40. However, the Tribunal concludes that the Claimant did not believe that in respect of any of the aforementioned, her disclosures were in the public interest pursuant to the first part of the public interest test in Chesterton. The Tribunal reached this conclusion for a number of reasons chiefly, as the Claimant had been pursuing the Respondent about her own personal pay, tax, and employment matters. She did not do so on behalf of any other colleagues nor did she seek include them in her actions in respect of the disclosures made.



41. If the Tribunal is wrong in its conclusion regarding the Claimant's belief that the disclosure was in the public interest, the Tribunal concludes in the alternative that the Claimant's belief was not, objectively, a reasonable one.
42. The court of Appeal provided helpful guidance on this second limb in *Chesterton* when it stated:

*'...element (b) in that exercise requires the Tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course, we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.*

*Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.*

*Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it'*

43. Therefore the Claimant's whistleblowing detriments claim fails.

Ordinary Unfair Dismissal

44. It is clear that the Respondent followed no process at all as they believed they did not have to as the Claimant was a 'contractor.' However, as a previous Tribunal found the Claimant was an employee, the Respondent erred in not following any process prior to dismissing the Claimant.

45. Therefore, this allegation is made out and succeeds.

*Automatic Unfair Dismissal: Assertion of a Statutory right*

46. We accept, from the documentary [259-262] and oral evidence that the Claimant asserted the statutory rights of:

- (i) To provide particulars of employment;
- (ii) protection against unlawful deduction from wages and breaches of the National minimum wage; and
- (iii) paid annual leave.

47. The Respondent had provided the Claimant with written particulars of employment at the start of her employment. The Respondent called it 'assignment agreement.' Therefore, this claim is not made out.

48. The national minimum wage at the material time was: £8.72p (2020-2021); £8.91p (2021-2022) and £9.50p (2022-2023). From the payslips in the bundle [100-115] and [280-281] it is evident that the Claimant received the minimum wage at the material times and this claim is not made out and fails.

Unpaid Holiday Pay

49. We accepted that the Claimant was not paid her appropriate holiday pay. The Respondent simply provided no evidence that the Claimant was paid holiday pay owing to her and therefore, we accept that the Claimant is owed the holiday pay listed in the document provided by the Claimant titled, 'Holiday Pay and Employer NI Breakdown' plus one week.

50. The Claimant's claim for unpaid holiday pay is well founded and succeeds.

**Remedy**

51. In light of our findings the Claimant is awarded the sum of £5,134.66p which must be paid by the Respondent to the Claimant within 28 days from when this judgment was sent to the parties.

52. Basis of Our Calculations

Average hours worked in last 12 months of employment:	1335.5
Average hours worked per week excluding weeks where no Work was offered:	27.04
Average weekly pay at £9.22p per hour:	£256.53p

Losses

Basic award x 2 weeks pay:	£513.05p
Notice pay x 4 weeks:	£1,026.11p
Loss of Statutory Rights:	£500.00p
Holiday pay:	£3,095.50p

*(Holiday pay accrued at 12.07% of hours worked*

*Average hours over 12 months (1335.5) = 111.3 hours per month*

*Plus holiday entitlement is an additional 13.43 hours x £9.22p = £123.82p per month*

*£123.82 x 24 months = £2,971.68 = 1 week = £3,095.50)*

**Total: £5,134.66p**

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**Employment Judge Sudra**

**Date: 27<sup>th</sup> November 2024**