Case No: 6010404/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr C Wood

Respondent: Buridan Network Limited

HELD AT: Newcastle CVP **ON:** 13th December 2024

BEFORE: Employment Judge Booth

REPRESENTATION:

Claimant: In person
Respondent: Mr K Atkinson, Group Managing Director

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The respondent's application for an extension of time to present the response is granted. The respondent's response is accepted.

2. The claimant's claims were presented within the necessary time limits and therefore the Tribunal has jurisdiction to hear them.

3. The complaint of unauthorised deductions from wages contrary to Part II Employment Rights Act 1996 is well-founded. The Tribunal declares that the respondent made an unauthorised deduction from the claimant's wages which were due to be paid on 31.05.2024 equivalent to 14 days' pay. The respondent shall pay the claimant **£2,153.76**, which is the gross sum deducted.

4. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2) of the Working Time Regulations 1998. The respondent shall pay the claimant **£153.84** gross.

5. The complaint of breach of contract in relation to notice pay is not well-founded and is dismissed.

6. The total amount to be paid to the claimant under paragraphs 3 and 4 above is **£2,307.60.** The sum shall be paid gross. The claimant is responsible for paying any tax or National Insurance.

REASONS

Introduction

1. The claimant, Mr C Wood, brings the following complaints against the respondent, Buridan Network Limited:
    a. That the respondent made an unauthorised deduction from his wages in the sum of £2,153.76 in respect of 14 days' pay for days worked between 1st May 2024 and 20th May 2024.
    b. That the respondent failed to pay him for 1 day of accrued but untaken annual leave remaining at the termination of his employment of 20th May 2024 in the sum of £153.84.
    c. That the respondent failed to give him two weeks' paid notice to terminate his contract of employment, with a purported value of £1,538.40.

2. The respondent disputes the claim and asserts that the claim was submitted outside of the time limits set down in the Employment Rights Act 1996.

3. The hearing was listed for 2 hours, starting at 2pm. Mr Atkinson and Employment Judge Booth had difficulty in joining the hearing and had to seek assistance. The hearing started at 2.40pm. The Tribunal offered to sit beyond 4pm, but Mr Atkinson had an important prior commitment.

4. The Tribunal reviewed documentary evidence contained within the ET1 claim form, ET3 response form. The claimant gave witness evidence on his own behalf. Mr Atkinson, Group Managing Director, gave witness evidence on behalf of the respondent.

5. The hearing concluded at 4pm with judgment to be reserved.

Procedural Matters

6. At the start of the hearing, the respondent made an application for an extension of time to allow the respondent's response (set out in an ET3 response form submitted to the Tribunal on 09.12.2024) to be presented.

7. The period of early conciliation began on 08.07.2024 and ended on 19.08.2024. The claimant was informed that ACAS had tried to contact Mr Atkinson by telephone and email and received no response. The claimant presented his ET1 claim form on 02.09.2024.

8. At the time of early conciliation and the claimant presenting his ET1 claim form, the respondent's registered office address, as held by Companies House, was Office E, Derwentside Business Centre, Consett, DH8 6BN ("the Consett address").

9. On 10.10.2024 the respondent electronically submitted an AD01 change of registered office address form to Companies House amending the address to 167-169 Great Portland Street, London, W1W 5PF ("the London address").

10. The Tribunal served the ET1 claim form, Notice of Hearing and Case Management Orders to the respondent at the Consett address on 11.10.2024. The respondent was given a time limit of 08.11.2024 to submit a response. The Tribunal did not receive any communication from the respondent and no response was submitted.

11. The Tribunal re-served the ET1 claim form, Notice of Hearing and Case Management Orders to the respondent at the London address on 27.11.2024 following Employment Judge Arullendran's assessment that service at the address provided by the claimant (the Consett address) was unlikely to come to the attention of the respondent.

12. The Tribunal's letter of 27.11.2024 informed the respondent that:

    "If you wish to defend these proceedings you will need to complete and return the enclosed ET3 form, explaining why it was not submitted within the original time limit. You will need to include a request that it be accepted out of time. Delay in returning the form may count against you."

13. On 09.12.2024 at 7.33pm, the respondent submitted the ET3 response. The respondent's cover email stated only that he had been on holiday. The respondent did not provide further reasons why the response was not submitted within the original time limit or include a request that the response be accepted out of time.

14. Under the authority to make general case management orders bestowed on the Tribunal by rule 20 of the Employment Tribunal Rules of Procedure, as set out in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), the Tribunal permitted the respondent to make an application for an extension of time for presenting its response.

15. Mr Atkinson stated in evidence that he received no contact from ACAS during the early conciliation period (08.07.2024 to 19.08.2024). Mr Atkinson explained that he spoke to Mr J Tibby at ACAS in w/c 09.12.2024 and Mr Tibby informed him that their records show the first communication was sent out on 25.11.2024.

16. The claimant's and respondent's recollections of information received from ACAS indicate a discrepancy. The Tribunal believes that ACAS would have attempted contact during the early conciliation period and notes that the early conciliation certificate was sent to the Consett address on 19.08.2024. The

Tribunal considers that Mr Tibby's comment to Mr Atkinson may have been made with regard communication since early conciliation or communication to the London address. In any event, the Tribunal accepts that there may have been some difficulty with regards to communication with the respondent, due to the respondent's change of address.

17. Mr Atkinson stated that the respondent left the Consett address in August 2024 and made arrangements with the landlord of the Consett address to forward on post. Mr Atkinson explained that the registered office address was not updated at Companies House until 10.10.2024 because the respondent was trying to organise a virtual office and relying on post being forwarded on. The respondent only later discovered that their post was not being forwarded on effectively.

18. The respondent did not receive the ET1 claim form, Notice of Hearing and Case Management Orders served at the Consett address. Mr Atkinson stated that the respondent would most likely have received the ET1 claim form, Notice of Hearing and Case Management Orders served at the London address on/ around 28.11.2024 but it did not reach his attention until 09.12.2024 because he was out of the office moving house. Mr Atkinson stated that he was the only person to whom the post would have been sent.

19. Mr Atkinson became aware of the ET1 claim form, Notice of Hearing and Case Management Orders on 09.12.2024 and submitted a response the same day.

20. The claimant was given the opportunity to respond to the application. The claimant stated that if the respondent had not received the paperwork from the Tribunal because they had moved house then that was fair, but he had been concerned that it was a delaying tactic.

21. The Tribunal considered the following in respect of the explanation for the delay by the respondent in submitting the response:
    a. Employment Judge Arullendran's assessment that service at the address provided by the claimant (the Consett address) was unlikely to come to the attention of the respondent;
    b. the evidence given by Mr Atkinson on behalf of the respondent, that the service of the ET1 claim form, Notice of Hearing and Case Management Orders at the Consett address, had not come to the attention of the respondent;
    c. the evidence given by Mr Atkinson that he was moving house and did not receive service of the ET1 claim form, Notice of Hearing and Case Management Orders until 09.12.2024.

22. In line with the guidance set out in Kwik Save Stores Ltd v Swain [1997] ICR 49, the Tribunal further considered:
    a. The merits of the defence. Although the respondent's response, is set out in very brief terms in the ET3 response form, it includes an assertion that the claimant's complaint of unpaid notice pay (wrongful dismissal) should fail because the claimant was dismissed in connection with acts of gross misconduct. Within the ET3 response form and Mr Atkinson's verbal application, the respondent confirmed that the alleged acts of

gross misconduct included conduct towards customers of the respondent's business, conduct towards Mr Atkinson as a senior manager (namely accusing Mr Atkinson of lying) and withholding of company property. Despite the brevity of the information supplied, the Tribunal was satisfied that such allegations of gross misconduct, may provide a meritorious defence to the complaint of unpaid notice pay.

b. The possible prejudice to each party in granting the extension of time. The Tribunal considered that neither party had disclosed information or evidence beyond the contents of the ET1 claim form and ET3 response form, meaning that neither party had an unfair advantage or disadvantage in preparing for the hearing. The Tribunal considered that the claimant would not be materially prejudiced by a requirement to answer questions on the alleged gross misconduct as such allegations relate to events occurring in/ around May 2024 and would therefore be within the scope of his knowledge and recollection. By contrast, the Tribunal concluded that the respondent would be materially prejudiced if not permitted to defend the claim given the total amount claimed by the claimant is close to £4,000 and possibility that the respondent may have grounds for at least an arguable defence.

23. Finally the overriding objective to deal with a case fairly and justly as set out in rule 2 of the Rules, including the need to ensure that the parties are on an equal footing so far as is practicable.

24. The Tribunal concluded that the respondent's application should be granted and the ET3 response form accepted out of time.

Time Limits

25. The respondent asserted that the claimant's complaints were submitted out of time.

26. The claimant's complaint of unpaid wages is brought under rules governing unauthorised deductions from wages set out in Part II of the Employment Rights Act 1996 ("ERA 1996"). Section 23(2) ERA 1996, requires a complaint for unauthorised deductions to be presented before the end of the period of three months beginning with the date of payment of the wages from which the alleged deduction was made.

27. The claimant's complaint of unpaid holiday is brought under the Working Time Regulations 1998 ("WTR 1998"). Regulation 30 requires a complaint to be presented before the end of the period of three months beginning with the date on which payment should have been made.

28. The parties agree that, if the claimant was eligible to receive the sums claimed as unpaid wages and unpaid holiday, such sums fell due to be paid on 31.05.2024. The period of three months therefore began on 31.05.2024 and ended on 30.08.2024.

29. The claimant's complaint of unpaid notice pay is brought as a breach of contract claim, which is governed by the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ("1994 Order"). Article 7a requires a complaint for breach of contract to be presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim.

30. The parties agree that the claimant's contract of employment was terminated with effect from 20.05.2024. The period of three months therefore began on 20.05.2024 and ended on 19.08.2024.

31. The claimant began early conciliation with ACAS on 08.07.2024 (day A), early conciliation ended on 19.08.2024 (day B). The period starting with the day after day A and ending with day B is 42 days.

32. The period of three months referred to in each of the complaints above must be extended by virtue of the claimant having undertaken early conciliation with ACAS. This is governed by section 207B ERA 1996, regulation 30B WTR 1998 and article 7ba 1994 Order all of which state that, when working out the time limit (i.e. the end of the period of three months) the period beginning with the day after day A and ending with day b (in this case a period of 42 days) is not to be counted.

33. The effect of paragraph 32 above is to extend the time limits as follows:
    a. The time limit for presenting the complaints of unpaid wages and unpaid holiday is extended to 11.10.2024.
    b. The time limit for presenting the complaint of unpaid notice pay is extended to 30.09.2024.

34. The claimant's complaints were presented on 02.09.2024. Accordingly, the claimant's complaints were submitted in time and the Tribunal has jurisdiction to hear them.

Issues to be Determined

35. At the beginning of the hearing, the parties agreed that the following issues were to be determined by the Tribunal.

36. Unpaid wages: the claimant's complaint of unpaid wages is brought under Part II ERA 1996 regarding unauthorised deduction from wages:
    a. What amount was properly payable to the claimant in respect of wages on 31.05.2024?
    b. Were the wages paid to the claimant less than the wages they should have been paid?
    c. What amount was deducted?
    d. Was any deduction required or authorised by a written term of the contract?
    e. If yes, did the claimant have a copy of the contract?
    f. How much is the claimant owed?

37. Unpaid holiday pay: the claimant's complaint of unpaid holiday pay is brought under WTR 1998.
    a. How much annual leave did the claimant accrue between 25.03.2024 and 20.05.2024?
    b. How much paid annual leave did the claimant take between 25.03.2024 and 20.05.2024?
    c. How many days of accrued annual leave remained unpaid at 20.05.2024?
    d. What is the relevant daily rate of pay?
    e. How much is the claimant owed?

38. Unpaid notice pay: the claimant's complaint of unpaid notice pay is brought as a breach of contract claim under the 1994 Order.
    a. Did the claimant fundamentally breach the contract of employment by committing an act of gross misconduct? The respondent asserts that the claimant:
        i. Was rude to customers;
        ii. Accused Mr Atkinson of lying;
        iii. Withheld company property, being the key to a company vehicle;
        iv. Withheld business critical information.
    b. If yes to the above, did this have the effect of releasing the respondent from the obligation to give the claimant notice to terminate the contract of employment?
    c. If no to the above, how much notice was the respondent obliged to give the claimant?
    d. Did the respondent give this notice? The parties agree that the claimant was dismissed with immediate effect on 20th May 2024 without notice or pay in lieu of notice.
    e. If the respondent breached the claimant's contract, should the claimant be awarded damages? If so, what is the value of these damages.

Findings of Fact

Contract of Employment

39. The parties agree that the claimant was an employee of the respondent from 25.03.2024 to 20.05.2024.

40. The parties agreed that the claimant was issued with a contract of employment, but did not sign it. Neither party put the contract of employment into evidence before the Tribunal.

41. Both parties made reference to the wording of a deductions from wages clause within the contract. The Tribunal is satisfied that the clause included the phrase

"By signing this contract you agree to any deductions…" and went on to refer to categories of deductions including deductions deemed necessary to reimburse the respondent for costs incurred by the respondent as a result of an employee's acts or omissions. The Tribunal is further satisfied that the clause included a procedure whereby the amount of any deduction would be notified in advance.

42. The claimant contended that the respondent had failed to notify him of the amount of deductions in advance. The respondent stated that information about the deductions was provided to the claimant within the wording of a COT3 or compromise agreement. The Tribunal considers that this document formed part of without prejudice communications and is therefore not in evidence before the Tribunal and nor will it be taken into account by the Tribunal in determining this complaint.

43. The parties agree that the claimant's daily rate of pay was £153.84 (gross).

44. The claimant stated that his contract included a two week notice period. The respondent did not dispute this.

45. The parties agree that the claimant was dismissed with immediate effect on 20.05.2024. The effective date of termination is therefore 20.05.2024.

Final Pay/ Pay Slips

46. The claimant worked five days per week and worked on each of the 14 weekdays between 01.05.2024 and 20.05.2024. The respondent prepared a final payslip for the claimant that included payment for 14 days worked in May 2024 and came to £2,153.85 (gross). The respondent does not dispute this. The payslip was not put in evidence before the Tribunal. The claimant stated that he had sent it to the Tribunal, but it has not been received.

47. The claimant stated that he had taken two or three days of holiday during his period of employment. The claimant stated that he has calculated that he had 1 day of accrued, but unused holiday remaining at 20.05.2024. The respondent does not dispute this.

48. Mr Atkinson stated that he (on behalf of the respondent) had intended to pay the claimant what was due to him and confirmed that what was due included payment for 14 days work plus 1 day of holiday. The parties agree that these monies have not been paid to the claimant. Mr Atkinson stated that this is because he made a deduction in line with the claimant's contract of employment see paragraph 41 above and 62-66 below.

49. The parties agree that the respondent prepared a further payslip for the claimant that included payment for 5 days' notice pay and came to £769.23 (gross). The payslip was not put in evidence before the Tribunal. The claimant stated that he had sent it to the Tribunal, but it has not been received.

50. Mr Atkinson stated that he (on behalf of the respondent) had intended to pay the claimant 5 days' notice only if the claimant entered into a COT3 or compromise agreement with him with additional terms and conditions. The Tribunal finds as fact that the respondent's preparation of this payslip is not an admission by the respondent that notice pay was due to the claimant.

Rudeness to Customers

51. In the ET3 response form the respondent alleged that the claimant was loud and disrespectful to customers and that this amounted to gross misconduct. In the hearing, Mr Atkinson clarified that the allegation is that the claimant was rude to a customer and referred to one specific incident which took place in w/c 13.05.2024.

52. In w/c 13.05.2024, the claimant and a colleague (A) went to do a job at a customer's home. The job had been booked for 2pm, but the claimant and A arrived earlier and telephoned the customer to request access. Subsequently, the customer refused to pay the respondent's invoice for the job and cited that they were unhappy with (i) the quality of the work done and (ii) how the claimant and A had conducted themselves. Mr Atkinson on behalf of the respondent attended the customer's home on Saturday 18.05.2024.

53. On attending the customer's home, Mr Atkinson was unhappy with the quality of the work done by the claimant and A. Mr Atkinson described that inside the home the lino had been damaged in the kitchen because the fridge was not moved properly and outside the home the claimant and/or A had fitted cable around a movable garden stool with cuttings left. Mr Atkinson swept up for the customer. The claimant stated that he had been responsible for the work inside the home and A had been responsible for the work outside the home. The claimant disputed the description by Mr Atkinson with regards to the cable and stated that he and A had been working under time pressures.

54. The customer informed Mr Atkinson that the claimant and A had pestered them to have access earlier than the allocated start time of 2pm and had then talked about how quickly they could leave, which made the customer feel very uncomfortable. The customer also informed Mr Atkinson that A had smoked. Mr Atkinson was aware that the customer had recently recovered from cancer and apologised for the claimant and A. The claimant disputed the allegation that he was rude to customers, but accepted that he had probably talked with

A about how quickly they could leave the job because they were working under time pressures.

55. Following this incident, A was spoken to and was issued with a verbal warning. Mr Atkinson stated that the verbal warning was for smoking. Mr Atkinson stated that he also intended to speak to the claimant. In submissions, Mr Atkinson confirmed that he intended to bring the matter to the claimant's attention for review and acknowledged that the incident (in isolation) was not a matter of gross misconduct.

56. The Tribunal finds that it is likely that the claimant did press on the customer to start the job early, speak in the customer's presence about how quickly he could leave the job and damage to the customer's lino. However, the Tribunal finds as fact that:
    a. these actions did not form the principal reason for the respondent's decision to dismiss the claimant; and
    b. the claimant's actions did not amount to gross misconduct and were not sufficiently serious to amount to a repudiatory or fundamental breach entitling the respondent to treat the contract as repudiated.

Accusation of Lying

57. On 20.05.2024, Mr Atkinson and the claimant had a telephone conversation which included a discussion of whether the claimant could take on a third job that day to which the claimant said no due to a personal appointment. Within this telephone conversation, Mr Atkinson raised his concerns about the job conducted in w/c 13.05.2024 (as above).

58. Mr Atkinson stated that the claimant responded to him "I don't believe you, you are lying". The claimant admitted that he had probably said words to that effect and described that it was a heated conversation. Mr Atkinson stated that this was the final straw for him, he informed the claimant that he was dismissed with immediate effect.

59. Both parties agree that the claimant offered to work his two weeks' notice and that Mr Atkinson did not want him to. Mr Atkinson stated that he informed the claimant that "I am firing you for gross misconduct". The claimant disputes this and stated that Mr Atkinson did not use the phrase gross misconduct, but said that the relationship was over. Regardless of the words used, the claimant understood that the respondent had dismissed him with immediate effect.

60. The Tribunal finds as fact that the claimant accused Mr Atkinson of lying and that this was done in the heat of the moment during a heated conversation. The Tribunal concludes that this statement is evidence of the loss of trust and

confidence between the parties and is the principal reason for the respondent's decision to dismiss the claimant.

61. The Tribunal concludes that, taking into account the background of events set out at paragraphs 51 onwards, the claimants act of accusing Mr Atkinson of lying was sufficiently serious to amount to gross misconduct and a repudiatory or fundamental breach of contract entitling the respondent to treat the contract as repudiated.

Failure to Return Property

62. In the ET3 response form the respondent alleged that the claimant failed to return company property and business critical information. The respondent contended that these were acts of gross misconduct.

63. The parties described that, after Mr Atkinson told the claimant he was fired, he asked the claimant to return (i) a key to a company vehicle and (ii) information needed to enable the respondent to complete electrical certificates on jobs the claimant had done.

64. As this arose after the respondent had dismissed the claimant, the Tribunal finds as fact that:
    a. these actions did not form the principal reason for the respondent's decision to dismiss the claimant; and
    b. cannot be relied upon by the respondent as a repudiatory or fundamental breach entitling the respondent to treat the contract as repudiated.

65. The claimant admitted that he still has the key to the company vehicle. The claimant stated that he tried to return it by giving it to his colleague A, but A would not take it from him as he did not want to accept responsibility for it. The claimant claims to have made further attempts to arrange the return of the key, and the Tribunal has noted difficulties in communication with the respondent in paragraphs 6 to 24 above. Mr Atkinson stated that the respondent had a new key made for the company vehicle at a cost of approximately £250.

66. The claimant stated that he asked for guidance on how to do the electrical certificates but did not receive this. The claimant stated that had he been permitted to work his two weeks' notice, he would have done this work. Mr Atkinson stated that the respondent was put to significant cost in having work redone to complete the electrical certificates on jobs the claimant had done, though these costs were not itemised and no supporting evidence was put before the Tribunal.

Relevant Law

Unauthorised Deduction from Wages

67. The right not to suffer an unauthorised deduction from wages is contained in section 13(1) ERA 1996:

> "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."

68. Section 13(2) ERA 1996 defines a relevant provision of a workers contract as "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 the worker in writing on such an occasion."

69. Section 13(3) ERA provides:

> "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."

70. With regards to the terms of the deduction from wages clause in the claimant's unsigned contract of employment (described in paragraph 41 above) the following is relevant:
    a. Unless the terms of the offer of employment prescribe that acceptance must be communicated in a particular way, acceptance can be express (for example by written signature or verbal agreement) or implied (through conduct) as in *Collymore v Capita Business Services Ltd EAT 162/98*.
    b. However, where the terms of the offer prescribe that acceptance must be communicated in a particular way, acceptance must be made that way. For example: in *Financings Ltd v Stimson [1962] 1 W.L.R. 1184* a hire purchase contract for a car contained a clause stating that the contract would become binding on Financings Ltd only upon acceptance "by signature" on behalf of the company. Mr Stimson signed the contract and Financings Ltd gave verbal agreement to Mr Stimson taking the car away from the dealership. Mr Stimson changed his mind about the purchase and returned the car several days later. As the contract had not yet been signed on behalf of the company, it was held that there was

no concluded contract and Financings Ltd were not able to retain Mr Stimson's deposit.

c. Where there is purposed acceptance which does not comply with the prescribed method, such as implied acceptance through conduct, this may be regarded as a counter-offer and for the contract to come into existence only when that counter-offer is in turn accepted. For example: in *Wettern Electric Ltd. v Welsh Development Agency [1983] Q.B. 796* the WDA offered Wettern Electric Ltd a licence to occupy premises for 12 months. The licence included a prescribed form of acceptance, which was for Wettern Electric to complete and return an acceptance form. Wettern Electric wrote with suggested alternative terms, did not complete and return the acceptance form and then moved into the premises. WDA allowed them to do this. It was held that Wettern Electric had not accepted the terms of the licence because they had not completed the prescribed form of acceptance. It was further held that in moving into the premises, Wettern Electric did so on the basis of the terms offered in their letter and that by allowing them to do so WDA accepted those terms.
d. Further, although acceptance may be by conduct, it is still necessary for the parties to intend to be bound by the terms of the contract. For example: in *Arley Homes North West Ltd v Cosgrave EAT 0019/16*, Mr Cosgrave was a director who drafted a contract of employment for himself, which included enhanced terms more favourable than those of other directors. Mr Cosgrave gave the draft to his managing director, who did not sign it and the working relationship continued. When Mr Cosgrave brought an unauthorised deductions from wages claim based on the terms of the contract of employment he had drafted, the Employment Appeal Tribunal held that although acceptance may be made by conduct, there must be an intention to be bound by the entirety of the contract of employment.
e. Finally, where a contractual deduction from wages clause includes a prescribed process (such as informing the worker of the amount of and reason for a deduction before it is made), that process must be followed.

Holiday Pay

71. The WTR 1998, entitle an employee to paid annual leave, which is made up of:
    a. 4 weeks of paid leave under Regulation 13(1) ("Reg 13 leave"); and
    b. 1.6 weeks of paid leave under Regulation 13A(1), (2)(e) and (3) ("Reg 13A leave").

72. Regulation 14 WTR 1998 states:
    (1) "… 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…

Notice Pay

73. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") gives the tribunal the power to deal with claims for breach of contract.

74. Where an employer has failed to give notice in breach of the employee's contract of employment, the employee is entitled to damages. The purpose of damages is to put the employee in the position they would have been in had both parties performed their obligations according to the contract.

75. An employee will not be entitled to notice of termination under their contract of employment if they have fundamentally breached the contract of employment and the employer has terminated the contract in response to that breach. For example, where the employee commits and act of gross misconduct and is dismissed as a result.

76. Whether the use of bad language by an employee amounts to an act of gross misconduct depends on the language used and the context within which it is used. For example: in *Pepper v Webb 1969 1 WLR 514, CA*: Mr Pepper had failed to carry out some work when requested and when spoken to said "I couldn't care less about your bloody greenhouse and your sodding garden". It was held that this statement to his employer amounted to a repudiatory breach of contract when taken in the context of his failure to carry out the work he'd been asked to do.

Decision

77. Returning to the issues to be determined, in applying the relevant law to the findings of facts I have decided the following.

Unauthorised Deduction from Wages

78. What amount was properly payable to the claimant in respect of wages on 31.05.2024? The parties agree that the claimant worked for 14 days from 01.05.2024 to 20.05.2024 inclusive and that his daily rate of pay is £153.84 (gross). Accordingly, the amount payable to the claimant on 31.05.2024 was £2,153.85 (gross).

79. Were the wages paid to the claimant less than the wages they should have been paid and, if so, what amount was deducted? The parties agree that, although the respondent prepared a payslip for May 2024 in the sum of £2,153.85, the claimant was not paid anything. Accordingly, the amount paid was less that what should have been paid and the amount of the deduction was the full amount of £2,153.85.

80. Was any deduction required or authorised by a written term of the contract? The Tribunal concludes that the deduction was not authorised by a term of the claimant's contract of employment, based on the following assessment:
    a. The claimant was given a copy of his contract of employment, which included a relevant provision authorising the respondent to make a deduction from wages, as required under section 13(1)(c) and section 13(2)(a) ERA 1996.
    b. The relevant provision was expressed as "by signing this contract you agree to any deductions…". Accordingly, the terms of the relevant provision included a prescribed method of acceptance. The claimant did not sign the contract and therefore did not use the prescribed method of acceptance. Accordingly, the claimant did not accept and is not bound by the terms of the relevant provision.
    c. The respondent contended that the claimant's conduct in carrying out work for the respondent must be deemed to be acceptance of the terms of his contract of employment, including the relevant provision. This is not accepted. The Tribunal concludes that the claimant's conduct in carrying out work for the respondent whilst withholding his signature on the contract constitutes a counter-offer of terms of employment not including terms requiring the prescribed method of acceptance of a signature. The respondent's conduct in allowing the claimant to work and paying the claimant for his work constitutes an acceptance of the claimant's counter-offer.
    d. Finally, the Tribunal concludes that if the relevant provision had been agreed to (which is not the case), the respondent failed to comply with the terms of the relevant provision by failing to inform the claimant in advance of the amounts to be deducted.

81. How much is the claimant owed? The claimant is owed the full amount of £2,153.85 (gross).

<u>Holiday Pay</u>

82. How many days of accrued annual leave remained unpaid at 20.05.2024? The parties are in agreement that the claimant had 1 day of accrued, but unused holiday entitlement at 20.05.2024.

83. What is the relevant daily rate of pay? The parties are in agreement that the daily rate of pay was £153.84 (gross).

84. How much is the claimant owed? The claimant is therefore owed £153.84 (gross).

Notice Pay

85. Did the claimant fundamentally breach the contract of employment by committing an act of gross misconduct? The Tribunal has made a finding of fact at paragraph 61 above that the claimant's actions in accusing Mr Atkinson of lying, when taken in the context of events leading up to that statement, was a fundamental breach of contract entitling the respondent to treat the contract of employment as repudiated.

86. If yes to the above, did this have the effect of releasing the respondent from the obligation to give the claimant notice to terminate the contract of employment? Yes, the Tribunal concludes that the claimant was summarily dismissed on the grounds of gross misconduct and was not entitled to receive notice or payment in lieu of notice.

Employment Judge Booth
31st December 2024