



EMPLOYMENT TRIBUNALS

Claimant

Miss E. De Vries

Respondent

Jeeves Care Group Ltd

AND

HEARD AT: **Watford Tribunal**
(via CVP)

ON: 19 & 20 February 2024

BEFORE: **Employment Judge Douse (Sitting alone)**

Representation:

For Claimant: In person

For Respondent: Ms Evans-Jarvis, Solicitor

JUDGMENT having been sent to the parties on 11 March 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 (now Rule 60(3) of the Employment Tribunals Rules of Procedure 2024), the following reasons are provided:

REASONS

Claims and issues

1. By a claim form presented on 22 September 2022, following a period of early conciliation between 1 July 2022 and 10 August 2022, the Claimant brought claims for:

- 1.1. Whistleblowing detriment;
 - 1.2. Three complaints of deduction from wages; and
 - 1.3. Two complaints of breach of contract.
2. The issues to be determined were identified by EJ Cotton at a preliminary hearing on 3 March 2022. AT that hearing the Claimant “*confirmed that her claim for unpaid expenses no longer includes the cost of a whiteboard or the cost of a tennis kit, which have now been reimbursed*” [76].
3. At a further preliminary hearing before EJ Graham on 23 October 2023, there was withdrawal of the whistleblowing claim and one wages complaint which related to sleep-ins.
4. The issues that remained for me today were:
- 4.1. Wages - Were the wages paid to the claimant for the following periods less than the wages she should have been paid:
 - 4.1.1. From 25 April 2022 – 20 May 2022
 - 4.1.1.1. The claimant says that, on 31 May 2022, she should have been paid 6 hours overtime at a rate of £89.40.
 - 4.1.1.2. The respondent says that no timesheets were submitted demonstrating that the hours had been worked.
 - 4.1.2. From 20 May 2022 – 7 June 2022
 - 4.1.2.1. The claimant say that she was not paid for 187.75 hours of work, including core hours, over time hour, two public holidays and two days of annual leave. The sum claimed is £2,797.50.
 - 4.1.2.2. The respondent says that she was paid for her core hours, according to her usual salary, but did not submit timesheets for any overtime hours she may have worked.
 - 4.2. Breach of Contract
 - 4.2.1. Did each claim arise or was it outstanding when the claimant’s employment ended?
 - 4.2.2. Did the respondent refuse to allow the claimant to work out one month’s paid notice and/or fail to pay the claimant one month’s pay in lieu of notice? (Amounting to £2583.33 gross)
 - 4.2.2.1. Was that a breach of contract?
 - 4.2.2.1.1. The respondent says that when the claimant resigned on 7 June 2022, she resigned without giving notice; and that this was a repudiatory breach of contract which was accepted on 7 June 2022; and

that no obligation to make a payment in lieu of notice arose.

4.2.3. Did the respondent, in June 2022, fail to reimburse the claimant the sum of £82 for groceries she purchased for consumption at the respondent? ('Company expenses paid for personally').

4.2.3.1. Was that a breach of contract? The claimant says that she was entitled to be reimbursed.

4.2.3.1.1. The respondent says that no payment was made for the groceries because, contrary to their policy/practice in this context, no receipts were provided as proof of the expenditure.

4.2.4. How much should the claimant be awarded as damages?

5. In her updated schedule of loss, following part-payment from the Respondent, the Claimant revised her claim for unpaid expenses to £36.93.

Procedure, documents, and evidence heard

6. I was provided with an electronic bundle of 380 pages, plus an additional Claimant bundle of 57 pages. Some of the Claimant's documents duplicated ones which were already in the main bundle. Numbers contained within [] in these reasons will be to the main bundle, unless it is explicitly stated that it is the Claimant bundle (indicated by the prefix "CB:").

7. There were lengthy discussions regarding disclosure of documents, with the Claimant maintaining that some were still missing from what had been agreed to be provided. I took the parties through the case management order from October 2023, where EJ Graham had stated that they "*declined to make an order for specific disclosure on this occasion but have recorded the documents which the parties will provide to the other:*

6.1 The hearing bundle already included time-sheets for staff for April 2022. The Respondent has agreed to provide the time-sheets for the same staff for May and June 2022 and to include these in the hearing bundle.

6.2 There is alleged to be an Ofsted report from 2022 which relates to the Respondent. If it exists and if the Respondent has a copy, it will disclose it to the Claimant and include it in the hearing bundle. If it does not have a copy then it is open to the Claimant to download it and send it to the

Respondent or provide a copy to the Tribunal at the final hearing. If such a document does not exist then clearly it cannot be provided.

6.3 The Claimant says she had an email exchange with the Respondent about her terms and conditions before she joined. She says she has sent a copy to the Respondent already but will re-send these emails.

6.4 The Claimant says she had a WhatsApp exchange with the Respondent where her expenses were approved. She says she has sent a copy to the Respondent already but will re-send screenshots of these.

6.5 The Claimant requested a copy of the final version of the rota for the last week of May 2022 and the whole of June 2022. The Respondent has agreed to provide copies of these.”

8. It was apparent that only the one at 6.1 remained outstanding and the Respondent's representative stated this could not be found.
9. Despite this, during evidence and submissions there were repeated references by the Claimant to missing documents and an inability to get documents. Some of this, she says, related to not knowing that she might need to provide something (e.g. the receipt of the bank transaction for groceries). I will make one overall statement about this and not return to it again. Although the Claimant is a litigant in person, I am satisfied that she was very able to focus herself on what documents she wanted or needed, making multiple requests and addressing this in the preliminary hearing in October. She was given the opportunity to submit her own bundle in addition to the main bundle and also had a chance to check the case management orders from the hearing (albeit there was a delay in those being sent) and identify if they did not fit with her record of what was discussed.
10. I had written witness statements from the Claimant and Mr. Jeevan Singh, a Director of the Respondent company, and both gave oral evidence.
11. Additionally, there were statement from four witnesses on behalf of the Claimant:
 - 11.1. Raul Jacques (his statement was primarily about his own situation with the Respondent - there was little in relation to the issues for me to determine in relation to the Claimant's claims);
 - 11.2. Christy Brinner (her statement was primarily about her own situation - there was little/nothing in relation to the issues for me to determine in relation to the Claimant's claims);
 - 11.3. Sherice Pitter (her statement was in relation to ancillary matters - there was nothing in relation to the issues for me to determine in relation to the Claimant's claims);
 - 11.4. Daniel Murphy;

12. All except Mr. Murphy gave oral evidence. He did not attend for personal reasons, and whilst I make no criticism of that, I have not taken his statement into account when making my determinations.

Findings of fact

13. I make the following findings of fact. I have not made findings in relation to all matters in dispute between the parties, only those that are relevant to determining the issues before me.

General

14. The Claimant was employed as a Deputy Manager at the Respondent's residential Children's care home from 25 April 2022, on a fixed-term contract until 30 September 2022, with a 3-month probationary period.
15. The Claimant was paid a salary of £31,000 per annum, paid monthly based on working 40 hours per week [196].
16. The home had no child resident until 23 May 2022.
17. Until that date the Claimant was only required to work 9-5 M-F. Once the child was in the home the 40 hours per week would be worked as required.
18. Relevant people:
- 18.1. Mr. Jeevan is the owner and Director of the Respondent company;
 - 18.2. Ms Kalvinder Keelie was employed by the Respondent, acted as the 'Responsible Individual', and was responsible for overall management of the home (sharing some of this with Mr. Jeevan);
 - 18.3. Mr. Raul Jacques was employed by the Respondent as a Registered Manager; he was the Claimant's line manager.
19. There were a number of Support Workers also working at the home at the relevant time [207-208]. Some were employed, and some were agency staff.

Overtime

20. The Claimant's terms and conditions included provision for overtime. The Respondent does not dispute that overtime could be worked and paid but maintains this would be unusual for a manager such as the Claimant to need to do this.
21. The offer letter of 30 March 2022 stated [179]:
- "Further to our discussion you will be paid at your usual rate for shifts worked that could not be covered by another staff member. This must be confirmed in writing, reasons detailed and approved by your manager. For*

example, if someone calls in sick and cover is required the next day this would be considered as an emergency cover and your usual rate applies.

If you are required to work past your usual shift time for reason of incident or lateness (some examples) then following approval from your manager TOIL (time of in Lieu) would apply.

If any shifts are worked by you for reasons of seeking overtime to get more hours, then they will be paid at the senior Team Leader rate of £11.50.”

22. From 5 May 2022 there were emails back and forth between the Claimant and Kal regarding the overtime rate. Ultimately on 20 May it was proposed that [365]:
- “Further to our discussion you will be paid at your usual rate for shift covered that are not covered by another staff member. But there must be some sort of trail that shows another member of staff could not cover the shift and why it is considered emergency cover by you. For example, if someone calls in sick and cover required the next day this would be considered as an emergency cover. However, would not include having a shift filled say a week away.*

If any shifts are done by you for reasons of you wanting to get more hours, then they will be paid at a senior rate level which is currently £11.50.”

23. On the same day, the Claimant replied [365]:
- “I’m happy with this.*

Will the understanding around toil also be included in my contract? Both Jeevan and Raul have confirmed this way of working for those times where I may have to work past my shift time. Examples would be in case of incident etc. in this case I would through agreement with Raul start later on a following shift to accommodate.

I will follow the agreed process and email Raul about any unavoidable overtime that I’m required to cover to get approval ahead of doing so.

Can you please have the contract amended to reflect what we have agreed?”

24. Although the contract was not signed until 1 June 2022, the parties were clear on the position from the outset. The only change was the rate payable.

25. Mr. Singh said today that there was in fact an overtime form to complete. The Claimant disputes this, but in any event, Mr. Singh said failure to complete the form would not be an absolute bar to payment, confirming the Respondent would accept emails or messages regarding this
26. Mr. Singh's evidence was also that although Mr. Jacques was to approve the Claimant's overtime, ultimately there was a further process once submitted to payroll, whereby he or Kal were also involved.
27. Between 25 April 2022 and 20 May 2022, the Claimant's timesheet records she worked 158 hours, in addition to having a paid public holiday on 2 May 2022, and an unpaid sick day on 3 May 2022. She says that 6 of these hours were overtime, comprised of additional hours beyond an 8-hour day. She says this was necessary as lots of preparation work was needed before the child arrived on 23 May 2022.
28. The Claimant submitted her timesheet to her manager, Mr. Jacques, and all hours were approved (signed) by him and submitted to payroll on 23 May.
29. The Claimant was not paid for the 6 hours of claimed overtime. She raised this with the Respondent.
30. Between 21 May 2022 and 7 June 2022, the Claimant's timesheet records 187.74 hours worked. She says that 73 hours of these were overtime. These are not broken down. The Claimant says that overtime kicks in once her contractual 40 hours have been reached, and everything above this was then overtime.
31. The Claimant says that she and Mr. Jacques would have had email exchanges about rotas and overtime needs, as well as in-person conversations. Mr. Jacques confirmed this in his evidence. However, none of these interactions were detailed in either the Claimant's witness statement or that of Mr. Jacques.
32. The Claimant says overtime was required, because the home was short-staffed, which Mr. Jacques supports.
33. Ms Brinner worked as a Support Worker. She confirmed staffing issues, and the need for her to do overtime including sleep-ins.
34. She further relies on the child needing 2:1 support. The Respondent maintains that this is two staff present on site, not actively watching the child.
35. The Claimant submitted this timesheet to Mr. Jacques on 20 June. He says he then submitted this to Amanda for payroll processing. Mr. Jacques left the Respondent organisation soon after this.

Resignation/notice

36. The contract said:

*"NOTICE OF TERMINATION TO BE GIVEN BY EMPLOYER/EMPLOYEE
Under 1 month's service - Nil.*

1 month or more -1 month.

PAY IN LIEU OF NOTICE

We reserve the contractual right to give pay in lieu of all or any part of the above notice by either party.”

37. There is reference elsewhere to the probationary period, but nothing that indicates different notice provisions for that time.
38. The Claimant resigned by email on 7 June 2022 at 5.34pm, stating:
“Please acknowledge this email as my official resignation and I am handing in my notice for Jeeves Care Group on today's date of Tuesday the 2nd of June 2022”
39. Kal replied at 5.54pm accepting the resignation:
“Thank you Emily I have excepted your resignation and you will be paid according your contract at the end of the month”
40. In the period between the emails above, the Claimant had emailed Kal again to say she did not think it was necessary to attend the probationary meeting scheduled for the following day given she had resigned. There was no reply from the Respondent regarding this. The Claimant says she would have been happy to attend if they had insisted.
41. The Claimant says “When I called my boss (direct manager as noted on my contract) a day later to confirm my shifts for my last four weeks he confirmed he had not been briefed or included in Kal’s actions. He was shocked surprised at the quick turn of events”, and that Mr. Jacques said he expected she would be on gardening leave.
42. Mr. Jacques recalled that it was him who reached out to the Claimant, after being told by the Respondent to remove the Claimant from the rota, though he doesn’t recall the date. He did not tell the Tribunal that hours or gardening leave were discussed.

Expenses

43. The Claimant says she had to pay for various things for the home, when for example the business card wasn’t working. This is evidenced by WhatsApp exchanges regarding approval to purchase certain items. These messages are undated, but the Claimant says they are from 5 & 6 June 2022.
44. The Claimant says she is still owed money for grocery shopping done at Asda on an occasion 5 June 2022. She says on this occasion she was with Mr. Singh, Mr.

Jacques, and the child in the car, and having completed the shop handed the receipts directly to Mr. Singh. Mr. Jacques gave evidence that he recalled the Claimant handing receipts to Mr. Singh. No bank statements were provided by the Claimant to support this claim.

45. Mr. Singh disputes this claim. Whilst he does not specifically recall the event, he suggests that if he was there, he would not have required the Claimant to use her own card and would have handed his card to use.
46. I can understand that a situation may occur where the Claimant purchase groceries and then seeks reimbursement. However, in the specific circumstances described, I find Mr. Singh's evidence preferable in relation to this. It is improbable that the owner, having been present at the point the Claimant went into the store, would have been required to use her own funds and then seek reimbursement. It's an unnecessary step for everyone when the Director is there.

Relevant law

Wages

47. Section 27(1) Employment Rights Act 1996

“Meaning of “wages” etc.

(1) In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise...”

48. Section 13 Employment Rights Act 1996

“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.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

Notice

49. Section 86 Employment Rights Act 1996

"Rights of employer and employee to minimum notice.

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a) is not less than one week's notice if his period of continuous employment is less than two years,

(b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and

(c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

(3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

(4) Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, subsections (1) and (2) apply to the contract.

...

(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.”

Submissions

50. I don't recite these in detail, a summary is provided below:

Respondent

- 51. The process was not followed, the overtime was fabricated;
- 52. Expenses are not evidenced;
- 53. The Claimant resigned without notice to avoid disciplinary action - she made no attempt to return or contact the Respondent.

Claimant

- 54. Maintain all processes followed for overtime and expenses;
- 55. Resignation was with notice, and it is the Respondent who prevented her from working
- 56. There are issues with inconsistencies and Mr. Jeevan's character, particularly in relation to evidence and disclosure.

Conclusions

57. Applying the facts to the law I reach the following conclusions, reminding myself that the burden is on the Claimant to prove her case on the balance of probabilities.

Overtime 25/04/22 - 20/05/22

- 58. The overtime agreement in place at that time related to full shifts needing cover in an emergency situation, not simply once normal contractual hours had been reached.
- 59. The process was clear – the Claimant repeated her understanding that she needed to get advance approval of the need for overtime. Mr. Jacques signing the timesheet after the fact is only part of the process.

60. The only evidence that the first part of the process occurred is that I/she would have done that. I appreciate the difficulty in accessing emails after the event when neither the Claimant nor Mr. Jacques work for the Respondent company. However, the Claimant did have access to her personal emails where the overtime position was discussed and negotiated, so she would have been able to refresh her memory of the agreed process. Therefore, it is surprising that there is no reference to the earlier stage of the process, even if there was not possible to provide documentary support of compliance, within her witness statement. There are repeated references to having followed the process, but only in relation to it submitting timesheets for Mr. Jacques's approval. This only represents post-event approval and is not sufficient to meet the Respondent's requirements.
61. Additionally, clear examples are given of when overtime would be deemed to be necessary and therefore approved. That is not the situation here. I cannot find that overtime during a period where there were no residents would meet the necessary criteria.
62. So, even if the necessary approval was granted by Mr. Jacques in advance, this would have been against the clear policy/criteria.
63. This claimed overtime does not amount to wages that were properly payable to the Claimant, therefore there has been no deduction.

Overtime 20/05/22 until end of employment

64. I adopt the findings in relation to the period above in relation to the Claimant's knowledge of, and compliance with, the required process in relation to overtime.
65. In relation to the need for overtime, the Claimant focused on this being because the home was short-staffed. Whilst that may have been the case she has failed to address the advance approval needed.
66. Even in circumstances where Mr. Jacques signed the timesheet, and sent it on to payroll, this does not negate the need for advance approval. This is a process she agreed to. Her only dispute in the overtime negotiation process was the payment rate – there was no question of the circumstances in which overtime might be necessary and the process to follow in those circumstances.
67. This claimed overtime does not amount to wages that were properly payable to the Claimant, therefore there has been no deduction.

Expenses

68. I accept that the Claimant may have on occasion incurred personal expenses to be reimbursed by the Respondent. However, I cannot conclude that this occurred on the occasion she claims.

69. In the circumstances described, it is more likely than not that Mr. Singh would have handed his/the company card to the Claimant to do the shop. She would still have handed receipts to him in this situation. So, although Mr. Jacques supports this occurring, it is not sufficient to support the Claimant's version of events.
70. The Claimant has failed to evidence the expenses were incurred through her personal account. This is not a situation where she requires information/documentation from the Respondent – this is readily available and accessible to her.
71. This claim therefore fails.

Notice pay

72. The Claimant's resignation stated "handing in my notice", which is clearly a reference to *some* notice.
73. Kal's reply said the Claimant would be paid as per her contract, and the contract refers to 1 month notice on either side. There is no special provision in relation to notice in the probationary period.
74. There is reference to gardening leave at the Respondent's discretion.
75. Kal quickly accepted the Claimant's decision to resign and acted to remove her from the rota. There was no attempt to clarify the immediacy or otherwise of the resignation.
76. I conclude that there was an assumption by Kal that resignation was immediate. Equally there was an assumption by the Claimant that she would be on gardening leave and not required to attend.
77. On the balance of probabilities, I am just persuaded that the Claimant was due a contractual notice period.
78. Therefore, the Claimant's claim succeeds, and the Respondent is to pay her the gross sum of £2583.33.

Other damages

79. The Claimant claims additional damages within her schedule of loss. This is unevicenced and therefore refused.
80. She refers to breach of the ACAS Codes of Practice and claims an uplift. There is no specific code re: BoC. This element is refused.

Other

81. I note that it had been conceded on behalf of the Respondent today that during the course of the hearing it has become apparent that two days of TOIL are owed for 6 & 7 June 2022.

82. The claim doesn't specifically refer to TOIL, because the Claimant says she understood she would claim overtime rather than get TOIL after the event. I therefore did not make a judgment in relation to this and accepted an undertaking from the Respondent's representative that this would be paid, on the understanding that if there was a failure to do so, the Claimant could return to me. However, there was then a suggestion that those days would be "swept up" in the notice period that was to be paid, so no additional sum was due.

83. Having reflected on this, I then requested that the Tribunal administration send the following correspondence to parties:

"Following delivery of the judgment, there was discussion regarding payment for 2 days of TOIL (outside of the judgment). The Judge had originally stated, and Respondent Representative agreed, that there should be an undertaking to pay this within the same timeframe as the notice pay award. Respondent Representative then asserted that the TOIL would be swept up by the notice period, and the Judge agreed. However, on reflection the Judge thinks this is incorrect and the TOIL days are outside of the notice period, for the following reasons:

- 1. The Claimant was paid up to 05/06/22*
- 2. TOIL would be for 06/06/22 and 07/02/22*
- 3. The Claimant resigned in the evening of 07/06/22*
- 4. The notice period runs from 08/06/22*

On this basis, 2 days TOIL should be paid in addition to pay in lieu of notice. The Respondent is requested to respond in writing, within 7 days of the date this correspondence is sent to them, to confirm their position. The Claimant will be invited to reply by the Tribunal if necessary."

84. To date, I have not received any further correspondence from parties, so I trust that this element has been resolved satisfactorily.

Summary

85. The Claimant's claim for breach of contract – notice pay – is well-founded and succeeds. The Respondent is to pay her the gross sum of £2583.33.

86. The other claims are not well-founded and are therefore dismissed.

87. Finally, I am aware that the Regional Employment Judge has written to the parties in general terms about the delay in these reasons being completed. I would like to take this opportunity to apologise to the parties and their representatives for the time that this has taken. I am grateful for the patience of all involved. The delay

has been caused by my ill health, and I have finalised and promulgated the reasons as soon practicable.

Employment Judge Douse

Date: 31 January 2025

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JUDGMENT SENT TO THE PARTIES ON 3 February 2025

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AND ENTERED IN THE REGISTER

.....
FOR THE TRIBUNAL