



EMPLOYMENT TRIBUNALS

Claimant: Ms A Bussy

Respondent: AA Healthways Limited

Heard at: Manchester (by video)

On: 30 January 2025 and
6 February 2025 (in chambers)

Before: Employment Judge Slater

Representation

Claimant: In person

Respondent: Mr M A Javid, director

RESERVED JUDGMENT

1. The respondent made an unauthorised deduction from wages by failing to pay the claimant wages for February 2024 and is ordered to pay to the claimant the gross sum of £3083 in respect of the amount deducted.
2. The respondent made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken holiday on termination of employment and is ordered to pay to the claimant the gross sum of £1707.72 in respect of the amount deducted.
3. The respondent was in breach of contract by not giving the claimant 4 weeks' notice of termination of employment but no award of damages is made.

REASONS

Claims and issues

1. The claimant claimed unauthorised deductions from wages in respect of unpaid wages for the period 1-29 February 2024 and for accrued but untaken annual leave on termination of employment.

2. The claimant also claimed breach of contract in respect of notice pay but said, during discussion at the start of the hearing that, if she was paid for her wages and holiday pay, she did not seek damages for the balance of the notice period which she says she was entitled to.

3. Both parties agree that the claimant was not paid any wages for February 2024 and that she was not made a payment, on termination of employment, for holiday pay.

4. The areas of dispute between the parties were clarified in discussion to be the dates of the claimant's employment and, therefore, whether the claimant was employed but not paid for February 2024, and whether she had accrued holiday which she had not taken as paid leave.

5. The claimant says she was employed from 15 August 2023 until 29 February 2024, having been told by Mr Javid, on 7 February 2024, that she would not be employed after the end of February. The respondent says that the claimant did not start work for them until 1 September 2023 and her employment ended on 30 January 2024. The respondent says that the claimant had taken more paid holiday by the end of her employment than her pro rata entitlement.

Evidence

6. There was no hearing bundle. Both parties had sent in some documents attached to their claim and response forms and the claimant had sent some more documents on 8 July 2024 with a letter explaining what she was claiming. Both parties sent some further documents on the morning of the hearing. There were no witness statements. The claimant and Mr Javid gave oral evidence, answering questions from me. I gave the claimant and Mr Javid the opportunity to question each other, but they had no questions they wanted to put.

Facts

7. The claimant met with Mr Javid in early August 2023. By a message sent on 10 August 2023, Mr Javid confirmed that the job was confirmed. The claimant and Mr Javid had a meeting at the respondent's office on 15 August 2023. The claimant says this was the start of her employment and she was doing work for the respondent from this time on. The claimant had already booked a holiday in September. She says that Mr Javid asked whether, if she began work straight away, he could put her start date on the contract as 1 September. He would then pay her for work in August and September by paying her a full month's pay at the end of September. Mr Javid says that the claimant was not employed until 1 September and that anything she did before that was just preparing to start work. The claimant was issued with a contract of employment giving her start date as 1 September 2023.

8. I prefer the evidence of the claimant as to the start date of her employment. Her evidence is more consistent with messages exchanged between her and Mr Javid on 17 and 31 August 2023. These messages include a request on 17 August that the claimant do proof reading of the website and the claimant replying that she will do a list that evening and that she is writing various things up. On 31 August 2023, the claimant wrote that the CQC application would need proof reading the next day

and Mr Javaid replied that they should meet and do it together. The messages indicate more than a keen prospective employee getting ready to begin work; they indicate that the claimant is already doing work for the respondent before 1 September 2023.

9. The claimant was paid a month's pay at the end of September 2023. The claimant went on holiday in September for 10 working days. I find that the payment in September was for work done in August and September. She was not, therefore, paid for the holiday taken in September.

10. The parties agree that the respondent's holiday year began on 6 April and that the claimant was entitled to 28 days' annual leave each year, including bank holidays (if taken as leave). In accordance with the contract, holiday entitlement at the date the employment terminates, is calculated as 1/52 of the annual entitlement for each full week worked from the start of the holiday year up to the effective date of termination.

11. Apart from the leave in September, which was unpaid, the claimant took paid leave only on the bank holidays which fell during her employment: Christmas Day, Boxing Day and New Year's Day.

12. The claimant was on a salary of £37,000 per annum.

13. The claimant's P45 was dated as completed on 12 February 2024, giving a termination date of 6 February 2024.

14. In a message on 1 March 2024, the claimant asked Mr Javaid to pay her final wages and holiday pay. Mr Javaid replied that he had "finished your job since 31st of January 2024 as agreed with you and got your P45 issued". The claimant replied that he had to give her 4 weeks' notice as per her contract "not just tell me you can't afford it anymore so I am asking ACAS to now step in as I am owed 3 weeks holiday pay and my final months wages."

15. The claimant has been consistent in her claim form, letter of 8 July 2024 and oral evidence to this Tribunal in saying that she was told by Mr Javaid at a meeting on 7 February 2024 that he could not afford to pay her wages anymore and that he asked her to go self employed from March, so he did not have to pay tax from her wage. Messages confirm that the claimant and Mr Javaid were due to meet on 7 February 2024. The claimant says she understood from this conversation that she was being given notice that her employment with the respondent would end at the end of February 2024. The claimant has shown me messages about late payment of previous wages.

16. The respondent has asserted in its response, and Mr Javaid's oral evidence to this Tribunal, that the claimant's employment ended on 30 January 2024 and the claimant had reached an agreement with the respondent to work as self employed as and when needed from February 2024. Mr Javaid said in evidence that the leaving date of 6 February 2024 on the P45 was a mistake. Messages confirm there was a meeting between the claimant and Mr Javaid on 9 January 2024.

17. It is not necessary for me to make a finding as to why the respondent terminated the claimant's employment but I consider that asking the claimant to

work on a self-employed basis for the respondent appears inconsistent with Mr Javaid's assertions about poor performance by the claimant. If the claimant performed as badly as Mr Javaid asserts (which the claimant denies), it is hard to see why the respondent or any of Mr Javaid's other companies would want to continue to use her services in any capacity. Mr Javaid asserts that the meeting when the claimant was told her employment was ending was in January, not February 2024. Messages confirm there was a meeting between the claimant and Mr Javaid on 9 January 2024.

18. I prefer the claimant's account of events, finding that the claimant was informed on 7 February 2024 that she was not going to be paid after the end of February 2024 because the respondent could not afford this. I find the claimant's account more consistent with the contemporaneous documents than that of Mr Javaid's account. The leaving date on the P45 of 6 February 2024 is not the date either of the parties say the claimant's employment ended, but I consider it to be more consistent with Mr Javaid informing the claimant on 7 February 2024 that her employment was ending, than with him having informed her on 8 January that her employment was ending on 30 January 2024. The previous late payment of wages suggests cash flow issues. This is consistent with the reason the claimant says she was given for her employment being ended; because the respondent could not afford to pay her after February 2024. In fact, as both parties agree, the claimant was not paid wages for February 2024.

Law

19. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996. The definition of "wages" in section 27 includes holiday pay.

Conclusions

20. I have found that the claimant was employed until the end of February 2024. She was not paid any wages for February. I conclude that the respondent made an unauthorised deduction from wages by failing to pay the claimant for the month of February. This was a gross amount of £3083.

21. The claimant reasonably understood, from what Mr Javaid told her on 7 February 2024, that her employment was being terminated with effect from the end of February 2024. I conclude that she was given less than the 4 weeks' notice to which she was entitled. The respondent was in breach of contract by dismissing her without the full notice period to which she was entitled. However, the claimant said she was not seeking damages for the balance of the notice period if her claim for wages for February 2024 was successful so I make no award of damages for breach of contract.

22. I found that the claimant was employed from 15 August 2023 but only paid one month's wages at the end of September, because the claimant took 10 working

days' holiday in September. The holiday was, therefore, not paid leave. The claimant only took paid leave on 3 bank holidays during her employment: Christmas Day, Boxing Day and New Year's Day. I have found that the claimant's employment ended on 29 February 2024.

23. The claimant was employed 15 August 2023 to 29 February 2024, a period of just over 28 weeks. In accordance with the contract, completed weeks of service count in calculating accrued holiday on termination.

24. The claimant's weekly pay was $37000/52 = £711.54$. The daily equivalent, on the basis of a 5 day week, is £142.31.

25. The claimant's pro rata entitlement to paid leave for her period of employment is calculated as follows:

$28/52 \times 28 = 15$ days.

The claimant had taken 3 days' paid leave, so is owed for 12 days' leave.

$12 \times £142.31 = £1707.72$.

Employment Judge Slater

Date: 6 February 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
10 February 2025

FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

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

Recording and Transcription

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

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



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2402418/2024**

Name of case: **Ms A Bussy** v **AA Healthways Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 10 February 2025

the calculation day in this case is: 11 February 2025

the stipulated rate of interest is: **8% per annum**.

For the Employment Tribunal Office