EMPLOYMENT TRIBUNALS

Claimant: Mrs J Joyce
Respondent: Hillview Medical Centre

Heard at: Reading Employment Tribunal (in person)
On: 3 to 5 February 2025
Before: Employment Judge Harrison

Representation
Claimant: In person
Respondent: Ms E Margetts, Counsel

JUDGMENT

1. The claimant's claim for unfair dismissal is not well founded. This means the respondent did not unfairly dismiss the claimant.

2. The claimant's complaint that there was an unauthorised deduction from her wages is well founded. The respondent made an unlawful deduction from the claimant's pay in August 2023 relating to 18.5 hours of work done in March 2023. The respondent is ordered to pay the claimant the gross sum of £560.74.

REASONS

1. The claimant confirmed that the respondent should be Hillview Medical Centre which was her employer. By consent, the identity of the respondent is amended.

2. The claimant's application that the respondent's witnesses' participation in the proceedings be limited as they served their statements late is refused.

3. I considered and balanced submissions on the extent and reasons for the delay, giving effect to the overriding objective, the effect on the claimant of having to consider the statements late when she was unrepresented, and the effect on the respondent were the witnesses to be excluded. Ms Margetts stated her witnesses had had no advantage as neither they nor her instructing solicitor had

looked at or known the contents of the claimant's statement until exchange. She suggested that the respondent's witnesses could confirm this on oath when giving evidence and each witness did so.

4. When asked, both parties confirmed that they would not wish to postpone the hearing.

5. The claim was brought by the claimant, Mrs Jane Joyce, against her former employer, Hillview Medical Centre, where the claimant was employed from 1 January 2019 until 28 August 2023 as an Advanced Nurse Practitioner. The claimant resigned from her role on 5 June 2023.

6. The claim was heard in person at the Reading Employment Tribunal from 3 to 5 February 2025. The claimant represented herself. The respondent was represented by Ms Margetts of Counsel.

Claims and issues

7. The claims and issues were identified at a preliminary hearing on 27 November 2024 the record of which is at page 57 onwards in the hearing bundle.

8. The issues were recorded at paragraphs 53 to 74 of the record of the preliminary hearing at pages 63 to 65 of the bundle.

9. The claimant has brought the following claims:

    9.1 Unfair dismissal contrary to s.95(1)(c) Employment Rights Act ("ERA") 1996, commonly referred to as constructive dismissal; and

    9.2 Unauthorised deductions from wages contrary to Part II of ERA.

10. I referred the parties to the issues to remind them that these had been produced and agreed at the preliminary hearing and to check that they were still correct. This was agreed.

11. The notice of hearing and record of the preliminary hearing stated that this case would be heard by a Judge and members. In fact it was listed to be heard by me sitting alone. I explained to the parties that the Regional Judge had converted the hearing to one with a Judge sitting alone but I offered them an opportunity to address me on this if they wished before we commenced. However, they were content to continue and neither wished to postpone (see paragraph 4 in these Reasons).

12. There was an agreed bundle running to 310 pages. The claimant asked to add two additional pages of evidence to the bundle which was agreed.

13. I read all the pages in the bundle to which I was referred either in written statements or when evidence was being given in the hearing. I do not refer to them all in my reasons, but I have considered them in reaching my decision.

14. At the start of the hearing I asked the parties about points which were outstanding from the preliminary hearing. The claimant had served an updated schedule of loss as ordered. This appears in the bundle. She clarified that the claim for an unlawful deduction from wages was in the sum of £560.74. The next sum listed of £3,690.88 is part of her claim for compensation for unfair dismissal.

15. The claimant also served a letter clarifying how she says that the respondent failed to follow the ACAS Code of Practice in relation to disciplinary and grievance hearings, however, this was not in the bundle or the Tribunal file. Ms Margetts' solicitor has had a copy. A copy was helpfully produced for me by the claimant during the day and added to the bundle.

16. The claimant raised as a preliminary issue the matter recorded above in these Reasons at paragraph 2.

17. The claimant gave oral evidence as did seven witnesses for the respondent. They were:

    - Jackie Stockill, Practice Manager;
    - Elayne O'Loughlin, Office Manager;
    - Dr Katherine Bulmer, GP Partner;
    - Dr Gurvinder Multani, GP Partner;
    - Jess Collins, Deputy Practice Manager;
    - Dr Deborah Shiel, Senior GP Partner; and
    - Dr Henry Knights, GP Partner.

    All have produced written statements. I adjourned to read the statements before commencing the hearing.

18. The hearing of evidence began about 12.15 on 3 February and was completed about 2.50 on the afternoon of 4 February.

19. The parties addressed me briefly on the order in which evidence would be given. As she was acting in person the claimant would have preferred to give her evidence second. After considering the position of both parties I decided that as this was a constructive dismissal claim the claimant should go first as, in this way, the respondent could understand how the claimant put her case in order to answer it, and the case could be heard most efficiently and logically.

20. I asked to hear evidence from the parties on liability including the amount in issue in the claim relating to deductions from wages as this is necessary to understand the claim being brought. I said that I would deal with remedy in relation to the constructive dismissal claim after I had decided on liability on the two claims, if relevant.

21. On the first day and at the beginning of the second day of the hearing I indicated that after completing evidence I would adjourn for a short time to allow the parties to gather their thoughts before making submissions. I explained the purpose of the submissions to the claimant. As she was unrepresented, I also referred to the importance of dealing with the agreed issues and I talked about the legal tests I would apply to the facts I found. I briefly reminded her that I would be deciding whether the complaints about the respondent's conduct amounted individually to fundamental breaches of her contract or if there was a course of conduct where she resigned in response to a last straw event.

22. I also reminded the parties on the second day that, whilst most of the time was being taken up in evidence about constructive dismissal, I also needed to hear evidence and submissions on the unlawful deductions claim.

23. Ms Margetts asked for 15 to 20 minutes for submissions. The claimant preferred

to provide these in writing which was agreed. Submissions began at 3.55 on 4 February and were completed at about 4.20. The claimant then sent her submissions to the Tribunal by email.

24. I adjourned to make my decision which I gave orally to the parties on the afternoon of 5 February. I find the facts as follows.

The facts

Constructive unfair dismissal

25. The claimant joined the respondent GP Practice in January 2019 as an Advanced Nurse Practitioner or ANP. She had enjoyed a long career in the NHS before this. In 2022 the claimant took up a retire and return option so she could take her NHS pension. In summary, she left her employment for 24 hours and returned to work on a new fixed term contract working two days a week and running from 3 February 2022 to 3 February 2024. I find that this contract was entered into by the parties on a fixed term basis to allow the claimant and the GP partners to assess whether a 2-day contract would work, as this was not something they had tried before. The evidence, including from appraisal documents, makes it clear that all parties found that the contract worked well. Again, evidence from all the parties allows me to find as a fact that the relationship between the claimant and the clinical and non-clinical staff, including the partners of the respondent, was a good one and that the claimant was a very highly regarded and diligent employee.

26. In March 2023 the claimant sustained a fracture to her wrist whilst on holiday. The claimant advised the respondent of her accident. From this point onwards there is contemporaneous written evidence of the communication between the claimant and the respondent. This was mainly by email but also WhatsApp and screen messages which were an internal instant messaging platform used by the respondent. These documents appear from pages 164 to 225 of the bundle. I was taken to these documents at the hearing, and I have read them all.

27. On 8 March the claimant contacted Mrs Stockill, the respondent's Practice Manager. The content of the email exchange is informal and friendly. The respondent sets out the situation. Mrs Stockill says the claimant should rest up and she asks, "Is there anything that I can do".

28. On 14 March the claimant contacted Mrs Stockill with an update on her condition and to say that she had spoken to one of the GPs, Dr Multani, and had offered to do a Vitamin D audit from home. Mrs Stockill agreed and asked about whether this would be on full or reduced hours for payroll purposes. Mrs Stockill followed up with a further message responding positively to the claimant's update about her wrist. The audit was completed and sent by the claimant to Dr Multani on 23 March. He replied on 29 March saying "It looks brilliant. Great work."

29. On 20 March the claimant again updated Mrs Stockill about her recovery by email and asked to do telephone consultations from home the following week. Mrs Stockill replied agreeing to this and saying, "Then back to the practice after that all being well." The claimant thanked Mrs Stockill for her support.

30. Both the claimant and respondent gave evidence that the respondent's preference is for staff to come in to work and not to work from home. I find that

in respect of the claimant the respondent varied this preference to allow her to work from home to support her during her recovery. I further find that they did so based on their acceptance of the claimant's professional and personal understanding of what was a suitable approach in her situation.

31. There was a further exchange on 30 and 31 March when the claimant told Mrs Stockill she was concerned about coming into work. She mentioned that she had checked with her union who had said she should be off sick if unable to work and if returning to have a risk assessment to ensure she was able to be in work. She went on to say that she did not want to be off sick and that she felt fully able to do telephone consults and admin at home. Mrs Stockill replied to say she was happy for the claimant to be of sick or work from home if fit enough. She stated she was happy with either and asked the claimant to let her know.

32. On 18 April the claimant told Mrs Stockill she would be back into work the next week (24 April) and able to do some face-to-face consultations. She gave an example of what she would not be able to do. Mrs Stockill acknowledged this the next morning. The claimant also sent a message to Ms O'Loughlin about returning to work and setting up her clinics. The message was informal and friendly.

33. The claimant sent a further message to Mrs Stockill on Friday 21 April about her return to work. Mrs Stockill was on a non-working day so did not see this before the claimant returned on Monday 24 April. I find that Mrs Stockill had replied to earlier messages quickly.

34. I find that when the claimant returned to work on the Monday, she went to see Mrs Stockill in her office. The evidence about this is disputed. I accept the claimant's evidence that the meeting was short, and Mrs Stockill was looking at her computer and did not ask how she was. However, I also find that when the claimant came to see Mrs Stockill, Mrs Stockill greeted her and the claimant immediately mentioned the email of 21 April which Mrs Stockill had not seen so Mrs Stockill looked for it on her computer. I find that when the claimant then left Mrs Stockill's office, Mrs Stockill thought the claimant was going to work her clinic adjusting who she saw together with her senior colleague including using on the day space left available in clinic schedules to help with such adjustments.

35. Mrs Stockill then looked at and replied to the claimant's email from 21 April including asking if she would like an Occupational Health referral. Mrs Stockill told the Tribunal she made this offer as she considered it would be a helpful step. I accept this and Mrs Stockill's evidence during cross examination that in referring the claimant to see Occupational Health she was not treating the claimant as difficult or making the referral as a punishment. The referral was made on 24 April, and I find it to be a statement of the facts that existed at the time.

36. In respect of the contemporaneous record of the exchanges between the claimant and Mrs Stockill, and based on Mrs Stockill's evidence to the Tribunal, I find that Mrs Stockill relied on the claimant's assessment of her wrist and therefore how and when the claimant could work, and that Mrs Stockill followed the claimant's lead on this.

37. The claimant drafted a message to Mrs Stockill after her message on 24 April which is in the bundle and which explained how she felt about her clinic, but she did not send it, so the respondent did not know what it said. The claimant did

draft and send an email on 26 April to say she would be off sick due to pain following the clinic and saying she was not yet ready for face-to-face consultations. I find that the respondent accepted this to be the position.

38. The claimant had some annual leave and then saw OH who replied that the claimant return 'initially from home' and 'on 75% of her contractual hours'. The latter statement is not explained by the OH with any further detail, and I find that it meant what Mrs Stockill understood at the time, i.e. a reduction to 75% of contractual hours.

39. By email on 26 May the claimant asked to return to the workplace to do telephone consultations. Mrs Stockill said this was fine if it was what the claimant wanted but she referred the claimant to the OH recommendation that she work at home and asked her to let her know what she preferred. The claimant then said she would work from home. I find that this is a clear example of the respondent listening to what the claimant wanted and said she felt she could manage, whilst also taking into consideration what the independent OH advised.

40. Evidence about the clinics on 1 and 5 June is disputed. I was taken to the documents, bundle page 126 onwards, showing the actual clinics and the document at bundle page 130, produced by the claimant, comparing what she said was a normal clinic with what she had on 1 and 5 June. The claimant considered that she was given a higher workload than normal, and although it was within 75% of her hours she said that she had more patients than normal and admin time was inadequate, so she had to work longer than normal.

41. I accept the respondent's evidence that in setting up the clinics they were reduced below the OH 75% recommendation allowing 10 minutes for each consultation with admin time. I accept the claimant's statement that there was no extra admin time at the end of the clinic, however I accept Dr Shiel's evidence that the document at page 130 of the bundle does not represent a standard clinic template.

42. In the screen message from the claimant to Mrs Stockill on 5 June the claimant expressed her unhappiness and feeling of unfairness about the clinic. In her reply Mrs Stockill expressly stated "If you would like to work less hours then of course we can discuss this."

43. The claimant resigned by email to the partners of the respondent on that evening, 5 June, (bundle page 213) with short reasons. She received a reply from Dr Shiel on 7 June proposing a meeting to discuss her resignation. The claimant replied on 9 June (bundle page 217) with a longer explanation of the reasons for her resignation. She declined the offer to meet saying she did not wish to discuss her resignation.

44. Evidence was given to the Tribunal about matters that were raised after the claimant's resignation. As these happened after the resignation they cannot have formed all or part of the reason for it.

45. The claimant did not expressly raise a grievance with the respondent, and I do not find that any of the communications from the claimant to the respondent expressly, or by implication, raised an informal or formal grievance that fell to be considered under the respondent's grievance policy.

Unlawful deduction from wages

46. Turning to the unlawful deductions from wages claim, the pay in question relates to hours worked in March 2023. Initially this was recorded as sickness however the claimant worked from home so a new sick note was produced to reflect that she could do amended duties. The evidence about what work was done is now in dispute. Fit notes and communications about pay are in the bundle.

47. At the time, in March, the evidence shows that the parties agreed that the claimant would work at home. She offered to do this as she explained that she felt bad about the effect of her accident and the impact of taking time off work. I accept this evidence.

48. No questions were raised about the hours worked at the time. This appears to have been put in question some months later when an audit of the claimant's log-in time was undertaken. The claimant gave evidence, including in cross examination, that despite her injury and normal working hours (10 hours, 2 days a week), in order to do the work from home she worked a bit each day rather than in her contractually agreed 2 long blocks. She said, and I accept, that she could not have done 2 long days at this time. She said in evidence that she thought she had in fact spent more than her contracted hours on the work. I accept the claimant's evidence on this issue. She did not do 18.5 hours below those contracted or paid at the time.

The law

49. The first claim is a claim of constructive unfair dismissal. The statutory definition is as set out at s.95(1)(c) of ERA1996 as follows:

> **"95 Circumstances in which an employee is dismissed.**
>
> (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—
>
> …
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

50. I was referred by Ms Margetts to the case of Western Excavating v Sharpe [1978] ICR 221 CA. Ms Margetts drew my attention to the part of the judgment of Lord Denning which stated:

> "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employee no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

51. I also remind myself of the rest of that section which says:

> "The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to

> leave at once. Moreover, he must make up his mind soon after the conduct for which he complains or if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

52. In other words, to succeed on a claim for constructive unfair dismissal the claimant must in summary show:

    52.1 A repudiatory or fundamental breach of the contract of employment by the employer;

    52.2 Termination of contract by the claimant because of the breach; and

    52.3 That they have not affirmed the contract after the breach.

53. The second claim is that the respondent made an unlawful deduction of wages contrary to Part II of ERA. The relevant sections are sections 13 which sets out the right not to suffer an unlawful deduction and section 14(1):

> **"14 Excepted deductions.**
>
> (1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—
>
> (a) an overpayment of wages"

Conclusions

54. I express my conclusions based on considerations of the issues before me, the facts I have found and the applicable law.

Constructive unfair dismissal

55. Up to 24 April 2023 I do not find that the respondent put pressure on the claimant to return to work in the Practice rather than work safely from home. On the contrary, the evidence from the time shows that the respondent varied its normal practice to allow this willingly. After an OH referral when the claimant expressed a wish to return to the workplace, it was the respondent that queried this, and the claimant then said she would work at home.

56. Between 3 and 16 April 2023 there was no contact between the claimant and Mrs Stockill when she was working from home, but this alone is not a fundamental breach of contract nor a breach of contract at all. Whilst no welfare checks were carried out in this period, nonetheless, this was within a longer period when communication was passing regularly between the claimant and the respondent, and I conclude that the overall picture is one of regular communication.

57. I conclude that the regular discussion by email between the claimant and Mrs Stockill recorded in the evidence constituted a sufficient risk assessment of the claimant during her absence and upon her return to work. This was later augmented by an OH referral and an OH report. I have found that the OH referral made by Mrs Stockill was factual. The underlying tone was not that the claimant was lying about her recovery. I know the claimant believes that this is what it

does, however, on the face of the evidence I have made an objective assessment and found that it does not.

58. Based on my conclusions above I do not find that there was a breach of the respondent's duty of care to the claimant. Based on the facts I have found I do not conclude that the respondent gave the claimant a clinic that was more stressful and busier than her normal working pattern on 1 or 5 June or that they ignored her concerns or her suggested adjustments.

59. The respondent adopted the advice of the OH to set the clinics at 75% of contracted hours. When the claimant raised concerns about her clinic on 5 June Mrs Stockill immediately offered to discuss a further reduction in hours.

60. In the light of my finding at paragraph 45 of these Reasons I conclude that the respondent did not fail to follow the ACAS Code of Practice in relation to disciplinary and grievance hearings.

61. On the basis of the facts I have found and conclusions I have reached I do not find that the respondent by any individual act, or by a series of acts taken together, breached the implied term of trust and confidence by behaving in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. There was no fundamental breach of contract. The test in Western Excavating, which I have set out, was not met and this claim fails.

Unlawful deduction from wages

62. In relation to unlawful deductions, given my findings of fact about the work undertaken by the claimant in March 2023, I conclude that she was not overpaid and that the later recalculation of her hours and deduction from her wages was in breach of Part II of ERA and was unauthorised.

Approved by:
Employment Judge Harrison

24 February 2025

JUDGMENT SENT TO THE PARTIES ON
4 March 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/