Case Number: 1300179/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mrs R Stochmal**

Respondent: **WSP UK Limited**

Heard at: **Birmingham**

On: 21 January 2025, 3 March 2025 (hybrid hearing).

Before:

Representation
Claimant: In person
Respondent: Mr. T Perry (Counsel)

RESERVED JUDGMENT

1. The respondent was in breach of contract by terminating the claimant's fixed term contract with effect from 13th October 2023 (rather than the agreed date of 16th October 2023) and by only paying the claimant up to 13th October 2023. The respondent shall pay to the claimant **£413.49**. This is the net value to the claimant of the amount due.

2. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of changes to her initial employment particulars. There are no exceptional circumstances that make an award of an amount equal to two weeks' gross pay unjust or inequitable. It is not just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant **£1,286**.

3. The respondent did breach the claimant's contract of employment by not reimbursing her for a bus fare and by calculating her pay by reference to the wrong basic pay figure between November 2022 and 13 October 2023. However, the payment of £20 made to the claimant in February 2024 fully compensated the claimant for the loss caused by these breaches of contract, and no award is made.

4. The remaining complaint of breach of contract (based on an allegation that the respondent had extended the claimant's fixed term contract to March 2024) is not well-founded and is dismissed.

5. The complaints that the respondent made unlawful deductions from wages are not well-founded and are dismissed.

REASONS

1. The respondent is a UK subsidiary of WSP Global Inc., a global business providing management and consultancy services in engineering and infrastructure.

2. The claimant was initially employed by WSP (Real Estate and Infrastructure) Limited from 17 October 2022 on a fixed term contract, but her employment transferred to the named respondent pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 on 1 July 2023. The Claimant's employment with the respondent ended on 13 October 2023.

3. This case is about shortfalls in the claimant's pay (in that her pay was calculated by reference to the wrong basic pay figure), reimbursement of a bus fare incurred by the claimant (£3.50), the fact that she was told on 11 October 2023 that her last day of employment would be 13 October 2023 (when in fact her contract stated 16 October 2023), and whether there had been an agreed extension of the claimant's fixed term contract of employment to March 2024 that was then withdrawn in breach of contract by the respondent.

4. This Judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the Tribunal must consider in order to decide if the claim succeeds or fails. If I have not mentioned a point, it does not mean that I have overlooked it, it is simply because it is not relevant to the issues.

Preliminary Issues

5. A final hearing had initially been due to take place on 4 September 2024. The final hearing did not go ahead on that date, and instead that date was used for case management. The claimant had asked for a Polish interpreter but her request had not been responded to and no interpreter was present.

Employment Judge Maxwell considered that whilst the claimant could speak and write in English, it was important to ensure that the claimant could give her evidence to best effect and that this may require the assistance of an interpreter, even if that person was only needed for certain questions or answers. Employment Judge Maxwell was satisfied that the claimant's facility with English was sufficient to enable her to discuss case management. The claimant made applications to amend her claim, and the Judge decided to allow an amendment in one respect only. This was to add a complaint that the respondent breached the claimant's contract by ending it on 13 October 2023, three days before it was supposed to end on 16th. The Judge set out a list of the issues that the Tribunal hearing the claim would have to decide. Employment Judge Maxwell decided not to make any order requiring the parties to agree a single bundle of documents for use at the final hearing, as he considered that such an order was unlikely to achieve its aim and was more likely to generate additional correspondence.

6. Although Employment Judge Maxwell had given permission to the respondent to amend its grounds of resistance to respond to the claim that he had allowed by amendment (i.e., that the respondent had breached the contract by ending it on 13th rather than 16th October 2023), the respondent wrote to the Tribunal on 20 October 2024 to say that it did not intend to defend that part of the claim on the basis it did not consider it proportionate to do so, and setting out the award it suggested should be made in respect of that complaint.

7. On 21 January 2025, a Polish interpreter did attend. At the start of the hearing, the claimant made a number of applications, including applications to amend her claim. I allowed the claimant to amend her claim in one respect, to clarify that she was seeking compensation under Section 38 of the Employment Act 2002 in respect of the respondent's alleged failure to comply with a duty under Section 4 of the Employment Rights Act 1996 to provide a statement of change of employment particulars. I rejected the other applications. I gave oral reasons for my decisions on 21 January 2025. Dealing with all of the preliminary applications meant that it was not until just before 2.30pm on 21 January that the claimant started to give her evidence. By 4.35pm, the claimant had still not finished all the questions

she had for Mr. Stansfield, and in the circumstances, I decided that a second day was required to complete the evidence and submissions in the case. This second day was 3 March, and I agreed that Mr. Stansfield could attend remotely.

8. Between 21 January 2025 and 3 March 2025, I recorded in writing the case management decisions that I had made on 21 January and a case management order was sent to the parties on 18 February 2025. The claimant had requested written reasons for the Tribunal's decision not to allow her to amend her claim to include a claim that she had been unfairly dismissed on grounds of having made a protected disclosure, and the written reasons for that decision are also contained in the document sent to the parties on 18 February 2025. The summary attached to the case management order also set out an updated list of issues, to reflect the issues following the amendment that I had allowed (to include the claimant's claim for an award pursuant to Section 38 of the Employment Act 2002).

9. On 3 March 2025, a Polish interpreter attended. The claimant completed her questions for Mr. Stansfield, and the parties made submissions, which finished shortly before 2.30pm. The claimant indicated that she would require written reasons for my decision. I decided to reserve my decision and to send it out in writing.

Documents and Evidence

10. At the hearing on 21 January 2025, I had the following documents:

    10.1 A bundle from the Claimant titled "*Documents as being shared before the CMO pre hearing on 4 September 2024*" (187 pages plus index). This included the claimant's own witness statement dated 28 March 2024, her supplemental statement dated 12 August 2024, and a witness statement (with attached documents) from the respondent's witness Mr. Stansfield dated 23 May 2024. (**Bundle 1**).

10.2 A further bundle from the Claimant titled "Supplementary Statements or New Documents after the CMO pre hearing on 4 September 2024" (418 pages plus index). (**Bundle 2**).

10.3 A further copy of the witness statement (and attached documents) of Mr Daniel Stansfield, Chartered Associate Director with the Respondent, dated 23 May 2024 (this was also in the claimant's Bundle 1), and an amended witness statement from Mr Stansfield dated 27 August 2024.

10.4 An additional document, being email exchange from Mr Stansfield to Mr Chinyere from the Environment Agency dated 6 June 2023 and a reply dated 27 June 2023. I gave this the reference DS1.

11. I explained to the parties on 21 January 2025 that I would not read every page of the bundles of documents provided to me and would only read pages that I was specifically referred to either by reference to a page number in a witness statement, or where the person asking questions in cross-examination asked about a particular document. I explained that if there were any documents that a party wished me to look at that had not been specifically mentioned in a witness statement, they must make sure they drew those documents to my attention.

12. At the hearing on 3 March 2025, the Claimant handed up a third bundle titled "*supplementary documents or new documents after the CMO pre hearing on 21 January 2025*" (99 pages including index) (**Bundle 3**). Mr Perry, the respondent, did not object to this bundle being provided to the Tribunal. In this bundle, the claimant referred me to page 53, which was an application to be allowed to rely on three pieces of evidence, namely: (i) Grounds of Resistance submitted by the Environment Agency in the Claimant's claim against them; (ii) A LinkedIn screenshot; (iii) an email from HR dated 11 October 2023 incorrectly referring to the claimant as having resigned. In fact, all of these documents had already been included in bundle 1 or bundle 2, and so they were not 'new' documents. The claimant also applied to be able to cross-examine Mr Stansfield on these documents, and I said that she could do so long as the questions were relevant to the issues I had to decide.

13. I read the statements of the claimant and Mr Stansfield, and I also heard each of them give evidence under cross-examination.

Issues

14. The issues for the tribunal were as follows:

(1) ***Unlawful deduction from wages***

1.1 Were the wages paid to the claimant less than was properly payable with respect to:

1.1.1 The calculation of her salary (This relates to the respondent using a basic salary figure that was less than her actual basic salary when calculating the claimant's pay)?

1.1.2 Reimbursement of expenses (specifically a bus fare of £3.50).

1.2 If so, what is the claimant owed?

(2) ***Breach of Contract***

2.1 Did this claim arise or was it outstanding when the claimant's employment ended?

2.2 Did the respondent do the following:

2.2.1 Fail to pay the claimant the correct salary (This relates to the respondent using a basic salary figure that was less than her actual basic salary when calculating the claimant's pay).

2.2.2 Fail to reimburse the claimant for her expenses (specifically a bus fare of £3.50).

2.2.3 Vary the end date for the claimant's fixed term employment from 16 to 13 October 2023.

2.2.4 Withdraw a contract extension after this had been offered and accepted.

2.3 Was that a breach of contract?

2.4 How much should the claimant be awarded as damages?

(3) ***Section 38 of the Employment Act 2002***

3.1 When these proceedings were begun, was the respondent in breach of a duty to give the claimant a written statement of a change to employment particulars?

3.2 If the claim(s) succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks'

pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

3.3 Would it be just and equitable to award four weeks' pay?

15. At the hearing before me, the respondent conceded that the claims had been brought in time.

Findings of Fact

16. I make the following findings of fact on the balance of probabilities.

Events leading to the Claimant's recruitment

17. The respondent had a Client Support Framework Agreement (CSF) with the Environment Agency. Under the CSF, the respondent provided the Environment Agency with a range of skilled resource and flood risk related services. Under the CSF the respondent was awarded a stand-alone contract on 1 March 2022 for the provision of resource to be seconded into the Environment Agency. In accordance with that, the provision of any service to the Environment Agency was subject to written terms being agreed between the parties (i.e., the respondent and the Environment Agency), and the provision of the service being recorded as a "Compensation Event".

18. In around September 2022, the Environment Agency asked the respondent to provide them with an experienced hydraulic and flood risk specialist. At that time, the respondent did not have anyone suitable, and so Mr. Stansfield instructed a recruiter to search for an appropriate person. The intention was that this person would be employed by the respondent and then seconded to do work at the Environment Agency, and it was intended that the length of the fixed-term contract would align to the duration of the secondment required by the Environment Agency.

19. The claimant was identified by the recruiter as being a potential candidate. Mr Stansfield interviewed the claimant and during the interview, he explained to the claimant the contractual arrangement between WSP and the Environment Agency.

20. A discussion then took place between the claimant and the Environment Agency, to discuss the secondment role and responsibilities. On 9 September 2022, Mr. Stansfield wrote to the Claimant setting out the basis on which any offer of employment with the respondent would be based but making clear that "*Capita need to get the initial CE* [i.e. Compensation Event] *agreed on an existing contract. As soon as that is approved we will arrange for the above formal offer to be sent out to you via our online portal"* (Bundle 1, p48). This was a reference to the fact that WSP (Real Estate and Infrastructure) Limited would only make an offer of employment to the claimant once it had a "Compensation Event" in place with the Environment Agency.

21. In due course, the respondent and the Environment Agency did agree a "compensation event", initially for 5 days a week for 6 months between 18 October 2022 and 29 March 2023, although this period was later increased to 12 months.

Claimant's appointment

22. On 4 October 2022, WSP (Real Estate and Infrastructure) sent to the Claimant a letter her offering the role of Associate Flood Risk Specialist from 17 October 2022 on a fixed term contract.

23. The letter, which had a footnote stating "*standard terms and conditions September 2022 – Version 1"* enclosed a summary statement of terms alongside a contract of employment, and stated that both should be treated as one single document. The summary statement provided to the claimant had a footnote stating "*standard terms and conditions 3 October 2022 – version 2)*. The summary statement said that the role was on a temporary basis (12-month fixed term contract), "*with effect from 17/10/2022 up to 16/10/2023"* (Bundle 1, p153).

24. The contract provided to the claimant also stated: "*If you are employed on a temporary basis your employment may be terminated before the end date in line with these notice provisions and you will not be entitled to payment in respect of the balance of the fixed term contract"* (Bundle1, p158). The notice period if the respondent wished to terminate the claimant's

employment was stated to be "*either…one months' or one week's notice for each full year of employment up to a maximum of 12 weeks, whichever is the greater."* The claimant's salary was stated to be £68,000 per annum, payable in twelve monthly instalments on 27th of each month (Bundle 1, p153).

25. Some amendments were subsequently made to some of the terms set out in the original contract documents. Of relevance to this claim, on 18 April 2023, the claimant was notified that as of 1 April 2023 her salary would increase to £69,000 (Bundle 1, p175).

26. As part of these proceedings, the respondent produced a version of the summary statement of terms which looked almost identical to the version situated at Bundle 1 p153, but which gave a different end date for the contract, in that it stated that the role was on a twelve-month fixed term contract "*with effect from 17/10/2022 up to 13/10/2023".* However, as part of these proceedings, the respondent did not dispute that the version of the contract issued to the claimant, and accepted by her, stated an end date of 16th (not 13th) October 2023.

Discussions about extending the claimant's contract

27. On 6 June 2023, Mr. Stansfield emailed 'George' at the Environment Agency, who Mr. Stansfield understood was standing in for Mr. Chinyere, who was the person with whom the claimant worked at the Environment Agency. Mr Stansfield said that he was aware that the Claimant's current secondment contract was due to end at the end of September 2023, and that he was conscious that any further extensions on CSF needed to be agreed by the end of 2023, otherwise it would require new contracts via alternative frameworks. He asked for a quick discussion.

28. On 27 June 2023, Mr Chinyere emailed Mr Stansfield to say that "*we are happy for you to extend the contract to end of March 2024. Please let me know if you would like me to complete any paperwork / forms to that effect."* (DS/1).

29. Around this time there was also some discussion between Mr. Chinyere and the Claimant in which Mr. Chinyere told her that the Environment Agency wanted to extend the secondment.

30. The claimant suggested the conversation with Mr. Chinyere involved Mr. Chinyere offering to the claimant an extension of her contract of employment with WSP (Real Estate and Infrastructure) Limited, and that she immediately accepted, creating a binding agreement between the claimant and WSP (Real Estate and Infrastructure) Limited. I did not hear evidence from Mr. Chinyere. However, based on the evidence that I did have, I find on balance that Mr. Chinyere did not offer the claimant an extension of her contract of employment with WSP (Real Estate and Infrastructure) Limited. He did not have any authority to act on behalf of WSP (Real Estate and Infrastructure) Limited, and in those circumstances, I find that it is inherently unlikely that he would have purported to do so. Even had he done so, that would not have bound WSP (Real Estate and Infrastructure) Limited because he didn't any authority to offer a contract of employment on their behalf, and the Claimant knew that her contract of employment was with WSP (Real Estate and Infrastructure) Limited and not with the Environment Agency.

31. On 29 June 2023, Mr. Stansfield sent to the Claimant a message on teams, saying:

"*By the way I had an email from Pio and they've extended your secondment to end of March 24. Once approved we'll extend your fixed term contract to match."* (Bundle 1, p66).

32. Mr. Stansfield's witness statement as originally sent to the claimant had misquoted this email, in that he described it as saying: "*they're planning on extending your secondment*" rather than "*they've extended your secondment."* In submissions the claimant referred to the original statement as being a "*lie",* but I find that Mr. Stansfield made a genuine error in his first statement and that he was not attempting to mislead the Tribunal. He had attached the email to his original witness statement, so anyone reading the full document could see what the email actually said, and he corrected his error in advance of the hearing by serving an amended witness statement.

33. The reference in the first sentence of the email dated 29 June 2023 was, as Mr. Stansfield accepted in evidence, “clumsy” wording, because whilst Mr. Chinyere had indicated that he was happy for the secondment to be extended, there was formal paperwork that needed to be completed before a further Compensation Event could be agreed between the respondent and the Environment Agency. I accepted Mr. Stansfield’s evidence that in order for the agreement between the Environment Agency and the respondent to be extended in respect of the claimant’s secondment, what had to happen was that first the Environment Agency would be required to send a formal request to the respondent that the respondent provide a proposal and quotation for an extension of services. Following this, a formal quotation would be provided to the Environment Agency, and the Environment Agency’s contract service manager would assess the proposal and quotation and either accept, or reject it.

34. I find that the reference to “*once approved”* in the second sentence of Mr. Stansfield’s email was a reference to the fact that the process that I have described above had yet to be completed. A further Compensation Event had not yet been agreed between the Environment Agency and the respondent. This was not Mr. Stansfield saying that WSP (Real Estate and Infrastructure) Limited had already extended the claimant’s fixed term contract nor making the claimant an unequivocal offer to extend her fixed term contract. Rather, Mr. Stansfield was setting out WSP (Real Estate and Infrastructure) Limited’s future intention to offer her an extension of her fixed term contract, subject to the Environment Agency formally approving an extension to the secondment arrangement that it had with the respondent, and agreeing a further “Compensation Event”.

35. The claimant replied to Mr. Stansfield’s email, asking about pay, and specifically: “*is the contract extended on the same terms and condition, will be verified for example to account inflation?”* Mr Stansfield replied: “*The EA don’t increase our rates to account for true inflation figures. The company isn’t increasing staff salaries by 8-10% either unfortunately. Next salary review will be in December…..”* On 13 July 2023, the claimant sent a message to Mr Stansfield, referring to public sector employees in the UK having been offered wage increases and saying that considering she was

seconded to the Environment Agency, which was public sector, she was wondering how this salary increase would translate into her salary increase. Mr Stansfield replied:

"*I'm afraid it won't as you're not a public employee Renata. Your salary (for your grade / experience) will already be approximately 20% or more higher than an equivalent public sector worker at the EA. The next pay review will be Dec 23 Jan 24."*

36. As things stood at 13 July 2023 therefore, it was not clear that the claimant would accept an offer of an extension to her fixed term contract if that offer was subject to the same salary that she was already receiving. I find that this correspondence is more consistent with the respondent's case that no extension of the claimant's fixed term contract had been agreed, than with the claimant's case that she had accepted an extension at the end of June 2023.

37. In late July 2023, the claimant spoke again with Mr. Chinyere, who told her that the processing of the extension of the secondment had been delayed, but he still expected it to go ahead. The claimant said in her witness statement that Mr. Chinyere had reassured her that this would not affect her employment contract and that "*the employment contract would start as agreed."* I find that at around this time Mr. Chinyere was communicating to the claimant that he still expected that the secondment arrangements between the respondent and the Environment Agency would be extended. The expectation of both Mr. Chinyere and the claimant was that if the agreement between the Environment Agency and the respondent was extended, the claimant would continue to be the individual hydraulic and flood specialist supplied by the respondent. I accept that they would have discussed their thoughts about the impact that any extension of the agreement (between the Environment Agency and the respondent) would have on the claimant. However, I find that Mr. Chinyere did not assure the claimant that her contract of employment with the respondent had been, or would be, extended, because he had no authority to do that.

38. By early August 2023, the Environment Agency and the respondent still had not agreed a Compensation Event. Mr Chinyere at the Environment Agency

spoke to the claimant and told her whilst the Environment Agency did want to extend the secondment arrangement, they were looking for a way to do it.

39. On 11 August, Mr Chinyere told the claimant that in fact the Environment Agency would not be extending the secondment arrangement. The claimant sent Mr Stansfield a message, saying that:

"*Last week he* (i.e., Mr. Chinyere) *confirm that they want to extend it but they looking for way to do it. Today he said that they considered to do it via tender but finally they have decided not."*

40. In further messages that same day, the claimant and Mr Stansfield agreed that the news was disappointing (Bundle 1, p67).

41. Nowhere in this exchange of messages did the claimant suggest that she had already agreed an extension to her contract of employment with WSP (Real Estate and Infrastructure) Limited (or with the named respondent which had by this point become the claimant's employer pursuant to a TUPE transfer). Again, I find that this is more consistent with the respondent's account than with the claimant's account that there had been an agreed extension to her contract and that this was now being unilaterally withdrawn.

42. In the message timed at 14.03 , the Claimant said:

"*That also confirmed Pio that my contract with the EA is end of September 23. Please note my wsp contract is up to 16/10/23."*

I find that this message was consistent with the fact that whilst Mr. Stansfield had indicated an intention on the part of the respondent to extend the claimant's fixed term contract, it had been subject to an extension of the agreement between the Environment Agency and the respondent being "*approved",* i.e, it was subject to the Environment Agency formally agreeing to extend the secondment arrangement and agreeing a Compensation Event. It is clear from this message that the claimant understood that because the Environment Agency and the respondent had not in fact agreed an extension to the secondment arrangement, her fixed term contract of

employment with the respondent remained one that was due to end on 16 October 2023.

43. Mr Chinyere also sent Mr Stansfield an email on 11 August 2023, confirming that the Environment Agency would "*not be extending her contract beyond Sept 2023."* (Bundle 1, p69). Although Mr. Chinyere referred to an extension of "*her contract",* the contract of employment was between the respondent and the claimant. I find that what Mr. Chinyere was referring to here was the fact that the Environment Agency had decided not to extend the agreement that it had with the respondent, under which the respondent provided a hydraulic and flood specialist to the Environment Agency. The claimant was the hydraulic and flood specialist who was provided under that contract, and so it is understandable that Mr. Chinyere would use the shorthand "*her contract".*

44. The agreement between the Environment Agency and the respondent for the respondent to provide the services of a hydraulic and flood specialist ended on 30 September 2023.

45. During September 2023, Mr Stansfield and the claimant spoke about whether there were any alternative potential projects that might lead to the respondent being able to extend the claimant's fixed term contract, but these discussions did not result in an alternative option being found. On 5 September 2023, the Claimant emailed Mr. Stansfield about a potential secondment opportunity in the Welsh Government, and she wrote:

"*we would like to know if* [the respondent], *as my current employer, would be willing to extend my current contract beyond 16 October to allow me to take advantage of the secondment opportunity – Technical Advisor? It would be good to know how long WSP would be able to do this."* Again, this was consistent with the claimant being aware that her fixed term contract had not been extended by the respondent.

<u>TUPE transfer 1 July 2023</u>

46. The claimant's employment transferred from WSP (Real Estate and Infrastructure) Limited to the respondent on or around 1 July 2023. As part

of these proceedings, the respondent accepted that the claimant should have been sent an amended statement of employment particulars to reflect the change in the identity of the employer.

End of the Claimant's employment in October 2013

47. On 11 October 2023, the respondent's HR Administrator emailed the Claimant stating:

"*Please find attached your acceptance of resignation letter….*" (Bundle 1, p106) This was an error. The Claimant had not submitted her resignation.

48. The letter that was attached to this email was also dated 11 October 2023, and it told the claimant that her fixed term contract was due to end on 13 October 2023 and that her last day of employment would be 13 October 2023 (Bundle p109). This was three calendar days earlier than the claimant and the respondent had previously agreed as being the last day of the fixed term contract.

49. The ending of the claimant's contract on 13th rather than 16th October had nothing to do with the claimant's conduct or performance and the ACAS Code of Practice on Disciplinary & Grievance Procedures did not apply.

Bus ticket

50. On 25 September 2023, and in the course of her employment with the respondent, the Claimant attended a meeting at the Environment Agency office in Tewkesbury. She travelled there by bus, and a few days later she submitted an expense claim in respect of the £3.50 bus ticket. I was not taken to any express term in the claimant's contract dealing with repayment of expenses, but it was not in dispute before me that the claimant was entitled under her contract to be reimbursed for this bus ticket. I accepted the claimant's evidence that all similar reimbursements of expenses in the past had been untaxed and paid directly into her bank account.

51. By email in November 2020, the claimant emailed Mr Stansfield about the fact that she had still not been reimbursed for the £3.50 bus ticket (Bundle 1, p75). Mr Stansfield informed the Claimant he had not seen an expense

for approval, and on 26 November 2023 the Claimant sent a copy of the relevant receipt (Bundle 1, p72). On 27 November 2023 Mr. Stansfield offered the Claimant a payment of £5 to compensate her for that expense and any inconvenience caused, but no payment was made at that time (Bundle 1, p71).

Identification of errors in pay

52. On 27 October 2023, the claimant emailed HR, copying Mr Stansfield, to ask how her basic pay for October 2023 had been calculated (Bundle 1, p110).

53. There was then email correspondence passing forwards and backwards between the claimant and the respondent. In an email dated 26 November 2023, the Claimant clarified that her position was that her basic pay had been wrongly calculated from November 2022 onwards, as follows (Bundle 1, p72):

    a. Between November 2022 and March 2023, her pay slips showed £5,666.49 gross as the basic pay, whereas £68,000/12 was £5,666.67, a difference of 18p (per month).

    b. Between April and September 2023, her pay slips showed £5,749.82 as the basic pay, whereas £69,000/12 was £5,750, a difference of 18p (per month).

    c. In October 2023, basic pay had been calculated using a figure of £68,997.85 rather than £69,000, which she calculated to be a difference of 9p in respect of the period 1 – 13 October 2023.

    d. These were all gross figures, but the claimant also said that this would affect tax, NI and pension calculations.

54. On 4 December 2023, Mr. Stansfield wrote to the claimant explaining that the payment issues were due to a "rounding error" (Bundle 1, p70). Mr. Stansfield calculated the loss to the claimant, including the unpaid bus ticket, to be less than £10 (£1.38 NI/tax, £3.12 net shortfall in pay / pension contributions, £3.50 bus ticket). He said that if the claimant agreed he would

request that £10 be paid to her in the following week's payroll run, but no payment was made at that time. Under-cross examination, Mr. Stansfield accepted the claimant's suggestion that as a result of the wrong annual basic pay figure being used, she suffered a pay shortfall of £4.30 (gross).

55. I find that this shortfall did come about because of a "rounding error" in the way that the respondent's accounting software calculated the claimant's gross basic pay. The claimant's contracted hours were 40, rather than the respondent's standard default of 37.5. Instead of just applying the claimant's basic gross annual salary figure as set out in her contract, the software converted that to a 37.5 hour equivalent and then pro-rated up. This led to a slight discrepancy between the gross figure that was in the claimant's contract, and the figure that the software then used to calculate her pay.

56. The claimant did not say in her correspondence about the bus fare and pay issues in late 2023 that she wanted to bring a grievance, and she was not invited to a meeting to discuss the complaints that she put in writing regarding her pay. Mr. Stansfield did however engage with the claimant's complaints. Whilst the claimant did not agree with his responses, he did provide a response.

Payment of £20

57. On 13 January 2024, the claimant presented her claim. At the date that she presented her claim, she had not received payment to reflect the shortfall in pay received due to the basic pay "rounding error", nor had she received payment for the £3.50 bus fare.

58. The respondent filed Grounds of Resistance in which it said that it would pay to the claimant £20 to cover the claims in respect of the shortfall in basic pay and the unpaid bus fare. On 29 February 2024 the respondent paid to the claimant the sum of £20 directly into her bank account (Bundle 1, p123).

Submissions

59. Both parties made oral submissions. Whilst I will only set out a summary here, I considered everything that was said.

60. The respondent did not dispute that the respondent should have reimbursed the claimant for the bus fare, or that the claimant had suffered some shortfall in her pay due to the wrong basic pay figure being used to calculate her pay. The respondent indicated that it was happy to concede the claimant's suggested figure of £4.30 as representing the shortfall in pay. However, the respondent submitted that there was no outstanding loss, because the respondent had paid to the claimant £20, which more than covered the pay shortfall and the bus ticket. The respondent denied that there had been an extension of the claimant's fixed term contract beyond 16th October 2023, and said that even if such an extension had been agreed, that would have been terminable on one month's notice. It accepted that the respondent had breached the claimant's contract by terminating her employment with effect from 13th (rather than 16th) October 2023, and that the respondent had failed to comply with Section 4 of the Employment Rights Act 1996 when it did not provide an updated statement of particulars of employment following the TUPE transfer.

61. The claimant submitted that in June 2024 Mr. Chinyere at the Environment Agency had offered her an extension of her fixed term contract to the end of March 2024, that she had accepted that and that this bound the respondent. She submitted that both Mr. Chinyere's email of 27 June 2023 and Mr. Stansfield's email of 29 June 2023 confirmed this. She submitted that Mr. Stansfield had lied in his original statement when he had suggested that the email of 29 June 2023 had referred to the Environment Agency "*planning"* to extend the secondment. She submitted that the respondent had failed to give her one month's notice to terminate the contract earlier than the end of March 2024 and that she be compensated for loss of earnings and ancillary benefits to at least March 2024, and beyond. The claimant suggested that the £20 paid to her in February 2024 had been paid to her without her consent. The claimant suggested that the ACAS Code on Disciplinary and Grievance Procedures applied, and that an uplift should

be awarded. She also submitted that an award of four weeks' pay should be allowed in respect of the failure to provide an amended statement of terms.

62. The claimant also invited me to award compensation in respect of proposed claims that she had previously applied to add by way of amendment where those applications had been refused. I explained to the claimant that I was not able to do that. The claimant also invited me to make a preparation time order, and I explained that it would be appropriate for me to first reach my decision on the claims, before dealing with any application for costs or preparation time orders that may be made by either party.

Law

Unlawful deduction from wages

63. Section 13 of the Employment Rights Act 1996 (**ERA**) provides (so far as relevant to this claim):

"*(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.

….

(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.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion."

64. To fall within Section 13 (4) the deficiency in wages must be (a) an 'error' on the part of the employer and (b) an error which affects 'the computation' of the gross wages. These words are to be given their ordinary meaning. An 'error' is a mistake, something incorrectly done through ignorance or inadvertence. 'Computation' of wages is a matter of reckoning the amount, of ascertaining the total amount due by a process of counting and calculation (Morgan v West Glamorgan County Council [1995] IRLR 68).

65. The meaning of "wages" is set out in Section 27 of the ERA. It says (in so far as relevant to this claim) that:

"*(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.

…but excluding any payments within subsection 2.

(2) Those payments are –

….(b) any payment in respect of expenses incurred by the worker in carrying out his employment…

…(4) In this Part "gross amount", in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature."

66. Section 24 of the ERA says (so far as relevant to this claim) that:

"*Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer –(a) in the case of a complaint under section 23 (1) (a), to pay to the worker the amount of any deduction made in contravention of section 13.*"

67. Section 25 (3) provides that an employer "*shall not under section 24 be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid such amount to the worker.*"

Breach of Contract

68. There was no dispute in this case that the Tribunal has jurisdiction to hear the claimant's claims for breach of contract by virtue of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.

69. A contract is a promise, or a set of promises, that the law will enforce. For a contract to exist, there must be an agreement (usually consisting of an offer which is then accepted), between two or more people, the agreement must be made with the intention of creating legal relations, and the agreement must be supported by consideration.

70. A contract of employment is a legally binding agreement. Once it is made, both parties are bound by its terms and neither can alter those terms without the agreement of the other.

71. For an offer to result in a binding contract, the person making it must have authority to make a binding contract on behalf of the employer (Puntis v Governing Body of Isambard Brunel Junior School EAT 1001/95).

Section 38 of the Employment Act 2002

72. Section 38 applies to proceedings before an employment tribunal for unlawful deductions from wages and breach of contract (amongst others).

73. The effect of Section 38 (2) and (3) is that, if the Tribunal finds in favour of the worker bringing the claim, even if no award is made, and

"*when the proceedings were begun the employer was in breach of his duty to the worker under….section 4 (1) of the Employment Rights Act 1996….the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount instead."*

74. The "minimum amount" is an amount equal to two weeks' pay, and the "higher amount" is an amount equal to four weeks' pay (Section 38 (4)). The duty to make the award does not apply if there are exceptional circumstances which would make an award or increase unjust or inequitable (Section 38 (5)).

75. Section 38 (6) sets out the way in which a week's pay should be calculated. Given the date that this claim was presented, the statutory cap on a week's pay for an award under Section 38 is £643 (Section 227 ERA).

<u>Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (TULRCA)</u>

76. In so far as relevant to this case, Section 207A (2) says that:

"*If, in the case of proceedings to which this section applies, it appears to the employment tribunal that-*

(a) The claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) The employer has failed to comply with that Code in relation to that matter, and

(c) That failure was unreasonable

The employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%."

Discussion and Conclusions

Pay shortfall due to applying the wrong basic pay figure

77. This claim was brought as a complaint of breach of contract and of unlawful deduction from wages. I will deal first with the claim for breach of contract.

78. *Issues 2.1, 2.2.1 and 2.3.* The respondent accepts that it breached the claimant's contract by paying her less than she was entitled to be paid, and that this claim was outstanding on termination of the claimant's employment. Instead of the claimant's net pay being calculated by reference to her actual gross annual basic salary as set out in her contract, the respondent's accounting software used a slightly lower figure.

79. *Issue 2.4.* In her Schedule of Loss, the claimant calculated the gross loss of pay caused by this breach to be £4.30 (representing a gross shortfall of 18p over 10 months, plus a gross shortfall of £2.50 in her final month). Mr. Stansfield accepted this figure in his evidence, and in submissions Mr. Perry said he was happy to concede that this was the appropriate sum. The claimant also suggested that she would have suffered a loss of employer pension contributions (5% of gross pay) due to the error, which on a shortfall of £4.30 would be 22p, making a total of £4.52. The payment of £20 made by the respondent to the claimant in February 2024 was sufficient to cover this. There is no outstanding loss arising from this breach of contract and I therefore make no award of damages.

80. *Issues 1.1.1 and 1.2.* This claim was also brought as a complaint of unlawful deduction from wages. However, the effect of Section 13 (4) of the ERA is that a deficiency in pay is not to be treated as a deduction in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable. I have found that there was an error in the gross basic pay figure that was used by the employer because of an error in the way that the accounting software calculated the gross basic pay (i.e., by converting it to a 37.5 hour equivalent and then producing a pro-rata 40 hour figure, rather than just applying the figure in the claimant's contract and dividing it by 12). I conclude that this is an error falling within Section 13 (4)

of the ERA, and so the complaint for unlawful deduction from wages should be dismissed. However, *if* the claimant had been able to bring this claim as a claim for unlawful deduction from wages, I would have made no award of compensation, because the respondent had already reimbursed the claimant for the loss caused by the error by the date of the hearing.

Non payment of bus fare

81. This claim was brought as a complaint of breach of contract and of unlawful deduction from wages. I will deal first with the claim for breach of contract.

82. *Issues 2.1, 2.2.2 and 2.3.* The respondent did not dispute that the claimant was entitled to be reimbursed for her bus fare of £3.50, and that it had failed to do that by the end of her employment, or by the date the claim was presented.

83. *Issue 2.4.* The respondent did reimburse the claimant for this bus fare in February 2024, when it paid her £20 which was intended to cover the loss caused both by the payroll error and the bus fare, and which did cover that loss. There is no outstanding loss to the claimant arising from the failure to reimburse the bus fare, and I therefore make no award of damages.

84. *Issue 1.1.2 and 1.2.* The claim for reimbursement of the bus fare was also brought as a claim for unlawful deduction from wages, but because the bus fare was an expense incurred by the claimant in carrying out her employment, it is excluded from the definition of 'wages' by Section 27 of the ERA. In those circumstances, the claim for unlawful deduction from wages in relation to the bus fare must fail. However, *if* the claimant had been able to bring this claim as a claim for unlawful deduction from wages, I would have made no award of compensation, because the respondent had already reimbursed the claimant for the bus fare by the date of this hearing.

Breach of contract (alleged withdrawal of an accepted job offer)

85. *Issue 2.1* The respondent did not dispute that this claim was outstanding when the claimant's employment ended.

86. *Issue 2.2.3.* I have found that Mr. Chinyere did not offer the claimant an extension of her contract of employment with WSP (Real Estate and Infrastructure) Limited, and that he had no authority to do so. I have also found that Mr. Stansfield's email to the claimant dated 29th June 2023 was him setting out a future intention to offer an extension of the fixed term contract, but subject to the Environment Agency formally approving an extension to the secondment agreement that it had with the respondent, and agreeing the "Compensation Event". There was not an agreed extension to the claimant's fixed term contract at that time.

87. Unfortunately for the claimant, the Environment Agency decided not to agree an extension to the secondment arrangements that it had with the respondent, and did not agree a further "Compensation Event". As a result of this, the respondent did not then reach the point of offering the claimant an extension of her fixed term contract beyond October 2023 and no extension was agreed between the claimant and the respondent. This complaint of breach of contract fails.

Breach of contract: contract ending on 13 October rather than 16 October

88. *Issues 2.1 and 2.2.3.* The respondent accepted that it did breach the claimant's contract of employment when it brought the claimant's contract to an end on 13th October (and only paid her up to 13th October) rather than 16th October.

89. *Issue 2.4.* I have to assess what would have happened but for this particular breach of contract. What would have happened is that the claimant would have been paid her salary up until 16th October 2023, rather than only up to 13th October 2023. The respondent suggested that damages should be £192.84 net, but the claimant did not accept that figure which she said only reflected one day's salary and not compensation for the three days she would otherwise have received salary.

90. The claimant was paid a salary, in equal monthly instalments. Her net monthly salary was £3,890.67, which equates to a net weekly salary of £895.44 (being (£3,890.67 x 12) / 52.14). Three calendar days is 0.43 of a week. I therefore calculate the net loss of salary caused by this breach of

contract to be £385.04 net of tax and national insurance (£385.04 x 0.43). In addition, the claimant lost the opportunity to accrue employer pension contributions, which were calculated at 5% of gross salary. As the claimant's gross weekly salary was £1,323.36, her gross salary over 3 days would be £569.05, and 5% of that would be £28.45 (£569.05 x 0.05). I therefore add this to the net loss of pay, giving a total award for damages in respect of this breach of contract of £413.49 net.

Failure to provide a statement of changes of employment particulars

91. The respondent accepted that it failed to comply with a requirement to provide a statement of changes of employment particulars in accordance with Section 4 of the Employment Rights Act 1996 when the legal identity of the claimant's employer changed following the TUPE transfer.

92. Section 38 (3) of the Employment Act 2002 applies. In respect of this, I award the claimant two weeks' pay. A week's pay for the purposes of this award is subject to the statutory cap that applied at the date the claimant brought her claim, which was £643, and I therefore award: £1,286. I have concluded that it is not just and equitable to award the higher amount of four weeks' pay. Although the respondent is a subsidiary of a global business and I take that into account, this is not a case in which there was a complete failure to provide any statement of terms, because the claimant had been provided with a relevant statement of terms at the outset of her fixed term contract.

Uplift for failure to follow the ACAS Code on Disciplinaries and Grievances

93. The ACAS Code on Disciplinary Procedures did not apply. The claimant did not label her complaints to Mr. Stansfield as grievances, but even if they should have been recognised as grievances, it was not unreasonable for Mr. Stansfield to deal with them in correspondence rather than inviting the claimant to a meeting. I conclude that there was no unreasonable failure to comply with the ACAS Code on Disciplinary or Grievance Procedures and so I do not award any uplift pursuant to Section 207A of TULRCA.

Approved by:

Employment Judge C Knowles

3 April 2025

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/