Reference number
6013382-2024

EMPLOYMENT TRIBUNALS

London South Employment Tribunal
11 March 2025 (video)

Claimant: Elahe Sadat Hokamian

Respondent: Herocompany Ltd

JUDGMENT

The Claimant's claims for notice pay and holiday pay fail. The claim for compensation for failure to provide compliant written particulars of employment succeeds. The Respondent is ordered to pay the Claimant £2,201.04 within 14 days, and the Claimant is responsible for accounting to HMRC for any tax and National Insurance properly due once this payment has been received.

REASONS

1. The judgment in this matter was handed down orally at the conclusion of the hearing on 11 March 2025, with a short-form written judgment issued on the same day. This short-form judgment was sent to the parties by the Tribunal administration on 21 March 2025. On the same day, the Respondent's representative, Ms Jessica-Mae Scarbrough-Lang, made an application for written reasons pursuant to Rule 60(4)(b) of the Employment Tribunals Rules of Procedure 2024. This application was properly made within the 14-day period specified in the Rules. Therefore, in accordance with Rule 60(7), this is the full written judgment with reasons.

Background to this case

2. The Claimant, Mrs Elahe Sadat Hokamian, commenced employment with the Respondent, Herocompany Limited, as a hair stylist on 5 December 2023. The Respondent operates hair salons in London. The Claimant's employment was governed by a contract sent to her on 7 December 2023, which set out her contractual duties including performing hair services such as colouring, cutting, and blow drying to all clients booked in her column. The Claimant's holiday year ran from 1 January to 31 December, with holiday entitlement calculated on a pro rata basis. The Respondent's practice was to pay holidays on an hourly basis rather than a daily basis, due to the variable nature of stylists' working schedules.

3. After the Claimant had worked for the Respondent for three months, she was enrolled into the pension scheme managed by NEST. The Respondent made pension deductions from the Claimant's wages from March to June 2024 and contributed to the pension scheme, despite the written contract stating that the company did not make contributions to the pension scheme. Between January and July 2024, the Claimant worked a total of 925 hours, with 80 of those hours being worked in January after the start of the holiday year on 1 January.

4. On 18 June 2024, the Claimant tendered her resignation, stating that she wished to leave her employment on 30 June 2024. According to the Claimant's contract, she was required to give

three weeks' notice, which would have meant her employment would terminate on 9 July 2024. The Respondent informed the Claimant that she could not leave before her notice period expired, despite her having secured alternative employment.

5. On 21 June 2024, the Claimant refused to provide a cut and blow dry service to a client who had booked through a Groupon offer. According to the Respondent, this service was within the Claimant's skill set and one she had performed many times before. The Claimant attempted to reallocate the service on the Respondent's booking system, which the Respondent regarded as outside her authority. When the service was reassigned to her, she again attempted to reallocate it despite being instructed to provide the service. Mr Ferreira, the Head of Growth and Innovation at the Respondent, considered this to be a serious act of insubordination and, following a meeting with the Claimant with a witness present, dismissed her for gross misconduct without notice.

6. Following her dismissal, the Claimant brought claims in the Employment Tribunal against the Respondent. The Respondent defended the claims, contending that the Claimant had been properly dismissed for gross misconduct due to her refusal to carry out services, which constituted a fundamental breach of her employment contract.

The complaints

7. The Claimant brought three distinct complaints against the Respondent. Firstly, she claimed entitlement to notice pay following what she asserted was an improper dismissal. She sought 12 working days' notice pay from 22 June to 9 July 2024, totalling £1,320.60. This calculation was based on her average gross monthly pay of £2,327.70, plus the employer's pension contribution of £56.75 per month, giving a daily rate of £110.05.

8. Secondly, the Claimant brought a claim for unpaid holiday pay. She calculated her holiday entitlement after 25 weeks of employment as 13.5 days. Having taken 12 days of paid holiday, she claimed underpayment of 1.5 days, totalling £165.08. Her calculation method used days rather than hours and applied the formula: 5.6 weeks divided by 52 weeks, multiplied by weeks worked.

9. Thirdly, the Claimant sought compensation for the Respondent's failure to provide compliant written particulars of employment. She identified two specific deficiencies in her employment contract: the contract failed to state the employer's notice period, and it incorrectly stated "You are not entitled to pension benefits" and "The Company does not make any contributions to such scheme" when pension contributions were actually being made.

10. The Claimant's case regarding her dismissal was that she was never properly dismissed for gross misconduct. She maintained that her text messages were misinterpreted and that she was merely unavailable for certain bookings due to legitimate scheduling conflicts, not refusing work outright.

Issues for the determination of the Tribunal

11. Was the Claimant entitled to notice pay following her dismissal on 21 June 2024?

    a) Did the Claimant's conduct on 21 June 2024 amount to gross misconduct justifying summary dismissal?

    b) Did the Claimant refuse to provide services to clients contrary to her contractual obligations?

    c) If so, did this conduct constitute gross insubordination?

    d) If the dismissal for gross misconduct was justified, is the Claimant entitled to any notice pay under her contract?

12. Was the Claimant entitled to additional holiday pay?

    a) What was the correct method for calculating the Claimant's holiday entitlement as a variable hours worker?

    b) How many hours of holiday entitlement had the Claimant accrued during her employment?

    c) How many hours of holiday pay had the Claimant received?

    d) Was there any shortfall in holiday pay due to the Claimant?

13. Did the Respondent fail to provide compliant written particulars of employment?

    a) Did the employment contract adequately specify the employer's notice period as required by Section 1(4)(e) of the Employment Rights Act 1996?

    b) Did the employment contract contain accurate information about pension arrangements as required by Section 1(4)(d)(iii) of the Employment Rights Act 1996?

    c) If there were deficiencies in the written particulars, what compensation is appropriate under Section 38 of the Employment Act 2002?

The hearing before the Tribunal

14. The hearing took place via video on 11 March 2025 before Employment Judge M Aspinall, sitting alone. The Claimant, Mrs Elahe Sadat Hokamian, represented herself, while the Respondent was represented by Ms J Scarborough-Lang, a Litigation Consultant.

15. The Tribunal had before it a bundle of documents comprising 80 pages, which included the Claimant's employment contract, payslips, text messages, booking system records, and other relevant documents. The Tribunal was provided with page references throughout the hearing using the format [FB/XX] to refer to the final hearing bundle.

16. The Tribunal heard oral evidence from the Claimant, Mrs Hokamian. On behalf of the Respondent, the Tribunal heard evidence from Mr Stéphane Ferreira, the Head of Growth and Innovation, and Mr Keefe, whose role was not specified but who appeared to be in a management position. All witnesses had provided written witness statements which stood as their evidence in chief, and they were cross-examined on the contents of those statements.

17. During the hearing, the parties made submissions regarding the correct calculation of holiday pay, with the Claimant arguing for a day-based approach and the Respondent contending that an hourly calculation was more appropriate for variable hours workers. There was also significant focus on the events of 21 June 2024, particularly whether the Claimant's actions constituted a refusal to perform services amounting to gross misconduct.

18. Both parties presented their closing submissions at the end of the hearing. The Tribunal delivered an oral judgment, which was recorded in the document dated 11 March 2025.

The law

Legislation

19. The Employment Rights Act 1996 (ERA 1996) contains provisions relevant to this case, particularly regarding notice periods and written particulars of employment.

20. Section 86 of the ERA 1996 provides for minimum periods of notice to terminate a contract of employment. Section 86(1) states: "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 is not less than one week's notice for each year of continuous employment if the period of

continuous employment is less than 12 years." As the Claimant had been employed for less than one year, the statutory minimum notice period was one week.

21. Section 1 of the ERA 1996 requires employers to provide employees with a written statement of particulars of employment. Section 1(4) specifies that the statement must include, among other things:
(e) "the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,"
(d)(iii) "any terms and conditions relating to pensions and pension schemes."

22. Section 38 of the Employment Act 2002 provides for compensation where an employer fails to provide compliant written particulars of employment. Section 38(2) states that where a tribunal finds that an employer has failed to provide a statement that complies with the requirements of section 1 of the ERA 1996, it may award compensation of between 2 and 4 weeks' pay.

23. The Working Time Regulations 1998 (WTR) govern holiday entitlement and pay. Regulation 13 provides that a worker is entitled to 5.6 weeks' annual leave in each leave year. For workers with irregular hours, holiday pay is calculated using an average over the preceding 52 weeks (or the number of complete weeks worked if less than 52). The rate of a week's pay is calculated in accordance with sections 221-224 of the ERA 1996.

Case law

24. In *Kaur v MG Rover Group Ltd* [2005] IRLR 40, the Court of Appeal considered the purpose of the written particulars provisions in the Employment Rights Act 1996. The court held that in determining whether provisions of collective agreements were incorporated into individual employment contracts, it was necessary to examine whether specific parts of those agreements were "apt to be a term of the contract". This principle is relevant when considering the adequacy of written particulars, as it emphasizes that employers must provide clear and unambiguous terms regarding essential employment conditions. As Lord Nicholls stated, one of the primary aims of these provisions is to ensure transparency and clarity in the employment relationship.

25. In *British Gas Trading Ltd v Lock* [2016] EWCA Civ 983, the Court of Appeal confirmed that holiday pay must reflect "normal remuneration" which may include commission and other variable elements of pay. The Court had to determine whether the Working Time Regulations 1998 could be interpreted to include results-based commission in holiday pay calculations, in line with CJEU decisions on Article 7 of the Working Time Directive. The Court held that it was possible to interpret the Regulations conformably with EU law even though this required reading additional words into the legislation. The Court reasoned that the "grain" of the Working Time Regulations was to provide holiday pay for workers at their normal remuneration, and that adopting a conforming interpretation did not involve amending the legislation but rather performing the duty to interpret it in line with EU law.

26. In the case of *Mears v Safecar Security Ltd* [1982] IRLR 183, the Employment Appeal Tribunal held that gross misconduct is "conduct which fundamentally undermines the trust and confidence which is inherent in the particular contract of employment" or "conduct which demonstrates that the employee no longer intends to be bound by one or more of the essential conditions of the contract."

27. In *Polkey v AE Dayton Services Ltd* [1987] UKHL 8, the House of Lords established that an employer's failure to follow a fair procedure when dismissing an employee does not automatically render the dismissal unfair if following a proper procedure would have led to the same outcome. However, this principle applies primarily in unfair dismissal cases, which require two years' qualifying service.

28. In regard to the calculation of holiday pay for workers with irregular hours, the Supreme Court case of *Harpur Trust v Brazel* [2022] UKSC 21 is particularly relevant. The case concerned a

part-year music teacher on a permanent contract who worked variable hours during school terms only. The Supreme Court rejected the employer's argument that holiday entitlement should be pro-rated to reflect weeks not worked during the year. The Court held that under the Working Time Regulations, part-year workers on permanent contracts are entitled to 5.6 weeks' holiday pay calculated using the 12-week averaging method (now 52 weeks), without reduction for weeks not worked. The Court confirmed that while this might result in part-year workers receiving holiday pay representing a higher proportion of their annual earnings compared to full-time workers, this was a policy choice made by Parliament that was compatible with the Working Time Directive, which establishes minimum requirements that member states can exceed.

The evidence

29. The Tribunal was provided with a final hearing bundle of 80 pages, which contained various documents relevant to the case. The Claimant's employment contract dated 7 December 2023 was included at pages 33-38 of the bundle. This set out her contractual duties as a hair stylist, including performing hair services to all clients booked in her column, primarily hair colouring, cutting, and blow drying [FB/34]. The contract also specified a three-week notice period [FB/37] and included provisions regarding holiday entitlement and calculation [FB/36].

30. Clause 12(I) and 12(II) of the contract permitted immediate termination without notice for gross misconduct and specified that no notice pay would be due in such circumstances. Clause 17 of the contract stated: "There is no entitlement to pensions benefit in relation to your employment. However the Company shall facilitate access to a designated pension scheme to the extent that we are required to do so as a matter of law. The Company does not make any contributions to such scheme."

31. The bundle contained the Claimant's payslips from January to July 2024 [FB/69-75, 80], which detailed her hours worked, pay, and deductions, including pension contributions from March to June 2024 [FB/58-61]. According to these payslips, the Claimant worked 925 hours between January and July 2024, with 80 of those hours worked in January after the holiday year commenced on 1 January [FB/69, 80].

32. The Tribunal was also provided with records from the Respondent's booking system [FB/57-59], which showed the allocation and reallocation of services on 21 June 2024. These records indicated that a cut and blow dry service for a Groupon client was initially allocated to the Claimant, then reallocated, before being reassigned to her [FB/58-59].

33. Text messages and communications regarding the events of 21 June 2024 were included in the bundle [FB/55-56]. These documented interactions between the Claimant and management regarding the service allocation and her response to being asked to provide services to certain clients.

34. The bundle also contained evidence related to the Claimant's resignation on 18 June 2024 and subsequent dismissal for gross misconduct on 21 June 2024 [FB/42-43]. This included the Respondent's notification of dismissal, which cited the Claimant's refusal to provide services to clients as the reason for her summary dismissal.

Oral evidence

35. The Tribunal heard oral evidence from three witnesses: the Claimant, Mrs Hokamian; Mr Stéphane Ferreira, Head of Growth and Innovation at the Respondent; and Mr Keefe, who appeared to be in a management position at the Respondent.

36. The Claimant, Mrs Hokamian, gave evidence regarding her employment with the Respondent and the events leading to her dismissal. She explained that she had tendered her resignation on 18 June 2024 with the intention of leaving on 30 June 2024, having secured alternative employment. She disputed the Respondent's characterisation of her actions on 21 June 2024, maintaining that she had not refused to provide services to clients but rather had legitimate

scheduling conflicts. She stated that her text messages had been misinterpreted and that she had not intended to refuse work outright.

37. During cross-examination, the Claimant was asked about her understanding of her contractual duties, specifically her obligation to provide services to all clients booked in her column. She acknowledged that her contract required her to perform hair services to all clients but maintained that she had not deliberately refused services. When questioned about her holiday pay calculation, she confirmed that she had calculated her entitlement based on days rather than hours. The Claimant also accepted during cross-examination that if properly dismissed for gross misconduct, she would not be entitled to notice pay under her contract.

38. Mr Ferreira gave evidence regarding the Claimant's employment and dismissal. He confirmed that the Claimant had been employed as a hair stylist from 5 December 2023 and had been provided with a contract setting out her duties. He testified that after the Claimant had worked for the Respondent for three months, she was enrolled into the pension scheme managed by NEST, with the Respondent making contributions despite the contract stating otherwise. He detailed the events of 21 June 2024, stating that the Claimant had refused to provide a cut and blow dry service to a client who had booked through a Groupon offer, despite this being within her skill set and a service she had performed many times before. He described how she had attempted to reallocate the service without authorisation and had continued to do so even after being instructed to provide the service. Mr Ferreira considered this a serious act of insubordination warranting dismissal for gross misconduct.

39. Mr Keefe provided particularly detailed evidence regarding the events of 21 June 2024. He testified that he had attended the Soho salon that day after reception staff raised concerns about the Claimant refusing to service certain clients. According to Mr Keefe, the Claimant specifically refused to perform services for clients who had booked through promotional offers, stating that "discounted clients are below her and the client was paying too little money." Mr Keefe stated that he had given the Claimant clear management instructions to provide the service as per her contract, but she had continued to refuse.

40. Mr Keefe described how the Claimant had manipulated the booking system, with services "bouncing back and forth" between her and another stylist, which he characterised as unauthorised use of company systems. He further testified that the Claimant had refused to delay her lunch break by 10 minutes when asked to collect products, claimed not to know where the office was despite previous visits, and later refused to service a 2pm client, claiming she was still on her lunch break which should have already ended. Mr Keefe stated that he had warned the Claimant that her refusal to perform services would likely amount to serious insubordination and breach of contracted duties, potentially constituting gross misconduct.

Findings of fact and application of the law

41. **Findings of fact and application of the law**

42. Regarding the first issue, whether the Claimant was entitled to notice pay following her dismissal on 21 June 2024, the Tribunal finds that the Claimant's conduct on that day did amount to gross misconduct justifying summary dismissal. The evidence from Mr Keefe and Mr Ferreira, which the Tribunal found to be detailed, consistent, and credible, established that the Claimant refused to provide services to clients who had booked through promotional offers. Mr Keefe's testimony was particularly compelling, recounting how the Claimant had stated that "discounted clients are below her and the client was paying too little money." This refusal to provide services was in direct contravention of her contractual duties as set out in her employment contract, which required her to "perform hair services to all clients that are booked in her column" [FB/34].

43. The Tribunal finds that the Claimant's actions went beyond a mere scheduling conflict, as evidenced by her repeated attempts to reallocate services after being explicitly instructed to provide them. Her manipulation of the booking system, with services "bouncing back and forth"

between her and another stylist, demonstrated a deliberate attempt to avoid performing her contractual duties. The Tribunal is satisfied that this conduct constituted gross insubordination and a fundamental breach of her employment contract.

44. Applying the definition of gross misconduct from Mears v Safecar Security Ltd, the Claimant's conduct fundamentally undermined the trust and confidence inherent in her employment relationship and demonstrated that she no longer intended to be bound by the essential conditions of her contract, specifically her obligation to provide services to all clients. The Tribunal therefore finds that the Respondent was justified in dismissing the Claimant for gross misconduct without notice.

45. The Claimant's contract provided that in cases of gross misconduct, she would not be entitled to notice pay, and she acknowledged in cross-examination that if properly dismissed for gross misconduct, she would not be entitled to notice pay. Consequently, the Tribunal finds that the Claimant is not entitled to the 12 days' notice pay she claimed.

46. Regarding the second issue, whether the Claimant was entitled to additional holiday pay, the Tribunal finds that the Respondent's method of calculating holiday entitlement was correct. For workers with variable hours, like the Claimant, holiday entitlement is calculated as 12.07% of hours worked (derived from 5.6 weeks ÷ 46.4 weeks = 12.07%). This is in accordance with established practice for variable hours workers and consistent with the principles established in cases such as British Gas Trading Ltd v Lock.

47. The evidence from the Claimant's payslips showed that she worked 925 hours between January and July 2024, accruing a holiday entitlement of 111.65 hours (925 × 12.07%). The payslips demonstrated that the Claimant received holiday pay for 112 hours (8 hours in February, 21 hours in March, 35 hours in April, 24 hours in May, and 24 hours in June), which exceeded her statutory entitlement.

48. The Claimant's calculation method, which used days rather than hours and did not apply the 12.07% formula, was incorrect for a variable hours worker. The Tribunal is aware of the Supreme Court's decision in Harpur Trust v Brazel [2022] UKSC 21, which held that part-year workers on permanent contracts are entitled to 5.6 weeks' holiday without pro-rating for weeks not worked. However, the present case is distinguishable from Harpur Trust. Unlike Mrs Brazel, who was a part-year worker on a permanent contract who did not work during school holidays, the Claimant in this case was employed on a contract where she could work throughout the year but with variable hours each week. She was not a "part-year worker" who had a continuing contract throughout the year but only worked certain weeks. The Claimant worked variable hours during all the weeks of her employment, rather than having distinct non-working periods. Therefore, the principles from Harpur Trust regarding the non-pro-rating of holiday entitlement do not apply to her situation. The Tribunal therefore finds that the Claimant is not entitled to any additional holiday pay.

49. Regarding the third issue, whether the Respondent failed to provide compliant written particulars of employment, the Tribunal finds that there were two significant deficiencies in the Claimant's contract. Firstly, Clause 12(VI) of the contract failed to specify the employer's notice period as required by Section 1(4)(e) of the ERA 1996. Instead, it contained a circular provision referring to "the earliest date your employment could otherwise lawfully have been terminated" without stating what that period was. This clause did not provide the clarity and transparency required by the legislation, as emphasised in Kaur v MG Rover Group Ltd, where the Court of Appeal highlighted the importance of clear terms in employment documentation.

50. Secondly, Clause 17 of the contract stated: "There is no entitlement to pensions benefit in relation to your employment...The Company does not make any contributions to such scheme." This statement was demonstrably false, as evidenced by the Claimant's payslips and Mr Ferreira's own testimony, which confirmed that the Respondent made pension contributions from March to

June 2024. This was a clear breach of Section 1(4)(d)(iii) of the ERA 1996, which requires written particulars to include accurate information about "any terms and conditions relating to pensions and pension schemes."

51. The Tribunal finds that these were not minor discrepancies or technical oversights but fundamental misstatements of the Claimant's terms and conditions of employment. The incomplete information regarding notice periods and the actively misleading information about pension contributions directly affected the Claimant's understanding of her employment rights, which is precisely what the statutory requirement for written particulars aims to prevent. In accordance with Section 38 of the Employment Act 2002, where an employee has an incomplete or inaccurate statement of employment particulars, the Tribunal may award between 2 and 4 weeks' pay. Given the seriousness of the deficiencies in this case, the Tribunal considers that the maximum award of 4 weeks' pay is justified.

52. Using the definition of a "week's pay" from sections 221-224 of the ERA 1996 and based on the Claimant's payslips which showed total gross pay of £13,206.17 over approximately 24 weeks, her average weekly pay was £550.26 (£13,206.17 ÷ 24). The compensation awarded is therefore 4 weeks' pay × £550.26 = £2,201.04.

Conclusion

53. The Claimant's dismissal for gross misconduct was justified, given her deliberate refusal to provide services to promotional clients despite clear management instructions. Her conduct fundamentally breached the trust and confidence essential to the employment relationship. As her contract expressly provides for dismissal without notice in such circumstances, her claim for notice pay must fail.

54. The holiday pay calculation used by the Respondent properly applied the 12.07% formula appropriate for variable hours workers. The Claimant's situation is distinguishable from that in Harpur Trust v Brazel, as she was not a part-year worker with defined non-working periods but rather worked variable hours throughout the year. Her claim for additional holiday pay therefore fails.

55. However, the Respondent's employment contract contained serious deficiencies that breached statutory requirements. The failure to specify the employer's notice period and the misleading statement regarding pension contributions were not minor oversights but significant omissions that deprived the Claimant of essential information about her employment terms. These shortcomings warrant the maximum award of 4 weeks' pay under Section 38 of the Employment Act 2002.

56. The Tribunal therefore dismisses the claims for notice pay and holiday pay but upholds the claim for compensation for non-compliant written particulars, awarding the Claimant £2,201.04 to be paid within 14 days.

Approved By:
Judge M Aspinall
(sitting as an Employment Judge)
Date: 13th April 2025

Sent to the parties:
Date: 30 April 2025

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