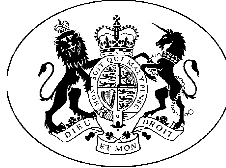
Case number: 6018751/2024



EMPLOYMENT TRIBUNALS

Claimant: Mr S Asher

Respondent: 1PhyioUK Limited

Heard at: Newcastle (remotely by CVP) **On:** 7 April 2025

Before: Employment Judge Heather

REPRESENTATION:

Claimant: Mr G Deane (Counsel)
Respondent: Mr G Aarons (Clinical Director at 1PhyioUK Limited)

JUDGMENT

The judgment of the Tribunal is as follows:

Breach of contract (pay)

1. The complaint of breach of contract in relation to wages is well-founded.

2. The respondent shall pay the claimant **£17,920.39** as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it.

Wages

3. The complaint of unauthorised deductions from wages is well-founded. The respondent made unauthorised deductions from the claimant's wages on 5 March 2024, 5 April 2024 and 5 August 2024.

4. The respondent shall pay the claimant **£93.43**, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

Holiday Pay

5. The complaint in respect of holiday pay is well-founded. The respondent made an unauthorised deduction from the claimant's wages by failing to pay

the claimant for holidays accrued but not taken on the date the claimant's employment ended.

6. The respondent shall pay the claimant **£2,023.40**. The claimant is responsible for paying any tax or National Insurance.

Total sum payable by the respondent to the claimant

7. The total amount that the respondent must pay to the claimant is **£20,037.22 (twenty thousand and thirty seven pounds and twenty two pence)**.

REASONS

Preliminary matters

Format of the hearing

1. The hearing took place remotely by CVP.

Bundle / documents

2. The Tribunal did not have the benefit of having a single comprehensive bundle for the hearing. The bundle produced from Judicial Case Manager which included the claim form, response and respondent's documents ran to 146 pages. The respondent's "bundle" which included witness statements and documents relied on by the respondent were included in the bundle generated from Judicial Case Manager. The claimant produced a bundle of disclosure documents which ran to 69 pages. The claimant's witness statement was 5 pages long. In addition the Tribunal was provided with a bundle of correspondence between the claimant's solicitor and the respondent which ran to 13 pages.

3. The parties each confirmed at the hearing that they had received each other's documents. There were no difficulties with navigating the various documents that were referred to during the course of the hearing.

The claim

4. The claimant's claim was issued on 15 November 2024. He was employed as a musculoskeletal physiotherapist by A&A Medical Limited from 19 April 2023. His case is that his employment transferred to the respondent on 1 May 2023 pursuant to the Transfer of Undertakings (Protection of Employment) regulations 2006. The claimant says that his employment with the respondent ended on 4 October 2024. Early conciliation began on 14 October 2024 and ended on 16 October 2024.

5. The claimant's claims as set out in the ET1 and supporting document were that:

   a. the respondent was in breach of contract by failing to provide the claimant with work, and to pay him, for his contracted number of hours each week;

b. the respondent failed to pay the claimant for his accrued but untaken holiday when his employment ended;

c. unlawful deductions from wages contrary to section 13 of the Employment Rights Act 1996.

The response

6. The respondent's response was dated 5 February 2025 (the respondent's request for an extension of time having been granted by Employment Judge Smith on 29 January 2025). The Respondent's position is that the Claimant was employed from 19 April 2023 until 30 September 2024.

7. The respondent is an employer of healthcare professionals, employing around 15 staff nationwide.

8. The respondent denies the claims entirely, on the following basis:

a. the claimant has been paid for the hours that he worked in accordance with his contract of employment which included provision for short time working;

b. the respondent kept the claimant updated about any increase of decrease in his working hours;

c. the respondent offered the claimant a number of opportunities to work at other locations across the UK;

d. the claims are pre-meditated;

e. the dates of employment are incorrect and therefore the claim is inflated;

f. any penalties imposed by the respondent were as a result of the claimant's professional negligence (omission of patient notes);

g. the holiday pay claim is miscalculated;

List of issues

9. A list of issues was agreed at the outset of the hearing, which are set out in the section "Discussion and conclusions" from paragraph 108 to 129.

The evidence

10. The Tribunal heard oral evidence from the claimant and from Mr Aarons.

11. Each witness relied upon witness statements which were taken as read. Each of the witnesses was subject to cross-examination questions from the Tribunal.

12. The Tribunal also had a witness statement from Bernadette Curtis, Clinic / HR Manager at 1PhysioUK Limited. She did not attend the hearing and did not give oral evidence.

13. The Tribunal was referred selectively to the relevant documentary evidence contained in the bundle generated from Judicial Case Manager and the claimant's disclosure documents.

Assessment of the evidence

14. It is not necessary to reject a witness' evidence, in whole or in part, by regarding the witness as unreliable or as not telling the truth. The Tribunal naturally looks for the witness evidence to be internally consistent and consistent with the documentary evidence. Is the evidence credible? Is it corroborated by other witness evidence and/or by the contemporaneous records or documents? How does the evidence withstand cross-examination? How reliable is a witness' recollection? Is a witness speculating rather than testifying? What is the witness's motive for their account? How does the witness compare to other witnesses?

Claimant's evidence

15. The Tribunal is satisfied that the Claimant attempted to assist the Tribunal when he gave his evidence. He was an honest, reliable and straightforward witness. The claimant's answers to questions were consistent with the documentary evidence and did not deviate from the evidence in his witness statement.

16. The claimant willingly accepted that he had read and understood the contract of employment and knew that there was a short time working clause. He was equally clear that he had agreed to the contract and to come to the UK on the basis that he would be working 37.5 hours per week with a salary of £25,600.

17. When it was put to the claimant that he refused offers of work in other locations he explained that he declined to work in Liverpool, Manchester and London because they were not feasible (unaffordable) locations given that he lived in Newcastle but that he agreed to work in Sunderland as that is quite close to Newcastle.

18. In relation to the deductions from wages the claimant maintained that he had not agreed to any deductions.

19. The Tribunal is content to rely on the claimant's evidence in relation to factual matters.

Mr Aarons' evidence

20. The Tribunal found Mr Aarons' evidence to be inconsistent, with a number of discrepancies between the documentary evidence and his oral evidence at the hearing as well as inconsistencies within his oral evidence. Some examples include:

    a. Mr Aarons said in oral evidence that 1PhysioUK Limited is not his business and that he is not responsible for administrative matters, yet Mr Aarons is representing the company in these proceedings and is its only witness giving oral evidence, the claimant's interview was with Mr Aarons, the claimant's offer of employment was sent by Mr Aarons, the notification of the claimant's employment transferring from one company to another was signed by Mr Aarons and almost all emails that the claimant exchanged with Bernadette Curtis were carbon copied (cc'd) to Mr Aarons by Bernadette Curtis;

    b. The respondent's ET3 describes the company as an SME with about 15 employees whereas Mr Aarons said in oral evidence that the company provides a "*large offering of physiotherapy*";

    c. Mr Aarons said at one point in his oral evidence that he was not aware of the terms of the claimant's visa (i.e. whether the claimant was restricted to working for one employer) and then later said that the claimant was eligible for work up to "*20 hours per week elsewhere per the terms of his sponsorship*". Mr Aarons had been copied into an email on 14 August 2024 in which his colleague informed the claimant that the respondent would notify the Hone Office that the claimant would no longer be working for the respondent which would, "*result in your current visa being withdrawn"*;

    d. Mr Aarons accepted that the claimant's contract of employment refers to a salary of £25,600 and working 37.5 hours per week but said that was not a full time job in light of the short time working clause in the contract and he did not accept that anyone reading the contract would reasonably consider it to be a full time job;

    e. Mr Aarons said in oral evidence that initially the lower number of hours was to facilitate "*gently introducing*" the claimant to his new role and ensuring he was "*up to scratch*" which only partly accords with the email that Mr Aarons sent to the claimant on 3 May 2023 (see paragraph 37 below);

    f. Mr Aarons said in oral evidence that the claimant's conduct was a "*secondary factor*" (to availability of patients) in the respondent deciding to reduce the claimant's hours yet the respondent offered further work to the claimant beyond the expiry of his notice period.

21. Given the number of inconsistencies in Mr Aarons' evidence the Tribunal is cautious about relying on his evidence in relation to factual matters without corroboration from either documentary sources or the claimant.

Ms Curtis' evidence

22. The evidence of Ms Curtis sets out her opinions about matters such as the claimant's understanding of his contract of employment, is not supported by documentary evidence (allegation that claimant did not meet professional standards set by governing bodies / clinical notes not as detailed as expected), contains hearsay evidence (reference to Mr Aarons speaking to the claimant about his record keeping), lacks context (states that claimant declined work offered to him but does not set out that the work offered was in London, Liverpool or Manchester and did not include any travel or accommodation costs) has not been subject to cross-examination. The Tribunal is therefore cautious about accepting the evidence of Ms Curtis about factual matters unless they are corroborated by either documentary sources or the claimant.

Findings of fact and chronology

23. I do not need to determine every matter in dispute between the parties. These findings are limited to the issues that need to be decided to enable me to make decisions about the claims that have been made by the claimant and for the parties to understand the conclusions that I have reached. Any matters which are not controversial but are relevant to understanding the chronology are included here without any analysis or explanation for the finding.

Chronology

24. The claimant received an offer of employment from "Aarons Medical" on 10 February 2023. The offer was set out in an email timed at 11:16 and was signed by George Aarons and contained the following information:

    "*Our offering is full time employed as a Musculoskeletal Physiotherapist, working 37.5 hours per week. There will be a 30 minute lunch break each day. The tole will include tier 2 sponsorship and the salary will be £25,600 per year. The starting date is as soon as possible.*

    The role will be at our Newcastle clinic and the postcode is NE12 8BX."

25. A contract of employment was issued to the claimant which has a logo and the name "Aarons Medical" at the top of the page. Then the contract is said to be between "A&A Medical Ltd" and Susheel Asher.

26. That contract was signed by George Aarons on 10 February 2023 and he is described in the signature pane as "Clinical Director/Owner".

27. The contract was signed by the claimant on 13 February 2023.

28. The relevant clauses of the contract read as follows:

2- Duties	a) You will be employed to undertake the following role as a Musculoskeletal Physiotherapist with the following duties:

<table>
<tr><td></td><td>
Completion of tasks of a clinical and administrative nature relative to the Physiotherapy profession meeting the professional guidelines of the Health and Care Professionals Council and Chartered Society of Physiotherapy including but not limited to:
- Physiotherapy assessment and treatment of patients
- Initial and Discharge assessment reports
- Comprehensive clinical record keeping
- Any other tasks of a clinical or administrative nature to meet the needs of A&A Medical Ltd
f) During your employment you will:

i. devote your whole time and attention to your duties and will not, without the prior written consent of the Employer, directly or indirectly hold any office or be employed or engaged by or concerned or interested in any capacity (whether paid or unpaid) in any other business or undertaking which is similar to or competitive with that of the Employer and/or any of the Employer’s suppliers and/or customers.

ii. obey all lawful and reasonable directions or instructions from time to time given to you by your Manager or any other authorised person

g) If the Employer should consent to your working for another employer during your employment under this contract, you will give the Employer such information as it may reasonably require from time to time regarding your working time and related arrangements with the other employer to enable it to satisfy itself that such work would not in any way diminish or restrict the performance of your duties under this contract.
</td></tr>
<tr><td>4 – Hours of work</td><td>
a) Your normal hours of work are 37.5 hours per week, to be worked:

Monday to Friday – 09.00hrs to 17.00hrs

The employee is entitled to a 30 minutes unpaid lunch break every day and this will start at 13.00pm and at 13.30pm
</td></tr>
</table>

	b) The Employer may vary your hours of work or the pattern of your normal hours, as it considers necessary to meet the needs of the business.
5 – Pay	a) The Employer will pay you: - £25,600.00 per annum, split into 12 equal monthly instalments of £2,133.33 minus Tax and National Insurance contribution which is deducted at source (your "Pay") b) Your Pay, which will accrue on a daily basis, will be paid in instalments in arrears on or about those days established in accordance with the following schedule: - Payment is made in arrears and will be paid on the 15th day of every calendar month. c) All payments of Pay are subject to deductions for income tax and national insurance and other authorised deductions or deductions required by law. d) You authorise the Employer at any time during your employment and/or in its termination to deduct any sums owed by you to the Employer at any time (to include, without limitation, the balance of a season ticket loan, pay, repayment of pay for holiday taken in excess of your accrued entitlement) from your Pay and/or from any other sums due to you under this contract (to include, without limitation, any payment in lieu of notice, bonus, holiday pay or sick pay).
6 – Shortage of Work	If there is a temporary shortage of work for any reason, we will try to maintain your continuity of employment even if this necessitates placing you on short time working, or alternatively, lay off. If you are placed on short time working, your pay will be reduced according to time actually worked. If you are placed in lay off, you will receive no pay other than statutory guarantee pay.
7 – Place of work and mobility clauses	a) Your normal place of work will be at Aarons Medical Newcastle Clinic but: i. you may be required to perform your duties in such other place or places as the Employer may reasonably require from time to time; and

	ii. your normal place of work is liable to change at the direction of the Employer.
8 – Holiday	a) You will be entitled to 5.6 times your weekly hours worked in paid holiday in each holiday year, up to a maximum of 504 hours' a holiday year. For example if you work 30 hours a week, you will be entitled to 168 (30 multiplied by 5.6) hours of paid leave but if your work 100 hours a week, you will be entitled to 504 (5.6 multiplied by 100 BUT restricted to maximum 504) hours. Public and Bank holidays are included within your annual leave entitlement. b) The holiday year runs from: 1st January to 31st December c) Your entitlement will be reduced pro-rate for any holiday year where you are not employed for a full-year. For instance, if the holiday year runs from 1 January to 31 December, but employment commences on 30 June, you will only be entitled to half of your full year's holiday entitlement for that holiday year. f) You must take all of your entitlement in the holiday year in which it accrues and carrying forward is not permitted unless either agreed in advance by the Employer or where the law allows holiday to be carried forward. h) The Employer reserves the right to require you to take holiday on particular dates including during any notice period. You will be given reasonable notice of any such requirement, which may be less than is required under statute. i) On termination of your employment you will be paid in lieu of accrued but untaken holiday entitlement in respect of the holiday year in which your employment terminates…
13 – Termination of employment	a) You may terminate your employment at any time on giving the Employer at least the following prior written notice: 8 Weeks from date of termination proposal submission
16 – Variation	a) The Employer reserved the right to make reasonable changes to any of your terms and conditions of employment. Changes to your terms and conditions of

	employment will be notified to you in writing before ethe date upon which they come into force.
18 – Entire agreement	a) This contract is the entire agreement between you and the Employer in relation to its subject matter and replaces all previous agreements and arrangements (whether written or oral, express or implied) relating to your employment by the Employer. Any such previous agreements and arrangement will be deemed to have been terminated by mutual consent as from the date of this contract. There are no particulars applicable to your employment relating to: a) non-permanent or fixed-term employment b) collective agreement which directly affect the terms and conditions of your employment c) working outside the United Kingdom for more than one month

29. Bernadette Curtis, Clinic Manager, sent an email to the claimant on 23 February 2023 which set out that the start date for the claimant will be, "*The sooner the better, we have a very busy clinic waiting for you."*

30. On or around 18 April 2023, the claimant arrived in the UK.

31. Bernadette Curtis sent an email to the claimant after he arrived in the UK (the date of which is not visible on the document in the bundle, but presumably on 18 April 2023). The email contained the following information:

    "*As you are aware, you will commence your employment with Aarons Medical on Wednesday 19th April 2023.*

    I confirm your schedule will be as follows:

    Wednesday & Saturday,08.30am- 1.30pm, …

    *Your administration training will take place on Tuesday 18th April *13.00 hrs via zoom."*

32. The claimant replied to Bernadette Curtis' email on 17 April 2023 with the following enquiry, "*…Can you please elaborate is this from Wednesday to Saturday or just Wednesday and Saturday?"*

33. On 21 April 2023, the claimant received a letter, with letterhead bearing the name "Aarons Medical" setting out the intention of George Aarons to "*restructure Aarons Medical effective Monday 1st May 2023 and will operate as 1PhysioUk Limited. There will no change to your terms and conditions of*

employment or sponsorship whatsoever, other than the name of your employer."

34. The letter dated 21 April 2023 was accompanied by an "Addendum to contract of Employment – Effective 01.05.23". That document was signed by George Aarons whose position was stated to be "Clinical Director". The document shows that the contract is between 1PhysioUK Limited and the claimant and states that, "*There is no change to any of your previous terms and conditions of employment."*

35. On 24 April 2023, there was an email exchange between the claimant and Bernadette Curtis. The times of the emails are not visible. They state the following:

    <u>Bernadette Curtis to claimant</u>

    Ok, thanks

    Pro Rata means you are paid your annual salary for the hours your work i.e. your salary is based on a 37.5 hour week but if you only work 10 hours you get paid for the equivant [sic] hourly rate for 10 hours

    <u>Claimant to Bernadette Curtis</u>

    How much will be my salary according to 10 hours per week then? I wasn't told all this before I signed the contract though

36. The claimant emailed George Aarons on 2 May 2023 raising various concerns about his working hours and salary, as follows:

    "*Dear George*

    I hope you are doing well. i am writing this email to express my concerns about my job in this company. there are two main concerns which requires your immediate attention please.

    My contract states that i will be working full time with ab annual salary of £25680. it's also a requirement for the home office that i earn this amount hence i was given a work permit. without any notice i am given only 10 hours per week and this significantly reduce my salary to roughly £500pm gros. i have confirmed with my manager bernadette she said my salary will reflect my worked hours and shouldn't expect a full salary. i believe your company is breaching home office requirement for the salary promised. i will struggle to either keep roof above my head or starve with this salary. i don't have any money left after this week and i will probably be going to a food bank or beg my friends for help. could you please resolve this issue?

    when i first started working at aaroons [sic] medical i was put in a brand new clinic without any clinical supervision or proper induction/protocols/fire safety procedures. though, it's exciting open a new clinic but i was expecting better induction to this. i believe that adequate supervision and a formal induction is required by hcps. i am very uncomfortable about this at present and worry that

if someone finds out in hcpc then it will not read well. could you please arrange a proper clinical supervision for me to ensure that i am following your company, hcpc and legal requirements and doing the job you expect me to do and best for our patients."

37. On 3 May 2023, Mr Aarons responded, as follows:

"*Dear Susheel*

…

We are entitled, as your sponsor employer, to increase or reduce working hours as we see necessary. ***<u>The salary can be pro rata'd in accordance with number of work hours completed; all of which is absolutely and entirely within the realms of home office legislation.</u>***

… I am aware that a full induction was provided at Newcastle by Katrina (the building manager), and an information pack was provided which covered kitchen, washrooms and fire exits. ***<u>I have also been made aware that on your first day, you were late for this meeting despite Katrina attending the building early especially to deliver this information to you.</u>***

Our decision to increase or reduce working hours may gave a direct correlation with your conduct and performance. Sine beginning your employment with us, the following concerns have been brought to my attention:

*-**<u>LATE ARRIVAL</u>** for work induction*

*_**<u>LATE ARRIVAL</u>** for first patient booked, on first day of work*

*-**<u>FAILURE</u>** to notify management about late arrival to work*

*-**<u>OUTSTANDING</u>** CSP document (**<u>breach of your employment contract!</u>**)*

It is my suggestion that in order for us to review your current working hours, your punctuality and communication improves with immediate effect, and your CSP certificate is supplied by close of business today."

38. On 8 June 2023, the claimant contacted CSP (Chartered Society of Physiotherapy). The content of those emails does not need to be repeated here.

39. On 3 July 2023, the claimant sent an email to Bernadette Curtis requesting copies of his payslips for the previous 2 months.

40. The claimant had further email contact with CSP on 19 July 2023 in which the claimant sets out the following:

"*Today we discussed the following things….*

Also, we decided that it is better for me to find a new job and then take legal action…"

41. On 29 November 2023 an email was sent by Bernadette Curtis to a distribution group "Physiotherapists". There is no dispute between the parties that the claimant was part of the distribution group and received the email. The email was carbon copied to George Aarons. The content of the email was as follows:

"*Good afternoon all*

I have recently completed an audit of the administration tasks being undertaken by the physiotherapists and am very disappointed to note that the standards Management have set are sliding rapidly. This results in us being in breach of SLA's and is creating a huge amount of extra work for the administration team.

There has also been an increase in the number of complaints we have received from patients regarding therapists using their mobile telephones during consultations and being inappropriately dressed. You have been provided with uniform and are expected to wear it. I attach a copy of the Dress Code Policy for anyone who does not currently have uniform which outlines what is acceptable clothing as an alternative to the uniform.

Effective Friday 1st December, we are introducing a fine system. We will be fining any member of staff who fails to undertake their administrative tasks/follow policy to an appropriate standard. ***£100 for each/every breach.***

You will be notified of the fine(s) being deducted from your salary by 1st of every month, the fine will be deducted from the months [sic] salary.

I attach a copy of a ***non-exhaustive*** *list of the type of administration tasks and standard of behaviour which are regarded as reasonable in the opinion of your employer, 1 PhysioUK Limited."*

42. The claimant sent a response on 15 December 2023 which was copied to Mumhammad Iqbal Hussain, Umar Shakoor, Bernadette Curtis, Physiotherapists, Muhamad Imran and Kavya Parupalli. The claimant's response was as follows:

"*Dear Bernadette and George*

I hope this email finds you well. I wanted to take a moment to share my concerns regarding the new £100 fine system that has recently been implemented.

As much as I am dedicated to contributing my best to our company, I find myself under significant pressure due to the added responsibility of this new system. Balancing multiple tasks while trying to maintain and update

everything has been quite challenging for me. I fear that this additional pressure might lead to errors on my part, which I genuinely want to avoid.

Moreover, I'm currently facing some financial difficulties, and the prospect of fines adds an extra layer of worry. I understand the importance of accountability and accuracy, but fear of potential fines is exacerbating my existing concerns.

I genuinely appreciate being a part of this team and am committed to delivering my best work. However, I kindly request reconsideration of the fine system. I humbly ask for your understanding and support in this matter.

…"

43. A further email was sent by Bernadette Curtis on 15 December 2023 to Abbas Khan and Physiotherapists as well as being cc'd to George Aarons. The text of the email was as follows:

"*Dear All*

Thank you for your recent communications regarding the adherence to the Administration Tasks & Policies Procedure.

Please be advised that the decision to implement this system is not one that we have taken lightly. however one that is necessary due to persistent poor professional performance, demonstrated by several practitioners. We have taken such measures to protect your professional status as we note that basic professional duties are being omitted in large volumes, including clinical notes…

We will not deviate from our position in enforcing this policy and we trust that by doing so we will see a marked improvement in practitioner performance. Put simply, if you are completing your professional duties in accordance with HCPC and CSP standards, the implementation of this policy will not affect you.

If any practitioner is not comfortable working under these conditions, they are free to contact me directly to discuss termination of their employment and the immediate revoking of their sponsoring visa.

Please kindly note that this will be our final communication on this matter."

44. On 21 March 2024, Bernadette Curtis emailed the claimant setting out that his visa needed to be renewed and issued in the correct company name and requested that the claimant completed and accompanying form.

45. On 3 April 2024, the claimant sent an email to Bernadette Curtis and George Aarons notifying them that he had been told by the building manage that, "*we are required to empty the room and hand over the keys by the end of the day.*

It has come to their attention that the rent for the room has not been paid for several months."

46. On 15 June 2024, the claimant sent an email to Bernadette Curtis requesting an increase in his working days.

47. On 17 June 2024, Bernadette Curtis responded to the claimant's email, cc'ing her response to George Aarons. The reply was that cover was required for clinics in Liverpool and Manchester from 19 July to 2 August.

48. On 20 June 2024, the claimant enquired if there would be, "*any place for me to stay if I work there?".*

49. The response from Bernadette Curtis on 20 June 2024 was that he would have to make his own accommodation arrangements.

50. On 21 June 2024, the claimant emailed Bernadette Curtis requesting the following information:

    "*Please send me the addresses of both locations along with the full 10 days schedule. And I would like to know will I be paid for the travel from Newcastle to Liverpool and Manchester and all my travel during those 10 days? These things will help me decide if I can work there…"*

51. On 24 June 2024, Bernadette Curtis responded with the clinic addresses and stated, "*it is not our usual policy to help with travel expenses, please find out what the return fares to each clinic would be and I will come back to you."*

52. On 26 June 2024, the claimant responded that the offer for him to work in Liverpool and Manchester was not suitable for him but requested that his hours be increased in Newcastle.

53. On 30 July 2024, Bernadette Curtis responded to the claimant declining his request to take a day off setting out that the claimant had given insufficient notice and that the clinic was fully booked for the day requested.

54. On 1 August 2024, Bernadette Curtis emailed the claimant giving him notice that his working hours at the Newcastle clinic would be amended with effective from the week commencing 5 August 2024 so that his working hours would be Saturday 8:30am – 5:00pm.

55. The claimant replied as follows on 3 August 2024:

    "*Hi*

    From the email I can understand that my hours have been decreased even more.

Can you please increase my working days or hours I am only earning 600 pounds from last couple of months and hence struggling a lot financial wise. Please understand my situation and let me know."

56. Bernadette Curtis replied on 5 August 2024 that no further hours could be offered in Newcastle.

57. On 9 August 2024, the claimant sent his resignation to Bernadette Curtis as follows:

"*Dear Bernadette*

I hope this email finds you well.

I am writing to formally resign from my position as a MSK Physiotherapist at 1Physio UK limited. After careful consideration, I have decided that I do not feel I can grow professionally within the company, Additionally, my current hours and earnings are not sufficient for my financial needs and the company is not fulfilling its contractual obligations.

As per company policy, I will continue to fulfil my duties for the next 8 weeks, with my last working day being 3rd of October 2024, 8 weeks from now.

I am committed to ensuring a smooth transition during this period."

58. The claimant's resignation was accepted by email from Bernadette Curts dated 14 August 2024, which was cc'd to Geroge Aarons. The email set out the following:

"*Good afternoon Susheel*
…

Your resignation has been accepted by the Directors of 1PhysioUK Limited and I confirm that your last day of working day of employment will be Friday 4th October 2024.

Any accrued, untaken annual leave will be paid to you with your final salary on 30th November 2024.

Please be advised that, as the sponsors of your current visa, we are legally bound to advise the Home Office that you will no longer be working for 1PhysioUK Limited after 4th October 2024. This will result in your visa being withdrawn. It is therefore your responsibility to ensure that you apply for another visa in good time and do not remain in the UK illegally."

59. On 16 August 2024, the claimant sent an email to George Aarons referencing telephone calls the previous evening and the possibility of the claimant working some hours in London. The claimant requested further details of the location and working pattern.

60. George Aarons sent a holding reply to the claimant on 16 August 2024.

61. A further reply was sent to the claimant by Bernadette Curtis on 21 August 2024 with details of work at Slough & Harrow Clinic from 14 October – 25 October.

62. There was a further email exchange between the claimant and George Aarons on 1 and 2 September 2024. Ultimately, the claimant said that he would not undertake any other roles with the respondent.

63. On 31 August 2024, the claimant sent an email to Bernadette Curtis requesting to take a day's leave on 21 September.

64. Bernadette Curtis replied on 2 September 2024, declining the request which she stated was because annual leave is not permitted during the notice period.

65. On 17 October 2024, the claimant sent a text message to Bernadette Curtis requesting his payslip for August 2024 as well as his P45.

66. On a later (unconfirmed) date the claimant sent a text message asking for details of his annual leave which he had been told he would be paid for.

67. On 8 November 2024, the claimant sent an email to George Aarons requesting details of his annual leave taken for the year.

68. George Aarons responded on 25 November 2024 setting out that details of the claimant's accrued but untaken annual leave would be made available to him in the first few days of December when his final payslip would be issued to him.

69. On 5 February 2025, George Aarons emailed the claimant to tell him that 1PhysioUK Ltd will be reporting him to HCPC as the respondent has evidence to suggest that the claimant's fitness to practice may be impaired following an audit of his clinical practice during his employment.

Findings of fact

70. The claimant entered into a contract of employment with A&A Medical Ltd.

71. The contract was finalised on 13 February 2023.

72. The claimant commenced working for A&A Medical Ltd on 19 April 2023.

73. The claimant was notified by A&A Medical Ltd on 21 April 2023 that his employment would transfer to 1PhysioUK Limited with effect from 1 May 2023.

74. The claimant was notified on or around 18 April 2023 that his working hours would be Wednesday & Saturday from 8:30am – 1:30pm.

75. The claimant was notified on 24 April 2023 that he would be paid for the hours that he works on a pro rata basis.

76. On 1 May 2023 the claimant's employment transferred to 1PhysioUK Limited pursuant to The Transfer of Undertakings (Protection of Employment) Regulations 2006 (specifically regulations 3 and 4).

77. The claimant first raised a formal written concern with the respondent about his working hours / salary on 2 May 2023.

78. From about 19 July 2023 the claimant was considering taking legal action against the respondent.

79. The claimant was notified on 1 August 2024 of a change (reduction) to his working pattern to 8 hours per week.

80. The claimant provided written (email) notice of his resignation on Friday 9 August 2024.

81. The respondent accepted the claimant's resignation and stated that the last working day would be Friday 4 October 2024 (see paragraph 58 above).

82. The claimant's notice period expired on Friday 4 October 2024 (being 8 weeks after the claimant resigned on Friday 9 August 2024).

83. Contractually, the claimant should have been paid (in arrears) on the 15th day of each month but, in reality, he was paid on or around the 5th day of each month, in arrears, for hours worked in the previous calendar month.

Claimant's submissions

84. The claimant's submissions were:

    a. the contract of employment is the starting point for assessing the agreed terms between the parties;

    b. the claimant came to the UK from Pakistan on the basis of the contact that he received and signed;

    c. the short time working clause in the contract of employment is too uncertain to be enforceable;

    d. the respondent has provided no evidence to justify exercising its discretion to invoke the short time working clause;

    e. the respondent was not acting within the terms of the short time working clause because any shortage of work was not temporary;

    f. the offers of alternative work by the respondent were not reasonable;

g. the evidence of the claimant in relation to holiday pay has not been refuted by the respondent;

h. the “fines” deducted by the respondent were not authorised by statute or contract;

i. the claim in respect of the “fine” in July 2024 is in time;

j. the “fines” from February 2024 and March 2024 are part of a series of deductions and therefore the claims are in time;

85. I was referred to the following cases:

a. **Hart v St Mary’s School (Colchester) Ltd, UKEAT/0305/14/DM** for the proposition that a contract of employment cannot be varied unilaterally at will by the employer;

b. **White v Reflecting Roadstuds Ltd, [1991] IRLR 331** for the proposition that any decision by the employer to invoke the short time working clause must be exercised reasonably;

Respondent’s submissions

86. The respondent’s written submissions were:

a. the contract of employment was confirmed, understood, signed and agreed by the claimant;

b. the contract contains a short time working clause which sets out that the claimant would be paid for the hours that he worked rather than the hours that he was contracted to work;

c. the calculation of the claimant’s holiday pay should be based on the hours that he worked rather than the hours that he was contracted to work;

d. the fines imposed by the respondent were a legitimate means of upholding professional standards;

e. the claim by the claimant was premeditated;

f. the claimant declined other offers of work from the respondent;

g. the claim is opportunistic and mischievous;

h. if the claimant was unable to meet his financial commitments he could have resigned;

Relevant law

Breach of contract

87. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 gives a right for certain contractual claims to be determined by the Tribunal in certain circumstances.

88. Article 4 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that:

> **Extension of jurisdiction**
> **3.** Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—
> (a)the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
> (b)the claim is not one to which article 5 applies; and
> (c)the claim arises or is outstanding on the termination of the employee's employment.

Unlawful deductions from wages

89. Section 13 of the Employment Rights Act 1996 provide that:

> **13 Right not to suffer unauthorised deductions.**
> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
>
> (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
>
> (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

> (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.
>
> (5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
>
> (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

90. Section 23 of the Employment Rights Act 1996 provides that:

> **23 Complaints to employment tribunals.**
> (1) A worker may present a complaint to an employment tribunal—
> (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
>
> (2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
> (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
> (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.
>
> (3) Where a complaint is brought under this section in respect of—
> (a) a series of deductions or payments, or
> (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,
>
> the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.
>
> (3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).
>
> (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

> (4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.
>
> (4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).

91. Section 24 of the Employment Rights Act 1996 provides that:

> **24 Determination of complaints.**
> (1) 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,

Interpreting the contract

92. In order to determine what is "*properly payable"* for the purpose of Section 13(3) of the Employment Rights Act 1996 the Tribunal has jurisdiction to interpret contractual terms (**Agarwal v Cardiff University and another 2019 ICR 433, CA**). The interpretation of contract is based on ordinary principles of common law and contract (**Greg May (Carpet Fitters and Contractors) Ltd v Dring 1990 ICR 188, EAT**,

93. The standard position is that the terms of a contract of employment cannot be unilaterally varied by either party. However there are exceptions to this where (a) variations are agreed by way of collective bargaining; and (b) where the contract has a variation clause.

94. A variation clause is effectively a clause whereby an employee gives advance consent to changes the employer may make subsequently.

95. Case law is clear that such clauses should be treated with caution, even though they are express and on the face of it, have been agreed by the employee in question. This includes applying the contra proferentem rule of contractual interpretation to them (i.e. interpreting any ambiguity in favour of the employee rather than the employer who drafted the clause).

96. The unequal bargaining positions of employer and employee will impact on the enforceability of such a clause. In **Birmingham City Council v Wetherill and others 2007 IRLR 781, CA**, for example, it was held that a clause in the employees' contracts allowing the Council to unilaterally alter the terms of a car-user allowance was subject to an implied term that it '*could not be exercised for an improper purpose, capriciously or arbitrarily, or in a way in which no reasonable employer, acting reasonably, would exercise it*'.

Series of deductions

97. The decision of the Supreme Court in **Chief Constable of the Police Service of Northern Ireland and another v Agnew and others 2023 UKSC 33, SC** sets out that the word "series" is an ordinary English word meaning *"a number of things of a kind which follow each other in time*". It is a question of fact in each case whether two or more deductions amount to a "series of deductions".

Holiday pay

98. There can be both statutory and contractual rights to annual leave. Any contractual right to annual leave will be determined in accordance with the contractual provisions agreed between the parties. Entitlement to statutory leave falls to be determined in accordance with statutory provisions.

99. Regulation 13 of the Working Time Regulations 1998 provides that:

> **Entitlement to annual leave**
> **13.**
> (A1) This regulation applies to—
> (a)a worker in respect of any leave years beginning before 1st April 2024, and
> (b)a worker to whom regulation 15B does not apply in respect of any leave years beginning on or after 1st April 2024.
>
> (1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year.
>
> (3) A worker's leave year, for the purposes of this regulation, begins—
> (a)on such date during the calendar year as may be provided for in a relevant agreement; or
> (b)where there are no provisions of a relevant agreement which apply—
> (i)if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or
> (ii)if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.
>
> (9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—
> (a) subject to the exceptions in paragraphs (14), (15) and (17), it may only be taken in the leave year in respect of which it is due, and
> (b)it may not be replaced by a payment in lieu except where the worker's employment is terminated.

100. Regulation 13A of the Working Time Regulations 1998 provides that:

> **Entitlement to additional annual leave**
> **13A.**—
> (A1) This regulation applies to—

(a)a worker in respect of any leave years beginning before 1st April 2024, and
(b)a worker to whom regulation 15B does not apply in respect of any leave years beginning on or after 1st April 2024.

(1) Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).

(2) The period of additional leave to which a worker is entitled under paragraph (1) is—
(a)in any leave year beginning on or after 1st October 2007 but before 1st April 2008, 0.8 weeks;
(b)in any leave year beginning before 1st October 2007, a proportion of 0.8 weeks equivalent to the proportion of the year beginning on 1st October 2007 which would have elapsed at the end of that leave year;
(c)in any leave year beginning on 1st April 2008, 0.8 weeks;
(d)in any leave year beginning after 1st April 2008 but before 1st April 2009, 0.8 weeks and a proportion of another 0.8 weeks equivalent to the proportion of the year beginning on 1st April 2009 which would have elapsed at the end of that leave year;
(e)in any leave year beginning on or after 1st April 2009, 1.6 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.

(6) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where—
(a)the worker's employment is terminated; or
(b)the leave is an entitlement that arises under paragraph (2)(a), (b) or (c); or
(c)the leave is an entitlement to 0.8 weeks that arises under paragraph (2)(d) in respect of that part of the leave year which would have elapsed before 1st April 2009.

101. Regulation 14 of the Working Time Regulations 1998 provides that:

Compensation related to entitlement to leave
14.
(1) Paragraphs (1) to (4) of this regulation apply where—
(a)a worker's employment is terminated during the course of his leave year, and
(b)on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

> (3) The payment due under paragraph (2) shall be—
> (a)such sum as may be provided for the purposes of this regulation in a relevant agreement, or
> (b)where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—
> $(A \times B) - C$
> Where
> A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;
> B is the proportion of the worker's leave year which expired before the termination date, and
> C is the period of leave taken by the worker between the start of the leave year and the termination date

102. Regulation 16 of the Working Time Regulations 1998 provides that:

> **Payment in respect of periods of leave**
> **16.**
> (1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulations 13, 13A and 15B, at the rate of a week's pay in respect of each week of leave.
>
> (1A) The hourly rate of pay in respect of any period of annual leave to which a worker is entitled under regulation 15B is determined according to the formula—
>
> $A \div B$
>
> where—
> - A is the week's pay mentioned in paragraph (1); and
> - B is the average number of hours worked by the worker in each week used to calculate A.
>
> (2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3), the supplementary provisions in paragraphs (3ZA) to (3ZG) and the exception in paragraph (3A).
>
> (3) The provisions referred to in paragraph (2) shall apply—
> (a)as if references to the employee were references to the worker;
> (b)as if references to the employee's contract of employment were references to the worker's contract;
> (c)as if the calculation date were the first day of the period of leave in question; ...
> (d)as if the references to sections 227 and 228 did not apply;
> (da)as if, in the case of entitlement under regulations 13 and 15B, sections 223(3) and 234 did not apply;

> (e)subject to the exception in sub-paragraph (f)(ii), as if in sections 221(3), 222(3) and (4), 223(2) and 224(2) and (3) references to twelve were references to—
> (i)in the case of a worker who on the calculation date has been employed by their employer for less than 52 complete weeks, the number of complete weeks for which the worker has been employed, or
> (ii)in any other case, 52; and
> (f)in any case where section 223(2) or 224(3) applies as if—
> (i)account were not to be taken of remuneration in weeks preceding the period of 104 weeks ending—
> (aa)where the calculation date is the last day of a week, with that week, and
> (bb)otherwise, with the last complete week before the calculation date; and
> (ii)the period of weeks required for the purposes of sections 221(3), 222(3) and (4) and 224(2) was the number of weeks of which account is taken.

103. The provisions setting out how to calculate a "weeks pay" are set out in the Employment Rights Act 1996.

104. Section 221 of the Employment Rights Act 1996 provides that:

> **221General.**
> (1)This section and sections 222 and 223 apply where there are normal working hours for the employee when employed under the contract of employment in force on the calculation date.
>
> (2)Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does not vary with the amount of work done in the period, the amount of a week's pay is the amount which is payable by the employer under the contract of employment in force on the calculation date if the employee works throughout his normal working hours in a week.
>
> (3)Subject to section 222, if the employee's remuneration for employment in normal working hours (whether by the hour or week or other period) does vary with the amount of work done in the period, the amount of a week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the employer to the employee in respect of the period of twelve weeks ending—
> (a)where the calculation date is the last day of a week, with that week, and
> (b)otherwise, with the last complete week before the calculation date.
>
> (4)In this section references to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.
>
> (5)This section is subject to sections 227 and 228.

105. Section 222 of the Employment Rights Act 1996 provides that:

> **222 Remuneration varying according to time of work.**
> (1)This section applies if the employee is required under the contract of employment in force on the calculation date to work during normal working hours on days of the week, or at times of the day, which differ from week to week or over a longer period so that the remuneration payable for, or apportionable to, any week varies according to the incidence of those days or times.
>
> (2)The amount of a week's pay is the amount of remuneration for the average number of weekly normal working hours at the average hourly rate of remuneration.
>
> (3)For the purposes of subsection (2)—
> (a)the average number of weekly hours is calculated by dividing by twelve the total number of the employee's normal working hours during the relevant period of twelve weeks, and
> (b)the average hourly rate of remuneration is the average hourly rate of remuneration payable by the employer to the employee in respect of the relevant period of twelve weeks.
>
> (4)In subsection (3) "the relevant period of twelve weeks" means the period of twelve weeks ending—
> (a)where the calculation date is the last day of a week, with that week, and
> (b)otherwise, with the last complete week before the calculation date.
>
> (5)This section is subject to sections 227 and 228.

106. Section 223 of the Employment Rights Act 1996 provides that:

> **223Supplementary.**
> (1)For the purposes of sections 221 and 222, in arriving at the average hourly rate of remuneration, only—
> (a)the hours when the employee was working, and
> (b)the remuneration payable for, or apportionable to, those hours,
> shall be brought in.
>
> (2)If for any of the twelve weeks mentioned in sections 221 and 222 no remuneration within subsection (1)(b) was payable by the employer to the employee, account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.
>
> (3)Where—
> (a)in arriving at the average hourly rate of remuneration, account has to be taken of remuneration payable for, or apportionable to, work done in hours other than normal working hours, and

> (b)the amount of that remuneration was greater than it would have been if the work had been done in normal working hours (or, in a case within section 234(3), in normal working hours falling within the number of hours without overtime),
> account shall be taken of that remuneration as if the work had been done in such hours and the amount of that remuneration had been reduced accordingly.

107. Section 224 of the Employment Rights Act 1996 provides that:

> **224Employments with no normal working hours.**
> (1)This section applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.
> (2)The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending—
> (a)where the calculation date is the last day of a week, with that week, and
> (b)otherwise, with the last complete week before the calculation date.
> (3)In arriving at the average weekly remuneration no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to twelve the number of weeks of which account is taken.
> (4)This section is subject to sections 227 and 228.

Discussion and conclusions

108. I will deal with the issues in dispute applying the relevant legal principles to the facts as I have found them to be.

Breach of contract

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

    a. it is agreed between the parties that this claim was outstanding when the claimant's employment ended.

110. *Did the respondent pay the claimant for less than 37.5 hours in each week from 19 April 2023 to 4 October 2024?*

    a. the claimant and respondent agree that the respondent paid the claimant for less than 37.5 hours for most of the weeks between 19 April 2023 and 4 October 2024 although neither provided comprehensive details of the number of hours worked / paid for in each week.

111. *Was that a breach of contract?*

    a. I start from the premise that the claimant is entitled to be provided with 37.5 hours of work per week at a salary equivalent to £25,600 paid in

monthly instalments in accordance with paragraph 2 of his contract of employment unless the short time working clause is properly invoked (as that is the basis of the respondent's case in response to the claim).

b. It is worth repeating the terms of the clause of the contract relied upon by the respondent:

6 – Shortage of Work	If there is a temporary shortage of work for any reason, we will try to maintain your continuity of employment even if this necessitates placing you on short time working, or alternatively, lay off. If you are placed on short time working, your pay will be reduced according to time actually worked. If you are placed in lay off, you will receive no pay other than statutory guarantee pay.

c. As there is no definition clause in the claimant's contract of employment, I have considered what is meant by the word "temporary" in clause 6. The ordinary meaning of the word "temporary" is:

i. not lasting or needed for very long (Cambridge dictionary);

ii. lasting for a limited time (Merriam Webster dictionary);

iii. lasts for only a limited time (Collins dictionary);

d. It is clear that "temporary" is therefore something that is short lived and not for an extended period of time.

e. Of the payslips that I have seen only the month of January 2024 (paid on 5 February 2024) shows that the claimant received gross pay which was at or above £2,133,33. The only other month when the claimant's gross pay exceeded £2,000 was October 2023 when his gross pay was £2,115.98.

f. The email to the claimant on 17 April 2023 about his working hours did not mention that the reduction in working hours was temporary or provide any indication of when his working hours would be increased. The email from Mr Aarons on 3 May 2023 was explicit that changes to working hours were linked, at least in part, to (the respondent's perception of) the claimant's conduct and performance. There was no mention in Mr Aaron's email of 3 May 2023 to a shortage of work.

g. Mr Aarons' oral evidence that the claimant was free to seek other work elsewhere is both irrelevant and incorrect. The claimant's contract of employment required him to have written consent from the respondent to engage in any other work and the claimant would be required to work in accordance with the terms of his visa (details of which were not provide to me). Even if the claimant could have sought additional work elsewhere,

that does not change the respondent's contractual liability to pay the claimant in accordance with his contract of employment.

h. I have reached the conclusion that the respondent was not entitled to invoke the short time working clause at any point during the period from 19 April 2023 to 4 October 2024 because there was never a temporary shortage of work. There was an almost permanent shortage of work which continued throughout the time that the claimant was employed by the respondent.

i. The respondent is therefore in breach of contract for each week between 19 April 2023 and 4 October 2024 that the claimant was not provided with 37.5 hours of work and not paid a salary equivalent to £25,600 per annum.

112. *How much should the claimant be awarded as damages?*

a. The claimant should be put back in the position that he would have been in if he had been paid in accordance with his contract.

b. The claimant should have been paid the gross sum of £2,133.00 per month.

c. For the month of April 2023, the claimant should have been paid pro rata for the period from 19 April 2023 to 30 April 2023 or 12/30 of £2,133.00 which is £853.20 gross.

d. For the month of October 2024 the claimant should have been paid pro rata for the period from 1 October 2024 to 4 October 2024 or 4/31 of £2,133.00 which is £275.23.

e. The total gross pay that the claimant should have received for the period from 19 April 2023 to 4 October 2024 was £37,389.34 (April 2023 at £853.20, May 2023 to September 2024 at £2,133.00 per month (17 months) and October 2024 at £275.23).

f. The claimant's evidence of the pay that he received is provided by a mixture of bank statements (net pay) and pay slips (gross pay and net pay detailed, together with deductions). For periods where the claimant has not received payslips the cumulative figures for previous months are included.

g. In the year from April 2023 to March 2024, the claimant's pay slips show that he received gross pay of £15,776.52. However, that figure is inaccurate because it is the figure after deduction of "fines" (which were deducted from gross pay). When the "fines" from February and March are added back on (£6.58 and £65.85) the true gross figure that has been paid to the claimant for the year from April 2023 to March 2024 is £15,848,95.

h. In the year from April 2024 to October 2024, the claimant's pay slips show that he received gross pay of £3,598.20 but again this figure is inaccurate because it is the figure after the deduction of a "fine" of £21 in August 2024. The true gross figure that was paid to the claimant for the period from April 2024 to October £2024 was £3,619,20.

i. The respondent has not provided any evidence about the claimant's working hours or pay that the claimant received.

j. I am satisfied that that the evidence provided by the claimant accurately reflects the payments that he received from the respondent.

k. In total the claimant received gross pay of £19,468.95 from the respondent in the period from 19 April 2023 to 4 October 2024.

l. The claimant was contractually entitled to receive gross pay of £37,389.34. The shortfall owed by the respondent to the claimant is £17,920.39 (£37,389.34 - £19,468.95 = £17,920.39).

Time limits (unauthorised deductions)

113. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 15 July 2024 may not have been brought in time. I have to consider therefore whether the unauthorised deductions complaints made within the time limit in Section 23 of the Employment Rights Act 1996?

114. *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?*

a. The claim in respect of the "fine" deducted from the claimant's pay on 5 March 2024 (for the period 1 February 2024 to 29 February 2024) was not made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made.

b. The claim in respect of the "pay adjustment – working hours" deducted from the claimant's pay on 5 April 2024 (for the period 1 March 2024 to 31 March 2024) was not made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made.

c. The claim in respect of the "fine" deducted from the claimant's pay on 5 August 2024 (for the period 1 July 2024 to 31 July 2024) was made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made.

115. *If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?*

a. I have concluded that the deductions from the claimant's pay in March, April and August 2024 were a series of deductions because they were "*a number of things of a kind which follow each other in time"*. The factual connection between each of the deductions is that they were imposed unilaterally by the respondent following the email notification which was circulated to the claimant on 29 November 2023. The series was not broken or ended by the fact that there were pay periods between 5 April 2024 and 5 August 2024 which did not contain deductions from the claimant's wages because each deduction was linked to the other as it was based on the same "fines" system.

b. Accordingly the deductions from the claimant's pay on 5 March 2024 and 5 April 2024 were part of a series of deductions which ended on 5 August 2024. The claims were made to the Tribunal within three months (plus early conciliation extension) of the last deduction and are, therefore, in time.

Unauthorised deductions

116. I turn to consider whether the respondent made unauthorised deductions from the claimant's wages and, if so, how much was deducted.

117. *Were the wages paid to the claimant on 5 March 2024, 5 April 2024 and 5 August 2024 less than the wages they should have been paid?*

a. The wages paid to the claimant on each of 5 March 2024, 5 April 2024 and 5 August 2024 was less than he should have been paid. There were two reasons. Firstly because he received gross pay that was less than £2,133 in each of those months. This has already been dealt with in respect of the breach of contract claim. Secondly the respondent made deductions from the claimant's wages for "fines" and "pay adjustment".

118. *Was any deduction authorised by statute?*

a. The deductions referred to as "fine" and "pay adjustment" were not deductions authorised by statute.

119. *Was any deduction required or authorised by a written term of the contract?*

a. The respondent does not argue that the deductions were authorised or required by a written term of the contract.

b. The respondent's position is that the deductions were a legitimate means of upholding professional standards. This is not a lawful basis on which to make deductions from the claimant's wages.

c. I have had regard to clause 16 of the claimant's contract of employment which provides that:

"*The Employer reserves the right to make reasonable changes to any of the terms and conditions of employment. Changes to your terms and conditions of employment will be notified to you in writing before the date upon which they come into force".*

d. I do not consider that clause 16 of the claimant's contract of employment entitles the respondent to unilaterally impose a "fines" system on the claimant. I have reminded myself of the guidance given by the Court of Appeal in **Birmingham City Council v Wetherill and others 2007 IRLR 781, CA**. There was a particularly unequal bargaining position between the claimant and respondent in this matter given that the claimant was reliant on the respondent to sponsor his visa and the respondent used that reliance to put pressure on the claimant through the threat of termination of employment (and also his visa) if he did not "agree" to the "fines" system. In any event the proposed "fines" system is unreasonable as it is not particularised, does not provide any mechanism for agreement from the employee before imposition nor any mechanism to appeal against a fine imposed and which refers to an arbitrary sum of £100 for each alleged infringement.

e. The claimant explicitly objected to the "fines" system by his email of 15 December 2023 and did not authorise any deductions to be made from his wages.

f. It is also worth noting that none of the deductions made from the claimant's wages were in the sum of £100 which was the information communicated by the respondent' email of 29 November 2023.

120. *Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?*

a. The claimant had written notice of the "fines" system before the deductions were made but the system was not part of the claimant's contract, was not a term that he agreed to and was not a change that the respondent was entitled to implement unilaterally.

121. *Did the claimant agree in writing to the deduction before it was made?*

a. The claimant did not agree to the deductions in writing before they were made. In fact, the claimant explicitly objected to the implementation of the "fines" system.

122. *How much is the claimant owed?*

a. The claimant should be repaid each of the deductions that was made from his wages, totalling £93.43 (March 2024 (£6.58), April 2024 (£65.85) and August 2024 (£21)).

Holiday pay

123. The most significant dispute between the parties about this part of the claim is whether the claimant's holiday entitlement should be calculated on the basis of his contracted hours or the hours that he actually worked. The claimant says he should receive holiday pay based on his contracted hours. The respondent says that the holiday pay should be calculated on a pro rata basis using the hours actually worked.

124. *What was the claimant's leave year?*

   a. The claimant's contract of employment sets out that the leave year was from 1 January to 31 December.

   b. The claimant said in his evidence that the leave year was from January to December.

   c. Mr Aarons said at one point that the leave year was from April to March.

   d. I am satisfied that the claimant's leave year was from January to December in accordance with his contract of employment.

125. *How much of the leave year had passed when the claimant's employment ended?*

   a. The period from 1 January to 4 October 2024 was 40 weeks which is 0.77 of the year, expressed as a decimal (40÷52 = 0.77).

126. *How much leave had accrued for the year by that date?*

   a. The claimant's contract of employments sets out that he is entitled to: "*5.6 times your weekly hours worked in paid holiday in each holiday year, up to a maximum of 504 hours' a holiday year. For example, if you work 30 hours a week, you will be entitled to 168 (30 multiplied by 5.6) hours of paid leave…"*

   b. The claimant says that he was entitled to 5.6 weeks of holiday per year which he says amounted to 4.6 weeks or 20.6 days from 1 January 2024 to 4 October 2024. These figures for weeks and days do not correlate with one another. Based on a 5 day week, 4.6 weeks of leave would be 23 days.

   c. The combined effect of Regulation 13(1) and Regulation 13A(2) of the Working Time Regulations 1998 is that the claimant also had a statutory entitlement to 5.6 weeks of leave per year.

   d. I am satisfied that the claimant's holiday entitlement was 5.6 weeks per year. As the period from 1 January 2024 to 4 October 2024 was 0.77 of the leave year the claimant accrued a total of 4.31 weeks of leave (5.6 x 0.77 = 4.31).

127. *How much paid leave had the claimant taken in the year?*

a. The claimant's unchallenged evidence, which I accept, was that he had taken 1 day of paid leave between 1 January 2024 and 30 October 2024.

b. The claimant had, therefore, taken 0.2 weeks of paid leave in the period from 1 January 2024 to 4 October 2024.

128. *How many days remain unpaid?*

a. The claimant's unpaid holiday was 4.11 weeks (his accrued holiday of 4.31 weeks less the 0.2 weeks paid leave he had taken). Based on a 5 day week this would amount to slightly more than 20.5 days.

b. The claimant says that he is owed 19.6 days of holiday pay which is based on his contracted hours of 37.5 hours per week.

c. The respondent says that the claimant should be paid for a pro rata number of days based on the number of hours / days that the claimant actually worked.

d. I have already concluded that the claimant's unpaid holiday was 4.11 weeks. Given that the Working Time Regulations 1998 refer to numbers of weeks of leave I prefer to decide the number of weeks of pay that are due to the claimant and then consider how to calculate the appropriate "week's pay".

129. *What is the relevant daily rate of pay?*

a. The claimant's position is that he should receive holiday pay at the daily rate of £70.14. I am not sure how this figure has been calculated but it may be based on calculating a daily rate for 7 days per week rather than 5 days per week.

b. The respondent has not provided any calculation of the daily rate that it says should be used to calculate the claimant's holiday pay but says that it should be calculated by reference to the hours that the claimant worked rather than his contracted hours.

c. It is clear from the claimant's contract of employment that the contractual right to paid leave is to be linked to the hours worked.

d. I must also consider the statutory payment in respect of periods of leave. This requires a consideration of whether the claimant had "normal working hours" (section 222 Employment Rights Act 1996), whether his remuneration varied according to hours worked (section 223 Employment Rights Act 1996) or whether the claimant had "no normal working hours" (section 224 Employment Rights Act 1996).

e. I have already decided that the claimant was entitled to be paid in accordance with his contract of employment on the basis of a 37.5 hour working and that the short time working clause was void and unenforceable. The claimant therefore had “normal working hours” and a week’s pay is 1/52 of his annual salary.

f. The claimant’s annual salary was £25,600 which gives a figure of £492.31 for a week’s pay (£25,600 ÷ 52 = £492.31).

g. As the claimant’s unpaid holiday was 4.11 weeks the sum due to him for holiday pay is £2,023.40 (£492.31 x 4.11 = £2,023.40)

Decision

130. The claimant’s claims for breach of contract, unlawful deductions from wages and holiday pay are all well founded and succeed.

Employment Judge Heather
14 May 2025

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