



EMPLOYMENT TRIBUNALS

Claimant: Miss A Powis

Respondent: Richard Language College

Heard at: Southampton (by CVP) **On:** 25 April 2025

Before: Employment Judge Yallop

Representation:

Claimant: In person
Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is well-founded. The Respondent made an unauthorised deduction from the Claimant's wages in failing to pay her salary in March, April, May and June 2024.
2. The Respondent shall pay the Claimant £9,316.25, which is the gross sum deducted by the Respondent. The Claimant is responsible for the payment of any tax or National Insurance.

Notice Pay

3. The complaint of breach of contract in relation to notice pay is well-founded.
4. The Respondent shall pay the Claimant £6,525 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 as Post Employment Notice Pay.

Holiday Pay

5. The complaint in respect of holiday pay is well-founded. The Respondent was in breach of contract in failing to pay the Claimant for 21 days of holiday accrued but not taken on the date the Claimant's employment ended.
6. The Respondent shall pay the Claimant £1,871.94 as damages for breach of contract. This is the net value to the Claimant of the amount due.

Redundancy Payment

7. Under section 163 Employment Rights Act 1996 it is determined that the Claimant is entitled to a redundancy payment of £11,418.75.

Unfair Dismissal

8. The complaint of unfair dismissal is well-founded. The Claimant was unfairly dismissed.
9. The Respondent shall pay the Claimant a compensatory award of £10,298.76. **Note** that this is the actual sum payable to the Claimant after any deductions or uplifts have been applied.
10. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply.

REASONS

Introduction

1. On 27 June 2024, the Claimant was told that an application to Companies House to strike off the Respondent had been accepted and that she was dismissed with immediate effect.
2. The Claimant claimed the Respondent did not pay her wages for March, April, May and June 2024, a redundancy payment, pay in lieu or notice, or the holiday pay she was owed.
3. No response was presented to the Claimant's claim. A hearing was therefore scheduled under rule 22(2) Employment Tribunal Procedure Rules 2024 (the Procedure Rules) to consider the determination of the claim.

The hearing

4. I conducted the hearing on 25 April 2025. The Claimant represented herself. The Respondent did not attend.
5. Having checked on the Companies House website, I realised that after the claim form was served on the Respondent, the Respondent had changed its registered office address and the Notice of Hearing had been sent to its old address. Having considered rule 47 of the Procedure Rules I decided to

proceed in the Respondent's absence. The Tribunal had no way of contacting the Respondent to check that it was aware of the hearing, and the Claimant had not heard from the Respondent since June 2024, despite many attempts to contact the company. The claim form had been sent to the correct registered address for the Respondent at the time that it was served, and the Respondent did not respond to the claim. Adjourning the hearing would have caused delay and impacted on the Tribunal's resources, and the Respondent's previous conduct suggested that the Respondent was unlikely to attend a rescheduled hearing. I therefore decided it was in accordance with the overriding objective to proceed.

6. Once this Judgment is served at the Respondent's current registered address, it is open to the Respondent to apply for a reconsideration, if desired.

Preliminary matters

7. The Claimant made an application at the start of the hearing to amend her claim. She sought to include a complaint relating to a loan she says she gave to the Respondent that has not been repaid. She said that she did not mention the loan on her claim form because she does not have any documentary evidence of it.
8. I considered the Presidential Guidance – General Case Management and decided not to allow the amendment. The loan was not mentioned on the Claimant's claim form and the facts relating to the loan are not the same as the facts already described in relation to the dismissal. The proposed amendment represents an entirely new complaint and would be a substantial alteration to the claim. The primary time limit for the Claimant to bring a claim for breach of contract that arose or was outstanding on the termination of her employment was 26 September 2024, so the complaint is out of time. The Claimant has not discovered any new facts that prevented her from bringing the complaint sooner and there was no suggestion from her that it was not reasonably practicable to bring the complaint in time. The Respondent did not have the opportunity to dispute the complaint after the claim form was served. I therefore decided that it would not be in accordance with the overriding objective to allow the amendment.

Findings of Fact

9. The Claimant was employed by the Respondent, Richard Language College, from 26 September 2009 as a Client Services Manager. The Respondent taught English as a foreign language. The Claimant was the only member of office staff.
10. Following the Covid-19 pandemic, the Respondent was suffering from financial difficulties that impacted on the Claimant. The business was initially based in its own college building, but the staff were removed from the building by bailiffs and were unable to return. The Respondent then rented some rooms in another building to enable the business to continue, but the Respondent did not pay the rent and the business was evicted.

11. At the point that the Respondent lost its second building, it had 4 members of staff: the Claimant; and 3 teachers, one of whom was on long-term sick leave. After the eviction, the Claimant worked from home. She is not sure what happened to the teachers, but said they were unable to work without the rooms.
12. The Respondent kept reassuring the Claimant that they were about to secure some big contracts that would save the business, and asked the Claimant to continue working to keep the business going. The Claimant did not want to abandon the students, and was worried about breaching her contract if she walked away. She therefore continued to work for the Respondent until her dismissal.
13. The Respondent did not pay the Claimant any wages in March, April, May, or June 2024. There was no written agreement that those monies would not be paid, and the Claimant was not told in advance that she would not receive her wages. Whenever she discussed the situation with the Respondent, the Respondent said everything was in process and she would be paid next week. The Claimant was shocked when she received an email from Ali Mana'a of the Respondent on 27 June 2024 saying that an application to strike off Richard Language College had been accepted by Companies House and that the Claimant should take the email: 'as formal notice of termination of your employment with immediate effect.'
14. The Claimant tried contacting the Respondent to discuss her dismissal, including visiting the company's registered office and emailing Mr Mana'a on 29 August 2024 asking when she would receive her salary for March to June 2024, a redundancy payment, her holiday pay and repayment of the £7,000 that she had loaned to the company on a short-term basis. The Respondent did not reply. The Respondent did not pay the Claimant her arrears of pay or any money in connection with the termination of her employment.
15. The Claimant told the Tribunal that on 24 April 2025, the day before the hearing, she had found a copy of her employment contract from 2017, but had not sent a copy to the Tribunal. She said that she finds technology confusing, but would try to send a copy after the hearing (I have not received it). The Claimant confirmed that her contract gave her an entitlement to 12 weeks' notice after 12 years' service (which is in line with her statutory entitlement, as she has 14 years' service). She also read a section from the contract about her holiday entitlement, saying that her holiday year was from 1 January to 31 December and that she was entitled to be paid in lieu of accrued but untaken holiday on termination of her employment. She said there was nothing in the contract about carrying over leave. She also said that the contract refers to her having a holiday entitlement of 30 days, but that had increased before her dismissal to 31 days because of her long service. She was unable to say when the increase had occurred.
16. The Claimant said that for the 5 years before her dismissal, she had been unable to take any holiday, except for at Christmas when the business was closed. When she asked to take leave, the Respondent said there was no-one to cover for her, as she was the only member of office staff, and that she could take leave when things were quieter. There was no evidence from the Claimant that carrying over untaken leave was ever discussed. The Claimant

just said that whenever she asked the Respondent about taking leave, she was told she could take some later.

17. Although I found the Claimant to be a truthful witness, there were elements about which she was clearly confused, as her evidence about her holiday entitlement and the leave she had taken was unclear and at times contradictory. She was unable to confirm exactly when the business was closed in 2020 to 2023 inclusive, but said that the business shut for a while during the Covid-19 pandemic and that it always closed for a 2-week period encompassing Christmas Day, Boxing Day and New Year's Day. At a different point in her evidence though, she said that the Respondent had told her it would only close for 1 week instead of 3. When asked how she had calculated the 75 days she was claiming, she said she had done it on the basis that she had been prevented from taking holiday for 5 years except for at Christmas. However, her holiday entitlement was 31 days including bank holidays, which if she had taken 10 days' holiday a year would have meant her untaken leave in 2020 to 2024 amounted to $21 \times 4 = 84$ days, and she would also have been owed an apportioned amount for the period 1 January to 27 June 2024. She could not explain how she had calculated the 75-day figure for holiday that appears on her schedule of loss.
18. The only documentary evidence before the Tribunal of the Claimant's holiday entitlement was a copy of a payslip that stated she was entitled to 31 days of annual leave. The Claimant said that she did not keep a record of the leave she had taken.
19. As the Claimant's oral evidence was unclear and there was little documentary evidence to clarify matters, I do not accept her evidence as to how much leave she had been entitled to take and had taken in the years before 2024. I also find that she did not have a contractual right to carry over any leave, as her contract does not mention carry over, and this was not specifically discussed with her. However, I do accept that at the time of her dismissal in 2024 the Claimant was entitled to 31 days' holiday per annum, including bank holidays (as is evidenced by her payslip) and she did not take any leave in that year. I also accept that the Claimant's holiday year runs from 1 January to 31 December.
20. At the time of her dismissal, the Claimant was 56 years' old and had 14 years' service. Her gross monthly salary was £2,356.25 and her net monthly salary was £1,931.30. She worked 5 days a week for a total of 37.5 hours. She received employer pension contributions of £70.69 a month.
21. Following her dismissal, the Claimant tried to find another job. She contacted an agent, looked online and contacted schools in her local area. She also tried to find temporary work at Waitrose while she sought a permanent job, but they were only able to offer her 6 hours a week, which would not have covered her travel costs. She did not claim any benefits whilst unemployed.
22. On 3 February 2025, she began working for her current employer, which is a database company that provides services for local schools and used to work with the Respondent before the Claimant's dismissal. The Claimant's role is as a Client Success Representative, and she has an annual salary of £26,000 gross (which translates to a net annual salary of £21,606). Her salary will

increase to £28,000 gross when she finishes her 6-month probation period. When she worked for the Respondent, her annual salary was £28,275 gross, so there will still be a small deficit. However, in her new role, the Claimant works from home, and she confirmed that the lack of travel costs will make up for that deficit once her gross annual salary increases to £28,000.

23. The Claimant currently receives employer pension contributions of £65.87, in comparison with the £70.69 she used to receive from the Respondent. However, when her annual salary increases, so will the employer contributions. She confirmed that at that point, her losses will effectively cease.

Law and conclusions

Wages

24. Section 13 Employment Rights Act 1996 (ERA) 1996 provides that an employer shall not make a deduction from wages of a worker unless:
- the deduction is required or authorised by statute, or by a provision in the worker's contract that the worker has received or been notified of in writing, or
 - the worker has given prior written consent.
25. Under s13(3) ERA there is a deduction from wages where the total amount of any wages paid on any occasion by an employer is less than the total amount of the wages properly payable by him to the worker on that occasion.
26. The Claimant was entitled to receive her salary in March, April, May and June 2024 and did not agree to it being withheld. The Respondent therefore made a series of unauthorised deduction from the Claimant's wages in failing to pay her salary in those months.
27. In March, April and May 2024, the Claimant was owed £2,356.25 gross per month ($3 \times 2356.25 = £7,068.75$).
28. In June 2024, the Claimant earned less, as her employment ended on the penultimate working day of the month. In June 2024, the Claimant was entitled to receive £2,247.50, calculated as follows:
- The amount of a day's pay, i.e. gross annual salary of £28,275 divided by 260 working days = £108.75 gross per day.
 - Gross monthly pay of £2,356.25 - £108.75 = £2,247.50.
29. The Claimant is therefore entitled to receive $£7,068.75 + £2,247.50 = £9,316.25$.
30. This is the gross sum deducted by the Respondent. The Claimant will be responsible for the payment of any tax or National Insurance on that sum.

Notice pay

31. The Claimant's contract entitled her to receive 12 weeks' notice and to be paid in lieu of notice on the termination of her employment. She was not given

any notice of her dismissal and was not paid in lieu of notice. She is therefore entitled to £6,525 as damages for breach of contract, being 12 weeks' notice pay at the gross weekly rate of £543.75.

32. This figure has been calculated using gross pay to reflect the likelihood that the Claimant will have to pay tax on it as Post Employment Notice Pay.

Holiday pay

33. The Respondent was in breach of contract in failing to pay the Claimant for the holiday she had accrued but not taken in 2024. The Claimant's employment ended on 27 June 2024 and her holiday year started on 1 January. She therefore worked for 179 days in the 2024 holiday year, which is 68.85% of that year ($179/260 \times 100 = 68.85$).

34. 68.85% of a holiday entitlement of 31 days is 21 days ($31/68.85 \times 100 = 21.34$). The Claimant did not take any leave in 2024, so is entitled to be paid for the 21 days she had accrued. This amounts to net pay of £1,871.94, calculated as follows:

- £23,175.60 net annual salary, divided by 260 working days = £89.14 a day.
- £89.14 x 21 = 1,871.94.

Redundancy payment

35. I am satisfied that the Claimant's dismissal was by reason of redundancy. The evidence presented by the Claimant suggests the reason was redundancy, as the dismissal email the Claimant received from the Respondent on 27 June 2024 refers to the Company being struck off from Companies House, and the Claimant was aware of the Respondent's financial difficulties and lack of any premises from which to carry on the business at that time. Under s163(2) ERA, there is a presumption that a dismissal has been by reason of redundancy unless the contrary has been proved, which it has not in this case.

36. The Claimant is therefore entitled to a statutory redundancy payment of £11,418.75 calculated in accordance with s162 ERA as follows:

- 1.5 (as the Claimant was aged 41 or over throughout her employment by the Respondent)
- x 543.75 (her gross weekly pay)
- x 14 years' service.

Unfair dismissal

37. The Claimant was unfairly dismissed under s94 ERA, as no process was followed in respect of her dismissal, and the Respondent has provided no evidence that their decision to dismiss the Claimant was substantively fair.

38. As the Claimant is being awarded a statutory redundancy payment, she is not entitled to receive a basic award for unfair dismissal, in accordance with s122(4) ERA.

39. I consider it to be just and equitable to award the Claimant a compensatory award in accordance with s123 ERA calculated below.

Loss when unemployed

40. The Claimant was unable to obtain employment until 3 February 2025, despite making reasonable attempts to obtain new employment and mitigate her loss. Her notice period would have been 12 weeks from 27 June 2024 to 19 September 2024 and she has been awarded damages for wrongful dismissal, so her loss of earnings flow from the end of that 12 weeks, i.e. from 20 September 2024.

41. The Claimant started her new job on 3 February 2025, so was out of work for 19.43 weeks. In that period her losses were:

Salary:

- £23,175.60 net annual salary, divided by 52 weeks = £445.68 net per week
- $19.43 \times £445.68 = \textbf{£8,659.56}$

Pension contributions:

- £70.69 a month $\times 12$, divided by 52 = £16.31 a week
- $19.43 \times £16.31 = \textbf{£316.90}$

Total

- **£8,976.46**

Loss after starting her new job, to date of hearing

42. From 3 February 2025 to 25 April 2025 (11.71 weeks) the Claimant's losses were:

Salary:

- £21,606 net annual salary in new role divided by 52 = £415.50 net per week.
- $£445.68 - £415.50 = £30.18$ ongoing loss
- $11.71 \times £30.18 = \textbf{£353.41}$

Pension contributions

- £65.87 a month in new role $\times 12$, divided by 52 = £15.20 a week.
- $£16.31 - £15.20 = £1.11$ ongoing loss
- $11.71 \times 1.11 = \textbf{£13.00}$

Total

- **£366.41**

Future loss

43. The Claimant has a 6-month probation period. After that period has been completed on 4 August 2025. I have found that her earnings and pension contributions will increase to extinguish her loss. I am therefore awarding her future loss from the date of the hearing to 4 August 2025 (14.57 weeks), calculated as follows:

Salary

- $£30.18$ ongoing loss $\times 14.57$ weeks = **£439.72**

Pension contributions

- £1.11 ongoing loss x 14.57 weeks = **£16.17**

Total

- **£455.89**

44. The total compensatory award for the three periods set out above is
 $£8,976.46 + £366.41 + £455.89 = £9,798.76$.

45. I also award the Claimant £500 for loss of statutory rights.

46. The Claimant's total compensatory award is therefore **£10,298.76**. This award reflects the loss suffered by the Claimant that is attributable to the action taken by the Respondent in dismissing her.

Approved by

Employment Judge Yallop
8 May 2025

Judgment sent to parties on
3 June 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE

Notes

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

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

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