



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss F Dury

**Respondent:** Pelagic Trading Limited

**Heard at:** London South Employment Tribunal and by video hearing

**On:** 18 March 2025

**Before:** Employment Judge Youngs

**Representation**

Claimant: In person

Respondent: Mr A Stratton, Director

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 60(4) of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

## REASONS

### Claims and parties

1. By a Claim Form presented on 9 November 2024 (case number 6018067/2024), the Claimant brought a claim for unlawful deductions from wages.
2. The Claimant claims that she worked six days, attended to work on a seventh day, and took one day's holiday in the period 1 July 2024 to 22 July 2024. She says she was prevented from working for nearly two days in the same period and was not paid for any work done or the holiday in July 2024.
3. The Respondent has not filed a Response to the Claim, although a Response was received to a similar claim brought against the wrong Respondent. That other Response does not set out any facts or denials, other than to say that the Claimant brought the Claim against the wrong Respondent. The Respondent accepts that they received the Claim Form.
4. No Response having been received, the Respondent was informed by the Tribunal, in advance of today's hearing, that the Respondent would only be

permitted to participate in the hearing to the extent permitted by the Tribunal.

5. I permitted the Respondent to participate in the hearing. It was in the interests of justice to do so. The Respondent admitted part of the Claimant's claim, but denied part of the Claim and raised issues as to whether the Claimant's claim had been brought out of time.

### **The issues**

6. At the start of the hearing I discussed the issues in the case with the parties, which are as follows:

#### Time limits

7. Was the unauthorised deductions and/or notice pay complaint made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:
  - 7.1. Was the claim made to the Tribunal within three months (plus early conciliation extension if applicable) of the date of payment of the wages from which the deduction was made?
  - 7.2. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
  - 7.3. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

#### Unauthorised deductions (Part II of the Employment Rights Act 1996)

8. The Tribunal will decide:
  - 8.1. Were the wages paid to the Claimant in July 2024 less than the wages she should have been paid? The Respondent says it dismissed the Claimant for gross misconduct on 19 July 2024 and that therefore no further sums were owed to her. In respect of holiday pay, the Respondent says that, as at the date of termination of employment, the Claimant had not accrued the leave taken in July 2024.
  - 8.2. It is not alleged that any deduction was required or authorised by statute.
  - 8.3. Was any deduction required or authorised by a written term of the contract of employment (which it is agreed the Claimant was issued with in advance of any deduction)?
  - 8.4. Did the Claimant agree in writing to the deduction before it was made?
  - 8.5. How much is the Claimant owed?

#### Notice pay (wrongful dismissal)

9. The Tribunal will decide:
  - 9.1. How many days of the Claimant's notice period were not paid?
  - 9.2. Did the Claimant do something so serious that the Respondent was entitled to dismiss without notice? This required the Respondent to prove that the Claimant committed such an act. The Respondent says it dismissed the Claimant for gross misconduct on 19 July 2024 and that therefore no further sums were owed to her.
10. In a case alleging non-payment of notice because of gross misconduct, the Tribunal has to decide on the balance of probabilities whether the Claimant committed gross misconduct such that she is not entitled to notice pay or further notice pay.

### **Procedure, documents and evidence heard**

11. The hearing was intended to be a remote hearing held via CVP (video hearing). However, the Respondent's representative attended the hearing in person. The Tribunal therefore set up a hybrid hearing so that the case could proceed to be heard with both parties present.
12. I had before me the Claim Form and a Bundle of Documents from the Claimant. Witness evidence was given by the Claimant and on behalf of the Respondent.

### **Findings of fact**

13. The Claimant was employed by the Respondent from 30 October 2023 to 22 July 2024. She did not have set hours of work. Her contract says that she will work 15-25 hours per week to be worked at such times as the Respondent reasonably requires. By July 2024, the Claimant's hourly rate of pay was £11.44 an hour.
14. The Claimant's contract of employment includes provisions in relation to annual leave including that annual leave taken over that which is accrued as at the point of termination will be repayable on termination of employment. There is also a clause entitling the Respondent to make deductions from wages where money is owed to it by the Claimant.
15. On 8 July 2024, the Claimant resigned giving two weeks' notice. Her employment was due to end on 22 July 2024.
16. The Claimant was rostered to work on the following dates during her notice period:  
1, 4, 8, 11, 14, 15, 18, 19, and 22 July 2024.
17. She was due to work 7.5 hours on each of these days, apart from Sunday 14 July, when she was due to work 6 hours.
18. The Claimant had booked 7 July 2024 as holiday. This leave was approved prior to the Claimant handing in her notice.

19. The Claimant worked 1, 4, 8, 11, 14 and 15 July as planned. The Respondent admits that the Claimant is owed £497.64 (gross) in wages for those days.
20. On the evening of 17 July 2024, the Claimant sent Mr Stratton of the Respondent a WhatsApp message, telling him that she would not be coming to work on 18 July 2024, as she was in A&E with her mother. Mr Stratton was not happy about this, and responded telling the Claimant that she had to attend work on 18 July. The Claimant did not attend work on 18 July. She sent a further WhatsApp message in the evening of 18 July saying that she would be in work the next day (i.e. 19 July 2024).
21. The Claimant was upset by the tone and content of Mr Stratton's WhatsApp messages on 18 July 2024 and shared them with her friend, Aaron. Unbeknownst to the Claimant, Aaron used the contents of these messages to post negative and damaging reviews online of the Respondent and/or Mr Stratton. Mr Stratton saw the reviews and sent a further message to the Claimant on 18 July 2024 telling her "tell your friend Aaron if he doesn't remove his fake review immediately I will sue him too". This message alerted the Claimant to the fact of the reviews, and she asked Aaron to take down the review. Mr Stratton believed that the Claimant had instigated and was responsible for the negative reviews.
22. The Claimant attended work on 19 July 2024. Approximately an hour into her shift, Mr Stratton called the Claimant into the office. There was a heated exchange which culminated in Mr Stratton dismissing the Claimant and sending her home. He subsequently sent her a WhatsApp message referring to the online reviews and saying "good riddance".
23. As the Claimant had been told not to come back to work, she did not attend for work on 22 July 2024.
24. The Respondent did not make any payment of wages to the Claimant in respect of July 2024. As set out above, the Respondent admitted that the Claimant was owed £497.64 in wages in respect of July 2024. The Respondent denies that the Claimant is owed any money in respect of holiday on 7 July 2024 or in respect of 19 July 2024 (when she was dismissed and sent home early) or 22 July 2024 (following her dismissal and which the Claimant did not work).
25. The Claimant contacted ACAS for pre-claim conciliation on 16 October 2024. The ACAS certificate was issued on 21 October 2024. She subsequently issued proceedings in the Employment Tribunal on 9 November 2024.

## **The law**

### Entitlement to Annual Leave

26. Regulations 13 and 13A of the Working Time Regulations 1998 (the WTR) set out the right to 5.6 weeks annual leave per year.
27. The WTR provide for what happens on termination of employment, namely that "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” (Regulation 14(3) WTR).

#### Unlawful deductions from wages claims

28. Section 13 of the Employment Rights Act 1996 (the ERA) sets out the right of employees not to suffer unlawful deductions from wages. Section 23 of the ERA then sets out the right to bring a claim to the Employment Tribunal. ACAS must be contacted within 3 months of the date of the last deduction, and then the Claim filed within a set period after that.
29. Time may be extended if it was not reasonably practicable to bring the claim in time, provided that the claim is then brought within a reasonable period.

#### Wrongful dismissal

30. As referred to above, the Respondent is entitled not to pay notice if the Claimant in fact committed an act of gross misconduct.
31. For something to amount to gross misconduct, the conduct must be a deliberate and wilful contradiction of the contractual terms. The conduct must go to the root of the contract. Whether the employer reasonably believed this to be the case is not the test.

### **Conclusions**

#### Time limits

32. The Claimant's claims have been brought in time. The Claimant contacted ACAS within three months of the date of termination of her employment, and filed the claim within a month after the end of the ACAS conciliation period. The date that payment was due was after the date of termination of her employment.

#### Deduction in respect of holiday

33. The Claimant was unable to confirm how much leave she had taken in the course of the leave year. The Respondent said that it had undertaken a calculation based on the hours worked by the Claimant and the amount she had been paid and the time in the leave year. The Respondent said that on this basis, it had calculated that the Claimant had accrued less leave than she had taken in the leave year.
34. The Claimant found this confusing, because her annual leave had been approved and she felt that if she had not accrued sufficient leave to be paid for annual leave, the leave would not have been approved. However the Respondent explained that the Claimant's leave was approved before she handed in her notice and therefore before the Respondent knew that she would not accrue sufficient holiday to be paid for the one day's leave in July 2024.
35. I accept the Respondent's evidence and submissions. The Respondent was transparent with the Tribunal about what was owed by the Respondent with

the Claimant and their practice in terms of approving annual leave regardless of whether the leave has been wholly accrued by that point in the leave year accords with standard employment practice. The fact that leave was approved is not determinative of whether the Claimant had accrued that leave by the termination of her employment.

36. The Claimant is not able to show that she is entitled to payment of any additional annual leave. Her contract of employment includes a clause enabling the Respondent to deduct any overpayment of leave from the Claimant's wages. Accordingly the deduction of a day's pay in respect of annual leave is not unlawful.
37. The Claimant's claim for holiday pay in respect of 7 July 2024 fails and is dismissed.

Pay for 19 and 20 July 2024

38. Both parties accept that the Claimant's employment was terminated on 19 July 2024. The Respondent did not make any payment to the Claimant in respect of 19 July 2024 and suggested that the Claimant did not do any worthwhile work that day. It is not disputed that she was in work for part of the day.
39. That said, the main issue for me is whether the Respondent was entitled to terminate the Claimant's contract without notice, or in other words, whether the Claimant committed a fundamental breach of her employment contract (or gross misconduct), such that she was not entitled to pay for the remainder of her notice period.
40. As I explained at the hearing, the test is not whether the Respondent had a reasonable belief in the Claimant having committed gross misconduct. If that were the test, the Respondent is likely to be found to have had a reasonable belief that the Claimant had instigated negative online reviews about the Respondent and/or Mr Stratton. However I have to consider whether the Claimant actually did, on the balance of probabilities, commit that gross misconduct.
41. It is agreed that the Claimant provided her friend Aaron with information that Aaron subsequently used to form the basis of negative reviews online. Had the Claimant written those reviews herself, or asked Aaron to write those reviews for her, that would be a fundamental breach of her contract of employment with the Respondent.
42. However, I have found as a fact that the Claimant did not know that Aaron was going to post the negative reviews and when she found out about them she asked him to take them down. Whilst I understand why the Respondent reached a different conclusion, particularly given that tensions were high in the meeting and communication broke down, I find that the Claimant did not commit a fundamental breach of her employment contract or gross misconduct on 18 or 19 July 2024 in relation to the posting of negative reviews online.
43. In this case the Claimant had already resigned. She was not paid in respect of two days' pay:

- 43.1. The Claimant was due to be paid for 19 July 2024, and the Respondent's failure to do so was an unlawful deduction from wages. The Claimant's claim for unlawful deductions from wages therefore succeeds.
  - 43.2. The Claimant was entitled to be paid in lieu of the remainder of her notice period, namely one day's pay on 22 July 2024. The Claimant's claim for wrongful dismissal (breach of contract) therefore succeeds.
  - 43.3. The Claimant is due 7.5 hours' pay in respect of each day, and therefore she is entitled to pay in respect of both of those days, which is agreed to be pay at a rate of £85.80 gross a day.
44. Taking into account the amount admitted by the Respondent to be owed to the Claimant (i.e. £497.64 gross), the total amount that the Respondent is ordered to pay the Claimant is £668.24. This is a gross amount and the Claimant shall be responsible for any tax and employee National Insurance due.

Approved by:  
**Employment Judge Youngs**  
13 May 2025

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Sent to Parties.  
4 June 2025

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