Case Number: 6010748/2024

THE EMPLOYMENT TRIBUNAL

Claimant: **Ms Sarah Wayman**

Respondent: **Super-Max Limited**

Heard at: London South Employment Tribunal

On: 3 June 2025

Before: Employment Judge A. Beale KC

Representation
Claimant: In Person
Respondent: Miss H. Murtaza (in-house Counsel)

JUDGMENT

The Claimant's claims for unauthorised deductions from wages, failure to pay accrued but untaken holiday pay and breach of contract (in respect of notice pay) succeed. The Respondent is ordered to pay to the Claimant the following net sums:

1. **The net sum of £41,286.67 in respect of arrears of wages.**

2. **The net sum of £3966.70 in respect of accrued holiday pay.**

3. **The net sum of £15,354.96 in respect of notice pay.**

WRITTEN REASONS

Introduction

1. Judgment was given orally at the hearing, but the Respondent requested written reasons, which are set out below.

2. The Claimant was employed by the Respondent, latterly as a Vice President, from 1 September 1998. She resigned on 14 August 2024 (in circumstances which, using legal terminology, she says amounted to a constructive dismissal) and her notice period expired on 6 November 2024. She claims unauthorised deductions from wages, notice pay and accrued holiday pay.

3. I was provided with a bundle of documents by the Claimant and a bundle of exhibits by the Respondent. The Claimant's bundle included her Schedule of Loss.

4. The Claimant represented herself at the hearing. She had not produced a witness statement in accordance with the Tribunal's order, because she had not understood that she needed to do so as the Claimant (although this was stated in the order). However, the Respondent's representative acceded to the Claimant's request to adopt her claim form as her witness evidence and agreed that she was in a position to cross-examine the Claimant on that information. I therefore heard oral evidence from the Claimant.

The Respondent's Witness Evidence

5. The Respondent sought to call two witnesses from the UAE, namely Mr Anindo Mukherji, former CEO of the Super-Max Group, and Mr Jitendra Hada, Head of Finance for Wesley International Limited. At the start of the hearing, I heard an application from the Respondent to take evidence from these witnesses by video, and alternatively, if that was refused, to postpone the hearing. I refused both applications and gave reasons orally at the hearing. When requesting these written reasons, the Respondent also requested that I include the reasons for refusing these applications, which are set out below accordingly (in italics). I have omitted some introductory points which repeat the information already given above.

6. *The Claimant's claim was submitted on 5 September 2024. Following an extension of time, a response form was submitted on 10 December 2024. A hearing was listed for 7 March 2025 which was intended to be the final hearing; however, the Respondent did not attend the hearing as it had not received proper notice, and the Claimant attended only after being contacted by the Tribunal. The hearing was converted to a case management hearing, and it appears that both the Claimant and the Respondent received the case management orders on 20 March 2025, as they were sent to the Respondent's current representative on that date by email. The case management order made it clear that the final hearing listed for 3 June 2025 would be in person at London South Employment Tribunal.*

7. *On 13 May 2025, the Respondent contacted the Tribunal to request that two witnesses be permitted to give evidence from abroad. The Respondent did not state where the witnesses were based. On 16 May 2025, Employment Judge Leith wrote to the Respondent stating that it needed to give more details of who would be attending from abroad, and its attention was drawn to the Presidential Guidance on Taking Oral Evidence by Video or Telephone from Persons Located Abroad, dated 17 January 2025.*

8. *The Respondent made an application on 29 May 2025 for permission for evidence to be given from abroad, explaining that the relevant witnesses were in the UAE. The Respondent confirmed that it had reviewed the Presidential Guidance and the FCDO webpage, which showed there was no agreement with UAE that witnesses had permission to give evidence in*

foreign courts or Tribunals from the UAE. It further confirmed that it had contacted the Foreign Process Section, but had been informed that it could take 3 months or more for a response to be obtained. The Respondent attached an affidavit from a UAE lawyer, Taher Abdeen Ibrahim (who did not attend the hearing), said to be a partner in the law firm Hadef & Partners which represents the shareholder of the Respondent. The affidavit sets out various assertions in relation to UAE law, principally that there is no express prohibition on giving evidence to courts abroad, and anecdotal evidence from Mr Ibrahim that he has given evidence by video from UAE to Australian proceedings, and is aware of another lawyer who has done the same in UK proceedings. He stated that he was not aware of permission being sought or granted in either case.

9. *On behalf of the Respondent, Miss Murtaza submitted that the evidence the witnesses could give was important to the case. She argued that the evidence from Mr Ibrahim demonstrated that there was no legal or diplomatic barrier to my hearing evidence from the UAE. She asked that video evidence be permitted. In the alternative, she made a postponement application.*

10. *In response, the Claimant said that she did not consider the evidence to be central to the case, as Mr Mukherji had left employment in 2023, before the period over which she was claiming monies, and Mr Hada had signed off the payments he was saying she made in abuse of power. She added that the hearing had already been postponed once and should not be postponed again*

11. *With regard to the giving of evidence by video link, I have reviewed the Presidential Guidance and the case of Agbabiaka (Evidence from Abroad, Nare Guidance) [2021] UKUT 286.*

12. *Agbabiaka clearly states, at paragraphs 12, 19 and 23 (as recorded in the Presidential Guidance):*

    "There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest. The potential damage includes harm to the interests of justice since, if a court or tribunal acts in such a way as to damage international relations with another State, this risks permission being refused in subsequent cases, where evidence needs to be taken from within that State. Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom, the question of whether it would be lawful to do so is a question of law for that country …

    In all cases, therefore, what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom's diplomatic relationship with the other country.

    … it is not for this (or any other) tribunal to form its own view of what may, or

may not, damage the United Kingdom's relations with a foreign State."

13. *The Presidential Guidance concludes at paragraph 20:*

"Where a party fails to demonstrate that there is no legal or diplomatic barrier to them calling oral evidence from abroad, the tribunal should not take that evidence. Following Agbabiaka and Raza, to do otherwise when the state in question has not given permission would risk damaging the United Kingdom's diplomatic relations with that state; such a risk would be contrary to the public interest and harmful to the interests of justice, even if the subsequent hearing would not necessarily be a nullity."

14. *The Respondent has not obtained permission to call evidence from the UAE through the Foreign Process Section. Further, I cannot conclude from Mr Ibrahim's (untested) affidavit that there is no legal or diplomatic barrier to calling evidence from the UAE. His evidence is (i) that there is no express legal barrier and (ii) that he and others have done this on occasion, he believes (although it is not clear from his evidence whether he has the requisite knowledge to make this assertion) without permission and without consequence. That anecdotal evidence from a single lawyer, who is in any case connected to the Respondent, cannot be enough to satisfy me, in the absence of written permission obtained through the normal process, that there is no legal, let alone diplomatic barrier to giving evidence. I therefore cannot give permission for video evidence to be heard from UAE.*

15. *Moving to the postponement application, I have to have regard to the overriding objective and the interests of justice in considering whether or not to grant the postponement requested.*

16. *I have taken into account the following points:*

(a) *The Claimant has not produced a witness statement for today's hearing as ordered, which might be an additional reason to postpone. However, the parties are agreed that this issue can be dealt with by adopting the ET1 form as the Claimant's evidence and cross-examining on it. Miss Murtaza agreed that she would not be prejudiced by this course of action.*

(b) *The hearing has already been postponed once, albeit, it appears due to lack of proper notification.*

(c) *The Respondent did not make enquiries about giving evidence from abroad in good time. Although the notice of hearing on 7 March 2025 was not received, this should have been done once the Respondent received notice of the second hearing (at the latest, on 20 March 2025). The Respondent's position is that it did not realise permission was needed – but it is not the Tribunal's responsibility to flag this to the Respondent. The Presidential Guidance clearly states, at paragraphs 26.1 - 2:*

26.1 Parties to Employment Tribunal proceedings in England and Wales who wish to call oral evidence from abroad – especially those who are professionally represented – must plan ahead and be organised, and not wait until the hearing is imminent. The first thing to check, by reference to

FCDO webpage, is whether the state has given standing permission. If it has not, parties must then make further enquiries of the state in question and/or the Foreign Process Section (which may be simpler if the state in question is a signatory to the Hague Convention), a process that may attract a consular fee.

26.2 Parties must understand that it is their responsibility to demonstrate that there is no legal or diplomatic barrier to the tribunal taking oral evidence from the nation state where that person is present. It is not the tribunal's responsibility to ascertain the position for them. That means they, not the tribunal, are responsible for making the necessary enquiries (including, where appropriate, seeking permission from the state). If parties delay in doing so without good reason, it may be likelier that the tribunal itself either refuses permission or sanctions them for causing a postponement.

(d) The Respondent has made no arrangements for its witnesses to attend the hearing, having understood from 22 May 2025 that permission was unlikely to be obtained from the UAE in time. The Respondent says it cannot afford this, but I have been provided with no evidence in support of this contention.

(e) I agree with the Claimant that the evidence of Mr Mukherji does not appear to be relevant, as he left the Respondent's employment prior to the period at issue in this case. In any event, the substantive points made in his statement can be put to the Claimant using documents in the Respondent's bundle. Mr Hada's evidence does appear more relevant, but it does not appear that much of it is disputed – the Claimant accepts, for example, that she was not present on the specific calls he references, and there are documents supporting this. It is not clear that the points on "abuse of power" included within Mr Hada's statement are relevant to the issues I have to determine.

(f) A further hearing could not be arranged until 1 October 2025, which is 4 months away.

(g) Postponing the hearing for a second time would entail further waste of the Tribunal's stretched resources.

17. *I accept there is some prejudice to the Respondent in not having its witnesses heard, but for the reasons given at sub-paragraph (e) above, I do not consider that prejudice to be as significant as claimed by the Respondent. There would be significant prejudice to the Claimant – and a further burden on the Tribunal – in postponing the determination of her claim yet again, particularly in circumstances where the Respondent has suggested that it is considering voluntary insolvency. Taking all the above factors into account, I refuse the application to postpone.*

18. *I am permitted to take into account written evidence from abroad. I will therefore read the Respondent's witness statements and give them such weight as I consider appropriate given that they are not tested.*

Submissions

19. I heard submissions from both parties, which I have recorded below where relevant to my findings.

The Issues

20. The issues to be determined are as set out in the case management order produced by EJ Musgrave-Cohen on 20 March 2025 and reproduced below. The Claimant did not seek to argue that the ACAS Disciplinary or Grievance Procedures applied, or for an uplift in her award, so I have omitted that issue.

Unauthorised deductions

19.1 Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

19.1.1 The Claimant says she has been underpaid a total of £44,148.54 net.

Holiday Pay (Working Time Regulations 1998)

19.2 Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when their employment ended?

19.2.1 The Claimant says she is owed 36 days accrued and unused holiday in the sum of £9,980.68 net.

Breach of Contract

19.3 What was the Claimant's notice period?

19.4 Was the Claimant paid for that notice period?

19.5 If not, did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

19.5.1 The Claimant says she is owed 12 weeks' notice pay in the sum of £11,921.36 net pay.

Remedy

19.6 How much should the Claimant be awarded?

Findings of Fact

21. The Respondent is the UK arm of a business which sells razorblades and related grooming products.

22. The Claimant was a long-standing employee of the Respondent who had worked her way up through the ranks, starting as a logistics manager until she was essentially running the European business as Vice President. She

gave evidence that she had been in this role for around 10 years, and had never had any concerns about her performance raised with her or any warnings. This evidence was not disputed. In her role as Vice President, the Claimant reported to Mr Mukherji.

23. The Claimant's contract (dating from 1998) states that her leave entitlement was 20 days plus 8 bank holidays. The Claimant's leave forms refer to an entitlement to 25 days, and the Claimant's evidence was that there was an increase in entitlement to 25 days plus bank holidays in around 2005. Based on the evidence of her leave forms, on which the Respondent also relied, I accept that the Claimant's leave entitlement at the time of the termination of her employment was 25 days plus 8 bank holidays.

24. The Claimant's contract also states that she was not permitted to carry leave over to the following leave year; however, the Claimant's 2023 leave form refers to an agreement that a maximum of ten 2023 holiday days could be carried over into 2024. The Respondent did not dispute that the Claimant was entitled to carry over ten holiday days.

25. In September 2022, Super-Max Personal Care Private Ltd, which was the Indian company that produced the razorblades sold by the Respondent, shut down. I understand from the written evidence of Mr Mukherji, which I accept in this respect as consistent with the Claimant's, that this arose due to prolonged shut-downs over the Covid period. This gave rise to significant supply issues for the Respondent and other global subsidiaries.

26. The Claimant explained, and I accept, that after this event, her role principally involved liquidating the stock she had in the UK warehouse over the course of around a year, managing suppliers and trying to maintain the business's relationship with current customers. There were initially discussions about getting the plant in India up and running again, and then after around 6 – 8 months, there was some discussion about getting a third party involved. I accept the Claimant's evidence that there was limited communication with employees about how the business was going to operate into the future. I also accept the Claimant's evidence that, when Mr Mukherji left the group's employment in November 2023, she was not given a new line manager to whom she should report.

27. It was put to the Claimant that over this period (prior to January 2024) she did not engage with producing a business plan for 2023/24, which was part of her job description. The Claimant accepted that this was part of her role, but said that she was not in a position to produce a business plan because there was no product to sell. She said the usual routine was that a pack would be sent out by the sales team for each of the global businesses to populate, and there would be an iterative process to produce a business plan for each territory. The pack was never sent out in 2023. The Claimant's evidence on this latter point was not challenged and I accept it.

28. In November 2023, the Claimant and the sole other UK employee at that time (who was Miss Murtaza) had not been paid their wages for August 2023 and subsequent months. The Claimant's evidence was that funding was coming

through for payments to staff and creditors in dribs and drabs. On 27 November 2023, when some funding had become available, the Claimant asked Mr Hada to release three payments, one for goods, one for the Claimant's August 2023 salary and one for a courier. The Claimant did not request that any sums be released in respect of Miss Murtaza's wages. This request was approved by Mr Hada. I understand that Miss Murtaza's wages were paid at a later date. Mr Hada states in his witness statement that "to his absolute surprise" he later learned that the payment in respect of wages was made by the Claimant to herself and no further allocations were made to other employees in that month. I am not sure why Mr Hada was surprised by this, as the email from the Claimant very clearly states to whom the payments would be made, and does not mention Ms Murtaza.

29. There is no dispute that the last month for which the Claimant was paid was December 2023.

30. The Respondent argued that, from January 2024, onwards, the Claimant has worked only a maximum of 3 hours per day for a total of 25 days. The ET3 asserts that the Claimant stopped responding to emails and appearing on sales calls, and in short, stopped working for the Respondent significantly before her formal resignation.

31. In support of this, the Respondent relies on various emails in its exhibit bundle. In particular, the Respondent has provided a small number of emails from 31 July 2024 onwards chasing for a response from the Claimant, about which she was not asked in cross-examination. I was also referred to some emails about weekly billing calls, which show that the Claimant declined a call on or around 12 February 2024, 31 March 2024 and 20 May 2024. On 22 January and 4 June 2024, she sought to reschedule the calls. I have read Mr Hada's witness statement, where he says that the Claimant "repeatedly" declined or sought to reschedule the weekly calls. He gives the above instances as examples.

32. 1 January 2024 – 14 August 2024 is a period of over 32 weeks, so over this period there would have been around 32 weekly calls. If the Claimant had indeed declined to attend these calls "repeatedly", I would expect to see more than three examples of this. The Claimant's evidence was that she attended the other weekly billing calls and, as this was not effectively challenged, I accept it.

33. I further accept the Claimant's evidence that her work from September 2022 was more about trying to hold on to current customers, so that the UK business could start selling again when the Indian company began producing again, than about making sales. She explained that although production of double-edged razor blades re-started at some point before her resignation, this was of little assistance in the UK market, which was primarily for single-edged blades. She said she did have billing calls with Mr Hada, which primarily consisted of checking what stock she had and whether there were customers remaining, rather than planning for the future. She responded to requests when they were raised with her. She continued to make requests for annual leave (which she took in February and July 2024), and otherwise

remained available for, and did, work.

34. Miss Murtaza agreed that no disciplinary action had been taken against the Claimant for not carrying out her agreed role (or for any other reason) over this period.

35. Eventually, the Claimant was told that no more money was going to be put into the UK business, and she felt unable to continue without pay. At that point, she resigned, on the basis of the Respondent's failure to pay her, as is stated in her resignation email.

36. There was no response to the Claimant's resignation email, other than an email from Miss Murtaza saying she would look into the issues raised (around unpaid wages and holiday pay). The Claimant was not asked to work her notice. The Respondent has supplied two emails to the Claimant asking her about a VAT issue and an approval of a payment dating from after 14 August 2024, to which the Claimant did not respond.

The Law

Unauthorised Deductions from Wages

37. Section 13(1) ERA 1996 provides that 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.

38. Section 13(3) ERA 1996 provides that 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 as a deduction made by the employer from the worker's wages on that occasion.

The Working Time Regulations 1998

39. The Working Time Regulations 1998 ("WTR 1998") provide for the entitlement to annual leave in regulations 13 and 13A and for payment for any accrued but untaken annual leave on termination of employment under regulation 14.

40. Regulation 13(16) WTR 1998 provides (inter alia) that, where in any leave year an employer fails to (c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost, sub-paragraph 17 will apply. Reg 13(17) provides that, where that sub-paragraph applies, the worker is entitled to carry forward any leave to which they are entitled under this regulation which is untaken in that leave year or has been taken but not paid in accordance with regulation 16.

41. Regulation 13A(7) provides that a relevant agreement may provide for any leave to which a worker is entitled under this regulation (i.e. additional annual

leave under reg 13A(1) and (2)) to be carried forward into the leave year immediately following the leave year in respect of which it is due.

42. Regulation 14(6) provides that, where a worker's employment is terminated, and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under regulation 13(17) or regulation 13A(7), the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave.

Breach of Contract

43. An employee will be regarded as constructively dismissed where an employer commits a repudiatory breach of contract, i.e. a breach of contract that is of sufficient gravity to entitle the employee to treat him or herself as dismissed, and the employee resigns in response to that breach. There is no requirement in such circumstances for the employee to give or work his or her notice, as they have in effect been dismissed by the employer.

44. A failure to pay notice pay in circumstances where an employee has been constructively dismissed will constitute a wrongful dismissal and a breach of contract.

45. An employer is entitled summarily to dismiss an employee (and thus to withhold notice pay) for an act of gross misconduct, even if the employer did not rely on that act of misconduct at the time of the dismissal. However, if the employer already knew of the misconduct in question and continued the employment thereafter, he/she may be taken to have waived his or her right to dismiss the employee on that ground (*Boston Deep Sea Fishing Co v Ansell* (1888) 39 Ch.D. 339).

Conclusions

Unauthorised deductions from wages

46. There is no dispute between the parties that the Claimant was not paid her salary from 1 January 2024 until 14 August 2024.

47. Although the Respondent argues that the Claimant did not work her full hours over this period, it has produced little evidence in support of this statement. As set out above, it has produced evidence of the Claimant declining only three of 32 weekly meetings over that period, and seeking to re-arrange two.

48. I accept that the Claimant continued to carry out what work she could over this period, and that she remained available to the Respondent at all times save for when she took holiday, with the Respondent's agreement.

49. Further, the Respondent did not take any disciplinary action against the Claimant for what it now asserts was a wholesale dereliction of duty, nor did it seek to vary her contract.

50. In such circumstances, the Claimant is due her agreed contractual wages for

the entire period.

51. There is no dispute that the Claimant's net monthly pay was £5,474.81 up to March 2024, then £5,544.83 from April 2024 onwards. The weekly equivalents are £1,263.42 and £1,279.58. The net sums owing to the Claimant are therefore:

    1 January 2024 – 31 March 2024: £5474.81 x 3 = £16,424.43
    1 April 2024 – 14 August 2024 (19.43 weeks) - £1279.58 x 19.43 = £24,862.24

    Total: £41,286.67 [please note, this total is slightly different from that given at the hearing as the calculation was not correct]

Holiday pay

52. I accepted the Claimant's evidence, which was not disputed by Miss Murtaza, that it was agreed that she should carry over 10 days of holiday from the previous year. As set out above, the Claimant's contract of employment entitled her to payment in respect of accrued but untaken holiday and she is also entitled to payment in respect of her statutory leave entitlement under the provisions of the Working Time Regulations 1998 recited above.

53. I likewise accepted that the Claimant had taken 10 days of holiday in 2024, the pay for which is included in my calculation of unpaid wages above.

54. That leaves 25 days of holiday entitlement for the full year, other than bank holidays, which I understand the Claimant was not required to work, so has already taken and been paid for.

55. The proportion of the leave year which had elapsed by 14 August 2024 was 0.62, so the number of days of accrued but untaken leave at that point was 15.5, or 3.1 weeks of holiday.

56. I have calculated the sum owed using the net weekly salary of £1,279.58, which produces a total of £3,966.70

Breach of Contract/Wrongful Dismissal

57. in failing to pay the Claimant over a period of almost 8 months, I find that the Respondent was in fundamental and repudiatory breach of her contract. There was no suggestion that the outstanding amounts would be paid, and indeed the Claimant's evidence, which I accept, was that she was told that no further money would be put into the UK business. The Claimant was entitled to accept that breach of contract by resigning. In such circumstances there was no obligation on her to give or work her notice. The Respondent has constructively dismissed the Claimant without notice and she is therefore

entitled to her notice pay.

58. The Respondent argued that the Claimant should not receive her notice pay because she did not work her notice. For the reasons given above, that argument must fail.

59. Although foreshadowed in Mr Hada's witness statement and in some of the questioning of the Claimant, it was not specifically argued that the Claimant had committed a repudiatory breach of contract by paying herself but not Miss Murtaza in November 2023. If that was the Respondent's case, I consider it must fail for two reasons. Firstly, I do not consider that the conduct relied upon can be said to amount to a repudiatory breach. The Claimant did not, as the Respondent alleges "abuse her position" by paying herself from the monies available. On the contrary, she explained clearly to Mr Hada what she proposed to use the money for, and Mr Hada approved that course of action. It might be argued that it would have been morally right to split the money between herself and Miss Murtaza, but the Claimant did not abuse her power or act in an underhand way. Secondly, it appears from Mr Hada's witness statement that he was aware of the fact that the Claimant had paid herself but not Miss Murtaza from the monies prior to her resignation, but chose not to take any action in respect of this. In such circumstances, I find that even if there was a repudiatory breach of contract by the Claimant, that breach was waived by the Respondent.

60. The Claimant is therefore entitled to her notice pay, which both under her contract and by statute, was 12 weeks' pay. This totals, on a net basis, 12 x £1,279.58 = £15,354.96.

61. These are the net sums to be paid by the Respondent to the Claimant. Any income tax payable on these sums will have to be accounted for in addition by the Respondent.

Employment Judge A. Beale KC
Date: 4th June 2025

Judgment sent to the parties
Date: 11th June 2025

For the Tribunal Office