EMPLOYMENT TRIBUNALS

Claimant: Mrs P Gascoigne

Respondent: Agincare (Somerset) Limited

Heard at: Southampton (by CVP) **On:** 9 May 2025

Before: Employment Judge Yallop

REPRESENTATION:

Claimant: In person
Respondent: Miss A Crabb (Head of HR)

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is well-founded. The Respondent made unauthorised deductions from the Claimant's wages in respect of her salary on 30 April and 2 May 2024.

2. The Respondent shall pay the Claimant **£125.84**, which is the gross sum deducted. The Claimant is responsible for the payment of any tax or National Insurance.

Redundancy Payment

3. The Claimant remains employed by the Respondent, so is not entitled to a redundancy payment.

4. The Claimant’s complaint under section 163 Employment Rights Act 1996 is therefore dismissed.

Holiday Pay

5. The complaint in respect of holiday pay is not well-founded and is dismissed.

Failure to provide a written statement of employment particulars

6. When the proceedings were begun the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. It is just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the Respondent shall therefore pay the Claimant **£503.36**.

REASONS

Introduction

1. The Claimant commenced employment with the Respondent on 29 April 2024, when the Respondent purchased the Critchell Court Residential Care Home (the Home) at which she worked, and her employment transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006. At the time of the transfer, the Claimant had 21 years' continuous service, having commenced employment on 5 October 2002.

2. Having taken over the Home, the Respondent reviewed the hours worked by its staff on zero hours contracts, which it considered to include the Claimant. The Respondent decided that the staffing levels at the Home were too high, so it informed those members of staff that fewer hours would be available whilst it increased the number of residents.

3. The Claimant's last day working for the Respondent was 25 April 2024. She asserted that she was contracted to work 11 hours' a week and had not agreed to being on a zero hours' contract. She sought a redundancy payment, holiday pay, arrears of pay and compensation in respect of the impact she said the Respondent's conduct had had on her mental health.

4. The Respondent defended the claim, arguing that the Claimant was on a zero hours' contract and was not entitled to a redundancy payment as she remained employed.

5. I conducted a hearing on 9 May 2025 to determine the Claimant's claim.

Issues

6. I agreed with the parties that the issues I needed to determine, were as follows:

Termination of employment

a) Was the Claimant's employment terminated?
b) If so, how and when?

Redundancy payment

c) If the Claimant was dismissed, what was the reason for her dismissal?
d) Was she entitled to receive a redundancy payment?
e) If so, what payment was she entitled to receive?

Holiday pay (Working Time Regulations 1998)

f) Did the Respondent fail to pay the Claimant for annual leave she had accrued but not taken when her employment ended? **OR**
g) If the Claimant remains employed, did the Respondent fail to pay the Claimant in accordance with regulation 16(1) of the Working Time Regulations 1998?
h) If so, what compensation should the Claimant receive?

Wages

i) Did the Respondent make unauthorised deductions from the Claimant's wages in respect of her salary, and if so how much was deducted?

Particulars of employment

j) When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars, or of a change to those particulars?
k) If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.
l) Would it be just and equitable to award four weeks' pay?

7. The Claimant stated in her claim form that she was seeking compensation for the impact of the Respondent's actions on her mental health. I explained that the complaints I had outlined did not enable such compensation to be awarded. I asked whether there were any complaints I had missed. She confirmed that she was not bringing any complaints aside from those I had already listed.

Findings of Fact

8. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.

9. Before being employed by the Respondent, the Claimant was employed by Somerset Care Limited to work at the Emma Shephard Day Club. She worked 11 hours a week, with a regular pattern, every Tuesday and Thursday. When the Covid-19 pandemic caused the Day Club to close, the Claimant was transferred to a different role within Somerset Care's business, becoming an activity organiser at the Home. The Claimant worked at the Home from 7 April 2020,

doing the same hours and receiving the same pay as she had when she had worked at the Day Club.

10. The arrangement under which the Claimant initially worked for the Home was temporary, with the Day Club reimbursing the Home for the cost of the Claimant's wages. However, when the Day Club reopened following the lockdown, it did so on reduced hours and there were no hours available for the Claimant. At that point, the manager of the Day Club requested that the Home took the Claimant on permanently, and the Home agreed.

11. Nichola Read (Registered Manager) worked at the Home when the Claimant moved over from the Day Club in April 2020, but as she was a shift supervisor at that time, she was not involved in management discussions about the basis on which the Claimant transferred. However, Miss Read confirmed that for 4 years from April 2020, the Claimant worked at the Home doing the same hours on Tuesdays and Thursdays, unless she wanted the day off.

12. Miss Read said that the Claimant was put on the Home's rota automatically because she always did the same hours and needed to be on the rota to get paid, but the Claimant could ask to be taken off the rota. When Miss Read was asked what happened with other staff members, she said that zero hours staff would provide their availability for the rota and be allocated shifts, or they would select from the shifts that were available, depending on their role. She explained that employees with contracted hours were already on the system, so did not need to be put onto the rota to be paid. If contracted hours employees wanted to take time off, they would have to complete a permission slip. She said that the Claimant never completed a slip, as being a zero hours employee, she did not need permission to take time off. The Claimant replied that she was never told to complete a permission slip, but that she always gave notice when she was going to miss a shift because she was going on holiday. Miss Read agreed that the Claimant did give notice when she would not be available for her regular shifts.

13. Miss Read was unable to say whether the Claimant was on a zero hours' contract at the Day Club, or whether the Claimant's contractual position had changed when she moved to the Home.

14. On 29 April 2024, the Respondent purchased the Home from Somerset Care Limited and the Claimant's employment transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Before the purchase, the Home had been failing, and it was under an embargo with the Local Authority, meaning it could not take on new residents. After the Respondent purchased the Home, it undertook a review of resident numbers and needs and determined that the Home was overstaffed. The Respondent therefore informed those members of staff on zero hours' contracts that until the embargo was lifted and resident numbers increased, there would be fewer hours available to them. The Employee Liability Information provided to the Respondent by Somerset Care Limited had indicated that the Claimant was on a

zero hours' contract. The Respondent therefore included the Claimant in its communications about the reduction in hours.

15. On 24 April 2024, the Claimant was informed by telephone that she was not needed to work on Tuesday 30 April 2024. Based on the Claimant's usual working pattern, 30 April was the first shift the Claimant would have worked after the Home transferred to the Respondent. The Claimant worked as usual on 25 April 2024, and spoke to the Deputy Manager of the Home about her shifts for the following week. She was told to look on the rota. The Claimant did as instructed, and found that her name was on the rota for 2 May 2024. However, on 1 May 2024, she was informed by telephone that she was not needed.

16. The Claimant raised her concern about this with Anna Ryan, HR Advisor for the Respondent. The Claimant explained that she had been told she was no longer required to work because she had a zero hours' contract, but said that she had not been told her contract had changed to zero hours. She also made a subject access request on 9 May 2024 to obtain her employment documentation.

17. As a result of the correspondence from the Claimant, Amy Crabb (Head of HR for the Respondent) contacted the Home on 16 May 2024 to ask for the Claimant's contract and any letters of variation. Miss Read replied that the Home only had the file the Day Club had provided when the Claimant had moved over. Miss Read was not able to provide Miss Crabb with a copy of the Claimant's contract of employment. With regard to the Claimant's hours, Miss Read said:

> 'The manager previous to myself just let her work the days she had always worked at the Day Centre and when I wanted to drop that as it wasn't required Somerset Care's HR wouldn't allow it as she had always worked those hours, despite being zero hour.'

18. On 24 June 2924, Miss Crabb provided the Claimant with the documents the Respondent had been able to obtain regarding her employment. This included:

    - a letter dated 5 March 2024 entitled: 'Addendum to Contract – Relief Activities Co-ordinator', confirming a change in the Claimant's pay following an agreement with UNISON. The letter states that the Claimant would be paid in accordance with Pay Schedule 901 (which was not in the hearing bundle) and that her remaining terms and conditions of employment would be unchanged; and

    - a letter dated 26 January 2005, in which the Claimant resigned from a role at the Home, but stated she would like to continue working as relief.

19. At the hearing, Miss Crabb said that she believed it was the Claimant's resignation in 2005 that had changed her relationship with Somerset Care Limited. When the Claimant was asked about the resignation letter, she explained that she had previously worked contracted hours at the Home, but had

left that job for another role with contracted hours within Somerset Care's business. She said that in her resignation letter, she had offered to continue to work for the Home on an ad hoc basis, i.e. doing relief work in her spare time. I accept the Claimant's explanation. I found the Claimant to be an honest and reliable witness, and there was no-one else in attendance at the hearing who was able to give evidence about the letter and the circumstances in which it was written. Miss Crabb's suggestion was supposition, and I found the Claimant's explanation to be credible.

20. Miss Crabb also asked the Claimant about the fact that the addendum refers to the Claimant being a 'Relief Activities Co-ordinator'. The Claimant said that she did not worry about the reference to relief because the addendum only related to her pay and was nothing to do with her contracted hours.

21. The Claimant lodged her claim with the Tribunal on 26 June 2024.

22. At some time during the summer of 2024, Miss Read recalls that the Deputy Manager at the Home telephoned the Claimant to request that she completed some mandatory training which had to be done by 1 September. The Claimant said she was busy and would call back, but she did not. Miss Read could not remember any contact after that between the staff at the Home and the Claimant.

23. On 12 August 2024, the Claimant emailed Miss Crabb saying that the documents the Respondent had provided in response to her subject access request did not contain any evidence of why or when she was put on a zero hours' contract. She said that she had received two calls from the Respondent about work at the Home, but she had not been able to speak on the first occasion, or to answer the second call. She stated that she had not been given a contract for zero hours or had any consultation about it.

24. Miss Crabb replied to the Claimant's email the same day, stating that she believed the Respondent had no case to answer, but that she was happy to arrange a conversation with the Claimant and Miss Read to discuss a way forward. The Claimant did not contact Miss Crabb again until 31 October 2024, when she asked about her contractual documentation. Miss Crabb replied that she was unable to comment, as there was a tribunal claim ongoing.

25. Miss Crabb said that the Home's zero hours staff were only unable to work for a short period whilst resident numbers were increased and they are now all back at work. She said that in hindsight, the Respondent should have used mediation to support the Claimant back to work. However, the Respondent decided not to do anything further pending the outcome of the tribunal proceedings.

26. Miss Crabb confirmed in her oral evidence that the Respondent had been unable to obtain a copy of the Claimant's employment contract. She said that she understood the Day Club had had one, but it had never provided a copy to the Home. The Claimant agreed that she used to have a written contract, but said

she had no idea where it was now. I therefore find that at some point historically the Claimant was issued with a written contract of employment by Somerset Care Limited, but her written contract was not updated when her place of work changed to the Home, or at any point thereafter.

27. In relation to her contractual terms, the Claimant said that at the Day Club she had contracted hours, not a zero hours' contract, and had worked 11 hours a week. At the start of the lockdown, she had been told that the Day Club would not be opening for the foreseeable future, so Somerset Care would look for another role for her. The Claimant had suggested she might be able to work at the Home, as she had worked there in the past. She said the managers arranged this, and she was told she could work at the Home doing the same hours. No-one said anything to her about any of her other terms of employment. She was not aware that the Home was being reimbursed for her wages, or that a decision was later made that she would remain at the Home permanently.

28. Having carefully considered the evidence, I find that the Claimant did not at any relevant point have a zero hours contract. I accept the Claimant's evidence that when she worked at the Day Club, she was contracted to work a regular pattern of 11 hours a week on Tuesdays and Thursdays, and that no changes to this arrangement were discussed with her, either in April 2020, or when she was transferred permanently to the Home. There is no written contract to show that the Claimant had a zero hours arrangement, and no evidence from the Respondent as to the terms that were agreed with her when she was working at the Day Club or when she transferred temporarily and then permanently to the Home. Although Somerset Care Limited appear to have considered the Claimant to be a zero hours employee at the time they sold the Home to the Respondent - and noted that in the Employee Liability Information they provided - the Home did not treat the Claimant in the same way as other zero hours workers, as it added her to the rota every week for the same two shifts without any discussion with her. Miss Read also said that HR at Somerset Care would not allow her to reduce the Claimant's hours, which suggests HR believed the Claimant was entitled to work her regular shifts. Although the addendum signed by the Claimant in March 2024 uses the word 'relief' in her job title, that does not evidence that the Claimant was a relief (i.e. zero hours) worker. The addendum was offered to the Claimant only to confirm a rise in her pay, so the fact that the word 'relief' was used as part of the letter title, and that was not challenged by the Claimant, is not compelling.

29. When asked how her employment had come to an end, the Claimant was clear that she was still employed by the Respondent. The Respondent agrees that the Claimant remains their employee. Although the Claimant's employment is continuing, I find that she has not made herself available for work since her shift was cancelled on 2 May 2024, as she has not followed the process the

Respondent put in place for arranging shifts, or completed her mandatory training. She has not done any work for the Respondent since 25 April 2024.

30. In relation to holiday pay, Miss Crabb explained that the Claimant was entitled to 28 days paid leave, pro rata. She explained that the Claimant could submit a claim for holiday pay, which would be paid on the basis of the previous 52 weeks worked. However, Miss Crabb was unable to confirm any specifics about what the Claimant may currently be owed. Miss Read was also unable to provide any information about whether the Claimant was owed any holiday, as she said that information does not show up on her rotas. She confirmed that the holiday year for staff at the Home runs from April to March. The Claimant was also unaware of whether she is owed any holiday and was unable to provide any information to substantiate her claim.

31. When asked about her schedule of loss, the Claimant said she had not known how to work it out, so the figures she had given do not reflect her actual losses. She explained that she had taken a figure from a payslip to draft her schedule of loss, but it might not be correct. She said she had just claimed loss of earnings until 14 June 2024 on the basis that seemed fair, and then compensation for being let down by the Respondent.

32. The gross figure for pay on the Claimant's ET1 (which the Respondent confirmed on the ET3 was correct) is £420.21 per month. This translates to £8.82 per hour, calculated as follows:

- £420.21 x 12 = £5,042.52 a year;
- £5,042.52 divided by 52 weeks = £96.97 a week;
- £96.97 divided by 11 hours a week = £8.82 per hour.

33. The pay figure used on the Claimant's schedule of loss is £62.92 a day, which gives an hourly rate of £11.44, calculated as follows:

- £62.92 x 2 = £125.84 a week;
- £125.84 divided by 11 hours = 11.44 per hour

34. As £11.44 was the figure for the national minimum wage in 2024 for employees 21 years' old and over, I prefer the figure in the Claimant's schedule of loss to that provided in her ET1. I therefore find that the Claimant was paid £11.44 gross per hour, which equates to £69.92 gross a day and £125.84 gross a week.

Relevant law and conclusions – redundancy payment

35. As both parties agree that the Claimant remains employed by the Respondent, she has not been dismissed by reason of redundancy. I therefore conclude under

section 163 Employment Rights Act 1996 (ERA) that the Claimant is not entitled to a redundancy payment.

Relevant law and conclusions – wages

36. Section 13 ERA provides that an employer shall not make a deduction from the 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.

37. 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.

38. I have found that the Claimant was contracted to work 11 hours a week, with shifts on Tuesdays and Thursdays. At common law, an employee who offers her services to her employer is entitled to be paid unless a specific term of the contract gives the employer the right to withhold payment (**Beveridge v KLM UK Ltd 2000 IRLR 765 EAT**). In this case, the Respondent did not pay the Claimant for any shifts after 25 April 2024, as it wrongly believed she was on a zero hours' contract. There is no evidence to suggest that there was anything in the Claimant's true contract that entitled the Respondent to cease paying her. I therefore conclude that the Claimant was entitled to be paid when her shifts were cancelled by the Respondent.

39. An employee, however, has no right to be paid for any period during which she refuses to work. Withholding wages in such a situation does not constitute an unlawful deduction from wages under section 13 ERA, as the Act only protects sums that are properly payable. Although the Claimant remains employed, she has not made herself available to work for the Respondent since her shift on 2 May 2024 was cancelled. There are therefore only 2 shifts for which the Respondent ought to have paid the Claimant: her shift on Tuesday 30 April 2024 and her shift on Thursday 2 May 2024. The total amount of the unauthorised deductions in respect of those two shifts was £125.84.

Relevant law and conclusions – holiday

40. The parties agree that the Claimant's employment is continuing, and there was no evidence before the Tribunal that the Respondent had failed to pay the Claimant in accordance with regulation 16(1) of the Working Time Regulations

1998. The Claimant's complaint in respect of holiday pay is therefore not well-founded.

Relevant law and conclusions – Failure to provide a written statement of employment particulars

41. Where an employee has successfully brought one of the substantive claims listed in Schedule 5 to the Employment Act 2002 - which includes a claim for unauthorised deductions from wages - and, at the time the claim was brought, the employer was in breach of its duties under section 1(1) or section 4(1) of ERA, the employee may be eligible under s38 Employment Act 2002 for an award in respect of the failure to provide employment particulars.

42. I have found that the Claimant historically had a written contract of employment with Somerset Care Limited, but that contract was not updated when she moved from the Day Club to the Home, or at any point thereafter. In accordance with s4(1) ERA, the Claimant was entitled to a written statement containing particulars of the changes to her employment that resulted from that transfer. Had Somerset Care Limited kept appropriate records of the Claimant's terms of employment, it would have been able to inform the Respondent of those terms when it provided Employee Liability Information, and/or when the Respondent queried the terms of the Claimant's employment.

43. When these proceedings began, the Claimant had not received a written statement of changes to her employment particulars. The Claimant was disadvantaged by the lack of clarity about her terms of employment, and given the significant size and resources of the Respondent and Somerset Care Limited, and the fact that no-one has been able to locate a copy the Claimant's historical contract, I consider it be just and equitable to award the Claimant four weeks' pay, calculated as follows: £125.84 a week x 4 = £503.36.

Employment Judge Yallop
Date: 11 May 2025

Judgment sent to the parties on
16 June 2025

Jade Lobb
For the Tribunal

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