



EMPLOYMENT TRIBUNALS

Claimant: Ms. S Ford
Respondent: The Vanity Clinic Ltd

Heard at: Reading Employment Tribunal
On: 28 April 2025
Before: Employment Judge Milner-Moore

Representation

Claimant: In person
Respondent: Did not attend

JUDGMENT having been sent to the parties on 27 May 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Claims and issues

1. This case came before me to consider complaints of unlawful deductions from wages, holiday pay and breach of contract in relation to the following matters:

Unlawful deduction from wages

2. The claimant alleges that

2.1. she was paid sums below the minimum wage during her employment with the respondent,

2.2. the respondent failed to pay her any salary whatsoever during the period 1 April 2024 to 10 May 2024,

Holiday pay

3. The claimant argues that she was entitled to, but was not paid for, 22.6 days accrued annual leave on the termination of her employment on 10 May 2024.

Breach of contract

4. The claimant says that she was constructively dismissed by the respondent on

10 May 2024 and did not receive the one months' notice which her contract entitled her to.

Proceeding in the respondent's absence.

5. The respondent did not attend the hearing. The hearing notice on file was addressed to the respondent's correct address, and there was no reason to think that the respondent was not properly on notice of today's hearing. I asked for checks to be made of the tribunal's inbox, and the respondent had not made any application to postpone the hearing or contacted the tribunal to explain its non-attendance. I tried to make arrangements for the clerk to contact the respondent, but the clerk was unable to do so because the respondent had provided neither an email address nor any contact telephone number on the ET3. The claimant confirmed that she was unable to say why the respondent was not present.
6. I considered in the circumstances that it was appropriate and consistent with the overriding objective for me to exercise the discretion available to me under Rule 47 of the Tribunal's Procedure Rules and to proceed in the respondent's absence. In doing so, I have regard to the factual matters asserted in the respondent's ET3 in determining the claim.

Preliminary matters

7. The claimant accepted that she did not have sufficient continuity of service to bring a complaint of unfair dismissal under section 98 of the Employment Rights Act 1996 and confirmed that she was not seeking to advance any such claim. During our initial discussion, the claimant made reference to wishing to recover sums that she had invested in the respondent's business. I explained to her that this complaint did not form part of her pleaded case that it would need to be the subject of an application to amend were it to proceed. The claimant confirmed that she did not wish to make such an application.

Evidence

8. The claimant gave evidence in support of her claim. She had produced a witness statement and documents referred to in that statement including a contract of employment; copy pay slips, copies of messages from Mr. Loveridge, a letter of suspension dated 8 April 2024, some exchanges of emails with the respondent's accountant, an announcement that a replacement manager had been appointed at the respondent business; and copies of Facebook postings showing photos of Mr. Loveridge pointing knife at a photo of the claimant on a birthday cake.
9. The claimant's evidence was that she had resigned as director in August 2023, and that it was then agreed between her and Mr. Loveridge that she would become an employed manager of the respondent business. The reason for this change was that the respondent business was not creating sufficient profit to enable the claimant to cover her outgoings and so it was agreed that the claimant would be appointed as an employee earning £760 a month from 5 August 2023 and would claim Universal Credit.
10. The respondent does not dispute that the claimant was employed. The

respondent's defence to the claims was that the claimant was a director of the respondent business until 5 August 2023 and that she was involved in setting her own rate of pay. The respondent's case was that the claimant only worked 15 hours a week and, if that were correct, then her hourly rate of pay would have been £14.10 per hour assuming that she was paid the amount set out in her contract.

11. The respondent maintained that the claimant was, during April 2024, under investigation for actions which could amount to gross misconduct including theft of money from the business, improper disposal of waste, improper handling of clinical products, performing treatments without proper qualifications, contacting staff and customers whilst suspended, and attempting to solicit customers.

12. In light of the evidence before me, I made the following factual findings.

Factual findings

13. The respondent is a limited company operating a business providing beauty treatments. It was established in or around 2022 with two directors, the claimant and Mr. Loveridge, who held equal shareholdings. From 5 August 2023, the claimant was employed by the respondent as a manager.

14. The claimant produced her contract of employment. The contract included the following provisions:

14.1. The claimant's employment began on 5 August 2023.

14.2. The claimant was obliged to work 40 hours a week (2,080 hours per annum or 173 hours per month) and worked 6 days a week.

14.3. The claimant's contract provided that she was paid £11,000 gross per annum. However, the claimant's evidence, which was consistent with the copy pay slips provided to me, was that she was actually paid £760 a month which equates to a slightly lower figure of £9,120 per annum.

14.4. The claimant was entitled to 30 days of annual leave including bank holidays under her contract.

14.5. The claimant was entitled to one receive one months' notice of termination.

15. I accepted the claimant's evidence that she worked at least 40 hours a week, as her contract required. The claimant was unable to produce any documentary evidence in support of this but says that had she been able to access the respondent's booking system this would have enabled her to evidence her hours of work. The respondent has not attended the hearing and has not provided any documentary evidence to support its case that the claimant worked only 15 hours a week. I considered it likely that the claimant worked 40 hours a week as she had said.

16. I found that, although the contract provided for a higher figure, in fact the

claimant was paid £760 per month. That was the figure which appeared on the claimant's pay slip of £760 per month equates to approximately £9,120 per annum.

17. The contract is quite clear that the claimant was entitled to 30 days annual leave including bank holidays and the claimant says that she took very little annual leave during her employment and was owed 22.6 days annual leave as accrued leave on the termination of her employment. I accept her evidence in this respect.
18. The contract provides for one months' notice for employees with between six months and two years' service.
19. In 2023/2024 the relevant rate of minimum wage was £10.42 for all work conducted between 1 April 2023 and 31 March 2024. That rate increased from 1 April 2024 to £11.44 per hour.
20. In March 2024, the claimant's working relationship with Mr. Loveridge deteriorated. On 14 March 2024, Mr. Loveridge sent the claimant an offensive and threatening text message.
21. After 1 April 2024 the claimant received no further pay from the respondent.
22. On 8 April 2024, the respondent suspended the claimant for four weeks pending an investigation into alleged misconduct. The misconduct was detailed in a solicitor's letter and included allegations of fly-tipping, endangering customer health and safety, carrying out treatments without requisite qualifications, deleting customer data and misappropriation of funds.
23. There was no documentary evidence from the respondent in support of these allegations and no evidence of the respondent actually having completed any disciplinary investigation into such matters.
24. On 9 April 2024, Mr. Loveridge stated that he could no longer collaborate with the claimant and began to refer publicly to the appointment of a new manager.
25. On 15 April 2024, the respondent business announced on Facebook that the business was under new management.
26. On 27 April 2024, Mr. Loveridge posted images on Facebook which showed him celebrating his birthday by pointing a knife at a photo of the claimant which sat on top of his birthday cake.
27. Although the claimant had been informed on 8 April 2025 that the investigation into her alleged misconduct was likely to be completed within four weeks that did not occur.
28. On 2 May 2024, the claimant was sent her pay slip for April by the respondent's accountant, advised that she could expect to be paid for April and that she would be contacted regarding the investigation and her ongoing employment. That was the last contact which the claimant received from the respondent. The claimant was not paid for April.
29. Although the claimant did not communicate her resignation to the respondent,

the claimant's evidence, which I accepted, was that by 10 May 2024 she had concluded that she could no longer return to work for the respondent and that she had considered herself to have been constructively dismissed from that date. A solicitor's letter was sent on the claimant's behalf on 13 May 2024 denying the alleged misconduct and referring to money owed to the claimant. The respondent did not reply to that letter.

Law

30. The right to bring a claim for unlawful deduction from wages arises under s.13 of the Employment Rights Act:

“13 Right not to suffer unauthorised deductions.

An employer shall not make a deduction from wages of a worker employed by him unless—

the deduction is required or authorised to be made by virtue of a statutory provision ...
or

the worker has previously signified in writing his agreement or consent to the making of the deduction.”

31. A deduction occurs 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.

32. When deciding what wages are properly payable to a worker, it is necessary to have regard to provisions of the National Minimum Wage Act 1998 and the associated Regulations, the National Minimum Wage Regulations 2015. A worker who receives less than the National Minimum Wage (NMW) is to be treated as having been subject to an unauthorised deduction from wages.

33. Section 49 of the National Minimum Wage Act provides that it is not permissible to contract out of the rights under the Act.

“49 Restrictions on contracting out.

Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports—

to exclude or limit the operation of any provision of this Act; or

to preclude a person from bringing proceedings under this Act before an employment tribunal.”

34. The details of the approach to be adopted calculating NMW are set out in the 2015 Regulations. It is necessary to identify whether a person is a salaried hours worker under regulation 21 of the Regulations (paid under contract for an ascertainable basic number of hours per year, paid an annual salary and no other payment for those hours and paid in equal monthly instalments). If so, the NMW is calculated in accordance with Regulation 7.

7. Calculation to determine whether the national minimum wage has been paid
A worker is to be treated as remunerated by the employer in a pay reference period at the hourly rate determined by the calculation—

R/H

where—

“R” is the remuneration in the pay reference period determined in accordance with Part 4;

“H” is the hours of work in the pay reference period determined in accordance with Part 5.

35. For an employee paid monthly, the pay reference period will be one month. NMW is therefore calculated by working out the remuneration paid in the pay reference period and then dividing this by the number of hours worked in the pay reference period. If that calculation results in a rate of pay which is less than the applicable NMW, then an unauthorised deduction from wages will have been made.
36. A constructive dismissal will occur where the employer acts in fundamental breach of contract. That can include not only a serious breach of the express terms of the contract but also of the implied terms of trust and confidence. A breach of the implied term of trust and confidence will be established where an employer has behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and respondent and where there is no reasonable or proper cause for the employer's actions (**Malik v BCCI**) .

Conclusions on liability

Unauthorised deduction from wages

37. I considered whether the respondent made unauthorised deductions from the claimant's wages and, if so, how much was deducted.
38. I began by considering whether the claimant was paid below the National Minimum Wage during her employment and, if so, by how much. I considered five questions:
- 38.1. Was the claimant a salaried worker?
 - 38.2. What were the hours of work performed by her in the pay reference period of one month? (H)
 - 38.3. What amount was she paid during that reference period? And
 - 38.4. What is the product of R divided by H and
 - 38.5. was it below the minimum wage at the relevant time?

39. I concluded that the claimant was a salaried worker within the definition set out

in the National Minimum Wage Regulations. She was paid under contract for an ascertainable basic number of hours per year, she was entitled to an annual salary for those basic hours, she had no other entitlement to payment for the basic hours, and she was paid in equal instalments every month.

40. The claimants worked 173 hours per month, and the claimant was paid £760 each month.
41. $R (\text{£}760) / H (173)$ generates an hourly rate of £4.19, well below the applicable minimum wage at the relevant time which was £10.42.
42. The claimant should have received £10.42 per hour for 173 hours per month, a monthly rate of pay of £1,802.66 and an annual salary of £21,632. For the 8-month period between 5 August 2023 and 10 May 2024, the claimant should have been paid £14,421.28.
43. The claimant was actually paid £6,080.00 and so an unlawful deduction from wages of £8,341 was made.
44. The respondent's defence to the complaint is that the claimant assented to this arrangement. However, under s.49 of the National Minimum Wage Act, it is not possible to agree to waive the right to be paid at the minimum wage, so this is not a defence that avails the respondent in this case.
45. The next matter which I had to consider was whether the respondent had failed to pay the claimant for the period of 1 April 2024 to 10 May 2024 and how much was due. I have found that the respondent did not pay the claimant for that period. The claimant was suspended at the time, but the contract contained no power to suspend without pay and so the claimant was entitled to be paid at a proper rate of pay during that period.

46. Holiday pay

47. I then considered whether the respondent had failed to pay the claimant for annual leave which she had accrued but not taken when employment ended. I concluded the claimant was contractually entitled to 30 days leave per year for the period August 2023 to May 2024, she had accrued entitlement to 25 days leave. The claimant's evidence, which I accepted, was that she took very little annual leave in the relevant period and that she was owed 22.6 days accrued annual leave.

Constructive dismissal breach of contract

48. Finally, I found that the claimant was constructively dismissed by the respondent in that the respondent had acted in breach of the implied term of mutual trust and confidence in a number of respects. The respondent had on 8 April 2024 accused the claimant of serious misconduct and had suspended her but had failed thereafter to investigate the allegations. The respondent had announced the appointment of a replacement for the claimant before its investigations had ever concluded. The respondent failed to pay the claimant at all during April and May 2024. In March and April 2024, the respondent's director sent the claimant offensive messages and posted offensive images on

Facebook. I considered that these are matters that were both calculated to, and likely to, damage the relationship of trust and confidence between employer and employee and that there was no reasonable and proper cause for the respondent's conduct. Even if the respondent considered that there was evidence that the claimant may have engaged in misconduct, the way in which the respondent conducted itself was unreasonable.

49. I considered that these matters amounted to a fundamental breach of contract which entitled the claimant to treat herself as having been constructively dismissed, which she did on 10 May 2023. Although the claimant never communicated that resignation to the respondent, I consider that she had resigned by conduct having decided by 10 May 2024 that she could no longer work for the respondent and then instructing solicitors to write to the respondent on her behalf.
50. I did not consider that the claimant had waived any breaches of contract or affirmed the contract. Although arguably the claimant could have resigned in response to Mr. Loveridge's conduct during April 2024, it was reasonable for the claimant to wait to see whether the investigation, which she was promised would take four weeks, would be concluded. However, once it became clear in early May 2024 that the respondent had not concluded its investigation and had not paid her for April, that was a final straw in response to which the claimant resigned.
51. The respondent constructively dismissed the claimant on 10 May 2024 and was therefore in breach of contract because the claimant was entitled to a contractual notice period of one month.

Remedy

Unauthorised deduction from wages

52. The claimant was underpaid by reference to the NMW in the period August 2023 to end March 2024. The claimant worked 173 hours per month. In the tax year 2023/2024, she should have received a rate of pay of £10.42 per hour, and been paid £1,802.66 per month. For the eight-month period from 5 August 2023 to 31 March 2024, the claimant should have received a total sum of £14,421.28. The claimant was actually paid £6,080.00 (£760 per month for 8 months). The Respondent therefore made an unlawful deduction from wages in the sum of £8,341 (£14,421 - £6,080).
53. The claimant was not paid at all between 1 April 2024 and 10 May 2024. She was then entitled to be paid at the rate of £11.44 per hour (the applicable rate of NMW at that time). She was therefore entitled to a monthly wage of £1,979.12 per month based. For the 40 days between 1 April 2024 and 10 May 2024 she is owed £2,573.

Annual leave

54. I have found that the claimant was entitled to 25 days annual leave for the period up to her dismissal. She had taken 2.4 days and was entitled to

compensation for 22.6 days accrued but untaken annual leave. The claimant's annual salary (adjusted for NMW) was £21,632. $\text{£21,632} \times 1/260$ generates a daily rate of pay of £83.36. £83.36 multiplied by 22.61 = £1,884.

Breach of contract

55. One month's notice at the appropriate rate of NMW amounts to £1,979.

Approved by:

Employment Judge Milner-Moore

6 July 2025

JUDGMENT SENT TO THE PARTIES ON

14 July 2025

FOR THE TRIBUNAL OFFICE