Case Number: 2217763/2024

EMPLOYMENT TRIBUNALS

Claimant: **Maridel Baltero**

Respondent: **Andrea Greystoke (deceased)**

Heard at: **London Central, in public by CVP**

On: **26 March 2025**

Before: **Employment Judge Watton**

Appearances
For the claimant: David Rommer, solicitor
For the respondent: No representative

RESERVED JUDGMENT

1. The claim for unfair dismissal is well-founded.

2. The claim for wrongful dismissal or breach of contract on the basis of failure to give the statutory minimum notice period is not well-founded and is dismissed.

3. The claim for breach of contract by unlawful deductions from wages from 13-16 November is well-founded.

4. The claim for redundancy pay is not well-founded and is dismissed.

5. The claim concerning written particulars of employment is dismissed on withdrawal.

6. The claim for failure to provide itemised pay statements is well-founded.

7. The claim for failure to provide written reasons for dismissal is well-founded.

8. The claim for breach of contract in respect of pension auto-enrolment is dismissed on withdrawal.

9. The successful claims will proceed to a remedy hearing, where any ACAS uplift will also be assessed. I have set separate directions for that hearing.

REASONS

Background

10. The Respondent sadly died after the issue of these proceedings and before the final hearing. The Respondent was not represented at the hearing and so I will set out the procedural history in full.

11. The Claimant was engaged as a housekeeper for the Respondent from 3 November 2013 to 16 November 2023. She worked 30 hours per week and was paid £488 gross per week.

12. The Claimant travelled to the Philippines on 10 October 2023 and her niece covered the Claimant's duties in her absence.

13. On 6 November 2023, while the Claimant was on holiday the Respondent messaged the Claimant stating *"Also that I am asking you to find another job. I am very fond of you but honestly you have not been doing a very good job the last few years. It is a big house. Especially at the moment when we have Aurelia and family living with us there is a lot of work. I shall give you 4 weeks pay as notice."* The Claimant responded to say the Claimant and Respondent would talk when the Respondent returned from holiday.

14. On 10 November 2023 the Claimant received a net payment of £1600 from the Respondent.

15. The Claimant returned to the UK on 11 November 2023. She reported for work on 13 November 2023 and completed her duties. She reported for work the following day as well but did not complete her work as she felt unwell. On 15 November she worked as normal but messaged the Respondent to say she could not work the next day. On 16 November 2023 the Respondent replied, in a message which included *"Please do not come tomorrow. You have seen our messages and received your final payment. I am grateful for what you have done in the past but there is no longer a job for you here."*

16. Acas early conciliation commenced on 25 January 2024 and the certificate was issued on 1 March 2024. The ET1 was filed in time, on 1 April 2024. On 23 April 2024 a final hearing was listed for 1 and 2 August 2024. The Respondent instructed Arch Law, who filed the ET3 and grounds of resistance on 23 May 2024. At box 6.1 Arch Law answered the question *Do you defend the claim?* by ticking the box 'Yes'. They then explained *"The claims are admitted save for the claim for pension arrears where the jurisdiction of the tribunal is contested. Please see particulars of ET3 attached."*

17. On or around 31 May 2024 the Respondent was taken ill and on 12 June 2024 she died. Arch Law promptly wrote to the Tribunal on 14 June 2024 to confirm this and asked for the final hearing to be postponed. The Claimant consented to that application and the hearing was vacated by order of EJ Klimov.

18. On 15 August 2024 the hearing was re-listed for 2 and 3 December 2024. On 22 November 2024 Arch Law wrote to the Tribunal seeking a further postponement on the basis that they had only recently been able to identify the executors of the Respondent's will. Arch Law said they needed time to take instructions to prepare for the final hearing and asked for at least six weeks from 2 December 2024 to do so. Again, the Claimant consented to the postponement application. EJ Adkin granted that application on 28 November 2024.

19. On 23 December 2024 the final hearing was listed for 25 and 26 March 2025. Notice to the Respondent was sent to Arch Law.

20. On 27 February 2025 the Tribunal asked for an agreed case management order from the parties and enquired whether they were ready for hearing. On 5 March 2025 Mr Rommer set out what the Claimant had done to prepare for the hearing and submitted that if there was nobody to defend the claim on behalf of the Respondent's estate, then default judgment should be entered in relation to liability only and the hearing should be converted to a remedy hearing.

21. On 11 March 2025 Arch Law emailed the Tribunal to confirm they were no longer instructed on behalf of the Respondent, and that correspondence for the estate should be sent to Mark Green and Andrew Greystoke. The same day, Mr Rommer wrote to Mr Green and Mr Greystoke enquiring whether a grant of representation had yet been issued and whether the estate would be represented at the hearing on 25 and 26 March.

22. On 12 March 2025 Andrew Greystoke emailed Mr Rommer (not copying anyone else), stating:

    "The estate is in my view insolvent and I understand that it will not be represented although it is nothing to do with me."

23. Later that same day Mark Green emailed Mr Rommer, copying Andrew Greystoke, reporting:

    "Grant of representation = not yet

    As far as I know, no one will be attending on the 25 & 26 March

    I can only report the estate has no funds."

24. On 21 March 2025 EJ Adkin converted the hearing to a three hour final hearing on 26 March 2025. He stated it was premature to enter default judgment. The Tribunal mistakenly sent that to the Respondent's personal email address, but Mr Rommer forwarded it to Mark Green and Andrew Greystoke on 24 March 2025.

25. The hearing was heard by CVP on 26 March 2025. The Claimant attended, represented by Mr Rommer. At the start of the hearing I asked Mr Rommer to confirm which claims were maintained

Legal framework: death of Respondent

26. I will address the claims brought by the Claimant below but it is first convenient to address the legal provisions governing the effect of the death of the Respondent on those claims. Most of the claims brought by the Claimant are under the Employment Rights Act 1996 (ERA 1996). Section 206(1) and (2) of the ERA state that:

> ***(1) Where an employer has died, any tribunal proceedings arising under any of the provisions of this Act to which this section applies may be defended by a personal representative of the deceased employer.***
>
> ***(2) This section and section 207 apply to—***
> ***(a) Part I, so far as it relates to itemised pay statements,***
> ***(b) Part III,***
> ***(c) Part V,***
> ***(d) Part VI, apart from sections 58 to 60,***
> ***(e) Parts VII and VIII,***
> ***(ea) Part 8B,***
> ***(f) in Part IX, sections 92 and 93, and***
> ***(g) Parts X to XII.***

27. If a claim is brought under ERA 1996 and s206(1) of that Act does not apply, then the claim cannot continue.

28. The position in relation to contract claims is different. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 states at section 9(1):

> ***Where proceedings in respect of a contract claim have been brought before an employment tribunal and an employee or employer party to them dies before their conclusion, the proceedings shall not abate by reason of the death and the tribunal may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon, order the personal representatives of the deceased party, or other persons whom the tribunal considers appropriate, to be made parties and the proceedings to be carried on as if they had been substituted for the deceased party.***

The claims and issues

29. The claims on the ET1 were:

- Unfair dismissal pursuant to s94 and s98 of the ERA 1996 in that there was no potentially fair reason for dismissal, no procedure was followed and the decision to dismiss was in all the relevant circumstances unreasonable.

30. This claim **can** proceed because it is made under Part X of the Act.

    - Wrongful dismissal/breach of contract on the basis that the Claimant was not given the 10 weeks' notice she was entitled to by contract pursuant to s86 ERA 1996.

31. This claim **cannot** proceed under Part IX of the Act. The claim could be pursued under breach of contract alone, but not in these circumstances, where the Claimant has not pleaded that there was any other applicable contractual notice period. Therefore, the claim must fail. Mr Rommer was realistic about the prospects of success of this claim but said at the hearing he would prefer not to formally withdraw it.

    - Unlawful deductions from wages/breach of contract: the Respondent made unlawful deductions from the Claimant's wages contrary to s13 ERA 1996 and/or breached her contract in that it failed to pay her wages in respect of the period from 13 – 16 November 2023.

32. This claim **cannot** proceed under Part IX of the Act. It **can** proceed as a breach of contract claim.

    - In the event that the principal reason for the Claimant's dismissal is found to be redundancy (and if not awarded a basic award for unfair dismissal) the Claimant claims a Statutory Redundancy Payment pursuant to s135 ERA 1996.

33. This claim **can** proceed because it is made under Part XI of the Act.

    - Failure to provide written particulars of employment (s1 ERA 1996 and s38 Employment Act 2002);

34. This claim **cannot** proceed because it is made under Part I of the Act and does not relate to itemised pay statements. In any event, Mr Rommer withdrew the claim at the hearing.

    - Failure to provide itemised pay statements (s8 ERA 1996);

35. This claim **can** proceed because s206 specifically says that Part I claims in relation to itemised pay statements can proceed.

    - Failure to provide written reasons for dismissal (s92 and s93(2)(b) ERA 1996);

36. This claim **can** proceed because s206 specifically says that s92 and s93 claims can proceed.

    - Breach of contract – pension auto-enrolment. From 1 July 2017 the Respondent was subject to a statutory obligation to enrol the Claimant into a pension scheme which complied with the Pensions Act 2008. The

Respondent did not enrol the Claimant until August 2022. This breaches the implied term of mutual trust and confidence, and in addition there was an implied term to comply with the obligations under the Pensions Act 2008.

37. Mr Rommer specifically withdrew this claim at the hearing.

- Uplift of 25% for failure to comply with ACAS Code, pursuant to s207A Trade Union & Labour Relations (Consolidation Act 1992).

38. I cannot identify any legal provision preventing the Claimant from pursuing the uplift.

Preliminary issue: proceeding in the absence of the Respondent's estate

39. I decided to proceed in the absence of any representative for the Respondent's estate pursuant to Rule 47. Before doing so I considered the letter of 11 March 2025 from Arch Law confirming that they were no longer instructed and that that correspondence for the estate should be sent to Mark Green and Andrew Greystoke. I also considered the emails from Mr Green and Mr Greystoke who were unambiguous that they did not intend to attend the hearing. Mr Rommer did not have any further information about anyone who could attend. I also considered whether I could fairly determine the claims.

40. First, the only two people who the Tribunal is aware could potentially be the personal representative for the Respondent have both said they will not attend the hearing. The Respondent's solicitors at Arch Law had given the details of Mr Green and Mr Greystoke as the suitable contacts for the estate. Probate had not been granted at the date of the hearing but probate is not always required. There is therefore insufficient information to determine that there is an appropriate personal representative other than Mr Green or Mr Greystoke, both of whom made clear they would not attend the hearing.

41. Second, the Respondent knew about the proceedings and prior to her death she had instructed solicitors to represent her. The ET3 was filed on her instructions and was received by the Tribunal before her death. The Respondent was on notice as to the detail of the Claimant's claims and her professionally prepared ET3 set out the nature of her response. I therefore consider I understand the Respondent's case in respect of the claims. While it may be the case that the Respondent's estate is in possession of evidence to refute the Claimant's claims, I consider that I can deal with that fairly in the weight I give the Claimant's evidence in the case of any evidential dispute.

42. Third, though this of course no fault of the Respondent, there has already been a considerable delay since the claim was filed. There appears to be no prospect of there being some other way of resolving this claim than by proceeding to determine liability. I also remind myself that the Respondent admitted most of the claims in the ET3, meaning that the lack of progress is causing additional injustice to the Claimant.

43. Fourth, I bear in mind the Tribunal's power to reconsider its decisions where it is necessary in the interests of justice to do so. This power may be exercised either by application under Rule 69 or on the Tribunal's own initiative under Rule 71. I consider that any prejudice to the Respondent's estate can be dealt with by considering the exercise of that power.

Evidence

44. The Claimant provided a bundle of 123 pages. The Claimant gave evidence by way of a witness statement and supplementary questions. Her oral evidence was consistent with her witness statement and confirmed she did not have access to her payslips and only had one P60. Mr Rommer then made legal submissions. I will address the issues, evidence and submissions in the context of each of the remaining claims in turn below. Though the Respondent admitted the remaining claims the ET3 makes some important clarifications which I will also address.

Unfair dismissal

Legal Framework

45. Section 94 of the 1996 Act says that employees have the right not to be unfairly dismissed. On the ET1 and particulars of claim the Claimant said that she was employed by the Respondent from 3 November 2013 until 16 November 2023. At box 4.1 the Respondent agrees that the dates of employment are correct. It is therefore agreed by the parties that the Claimant had been employed by the Respondent for more than two years on the effective date of termination (16 November 2023).

46. The fact that the Claimant was dismissed by the Respondent is also agreed, the Claimant has established she was dismissed by the Respondent for the purposes of section 95 of the 1996 Act.

47. Section 98 of the 1996 Act deals with the fairness of dismissals in two stages. The first stage is that an employer must show what the reason was and that it was a potentially fair reason. The employer is required to prove this on the balance of probabilities. Paragraph 13 of the response states that the reason for dismissal was "personality difficulties".

48. In *Royal Mail Group Ltd v Jhuti* [2019] UKSC 55 the Supreme Court considered the situation where an employer determines an employee must be dismissed for a reason, but that reason A is hidden behind an invented reason B. It held that it is the Tribunal's duty to *"penetrate through the invention rather than to allow it also to infect its determination."*

49. The second stage of section 98 is that the Tribunal must consider whether the respondent acted fairly or unfairly in dismissing for that reason. Section 98(4) states that fairness (or unfairness) depends on whether in the circumstances the Respondent acted unreasonably in treating the conduct as a sufficient reason for dismissing the Claimant. I must also have regard to the size and

administrative resources of the employer. Section 98(4) also requires that fairness be determined in accordance with equity and the substantial merits of the case.

50. It is immaterial how I would have handled the events or what decision I would have made. The Tribunal must not substitute its own view for the view of the reasonable employer: *Iceland Frozen Foods Limited v Jones 1982 IRLR 439*.

51. When determining fairness I must apply *British Home Stores v Burchell* 1980 ICR 303 and *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23, and consider:

    - Whether the Respondent genuinely believed the Claimant was guilty of misconduct.
    - Whether that belief was based on reasonable grounds.
    - Whether a fair investigation took place.
    - Whether the Respondent acted in a procedurally fair manner.
    - Whether it was within the band of reasonable responses to dismiss the Claimant.

52. I must have regard to the ACAS Code of Practice and take account of the whole process, including any appeal: *Taylor v OCS Group Ltd* [2006] IRLR 613.

53. Where the dismissal is for gross misconduct I must be satisfied that the Respondent acted reasonably both in characterising the alleged conduct as gross misconduct and also in determining that dismissal was the appropriate punishment: *Brito-Babapulle v Ealing Hospital NHS Trust* [2013] IRLR 854.

The issues

54. It is accepted by all parties that the Respondent dismissed the Claimant. Having regard to the legal framework set out above, the issues I need to resolve are:

    - What was the reason or principal reason for dismissal? The Respondent says the reason was "personality difficulties". I must decide whether that is a potentially fair reason and whether the Respondent genuinely believed in the potentially fair reason.

    - If the reason was capability (performance) I must decide whether:

        - The respondent genuinely believed the claimant was no longer capable of performing her duties;
        - The respondent adequately consulted the claimant;
        - The respondent carried out a reasonable investigation;
        - Whether the respondent could reasonably be expected to wait longer before dismissing the claimant;
        - Dismissal was within the range of reasonable responses.

55. The claims is admitted, but not all of the allegations, which may be relevant to remedy. Given that the claim is admitted, some of the questions can be answered relatively briefly.

My findings: unfair dismissal

What was the reason or principal reason for dismissal?

56. I find that the reason or principal reason for dismissal was capability, i.e. performance. The response makes extensive reference to performance issues, as do the messages informing the Claimant of her dismissal: *"I am very fond of you but honestly you have not been doing a very good job the last few years."*

57. I have also considered whether the reason or principal reason for dismissal was conduct, given some of the explanation in the Respondent's response. This is described as "personality clashes" and there are references to the Claimant allegedly sulking, becoming overly familiar and taking unauthorised breaks. However, the response also makes reference to performance issues,

58. It is also inconsistent with a conduct dismissal that the Respondent would have allowed the Claimant to temporarily move into a flat on her property in the month prior to the dismissal. I therefore find that performance was the principal reason for dismissal.

Did the Respondent genuinely believe the Claimant was no longer capable of performing her duties?

59. I am not satisfied on the lower standard that this is the case. I am not doubting the Respondent's truthfulness, but there is simply insufficient evidence of this. Though it is not evidence, the response to the claim references both performance and "personality issues". Though the message to the Claimant informing her of termination referenced performance issues the Respondent wrote a reference for the Claimant on 21 November which stated that the Claimant performed her duties efficiently, and that her needs had changed so she no longer needed someone so much. I cannot conclude that the Respondent believed the Claimant was no longer capable of performing her duties from this mixed evidence.

Did the Respondent adequately consult the Claimant?

60. In the response the Respondent admits that "no consultation or performance management took place". There is no evidence to refute that. I find that the Respondent did not adequately consult the Claimant.

Did the Respondent carry out a reasonable investigation?

61. I bear in mind that the Respondent was an individual acting as employer, and I cannot expect her to have a large HR function at her disposal. However, on the evidence before me she did not carry out any investigation whatsoever, let alone a reasonable one. The Claimant was not asked about her performance, nor were the issues discussed with her.

Could the Respondent be reasonably expected to wait longer before dismissing the Claimant?

62. I find that the Respondent could have reasonably been expected to wait longer before dismissing the Claimant, at least until she had some form of consultation or performance management with the Claimant. There was no urgency to the Claimant's alleged poor performance.

Was dismissal within the range of reasonable responses?

63. I remind myself that I am not to substitute my own view of the Claimant's conduct in deciding what is within the band of reasonable responses. However, I do not find that dismissal was within the band of reasonable responses. The Respondent had not made any attempt to find out if there were any reasons for the allegedly poor performance, or to warn the Claimant. In the circumstances where the Respondent is alleging generally poor performance over a period of time rather than a single incident of performance so poor as to amount to misconduct, I cannot find that dismissal was within the range of reasonable responses.

Breach of contract: deduction of wages for 13 – 16 November 2023

64. This claim is admitted in the ET3 and in the ET3 the Respondent also accepted that the Claimant had correctly identified the effective date of termination as 16 November 2023. The Claimant was therefore entitled to be paid for those days and has not been.

Statutory redundancy payment

65. I did not find that the principal reason for ending employment was redundancy and so this claim must fail. As addressed by Mr Rommer, I appreciate this may have a significant effect on the Claimant because of the stronger recovery options for the Claimant on this claim, but I have explained above that in my judgement the evidence points to capability being the principal reason for ending employment.

Failure to provide itemised pay statements

66. This claim is admitted in the ET3, though the response does say that on request these were given. It is not currently possible to calculate the remedy because the deductions made are unclear.

Failure to provide written reasons for dismissal

67. Though the ET3 says that the claims are admitted, this claim is expressly denied at paragraph 18 of the response. Paragraph 18 says that the Claimant received written reasons for her dismissal in the message of 6 November 2023.

68. I was not addressed on whether WhatsApp messages can in principle amount to written reasons but in any event I find that the written reasons given were inadequate for the purposes of section 93 ERA 1996. They amount to "you have not been doing a very good job the last few years" and "there is no longer a job for you here." I accept that an employer is not required to give full particulars of

each act relied upon but the extremely general explanation given in this case does not suffice.

Conclusions

69. It is not currently possible to calculate the remedy for the successful claims because of the scarce financial evidence in the bundle. In fairness to the Claimant, she did not have a long time between discovering the Respondent would not be represented at all at the hearing and the hearing itself. I have set directions for the Claimant to provide the evidence for the Tribunal to calculate remedy. I have given the Claimant longer than usual to do this given the difficulty in securing documents from the Respondent's estate and time it may take to request information from other sources such as HMRC and NannyTax, though of course she may comply sooner if she wishes.

70. Should the Claimant identify a personal representative of the Respondent, she should write to the Tribunal with contact details for that person so that the Tribunal can consider making additional directions to the personal representative before the remedy hearing.

Employment Judge Watton

7 July 2025

Judgment sent to the parties on:

25 July 2025

For the Tribunal