EMPLOYMENT TRIBUNALS

Claimant: Ms M Ogumodede

Respondent: Churchill Contract Services

Heard at: by CVP, Central London Tribunal

On: 2, 3 and 4 July 2025

Before: Employment Judge Woodhead (sitting alone)

Appearances

For the Claimant: Representing herself

For the Respondent: Mr R Kerr (Consultant)

Interpreter (Yoruba): Mr Anthony Labeodan

JUDGMENT WITH REASONS

1. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

2. The complaint of breach of contract in relation to notice pay is not well-founded and is dismissed.

3. Under section 163 Employment Rights Act 1996 it is determined that the Claimant is not entitled to a redundancy payment.

4. The complaint of unfair dismissal is not well-founded and is dismissed. The Claimant was not unfairly dismissed.

REASONS

THE ISSUES

5. The Respondent is a contract cleaning company. The Claimant remains employed by the Respondent to work as a cleaner at Deutsche Bank's offices for 40 hours per week, 8am - 5pm, Monday to Friday. She became an employee of the Respondent in respect of this contract of employment following a TUPE

transfer to the Respondent from a third party ("**Former Employer A**") that lost the contract on 5 March 2018 (the date of her transfer).

6. This claim relates to a second contract of employment that the Claimant came to have with the Respondent for cleaning at the Houses of Parliament (or "**HoP**"). On 1 May 2024 the Respondent took over cleaning services at the HoP from a contractor ("**KGB**") that had employed the Claimant to clean at that site for 37.5 hours per week 10pm - 6am, Monday to Friday and the Respondent therefore also became the Claimant's employer under TUPE in respect of this work.

7. The Claimant had therefore, for some time, been working long hours for two separate employers: 8am – 5pm at Deutsche Bank and then 10pm to 6am at the Houses of Parliament. It is remarkable that she was able to sustain this in circumstances where it was not in dispute that the Claimant had a clean attendance and disciplinary record in respect of her HoP work.

8. The Respondent, when it had just employed the Claimant in respect of the Deutsche Bank work, did not know that she was also working a night shift at the Houses of Parliament. However, with the 1 May 2024 TUPE transfer, the Respondent became the Claimant's employer in respect of both the Deutsche Bank work and the Houses of Parliament work. She had two contracts of employment with the Respondent in respect of two different roles and the long hours that the Claimant was working came to the Respondent's attention. It was rightly concerned about the Claimant's hours, particularly as it was now the sole employer in respect of all of the Claimant's work (17 hours in a 24 hour period with breaks between the two roles of only five hours in the evening and two hours in the morning).

9. The complaints in the Claim arise out of the Respondent's decision to dismiss the Claimant from her employment contract in respect of the Houses of Parliament work without notice with effect from 28 October 2024 and its decision to suspend her on nil pay under that contract between 25 July 2024 and 28 October 2024. The Claimant contends that she was unfairly dismissed and should have been made redundant (as were some of her colleagues working for the Respondent at the Houses of Parliament). The Claimant says that she was entitled to notice and that the Respondent made unauthorised deductions from her pay during her suspension. As such the Claimant brings complaints of:

    9.1 Unfair dismissal;

    9.2 Redundancy Pay

    9.3 Unlawful deduction from wages - related to unpaid suspension

    9.4 Wrongful dismissal - relating to a claim for notice pay

10. The complaints were agreed in a **List of Issues** at a preliminary hearing for case management held on 14 March 2025 ("**the CMPH**") and they are set out in **Appendix 1** to this judgment.

THE HEARING

11. This claim was listed at the CMPH for a hearing of three days with a proposed timetable. The hearing was due to be held in person but had, at short notice, to be converted by the Tribunal to a CVP hearing.

12. There was a delay at the start of the hearing because of problems with the Claimant's connection to the hearing.

13. Mr Anthony Labeodan translated simultaneously for the Tribunal, the Claimant's first language being Yoruba.

14. I made clear that the Claimant and anyone else participating in the hearing (including Mr Labeodan) could ask for breaks if they felt they needed them. I reminded witnesses under oath that they were not permitted to communicate with others about the case during breaks or adjournments while they were giving evidence under oath.

15. At the start of the hearing I was provided with:

    15.1 A bundle of 203 pages (which included the witness statements)

    15.2 Witness statements for:

        15.2.1 The Claimant

        15.2.2 Mr C Vasconcelos (Account Lead and the manager who took the decision to dismiss the Claimant)

        15.2.3 Ms K Hutchinson (Employee Relations Manager and the manager who worked on the Respondent's redundancy exercise in respect of employees working at the Houses of Parliament in 2024);

        15.2.4 Ms P Dimitrova (Operations Manager and the manager who decided an appeal against a decision made on a grievance raised by the Claimant (the original decision maker being Mr C Waldren).

    15.3 A set of emails disclosed late by the Respondent which are reproduced as far as necessary in **Appendix 2** to this Judgment. The Claimant did not object to these emails being put before the Tribunal and I considered it in the interests of justice to allow the Respondent to refer to them.

16. I made sure that the Claimant had all of these documents. I explained the hearing process and the Claimant confirmed that she had prepared cross examination questions. The Respondent agreed with my initial impression that there were not significant disputes on the central facts and that most of the claim would turn on the law. However, the Respondent said that questions for cross examination did arise on those questions of law. On that basis and with the agreement of the Respondent, I considered it preferrable for the Claimant to give evidence first, as

a litigant in person, so that she could understand the points she was being challenged on and adapt her own cross examination of the Respondent's witnesses accordingly. This would also afford the Claimant the opportunity to experience the process before having to cross examine the Respondent's witnesses. I regularly checked if the Claimant had questions about the process.

17. Before I started to hear evidence I sought to put the Claimant on an equal footing by explaining the process and in particular by providing guidance on:

    17.1 The importance of the list of issues as defining the matters that we would be asked to determine and therefore the focus that the parties should put in cross examination;

    17.2 The process of hearing the evidence and cross examination, tribunal questions, re-examination and the need for the Claimant, when it came to her cross examination of the Respondent's witnesses, to challenge them on things that they said in their witness evidence which are relevant to the List of Issues and which the Claimant disputed. I made clear that, as such, the List of Issues should be a useful tool for the Claimant to focus her cross examination.

18. I explained that if a witness is not challenged on the evidence in their witness statement the Tribunal is entitled to accept that evidence (take it at face value) and that if the Claimant did not challenge a witness on a material point then that could affect the Claimant's ability to establish her case. This was guidance that I repeated on a number of occasions during the Claimant's cross examination of the Respondent's witnesses.

19. I carried out some further reading and we heard the Claimant's evidence from about 12:40 to 13:25 and then from 14:10 to 15:25. We then heard Ms Dimitrova's evidence and the hearing adjourned at just after 16:00. Before adjourning we discussed the timetable for the next day and the Respondent agreed to send the Claimant some information on the legal arguments it relied upon. This was to assist the Claimant with her cross examination and to 'level the playing field' for her when it came to submissions.

20. On the second day of the hearing, 3 July 2025, we heard the evidence of Mr Vasconcelos and Ms Hutchinson. Some time was lost in the morning because the Claimant maintained for some time that she had not in fact received the Respondent's witness statements (during her cross examination of Ms Hutchinson). She subsequently confirmed, as she had done the previous morning, that she did have hard copies of those statements which had been sent to her by recorded Royal Mail service and delivered on 14 June 2024.

21. Evidence concluded at around mid-day. Mr Kerr confirmed that the previous evening he had sent the Claimant a precis argument on the Respondent's points on illegality and the effect of Reg 6.1of the Working Time Regulations on the contract and had also sent her two authorities and photocopy of page from IDS in

relation to reg 6.1 WTR. The Claimant confirmed that she had read those documents. The Respondent needed 30 minutes to finalise its written submissions and sent them to the Claimant and the Tribunal (anticipated to be a seven page document). The Claimant said she would need 30 minutes to read that document when it arrived. We agreed that we would reconvene at 14:00 to hear submissions. The Claimant said she had no other submission to make than to ask for a true and fair judgment. Unfortunately there was a delay in the Tribunal administration being able to pass the submission to me. After some discussion we therefore had to adjourn until 15:15 for them to be sent to me and for me to read them. The Respondent provided me with:

21.1 Three extracts from the IDS Handbook from 2013 which appeared to me to be out of date and which I could not reconcile with the current IDS Handbook;

21.2 **Barber and others (plaintiffs) v. RJB Mining (UK) Ltd (defendants) – [1999] IRLR 308**. The Respondent made particular reference to paragraph 35;

21.3 **Okedina (appellant) v Chikale (respondent) [2019] EWCA Civ 1393**. The Respondent made particular reference to paragraph 12.

21.4 A written submission of eight pages.

22. Mr Kerr than gave his submissions. Of course this took longer than it might otherwise have done because of the need for translation of what he said. This took us to around 16:15. During his submissions Mr Kerr referred to **Enfield Technical Services v Payne EAT 2007 IRLR 840**. I was not confident that I had asked all the questions that I might want to put to the Respondent and so I asked the parties to come back at 10am the following day.

23. Overnight the Respondent sent in further authorities as follows:

23.1 **BATEMAN and others (appellants) v. ASDA STORES LTD (respondent) [2010] IRLR 370**. The Respondent referred in particular to elements of paragraphs 6, 11 and 33.

23.2 ENFIELD TECHNICAL SERVICES LTD (appellant) v. PAYNE (respondent) GRACE (appellant) v. BF COMPONENTS LTD (respondent) [2007] IRLR 840. The Respondent referred in particular to para 11 point 6 on page 3, and para 43. [NOT SUPERCEDEDED BY COFA?]

23.3 **R (on the application of the FBU) v South Yorkshire Fire and Rescue Authority [2018] IRLR 717.** The Respondent referred in particular to para 19 and para 22.

24. On the morning of the third day (4 July 2025) there was further discussion in respect of the Respondent's submissions and the Claimant made her

submissions. It was approaching midday by the time that submissions concluded and there was then insufficient time for me to deliberate and give an oral decision to the parties. I warned them that unfortunately there may be a delay in my being able to produce a judgment with written reasons.

FINDINGS OF FACT

25. Having considered all the evidence, I find the following facts on a balance of probabilities.

26. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.

Knowingly concealment of Deutsche Bank work to KGB

27. The Claimant did not dispute that:

    27.1 When she started working for KGB at the Houses of Parliament she was already employed to work a day shift for Former Employer A at Deutsche Bank. Her date of continuous employment in that Deutsche Bank job was 5 April 2004.

    27.2 She had told KGB that the Houses of Parliament work was her only job [HB33] in an employee declaration and that she knew this was the wrong answer but had deliberately hidden the fact of her other full time job working at Deutsche Bank because she knew it breached the law on working time.

    27.3 That her contract of employment in respect of her night work at the HoP which transferred from KGB to the Respondent under TUPE in May 2023 provided [HB33]: "*I accept that the Company reserves the right to alter or amend this statement of my terms and conditions of any employment that I undertake during my employment with KGB*."

    27.4 Her date of continuous employment in her job at the HoP was 20 November 2008 [HB33-34].

Modes of corresponding with employees – MO:DUS

28. Mr Vasconcelos and Ms Hutchinson, in oral evidence, gave consistent explanations of an IT platform that the Respondent operates called MO:DUS or MODUS. It is through this platform that the Respondent often communicates with its staff and through which an employee can update their contact details. If the Respondent uploads correspondence to an employee onto the platform then MO:DUS sends the employee an email notification telling them that it is there. They can then log into the platform to read it. Employees can also view their payslips and other data on the platform. If a letter said "*sent by MO:DUS/email*" it meant that it was sent via the platform (with an email notification also being generated) and in addition to that it was sent via a direct email as well.

Knowing concealment of other Deutsche Bank work to the Respondent

29. The Respondent disclosed in the bundle a TUPE joiner form which it said it had asked the Claimant to complete on the transfer of her employment from KGB to the Respondent related to the Claimant's night work at the HoP. The Respondent said that the Claimant had completed and signed the joiner form electronically (via DocuSign).

30. Ms Hutchinson gave persuasive evidence as to how the form had been created. She explained that the forms were completed on site with employees and then sent to them via their systems by email for the employee to check and sign. There was little confusion over the dates because she at first misread a USA formatted date but explained that the Respondent's records showed that the form was sent to the Claimant at 00:31 on 11 April 2024 and that the Claimant signed and returned the form at 11:41 the same day.

31. In response to one question on this TUPE form the Claimant said "*I answered the questions but I did not sign on the paper*" she then appeared to retract that answer and say that all of the responses to the questions on the form had been tampered with and that it was not her signature on the form. She did not know who had completed it and that the contents of the form were not hers.

32. The Claimant did not challenge the Respondent's witnesses on the authenticity of the TUPE joiner form.

33. I find on the balance of probabilities that the Claimant did in fact complete and sign this form. The Claimant gave no explanation as to who might have completed it and, given what she told KGB, I consider it more probable that the Claimant did complete it and did incorrectly tell the Respondent in the form that she did not have another job [HB35].

34. This form represented another example of the Claimant concealing her second job. It was particularly in her interests to do so given that both of her roles were by this point about to come under the same employer, the Respondent.

25 July 2024 meeting in respect of the Claimant's hours of work

35. The Respondent having identified that the Claimant had two full time employments with it, one of which (the Houses of Parliament role) involved a night shift, it called the Claimant to a meeting to discuss the matter and its concerns on 25 July 2024. The notes of that meeting record [HB47]:

> *[…]*
>
> *The reason for this meeting is to discuss concerns with you about what we have been made aware of. In summary, the concerns are:*
>
> *That you have been working 2 full-time roles for Churchill - specifically that you work 5 shifts per week at the houses of parliament from Monday to Friday, 10pm -6am as well as completing 5 shifts per week at*

Deutchebank, from 8am - 5pm. We have been made aware of this through your recent transfer in on the HoP contract. Your current working pattern is in breach of the Working Time Directive, specifically the rest breaks between shifts, there is a minimum requirement for 11 hours rest between shifts which is not being observed currently with your two positions. Therefore, we will have to suspend you on nil pay from the HoP contract whilst we look into this matter. The HoP contract has been selected as you receive more hours at DB and a higher weekly pay.

The purpose of this meeting is to firstly get an understanding on your welfare and how you have been completing both these roles, as well as to look for any roles that meet your current requirements whilst taking into consideration legal compliance and your health and safety. We can look for alternative or additional roles, however you cannot continue with these two positions as they stand.

Firstly, the number of hours you have been completing is very concerning to us, how have you been completing both roles?

We heed to observe these rest breaks as rest is important, not only to follow the law but because it protects the organisation and its staff and customers.

- If staff do not get enough rest it could lead to:

- negative effects on their physical and mental health

- mistakes or accidents

- reputational damage or financial cost to the organisation

C: I am working there since 8 November 2008 Churchill started May 2024, if you want me to leave you gave to give me redundancy 60% of the staff at HOP are doing two full times.

I feel very well. I have been working like this since 2008 it's only now Churchill has come they want to take me out without redundancy, I have union an lawyer to discuss this properly we don't have problem working check my record I had another absent of sick.

I used to work at the Home Office before HOP and when I left to join HOP asked one of there staff the hours I can work and they said as long as I am not on benefits I can work as many hours as I want

R: - As a minimum employees are also entitled to days off from work, either at least 24 hour rest in a 7 day period, or 48 hours of rest in a 14 day period (either as 1 block of 48 hours or 2 blocks of 24 hours), is this being observed with your current shift patterns?

C: Yes, I rest properly on my weekends, I don't clean or cook I have a long rest.

*R: *show vacancy lists* is there anything on hear that you find suitable that would not be in breach of the 11 hour rest break between shifts? - please note if you were to retain the DB role then you could work until 9 PM in the evening at another location, but not beyond that without being in breach.*

C: I think I want that because I already have a job and I can look for jobs myself like I said if you want me out then you will have to offer me redundancy

R; Have you signed an Opt-out form for the 48 hour working week? (if so, obtain copy)

C: Yes, I have

[…]

26 July 2024 suspension on nil pay

36. On 26 July 2024 the Respondent sent the Claimant a letter, by post, confirming that she was suspended on nil pay under her Houses of Parliament contract [HB54]. The Respondent chose this contract because it paid the Claimant less (the hourly rate was higher but it afforded the Claimant fewer hour per week, and therefore less value, than the Deutsche Bank work). It suspended the Claimant from this contract notwithstanding that workers prepared to work a night shift were prized by the Respondent on the HoP contract (as will become evident from my findings in respect of a redundancy consultation that it commenced). It was also a night shift contract. The letter explained:

I am writing to confirm the outcome of our investigation meeting held on the 25th July 2024.

Following the recent transfer of your assignment on the Houses of Parliament contract (under TUPE regulations) to Churchill, the Company has evidenced that you are currently working two full time positions and in turn breaching the Working Time Directive, specifically the rest break of 11 hours between shifts.

Following this investigation, I can confirm you have been suspended from duty, on nil pay, as of 25th July 2024 from your Cleaning Operative role at the Houses of Parliament. Your suspension was required in the interest of a duty of care toward our employees and legal compliance.

Whilst suspended from your role on the Houses of Parliament assignment, you are prohibited from entering this site unless expressly instructed to do so. The suspension is with nil pay and you remain in the employ of the Company. You are required to be available to attend any

meetings as directed by the Company within normal working hours.

Your role at Deutsche Bank continues unchanged and you are still expected to attend for work at Deutsche Bank under the current arrangements and you will be paid accordingly for work carried out for this role.

The decision was made to suspend you from your role on the Houses of Parliament assignment as your hours at Deutsche Bank have been deemed to be more beneficial in terms of the rest periods mandated in the Working Time Directive, in addition to providing a higher weekly pay.

You are currently employed on two contracts for Churchill, for clarity I have listed the details of both employments below:

Location: Houses of Parliament

Role: Cleaning Operative

Contractual Hours: 37.5 hours per week

Shift Pattern: 10pm - 6am, Monday to Friday

Location: Deutsche Bank

Role: Cleaning Operative

Contractual Hours: 40 hours per week

Shift Pattern: 8am - 5pm, Monday to Friday

The Government website (https://www.gov.uk/rest-breaks-work) states that employees have the right to 11 hours rest between working days, e.g. if employee finishes work at 8pm they should not start work again until 7am the next day.

It is clear from reviewing the two working patterns that you fulfill, that you have been working in breach of these legal rest periods and that the Working Time Directive is not being observed. Therefore, it was necessary as a matter of legal compliance for you to be suspended on nil pay for the Houses of Parliament role.

Further consultation will be had with you to determine how this matter can be amicably resolved whilst focusing on the duty of care the Company has towards you in along with complying with the law.

The Company will be in contact with you in due course to invite you to a further meeting to discuss this further. During this meeting we will establish your preference as to which role you wish to continue, if either.

As was discussed during our meeting, I will also be issuing you with a copy of the vacancy lists for you to consider any additional or alternative roles within Churchill that may appeal to you, and which do not breach the Working Time Directive.

You stated during the meeting that you believe there are other staff working additional hours at the Houses of Parliament that may also be in breach of the Working Time Directive.

I would ask that you provide the names of the staff members you believe this to be and any other details you are aware of concerning second employment at the earliest opportunity so this can be investigated further to ensure staff welfare and legal compliance.

Redundancy consultation

37. By this time the Claimant and other cleaners working at the Houses of Parliament had been put at risk of redundancy and a collective redundancy consultation process had been initiated. The sequence of events/outcomes in respect of the consultation was as follows:

37.1 8 July 2024 – there was a consultation meeting which the Claimant attended [HB40];

37.2 18 July 2024 – the Claimant was sent a redundancy 'at risk' letter (which also asked for nominations for employee representatives);

37.3 30 July 2024 – there was a group consultation meeting at which the Respondent made clear the redundancy scoring that it proposed to apply [HB80]. This scoring was then applied to the 170 or so employees at risk and the Claimant scored in the top 3 of those employees [HB56-79]. The lowest scoring twenty or more employees had minus scores of between -383 and -21. The Claimant had a score of +8.

37.4 The Respondent then decided to try to achieve the necessary reduction in staffing levels without compulsory redundancies and instead by seeking volunteers for redundancy. On 2 August 2024 its HR team sent out by email to the employee representatives, with the Claimant and other at risk staff on blind copy, an email seeking volunteers for redundancy ("**VR Correspondence 1**"). It gave a deadline of 9 August 2024 for applications for voluntary redundancy ("**VR"**) and provided a form for doing so [HB93-96]. On 9 August 2024 a further email was sent out in the same way extending the deadline for VR applications to 16 August 2024 ("**VR Correspondence 2**").

37.5 The Claimant's son helped the Claimant with her email correspondence and the email address that the Respondent (and subsequently this Tribunal) had for corresponding with the Claimant was one monitored by her son. The Claimant said that she did not receive VR Correspondence 1

or VR Correspondence 2 because her son had gone travelling (she could not recall the dates) and had lost his phone but (i) accepted that on 1 August 2024, from the same email address to which the VR Correspondence 1 had been sent, she/her son had sent the Respondent an email telling the Respondent of the GMB's involvement in matters relating to her [HB91] (ii) on 19 August 2024 submitted her grievance using the relevant email address [HB111-112].

37.6 The Claimant's evidence in respect of the 19 August 2024 grievance was particularly confused. It was not put to her that her son had written the email, just that she had submitted it on 19 August 2024 by email using the email address to which the VR Correspondence had been sent. However, the claimant volunteered that the email had not been written by her son. She then suggested that it was her daughter who had written the letter but then seemed to suggest that it was not in fact the 19 August 2024 email that her daughter had written but another letter of 26 July 2024. My conclusion on this is that it was not just the Claimant's son who had access to the email account to and from which correspondence was sent and that on the balance of probabilities the Claimant received the VR Correspondence but for some reason did not apply for VR.

37.7 On 17 September 2024 the Respondent wrote to the Claimant by MO:DUS and email (but this time to a different (Outlook rather than Yahoo) email address) to confirm that she was no longer at risk of redundancy [HB141].

37.8 I accept Ms Hutchinson's unchallenged evidence that nineteen members of the cleaning staff volunteered for redundancy and the Claimant was not among them. All 19 of those applications were accepted by the Respondent (but it reserved the right to reject an application and it is not likely that the Claimant, had she not also had the Deutsche Bank role and had she made a VR request, would have had a VR application accepted because she did a night shift (employees prepared to work a night shift are particularly valuable) and because of how well the Claimant scored against the provisional redundancy selection criteria). The accepted VR applications brought resourcing levels down to an acceptable level taking into account that the level could be further reduced through leavers in the ordinary course. This meant that, of the non-kitchen cleaning staff, about 160 remained. The VR's took effect around the end of August/the beginning of September of 2024.

12 August 2024 meeting in relation to the Claimant's hours and grievance

38. On 7 August 2024 the Respondent sent the Claimant a letter inviting her to a further meeting to discuss the working time issue scheduled for 12 August 2024. This letter was sent via MO:DUS and the Claimant agreed that she received it [HB97]. She attended the meeting and the notes [HB106] record that there was discussion of how the Claimant would like to proceed whilst ensuring that she had a rest break of 11 hours between shifts. On the document prepared as a framework for the discussion it is written in manuscript "*Cut hours at HoP up to 4*

hours". The Claimant's evidence was that she did not suggest this, the Respondent did. She said that had this been offered in July she would have accepted it and appeared to reason that in August she was not interested in this option because the Trade Union were telling her she should be given redundancy. There was discussion of a vacancy list but the Claimant said she did not want to leave the HoP role. The Claimant signed the notes of the meeting [110]. In cross examination of Mr Vasconcelos the Claimant appeared to suggest that the option of working part time at the Houses of Parliament had not been raised with her (only other vacancies) or that it had not been suggested until 12 September 2024. Reference was made to her own evidence the previous day and the notes of the meeting of 12 August 2024 [HB106] and she then chose to drop that line of questioning.

39. On 19 August 2024 the Claimant submitted a grievance which focused on her suspension on nil pay [HB111].

12 September 2024 meeting in respect of the Claimant's hours of work

40. On 9 September 2024 the Claimant was sent by MO:DUS and email a letter inviting her to a further consultation meeting on 12 September 2024 to discuss the working time issue [HB115]. The Claimant received the letter and attended the meeting on 12 September 2024. She accepted that the notes of the meeting [117-125] were accurate and she was accompanied by her Trade Union. At the meeting the Respondent set out its concerns about the legality of the Claimant having the two roles working the hours that entailed. The Respondent asked the Claimant to consider [120]:

> "*I would like to ask you to consider whether you would be happy to accept that you remain in your Deutsche Bank position working Monday - Friday, 8am - 5pm in addition to working a cleaning operative role at the Houses of Parliament from 6pm - 9pm. The two roles on offer are within the constraints of the working time directive, and the time between the two shifts (1 hour) would enable you to travel from DB to HoP. Can you please confirm if this would be of interest to you?"*

41. At this meeting on 12 September 2024 the Claimant, together with her Trade Union representative, complained "*in House of Parliament they gave 18 people money for redundancy for our last pay but not me*" and *"[TU REP] if this is the case, Molikat has claim for redundancy because she has been treated differently than the rest of her colleagues. You can't suspend someone whilst they are undoing investigation. Suspending her without pay is unlawful*". At the meeting the Claimant Trade Union representative mentioned that the Claimant had showed her 'a redundancy package' form.

16 October 2024 meeting in respect of the Claimant's hours of work

42. On 16 October 2024 the Respondent wrote to the Claimant by MO:DUS and email inviting her to a further meeting on the working time issue [HB147]. The Claimant received the letter and attended the meeting on 25 October 2024. The letter recorded (amongst other things):

> *The purpose of this consultation meeting is to conclude the process and to find out if you have any ideas or suggestions on how we can accommodate your desires on an agreed upon working pattern whilst observing legal compliance and our duty of care toward you.*
>
> *During this consultation meeting, I will discuss this in more detail, including the reasons for the proposed changes and any alternative sites that you could work at. I will also discuss any possible changes to your terms and conditions, should there be no other viable sites for you to work at.*
>
> *We would appreciate any input you may have with regards to how we may best consider your requests. However, if you cannot make a decision on which contract you wish to continue with, then I will have no choice but to make this decision for you based on whichever employment is deemed to be more beneficial to you.*

43. The Claimant agreed that the notes of the meeting were accurate [149-153]. They record Mr Vasconcelos saying to the Claimant:

> *In our previous meeting I presented to you that you could remain in your DB position from Monday to Friday 8am - 5pm in addition to working a cleaning operative role at the Houses of Parliament from 6pm - 9pm. The two roles are within the constraints of the working time directive and the time between the two shifts (1 hour) would enable you to travel from DB to HoP. Have you had anymore thoughts on this?*

44. The Claimant's Trade Union representative replied that the Claimant was not interested in doing four hours work at the Houses of Parliament. At the hearing the Claimant explained that she did not accept that because she had been laid off for 3 months before it was offered to her. The Claimant's trade union representative had previously confirmed by email on 6 September 2024 that she did not want that role and wanted to be considered for redundancy (see **Appendix 2 Email 1**).

45. The notes also record the Claimant's Trade Union representative saying:

> "*Just to let you know, the employee did not receive the consultation document. The redundancy documents were went to her through email and it was sent to her son's email. He was out of the country at the time so she did not receive it.*" and *"[…] Any redundancy should be sent recorded delivery, not via email. If an employee is suspended, it needs to be sent recorded delivery as she didn't receive the email. Just to add, you should be able to check from your end as well*."

46. At the hearing the Claimant confirmed that she did not want to work part time after they had laid her off (put her on unpaid suspension) and paid others redundancy.

28 October 2024 termination of employment for night work at HoP

47. On 28 October 2024 Mr Vasconcelos wrote to the Claimant by MO:DUS and email to give the Claimant his decision [HB154]. The Claimant received this letter. Mr Vasconcelos set out the background and said [HB155]:

> *We also discussed a new shift pattern with you in order to minimise the financial detriment is present as a result of either contract coming to an end. For clarity, I have listed the details of the position that was offered to you as part of this process:*
>
> > *Location: Houses of Parliament*
> >
> > *Role: Cleaning Operative*
> >
> > *Contractual Hours: 15 hours per week*
> >
> > *Shift Pattern: 6pm - 9pm, Monday to Friday*
>
> *The position that was offered to you would enable you to continue with your Deutsche Bank contract whilst observing the legal requirement for rest breaks. There would be an hour between your shift finishing at Deutsche Bank which would enable you to travel to the Houses of Parliament in time for the other contract to begin.*
>
> *I can now confirm that as discussed in the meeting, effective from 25th October 2024, your terms and conditions will change in the following way:*
>
> *You have declined the above vacancy at the House of Parliament for 15 hours per week, that was offered to you.*
>
> *Consequently, as discussed in our previous consultation meetings and as stated in your invitation letter for the meeting scheduled on 25th October 2024, I have had to make a decision regarding the assignment you will continue with in order to finalise the process.*
>
> *In light of this, I can confirm that your contract with the Houses of Parliament will be terminated effective 25th October 2024. Your position at Deutsche Bank will remain unchanged, and you will continue to receive payment for the work performed in that role.*
>
> *The decision to terminate the contract with the Houses of Parliament was based on the assessment that your working hours at Deutsche Bank are more advantageous, particularly concerning the rest periods required by the Working Time Directive, as well as offering you a higher weekly salary.*
>
> *All terms and conditions will be as per our standard Churchill contract, a copy of which you will be provided with in due course.*

48. Mr Vasconcelos said in his letter "*If you are not in agreement with this change, please write to me by 4th November 2024 at the below address detailing your reasons.*". The Claimant did not appeal but had her ongoing grievance.

13 September 2024 grievance hearing and outcome

49. On 9 September 2024 a Mr Walden had sent and the Claimant had received a letter by MO:DUS and email inviting her to a grievance hearing on 13 September 2024 [HB115]. The Claimant was accompanied by her Union representative [HB126-139]. The Union agreed that the law would be broken if the Claimant continued to work the hours she had been working in both roles and raised other matters, including the question of redundancy. At the meeting the Claimant said, contrary to her evidence at this hearing, that she told KGB about her two roles [HB132].

50. On 9 October 2024 Mr Walden issued his decision not to uphold the Claimant's grievance [HB142-145]. The Claimant notified the Respondent of her request to appeal the decision on 9 October 2024 [HB146].

20 November 2024 - grievance appeal meeting and outcome

51. The Claimant confirmed that she received a letter dated 14 November 2024 from the Respondent inviting her to a grievance appeal hearing on 20 November 2024 [HB157-158] and which the Claimant attended with her Trade Union representative (PE). Ms Dimitrova conducted the hearing and notes were taken which the Claimant confirmed to the Tribunal were accurate [HB159-165].

52. Ms Dimitrova concluded that the Claimant, given her scores against the selection criteria, had not really been at risk of redundancy and that the Claimant had not applied for VR. She was plainly right in reaching these conclusions. She confirmed her decision not to uphold the Claimant's appeal by letter dated 2 December 2024 [HB66-168]. Her letter, amongst other things recorded:

> *[…]*
>
> *1. You expressed that the consultation pack was not sent to you via Royal Mail Recorded Delivery, hindering your ability to apply for voluntary redundancy.*
>
> *Upon investigation, it has been confirmed that all employees, including yourself, received their voluntary redundancy applications via email. No hard copies were sent.*
>
> *The email was sent to the address you provided during the TUPE transfer process:*
>
> *[CLAIMANT EMAIL ADDRESS]. You have stated that you were unable to access this email account as it belonged to your son, who was out of the country at the time. However, our records indicate that this account was actively used during the period in question.*

Specifically:

• On 1st August 2024, you emailed [ER email address], authorising the GMB union to liaise with us on your behalf.

• On 19th August 2024, you emailed two Churchill representatives to formally raise a grievance.

The voluntary redundancy communication was sent to your email on 2nd August 2024, followed by a reminder on 9th August 2024, both in multiple languages (English, French, Spanish, and Portuguese). These emails provided comprehensive details, including the deadline for applications.

Based on the evidence of email activity, I am satisfied that you had access to the email account. Therefore, this aspect of your appeal is not upheld.

2. It was identified upon your transfer to Churchill that you held two separate 40-hour contracts, resulting in a combined work schedule exceeding the limits of the Working Time Directive (WTD). As an employer, we are legally obligated to address breaches of the WTD, which is designed to safeguard employee health and safety. Immediate action was taken to rectify this breach, including your suspension without pay. This decision was influenced by the following:

• Legal Compliance: Continuing to pay during a period of statutory non-compliance could have been seen as condoning the breach.

• Employee Responsibility: As an employee, you bear some responsibility for managing your working hours and disclosing arrangements that may contravene statutory requirements.

• Ability to Attend: On the basis of the hours in question you were not in reality able to, or at least not able to safely, attend work. Given these circumstances, this aspect of your appeal is not upheld.

3. As stated, and evidenced in the summary to point 1, we communicated via email to all employees regarding the opportunity to apply for voluntary redundancy on 2nd August 2024. You indicated that you did not receive this email until your son returned from Africa on 15th September 2024. However, during your meeting on 13th September 2024, your union representative, Patricia Ennis, provided the following response:

> *“Chair was to advise employee that they will continue their investigations not these allegations. Does the employee have anything else to add?*

Response by Patricia Ennis - In the meeting yesterday, Mulikat requested redundancy due to stress. 18 other people requested this but Claudio said no. She received a letter to complete but was not invited to the redundancy meeting. She was missed out and feels unfairly treated due to this. She wants redundancy like her 18 other colleagues."

I have been able to evidence that you were given the opportunity to apply for voluntary redundancy, but subsequently did not apply as per the emailed communication of 2nd August 2024. You were not invited to attend a redundancy meeting as your role was not at risk, therefore you were not in scope for any compulsory redundancy consultations that may have been deemed necessary.

It is on this basis that I have taken the decision to not uphold this aspect of your appeal.

4. As I have outlined in my response to point 3 above, your role was not at risk of compulsory redundancy and as you had not applied for consideration for voluntary redundancy, there was no requirement or obligation for your inclusion in any of the ongoing consultations that took place in relation to the compulsory redundancies required on the Houses of Parliament contract.

My decision is, therefore, to not uphold this aspect of your appeal.

I have carefully considered and reflected on the allegations raised in your letter and aired at our meeting on 20th November 2024. I have carried out further investigations where possible to test both your assertions

Following this careful consideration as I have outlined above my decision is to reject your grievance, as I do not believe there is sufficient substance to your allegations for the reasons set out above.

You have now exercised your right of appeal under the Company's grievance procedure and this decision is final. There is no further right of appeal.

53. The Claimant had submitted her claim form on 22 October 2024.

THE LAW

Unfair dismissal - ERA

54. Section 98(1) Employment Rights Act 1996 ("the ERA") provides:

> (1) "In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –(a) The reason (or, if more than one, the principal reason) for the dismissal, and

(b) That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."

55. Section 98 (2) ERA provides:

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

56. Section 139 (Redundancy) ERA provides:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

[…]

> (4) Where—
>
> (a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and
>
> (b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment, he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).
>
> (5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.
>
> (6) In subsection (1) “cease” and “diminish” mean cease and diminish either permanently or temporarily and for whatever reason.
>
> […]

57. Section 98(4) ERA provides:

> Where the employer has fulfilled the requirement of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case."

58. It is for the Respondent to show the reason for the dismissal and that that reason is a potentially fair reason. The reason for dismissal is the facts and beliefs known to and held by the Respondent at the time of its dismissal of the Claimant - **Abernethy v Mott Hay and Anderson [1974] IRLR 213**.

59. The employer is required to follow a fair procedure.

60. The range of reasonable responses test as set out in **Iceland Frozen Foods Limited v Jones [1982] IRLR 439**, **Post Office v Foley [2000] IRLR 827** and **J Sainsbury plc v Hitt [2003] ICR 111** requires us to consider whether the decision of the Respondent to dismiss the Claimant fell within the band of reasonable responses of a reasonable employer acting reasonably. This applies equally to the procedure that was followed as well as the decision to dismiss.

61. Tribunals must avoid the substitution mindset and not decide the matter on what

the Tribunal would have done in these circumstances. Rather it must apply the standard of what a reasonable employer would have done. There may be a range of responses that a reasonable employer could have reached. Ultimately, the Tribunal must consider whether dismissal fell within the range of reasonable responses open to a reasonable employer.

Redundancy payment - ERA

62. **Chapter I (Right to Redundancy Payment), Section 135 (The right)** of the ERA provides:

> (1) An employer shall pay a redundancy payment to any employee of his if the employee—
>
> (a) is dismissed by the employer by reason of redundancy, or
>
> (b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.
>
> (2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

63. **Section 162 (Amount of a redundancy payment)** of the ERA provides:

> (1) The amount of a redundancy payment shall be calculated by—
>
> (a) determining the period, ending with the relevant date, during which the employee has been continuously employed,
>
> (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
>
> (c) allowing the appropriate amount for each of those years of employment.
>
> (2) In subsection (1)(c) “the appropriate amount” means—
>
> (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,
>
> (b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
>
> (c) half a week's pay for each year of employment not within paragraph (a) or (b).
>
> (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

(6) Subsections (1) to (3) apply for the purposes of any provision of this Part by virtue of which an employment tribunal may determine that an employer is liable to pay to an employee—

(a) the whole of the redundancy payment to which the employee would have had a right apart from some other provision, or

(b) such part of the redundancy payment to which the employee would have had a right apart from some other provision as the tribunal thinks fit,as if any reference to the amount of a redundancy payment were to the amount of the redundancy payment to which the employee would have been entitled apart from that other provision.

Working Time Regulations 1998 (WTR)

64. **Regulation 2 (Interpretation)** WTR provides:

(1) In these Regulations—

"the 1996 Act" means the Employment Rights Act 1996;

[…]

"day" means a period of 24 hours beginning at midnight;

"employer", in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

"employment", in relation to a worker, means employment under his contract, and "employed" shall be construed accordingly;

"night time", in relation to a worker, means a period—

(a) the duration of which is not less than seven hours, and

(b) which includes the period between midnight and 5 am,

which is determined for the purposes of these Regulations by a relevant agreement, or, in default of such a determination, the period between 11pm and 6am;

"night work" means work during night time;

"night worker" means a worker—

(a) who, as a normal course, works at least three hours of his daily working time during night time, or

(b) who is likely, during night time, to work at least such proportion of his annual working time as may be specified for the purposes of

these Regulations in a collective agreement or a workforce agreement;

and, for the purpose of paragraph (a) of this definition, a person works hours as a normal course (without prejudice to the generality of that expression) if he works such hours on the majority of days on which he works;

[…]

“relevant agreement”, in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer;

“rest period”, in relation to a worker, means a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations;

“the restricted period”, in relation to a worker, means the period between 10pm and 6am or, where the worker's contract provides for him to work after 10pm, the period between 11pm and 7 am;

“working time”, in relation to a worker, means—

(a) any period during which he is working, at his employer's disposal and carrying out his activity or duties,

(b) any period during which he is receiving relevant training, and

(c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement;

and “work” shall be construed accordingly;

65. **Regulation 4 (Maximum weekly working time)** WTR provides:

(1) Unless his employer has first obtained the worker's agreement in writing to perform such work, a worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed by him in relation to whom it applies and shall keep up-to-date records of all workers who carry out work to which it does not apply by reason of the fact that the employer has obtained the worker's

agreement as mentioned in paragraph (1).

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 23(b), the reference periods which apply in the case of a worker are—

(a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or

(b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) Paragraphs (3) and (4) shall apply to a worker who is excluded from the scope of certain provisions of these Regulations by regulation 21 as if for each reference to 17 weeks there were substituted a reference to 26 weeks.

(6) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$A+B/C$$

where—

A is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

B is the aggregate number of hours comprised in his working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals the number of excluded days during the reference period; and

C is the number of weeks in the reference period.

(7) In paragraph (6), “excluded days” means days comprised in—

(a) any period of annual leave taken by the worker in exercise of his entitlement under regulation 13, 13A or 15B;

(b) any period of sick leave taken by the worker;

(c) any period of maternity, paternity, adoption or parental leave taken

by the worker; and

(d) any period in respect of which the limit specified in paragraph (1) did not apply in relation to the worker by reason of the fact that the employer has obtained the worker's agreement as mentioned in paragraph (1).

66. **Regulation 6 (Length of night work)** WTR provides:

(1) A night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by him.

(3) The reference periods which apply in the case of a night worker are—

(a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or

(b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) For the purposes of this regulation, a night worker's average normal hours of work for each 24 hours during a reference period shall be determined according to the formula—

$$A+B-C$$

where—

A is the number of hours during the reference period which are normal working hours for that worker;

B is the number of days during the reference period, and

C is the total number of hours during the reference period comprised in rest periods spent by the worker in pursuance of his entitlement under regulation 11, divided by 24.

(6) …

(7) An employer shall ensure that no night worker employed by him whose work involves special hazards or heavy physical or mental strain works for more than eight hours in any 24-hour period during which the night worker performs night work.

(8) For the purposes of paragraph (7), the work of a night worker shall be regarded as involving special hazards or heavy physical or mental strain if—

(a) it is identified as such in—

(i) a collective agreement, or

(ii) a workforce agreement,

which takes account of the specific effects and hazards of night work, or

(b) it is recognised in a risk assessment made by the employer under [regulation 3 of the Management of Health and Safety at Work Regulations 1999] as involving a significant risk to the health or safety of workers employed by him.

67. **Regulation 7 WTR** has provisions in respect of the health assessment and transfer of night workers to day work and other provisions set out requirements in respect of rest periods and rest breaks and annual leave. There are other provisions which are not relevant to this claim.

68. **Regulation 10 (Daily rest)** WTR provides:

(1) A worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which he works for his employer.

(2) Subject to paragraph (3), a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which he works for his employer.

(3) The minimum rest period provided for in paragraph (2) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

69. **Regulation 11 (Weekly rest period)** WTR provides:

(1) Subject to paragraph (2), a worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which he works for his employer.

(2) If his employer so determines, a worker shall be entitled to either—

(a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which he works for his employer; or

(b) one uninterrupted rest period of not less than 48 hours in each such 14-day period, in place of the entitlement provided for in paragraph (1).

(3) Subject to paragraph (8), a young worker is entitled to a rest period of not less than 48 hours in each seven-day period during which he works for his employer.

(4) For the purpose of paragraphs (1) to (3), a seven-day period or (as the case may be) 14-day period shall be taken to begin—

(a) at such times on such days as may be provided for the purposes of this regulation in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply, at the start of each week or (as the case may be) every other week.

(5) In a case where, in accordance with paragraph (4), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular worker shall be taken to begin—

(a) if the worker's employment began on or before the date on which these Regulations come into force, on 5th October 1998; or

(b) if the worker's employment begins after the date on which these Regulations come into force, at the start of the week in which that employment begins.

(6) For the purposes of paragraphs (4) and (5), a week starts at midnight between Sunday and Monday.

(7) The minimum rest period to which [a worker] is entitled under paragraph (1) or (2) shall not include any part of a rest period to which the worker is entitled under regulation 10(1), except where this is justified by objective or technical reasons or reasons concerning the organization of work.

(8) The minimum rest period to which a young worker is entitled under paragraph (3)—

(a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration; and

(b) may be reduced where this is justified by technical or

organization reasons, but not to less than 36 consecutive hours.

70. **Regulation 23 (Collective and workforce agreements)** WTR provides as follows but it was not contended that there was any such collective or workforce agreement (and Regulation 24 (Compensatory rest) was not relevant):

> A collective agreement or a workforce agreement may—
>
> (a) modify or exclude the application of regulations 6(1) to (3) and (7), 10(1), 11(1) and (2) and 12(1), and
>
> (b) for objective or technical reasons or reasons concerning the organization of work, modify the application of regulation 4(3) and (4) by the substitution, for each reference to 17 weeks, of a different period, being a period not exceeding 52 weeks,in relation to particular workers or groups of workers.

71. **Regulation 28 (Enforcement)** WTR provides:

> (1) In this regulation, regulations 29–29E and Schedule 3—
>
> "the 1974 Act" means the Health and Safety at Work etc Act 1974;
>
> […]
>
> "the relevant requirements" means the following provisions—
>
> (a) regulations 4(2), 5A(4), 6(2) and (7), 6A, 7(1), (2) and (6), 8, 9 and 27A(4)(a);
>
> (b) regulation 24, in so far as it applies where regulation 6(1), (2) or (7) is modified or excluded, and
>
> (c) regulation 24A(2), in so far as it applies where regulations 6(1), (2) or (7) is excluded;
>
> […]

72. **Regulation 29 (Offences)** WTR provides:

> (1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.
>
> (2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 3.
>
> (3) It is an offence for a person—
>
> (a) to contravene any requirement imposed by the inspector under paragraph 2 of Schedule 3;

(b) to prevent or attempt to prevent any other person from appearing before the inspector or from answering any question to which the inspector may by virtue of paragraph 2(2)(e) of Schedule 3 require an answer;

(c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as is modified on appeal);

(d) intentionally to obstruct the inspector in the exercise or performance of his powers or duties;

(e) to use or disclose any information in contravention of paragraph 8 of Schedule 3;

(f) to make a statement which he knows to be false or recklessly to make a statement which is false, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.

(4) An employer guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(5) A person guilty of an offence under paragraph (3) shall be liable to the penalty prescribed in relation to that provision by paragraphs (6), (7) or (8) as the case may be.

(6) A person guilty of an offence under sub-paragraph (3)(a), (b) or (d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under sub-paragraph (3)(c) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(8) A person guilty of an offence under any of the sub-paragraphs of paragraph (3) not falling within paragraphs (6) or (7) above, shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment—

(i) if the offence is under sub-paragraph (3)(e), to imprisonment for a term not exceeding two years or a fine or both;

(ii) if the offence is not one to which the preceding sub-paragraph applies, to a fine.

(9) The provisions set out in regulations 29A–29E below shall apply in relation to the offences provided for in paragraphs (1) and (3).]

73. **Regulation 29B (Offences by bodies corporate)** WTR provides:

(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

74. **Regulation 30 (Remedies)** WTR provides:

(1) A worker may present a complaint to an employment tribunal that his employer—

(a) has refused to permit him to exercise any right he has under—

(i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4), 13, 13A, 15B or 15D;

(ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded; …

(iii) regulation 24A, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is excluded; or

(iv) regulation 25(3), 27A(4)(b) or 27(2); or

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2), 15E, 16(1) or 16A.

(2) Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

(2A) Where the period within which a complaint must be presented in accordance with paragraph (2) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (2).

(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the worker.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in refusing to permit the worker to exercise his right, and

(b) any loss sustained by the worker which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or (5), 15E, 16(1) or 16A, it shall order the employer to pay to the worker the amount which it finds to be due to him.

Unauthorised Deductions - ERA

75. **Section 13 (Right not to suffer unauthorised deductions)** ERA provides:

(1) 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.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) 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 for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a

deduction at the instance of the employer.

(8) In relation to deductions from amounts of qualifying tips, gratuities and service charges allocated to workers under Part 2B, subsection (1) applies as if—

(a) in paragraph (a), the words “or a relevant provision of the worker's contract” were omitted, and

(b) paragraph (b) were omitted.

Illegality

76. The Court of Appeal has provided a useful summary of on the law on illegality in its judgment in **Okedina v Chikale [2019] EWCA Civ 1393, [2019] IRLR 905.** It makes clear that there are ways in which a contract may be ‘defeated’ as illegal under (1) statute and (2) common law illegality. In **Okedina** Underhill LJ said at paragraphs 12, 13 and 14:

[12] The essential starting-point is to recognise that there are two distinct bases on which a claim under, or arising out of, a contract may be defeated on the ground of illegality. These are nowadays generally referred to as ‘statutory’ and ‘common law’ illegality.

Put very briefly:

(1) Statutory illegality applies where a legislative provision either (a) prohibits the making of a contract so that it is unenforceable by either party or (b) provides that it, or some particular term, is unenforceable by one or other party. The underlying principle is straightforward: if the legislation itself has provided that the contract is unenforceable, in full or in the relevant respect, the court is bound to respect that provision. That being the rationale, the knowledge or culpability of the party who is prevented from recovering is irrelevant: it is a simple matter of obeying the statute.

(2) Common law illegality arises where the formation, purpose or performance of the contract involves conduct that is illegal or contrary to public policy and where to deny enforcement to one or other party is an appropriate response to that conduct. The nature of the rule has long been controversial, but the controversy has been resolved by the decision of the ***Supreme Court in Patel v Mirza [2016] UKSC 42, [2017] 1 All ER 191, [2017] AC 467****. The majority of the Court adopted an approach based on an assessment of what the public interest requires in a particular case, having regard to a range of factors. At para 101 of his judgment Lord Toulson, with whom the majority agreed, said:*

> *'One cannot judge whether allowing a claim which is in some way tainted by illegality would be contrary to the public interest, because it would be harmful to the integrity of the legal system, without (a) considering the underlying purpose of the prohibition which has been transgressed, (b) considering conversely any other relevant public policies which may be rendered ineffective or less effective by denial of the claim, and (c) keeping in mind the possibility of overkill unless the law is applied with a due sense of proportionality.'*

Patel v Mirza is not directly concerned with statutory illegality, though there are references to it in Lord Toulson's judgment – particularly at para [40] and the beginning of para [109] ([2017] 1 All ER 191 at p 206 and 222e, [2017] AC 467 at p 484–485 and 501G–H).

The formulations in the first sentences of (1) and (2) above are gratefully adopted (with slight editing) from section 44 of Professor Burrows' Restatement of the English Law of Contract.

[13] Traditionally employment lawyers have tended to refer to the judgment of Peter Gibson LJ in Hall v Woolston Hall Leisure Ltd [2000] IRLR 578, [2001] ICR 99 as the authoritative statement of the distinction between the two kinds of illegality (see paras 30–31 ([2000] IRLR 578 at p 582, [2001] ICR 99 at p 108E– H)), with statutory illegality being referred to as the second category of illegality and common law illegality as the third1. Peter Gibson LJ identifies the touchstone for the availability of a defence in 'third category' cases as being that the employee has knowingly participated in the illegal performance of the contract – so-called 'knowledge plus participation' (para 31, quoting Scar-man LJ in Ashmore, Benson, Pease & Co Ltd v A V Dawson Ltd [1973] 2 All ER 856, [1973] 1 WLR 828).

[14] The appellant's grounds of appeal rely on both forms, but in her submissions before us Ms Prince focused almost entirely on statutory illegality. Any defence of common law illegality faces the obvious difficulty of the claimant's lack of knowledge, because she was unaware that her visa had not been extended after 28 November 2013; and, to anticipate, I believe the ET was right to reject it. This feature distinguishes her case from most of the reported cases involving illegality in the employment field. Typically the employee is well aware of his or her immigration status, though they may seek to conceal it from the employer. Here the boot is on the other foot: it is the appellant who concealed from the claimant the fact that her visa had not been extended. That is why only the absolute bar created by statutory illegality can give the appellant any defence.

[…]

> *[62] […] In his judgment in Patel v Mirza Lord Toulson was attempting to identify the broad principles underlying the illegality rule. His judgment does not require a reconsideration of how the rule has been applied in the previous case-law except where such an application is inconsistent with those principles. In the case of a contract of employment which has been illegally performed, there is nothing in Patel v Mirza inconsistent with the well-established approach in Hall as regards 'third category' cases. As Mr Reade put it, Hall is how Patel v Mirza plays out in that particular type of case. Accordingly the ET was quite right to treat its findings about the claimant's 'knowledge plus participation' as conclusive; and the EAT was right to endorse that approach.*

Statutory illegality

77. As is clear above, Okedina is a leading authority in the employment law context and set out the principle (as quoted above):

> *The underlying principle is straightforward: if the legislation itself has provided that the contract is unenforceable, in full or in the relevant respect, the court is bound to respect that provision. That being the rationale, the knowledge or culpability of the party who is prevented from recovering is irrelevant: it is a simple matter of obeying the statute.*

78. In that case the employer sought to avoid liability by relying on breaches of immigration law. The employer's defence under common law illegality was rejected by the Tribunal, Employment Appeal Tribunal and the Court of Appeal because of the Claimant's lack of knowledge. The statutory illegality defences similarly failed because:

> *[44] Neither s 15 nor s 21 of the 1996 Act says that no person shall be a party to a contract of employment where the employee does not have the appropriate immigration status, or that such a contract should be unenforceable by either party. They fall short of saying so in two respects. First, they do no more than provide for a penalty in the event of such employment. Second, they impose the penalty only on the employer. The authorities cited above make it clear that in such a case the legislature is not necessarily to be taken to have intended to prohibit the contract in the sense with which we are concerned: see in particular the passage from the judgment of Kerr LJ in Phoenix quoted at para [22].*
>
> *[45 The question thus is whether an intention can be implied into s 15 and/or 21 that a contract of employment where the employee does not have the appropriate immigration status should be unenforceable by either party. In answering that question it is necessary, as Kerr LJ puts it under head (ii) in the passage cited from Phoenix, to have regard to 'considerations of public policy in the light of the mischief which the statute is designed to prevent, its language, scope and purpose, the consequences for the innocent party, and any other relevant considerations'. The test is of course one of necessity.*

I start with the mischief which the statute is designed to prevent. I accept Ms Prince's submission that this case cannot be equated with cases of the Phoenix or Hughes v Asset Managers type, where a provision that the contract should be unenforceable would risk injuring the very class of person whom the statute is intended to protect. The provisions of the 2006 Act relied on are clearly not aimed at the protection of employees without immigration status. On the contrary, it is clear not only from the provisions in question but from the scheme of immigration control more generally that it is contrary to public policy for persons to be employed in the UK without the relevant immigration status: I will use the convenient shorthand 'working illegally', but without prejudice to the issue whether 'illegal working' is prohibited in the sense with which we are concerned.

However, that does not exhaust the public policy aspect. Although typically a person who is working illegally will know that they are doing so, that will not always be the case, as the facts of the present case illustrate. Most obviously, there is a well-recognised problem of vulnerable foreign nationals being brought to this country for exploitation of various kinds: usually, though this is not of the essence, they will be victims of trafficking within the meaning of the Anti-Trafficking Convention. Sometimes they will know that their presence and/or their employment is illegitimate, but sometimes they will be told, and believe, that it is legitimate when it is not. And even outside that context there may be circumstances where an employee is genuinely mistaken about his or her immigration status, sometimes because of their own mistakes but sometimes also because of their employer's (it is of course not unusual for larger employers to take responsibility for obtaining the necessary permissions for foreign employees). Nor will such mistakes necessarily be unreasonable: some aspects of the relevant rules are complicated or unclear, and wrong advice can be given, sometimes by the Home Office itself. In short, not all cases of illegal working involve culpability on the part of the employee.

It does not seem to me that public policy requires a construction of these sections which would have the effect of depriving the innocent employee of all contractual remedies against the employer in circumstances of that kind. The observations of Pearce LJ quoted at para [24] above are apposite. We are only concerned here with whether the blunt weapon of statutory illegality requires to be deployed. The common law illegality rule remains available in cases in which the employee knowingly participates in the illegality in question; and that rule appears to give the courts and tribunals all they need in order to reach a proportionate result in a particular case.

What all that leads to is that I do not believe that it can be said that the undoubted public interest in preventing foreign nationals from working illegally requires ss 15 and 21 to be construed as evincing a clear

statutory intention that contracts of the kind to which they refer should be unenforceable.

51 I turn to Ms Prince's arguments based on the authorities on which she relied.

52 As for Phoenix, there are three potential points of distinction from the present case. First, s 2(1) of the 1974 Act contained an express prohibition on unauthorised insurers carrying out contracts of insurance, albeit reinforced in s 11 by a criminal sanction, whereas here the appellant's case has to be based on an inference from the existence of the criminal sanction alone. Secondly, Kerr LJ felt compelled, with avowed reluctance, to treat a prohibition on 'carrying out' a contract of insurance as necessarily implying that the contract itself was prohibited: that phrase, he believed, connoted specifically the performance of the contract. I do not accept that the language of ss 15 and 21 of the 2006 Act is equally unambiguous: the act of 'employing' need refer only to the fact of the contractual relationship and does not necessarily connote the performance of obligations under it. Third, liability under s 11 is strict, whereas liability under both s 15 and s 21 depends on culpability – in the case of s 21 straightforwardly on knowledge of the illegality, and in the case of s 15 on non-compliance with various procedures. I need not consider whether any one of those distinctions would be sufficient on its own, though I am inclined to think that at least the latter two would be. What matters is that when taken cumulatively they are in my view sufficient to mean that Kerr LJ's conclusion in Phoenix does not govern the present case.

53 As for Mohamed v Alaga, I do not believe that Lord Bingham's 'point (6)' can be treated as enunciating a universal proposition that, because a contract requires the concurrence of at least two parties, any prohibition on one party entering the contract necessarily renders it unenforceable by the other. That would be wholly contrary to the authorities reviewed above, which require a case-by-case assessment of the public interest. It is clear that his proposition was directed to a contract of the kind in question, and that indeed appears from the following points (7)–(9) which directly address the public interest in that case.

54 I have already identified why the decisions referred to by Ms Prince concerning employees knowingly working illegally do not assist on her case of statutory illegality. Indeed Hounga v Allen might be thought to assist the claimant. The final sentence of the passage from Lord Wilson's judgment quoted at para [40] above appears to suggest that if the statutory illegality claim had been before the Court the strong public policy in favour of protecting victims of trafficking might have led it to conclude that the relevant statutory provision did not prohibit the contract.

55 Mr Reade made a further point of a different character. He pointed out that s 98(2) of the Employment Rights Act 1996, which identifies the potentially fair reasons for the dismissal of an employee, includes at head (d) the case where:

> *'… the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment'.*

He submitted that that showed that Parliament contemplated that a contract of employment would remain legally effective even if entered into in breach of a statutory prohibition. That is a fair point as far as it goes, but it cannot of course establish that that was the intention of the particular statutory provisions with which we are concerned here.

For those reasons I do not believe that ss 15 and/or 21 of the 2006 Act can be read as impliedly prohibiting contracts of employment, in the sense of rendering them unenforceable by either party, where the employee does not have the requisite immigration status.

57 As I have already noted, the issues were rather different in the ET and the EAT than before us. In particular, the statutory illegality question was understood to depend on whether the contract was unlawful at its inception, a point which is not now pursued. However, in the EAT Judge Eady did also consider whether a defence of statutory illegality could be raised in any event. At para 49 of her judgment she said:

> *'… I would also agree with the claimant that the statutory provisions relied on by the respondent did not clearly invalidate any contract entered into in 2013. Legislation that provides for a potential criminal offence on the part of an employer (ss 15 and 21 IANA) says nothing about the validity of any contract entered into by that employer (a contract, moreover, that could be fairly terminated should it become apparent that the employee could not continue to work without contravention of a duty or restriction imposed by or under an enactment, see section 98(2)(d) ERA). And although I allow that regard should be had to the broader, underlying purpose of the prohibition in question (and thus to the claimant's potential breach – by virtue of the Immigration Rules – of her leave to remain), that simply brings into play the balancing of public policy considerations (as allowed in Hounga and Patel), in a way that is entirely consistent with the ET's characterisation of this as a case falling within the third category in Hall; that is, a case where illegal performance of a contract may mean it cannot be enforced by a party who knowingly participated in the illegal performance.'*

> *58 Though more broadly stated – reflecting the very limited argument which it is clear she heard on the point – Judge Eady's conclusion, and the essence of her reasoning, is to the same effect as mine. Although a purist might say that the second half of the passage inappropriately conflates (a) the exercise required in deciding whether a statute implicitly prohibits a contract in the relevant circumstances with (b) the exercise required in deciding whether the contract is unenforceable at common law, the distinction is in truth largely at the level of theory, since the same underlying principles are involved. It is noteworthy that the language used in the penultimate sentence of Kerr LJ's 'head (ii)' in the passage quoted at para [22] above from Phoenix is very similar to that used by Lord Toulson at para 101 of his judgment in Patel v Mirza: see para [12](2) above.*

Common law illegality

79. Of course Okedina and Mirza are leading authorities (Okedina in the employment law context) on common law illegality as set out above. It bears repeating here Okedina's quote of Lord Toulson in Mirza as follows:

> *(a) considering the underlying purpose of the prohibition which has been transgressed, (b) considering conversely any other relevant public policies which may be rendered ineffective or less effective by denial of the claim, and (c) keeping in mind the possibility of overkill unless the law is applied with a due sense of proportionality.'*

80. I also note that in the Court of Appeal decision in **Enfield Technical Services Ltd v Payne Grace v BF Components Ltd [2008] EWCA Civ 393** Lord Justice Lloyd said:

> *38. In Hall v Woolston Hall Leisure Ltd [2000] IRLR 578 this court held that, if the illegality relied on is in the performance of the contract, the employee is not affected unless he or she knows of the facts which render the performance illegal and also participates actively and knowingly in the illegal performance. In that case the illegality was on the part of the employer alone, in using false documents; Mrs Hall knew of that, because the documents included her payslips, but she did not participate in the illegality. The employer misrepresented the position to the Revenue, to the knowledge of the employee, but the employee did nothing herself. The case was therefore unlike Miller v Karlinski and Salvesen v Simons where both parties participated in a misrepresentation to the Revenue, in the one case that a sum claimed as expenses was properly so claimed, whereas in fact it was just part of the employee's salary, and in the other case that a sum was properly payable to a partnership consisting of the employee and others, on the basis that the partnership had rendered some service to the employer for which it was properly entitled to be paid. The requirement of knowing participation does not require that the employee should realise that what*

> *is being done is illegal, but it is necessary that he or she should know of the facts which make it illegal.*

81. Indeed the EAT in the same case held (**Enfield Technical Services Ltd v Payne Grace v BF Components Ltd [2007] IRLR 840**):

> *101.1 The essential feature of all the cases where there has been found to be illegality is that the parties have knowingly entered into arrangements which have to their knowledge represented the facts of the employment relationship to be other than they really were. In none of those cases has the contract been held to be illegal merely as a consequence of the fact that the parties in good faith and without misrepresentation wrongly characterised their relationship with the result that the wrong tax regime was adopted. That is a relatively common occurrence. Tribunals frequently have to determine whether someone ostensibly employed under a contract for services has in fact been subject to a contract of employment. Such cases typically involve the employee resiling from the arrangement he originally made*.

82. Whist not aired with the parties, I note that in **Blue Chip Trading Ltd v Helbawi [2009] IRLR 128, EAT**, the EAT held, in circumstances where the employee had worked beyond the maximum hours permitted by his work visa, the claim should be disallowed as regards the excess hours but allowed in respect of the hours which were permitted by the visa because of the important social goal of enforcing minimum standards.

Statutory variation

83. The Respondent referred me to **Barber v RJB Mining (UK) Ltd [1999] IRLR 308** and IDS Handbook commentary on the findings in that case. Barber was a claim with a particular focus on Regulation 4(1) and 4(2) of the WTR. In that case the High Court held:

> *Regulation 4(1) of the Working Time Regulations imposes a contractual obligation on an employer not to require an employee to work more than an average of 48 hours a week during a reference period.*
>
> *The requirement in reg. 4(1) that "a worker's working time, including overtime, in any reference period which is applicable in his case, shall not exceed an average of 48 hours for each seven days" is mandatory and was clearly intended to have the effect that all contracts of employment should be read so as to provide that an employee should work no more than the permitted number of hours. The fact that reg. 4(1) does not state that an employer is prohibited from requiring an employee to work longer hours does not prevent it from creating free-standing legal rights and obligations under the contract of employment.*

It could not accepted that reg. 4(1) must be read with, and subject to, reg. 4(2), so that the only obligation provided by the regulation is the requirement in reg. 4(2) that an employer take all reasonable steps to ensure that the 48-hour limit is complied with. The qualified obligation on an employer in reg. 4(2), breach of which can be the subject of criminal proceedings, is separate and distinct from the clear, precise and mandatory terms of reg. 4(1). To read the paragraphs together would have the effect of reducing or making uncertain the limit of the maximum average working hours permitted in any week. Nor is the protection against detriment and dismissal for refusing to work hours in excess of the statutory limit sufficient to show that the only obligation provided by the regulation was that set out in reg. 4(2).

Since reg. 4(1) imposes a contractual obligation on an employer, an alleged breach of reg. 4(1) is justiciable in the civil courts, even though the court does not have jurisdiction to deal with a breach of reg. 4(2). In the present case, therefore, the court had jurisdiction to entertain the plaintiffs' claim seeking a declaration of their rights under reg. 4(1) and enforcement of those rights by means of injunctions.

The plaintiffs were entitled to a declaration that, having worked in excess of the permitted hours during the relevant reference period, they need not work until such time as their average working time fell within the limits specified in reg. 4(1). That declaration would have the effect of making it clear that the plaintiffs were entitled, if they so chose, to refuse to continue working until their average working hours came within the specified limit.

An injunction restraining the employers from requiring the plaintiffs to work until such time as the average working time fell within the specified limit would not be granted. In the circumstances of this case, the effect of injunction would be disproportionate to the benefit of the plaintiffs.

The plaintiffs were still entitled to exercise their right not to work, but that matter was better left to the individual choice of each plaintiff and to negotiations between them, their union and the employers.

Nor would the Court grant an injunction prohibiting the employers from subjecting the plaintiffs to any detriment for refusing to work excess hours. That injunction was neither appropriate nor necessary since any detriment which may be caused to the plaintiffs could form the basis of a complaint to an employment tribunal under s.45A of the Employment Rights Act.

84. The Respondent also referred me to **R. (on the application of Fire Brigades Union) v South Yorkshire Fire and Rescue Authority [2018] I.R.L.R. 717**. In South Yorkshire it was held:

> [*21] Regulation 6 deals with the length of night work. Regulation 6(1) provides that a night worker's normal hours of work in any reference period applicable in his case 'shall not exceed an average of eight hours for each 24 hours'. Regulation 6(2) requires the employer to 'take all reasonable steps … to ensure that the limit … is complied with in the case of each night worker employed by him'.*
>
> *[22] There is no right to complain to an employment tribunal of a breach of rule 6(1). It is possible that it may create a contractual as well as a statutory prohibition on the employer and a corresponding contractual right in the employee, by parity of reasoning with that in Barber in relation to reg 4; but there is no authority on the point. Unlike reg 4, reg 6 does not include any provision for an individual to opt out.*
>
> *[23] Compliance with reg 6(2) is a 'relevant requirement' within reg 28(1). It is therefore a crime (see reg 29(1)) not to comply with reg 6(2), but this is subject to exceptions. There is an exception where reg 23 applies. That provides at (a) that a collective agreement or workforce agreement may modify or exclude the application of (among other provisions) reg 6(1) and (2).*

85. The Respondent submitted, and I accept, that the wording of Regulations 6(1) and 6(2) of the WTR's are so similar to the wording of Regulations 4(1) and 4(2) that the same conclusions should be reached on them. I accept that weight is added to this argument by the opinion expressed in the IDS Handbook.

Contractual right to vary

86. The Respondent also referred me to the EAT decision in **Bateman and others (appellants) v. Asda Stores Limited (respondent) [2010] IRLR 370** and argued, in the alternative to its contentions on illegality as regards the claimant's unlawful deductions and notice pay claims that the Respondent was entitled to suspend without pay or reduce her hours and pay to zero given the variation clause in the contract of employment [HB33]. In Bateman the EAT held:

> *According to the comments of the Court of Appeal in Wandsworth, an employer can reserve the ability to change a particular aspect of the contract unilaterally, although clear language was required to do so. Such a right should be exercised in a way that does not breach the implied term of trust and confidence.*
>
> *In the present case, the argument that the tribunal had failed to have regard to the relevant background would be rejected. It had been*

accepted at the hearing that the handbook should be construed on an objective basis, and no evidence had been adduced before the employment tribunal as to the claimants' alleged expectation as to the effect of the handbook. On its true construction, the handbook conferred on the employer two separate rights: the right to review and amend the contents of the handbook, and the right to introduce new policies. The words "reserves the right to review, revise, amend or replace" clearly showed that the employer was entitled to change unilaterally the contents of the handbook. The power to vary was not limited to non-contractual policies, since the "contents of the handbook" also included contractual matters.

87. In Bateman the applicable contractual wording was:

'Your contract

[A] The letter you received offering you your job (and any subsequent contract change letters), together with the following sections in this handbook, form your main terms and conditions of employment:

– Changes to the colleague handbook

– Probationary period

– References

– My pay

– Sick pay

– My hours of work

– Breaks

– Customary holidays

– Holidays

– Notice periods

– Other employment

[B] They also constitute your statement of employment particulars which you are entitled to under the Employment Rights Act 1996. The handbook also contains lots of information about Asda policies which do not form part of your terms and conditions of employment.

Changes to the colleague handbook

> *[C] The company reserves the right to review, revise, amend or replace the content of this handbook, and introduce new policies from time to time to reflect the changing needs of the business and to comply with new legislation. A copy of the handbook is displayed on the colleague communication board in your store and on pipeline, and replacement copies are available from your people manager.*
>
> *[D] You should keep yourself up to date with any changes, by attending meetings, huddles [informal team meetings] and by keeping an eye on the colleague communication board for any updates …'*

88. In Bateman the EAT noted the unilateral variation that was sought to be made and which was permitted by the contract as follows [10]:

> *The employment tribunal held that the introduction of the new regime was a significant change affecting how much employees would be paid for their work at particular times of the day and night as well as removing certain benefits. It concluded that the pay of the claimants was fundamental to the employment relationship and that in the light of the significant changes to the claimants' contractual terms as to pay, Asda was required on ordinary principles to obtain the consent of the employees.*

ANALYSIS AND CONCLUSIONS

Employment status

89. Whilst included in the list of issues, it was not in dispute that the Claimant was an employee of the Respondent within the meaning of section 230 of the ERA.

The Respondent's contentions

90. The Respondent argued that the complaints of unfair dismissal, for notice pay, for unauthorised deductions from wages (the unpaid suspension period) and for a redundancy payment should all fail on the grounds of either statutory or common law illegality. Failing that the Respondent argued:

90.1 **Dismissal fair:** That the Claimant's dismissal was not by reason of redundancy it was for the potentially fair reasons being either:

90.1.1 that the Claimant could not continue to work in the position which she held without contravention (either on her part or on that of her employer) of a duty or restriction imposed by or under an enactment; or

90.1.2 some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held (being the restrictions on working time under the WTR); and

90.1.3 that it was fair in all the circumstances of the case.

90.2 **Statutory variation:** that in accordance with Barber the effect of Section 6(1) WTR was to vary the contract to a part time contract of less than 3 hours between 11pm and 6am. It argued that if the Claimant worked three hours between 11pm and 6am then she would be a night worker and could not then work more than an average of eight hours in 24. However, it said, the Claimant was in fact entitled to nothing because the Claimant had not been willing to work part time on the HoP contract (she had been asked if she was prepared to work at the Houses of Parliament from 6pm - 9pm – after her day shift at Deutsche Bank but declined). The Respondent contended that in these circumstances the Claimant was entitled to no amount in respect of her notice and, if anything, she was only entitled to at the most three hours per day for her statutory notice period of 12 weeks.

90.3 Contractual unilateral right to vary: The Respondent also contended that it was entitled to suspend without pay or reduce her hours and pay to zero given the variation clause in the contract of employment. Therefore nothing was properly payable in the "suspension" period and so there were no unlawful deductions and no breach of contract in not making payment for the Claimant's notice period.

Concealment

91. I deal first with the arguments in respect of illegality. As I make clear in my findings of fact, when she started working for KGB at the Houses of Parliament the Claimant was already employed to work a day shift for Former Employer A at Deutsche Bank. That employment then transferred under TUPE to the Respondent. The Claimant had told KGB that the Houses of Parliament work, which was undoubtedly night work, was her only job. She knew this was the wrong answer but deliberately hid the fact of her other full time job working at Deutsche Bank because, unsurprisingly, she knew it breached the long standing law on working time. The Claimant then knowingly misrepresented her employment situation to the Respondent through the TUPE joiner form when at "C" she indicated "*non*" in response to the statement "*I have another job or receive a state or occupational pension*" [HB35]. This was a second deliberate concealment of her night worker job in circumstances where she knew her working hours breached working time law.

Health, safety and public policy and Regulation 6 WTR

92. There are clearly strong health, safety and public interest considerations behind the restrictions on working time imposed by the WTR's. This is particularly the case given the higher risks associated with night work. This is reflected in the greater restrictions on the amount of working time permitted for those working between the hours of 11pm and 6am (night workers) and the fact that there is no option to opt out of those restrictions (as there is with the 48 hour working week).

93. Regulation 6 (1) WTR's makes clear (emphasis added) that a "*night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours.*". Regulation 6 (2) makes that an employer shall take "*all reasonable steps, in keeping with the*

need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by him". This is no doubt why KGB and the Respondent asked the questions that they did.

94. The consequences for the Respondent in not taking all reasonable steps under Regulation 6(2) would be serious because those obligations fall within the definition of "*relevant requirements*" and Regulation 29 provides that an employer who fails to comply with any of the "relevant requirements" shall be guilty of an offence meaning that it shall be liable *"(a) on summary conviction, to a fine not exceeding the statutory maximum* (b) *on conviction on indictment, to a fine*.".

95. There could also be serious implications for individuals engaged by the Respondent under Regulation 29B which provides that (emphasis added) "*where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly*."

96. The health and safety concerns that need to be addressed are not just those of the individual performing night work. They are also of wider society. Tiredness, particularly associated with night work, creates an increased risk of an individual making mistakes not just in the workplace (that could affect colleagues) but also in the wider world. The negative health implications of excessive hours on top of night work also have a potential cost to society.

Reason for dismissal

97. It is expedient for me to here explain my analysis and conclusions on the reasons for the Claimant's dismissal:

    97.1 By the time that the Respondent took the decision to dismiss the Claimant, she was not at risk of redundancy. The Respondent had achieved the necessary reduction in the workforce by accepting volunteers for redundancy.

    97.2 For the reasons set out in my findings of fact, even had the Claimant applied for voluntary redundancy, on the balance of probabilities any such application would not have been accepted by the Respondent (the Claimant having scored so well against the redundancy selection criteria and good night workers, such as the Claimant, being prized by the Respondent).

    97.3 Whether or not the Claimant received correspondence asking for volunteers for redundancy, she did not apply for it.

97.4 There is no evidence that the reason for dismissal was the fact that the Respondent had ceased or intended to cease:

97.4.1 to carry on the business for the purposes of which the Claimant was employed; or

97.4.2 to carry on that business in the place where the employee was so employed; or

that the requirements of that business:

97.4.3 for employees to carry out work of a particular kind, or

97.4.4 for employees to carry out work of a particular kind in the place where the Claimant was employed by the employer;

had ceased or diminished or were expected to cease or diminish.

98. The Claimant is not therefore entitled to a redundancy payment pursuant to Sections 135 / 163 of the ERA. She was not dismissed by reason of redundancy.

99. It is clear that the reason for the Claimant's dismissal was the potentially fair reason that the Claimant could not continue to work in the position which she held without contravention of the restriction imposed by Regulation 6 (1) WTR on the working time of night workers (S.98 (2) (d) ERA). If it was not that then the Respondent had some other substantial reason of a kind such as to justify the dismissal of the Claimant (being also the restrictions on working time under the WTR) (S.98 (1) (b) ERA).

100. Of course hours of work are central to a contract of employment, particularly one for night cleaning where the employee is paid by the hour (as was the Claimant). The hours of work and the time of day or night when those hours of work are performed go to the root of the contract of employment.

ILLEGALITY

Common law illegality

101. The Claimant seeks to rely on her contract of employment with the Respondent in respect of her HoP hours in the following respects:

101.1 A complaint of unfair dismissal;

101.2 For payment for the period in which she was suspended without pay;

101.3 For notice pay.

101.4 For a redundancy payment (she is not entitled to this for the reasons set out above).

Pay during suspension

102. I accept the Respondent's contention that the Claimant cannot enforce the contract of employment against the Respondent because of the principles of common law illegality.

103. It is clear that the performance of the contract in question, given the Claimant's work for the Respondent at Deutsche Bank, was in breach of Reg 6 (1) WTR which provides that "*A night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours*.".

104. For the reasons set out above, performance of the HoP contract was also clearly contrary to public policy and the importance of the Reg 6 (1) prohibition and the public policy matters is emphasised by (i) the absence of an opt out (taking full account also of Reg 23 (a)), and (ii) the fact that if the Respondent did not meet its obligations under Reg 29 and 29B then offences might be committed.

105. When this is balanced against the impact to the Claimant of the denial of the right to enforce the contract the illegality and public policy considerations prevail particularly since:

    105.1 The Claimant deliberately sought to conceal from the Respondent her dual employment and the breach of the Reg 6 (1) in circumstances where the Claimant knew that the hours she was working under the Deutsche Bank and HoP employments were in breach of the WTR's.

    105.2 The Respondent took a considered and reasonable approach in choosing which contract to suspend (i.e. taking the course that was most advantageous to the Claimant) and the Claimant did not suggest that it should be the other contract that should be the focus of attention.

    105.3 The circumstances arose out of the Claimant's concealment and it would be unjust that, the Respondent having no choice but to suspend some of her hours, the Claimant should be paid for hours that she could not work without there being a breach of Reg 6 (1) WTR and with potentially serious consequences for the Respondent and under Reg 29B WTR.

    105.4 The Claimant was also not interested in doing a reduced, four hour shift, at the Houses of Parliament.

    105.5 The Claimant clearly wanted to be made redundant instead so that she could benefit from a redundancy payment.

106. I do not consider that this represents "overkill" and consider that it represents application of common law illegality with "a due sense of proportionality".

107. Accordingly, common law illegality prevents the Claimant from enforcing the contract of employment against the Respondent to recover pay for the period during which she was suspended without pay (whether under the Employment

Tribunals Extension of Jurisdiction (England and Wales) Order 1994 or under the unauthorised deduction from wages provisions of the ERA).

Notice pay

108. As regard the Claimant's complaint of failure to give notice of termination (and pay for such period) I repeat my conclusions in respect of pay during the period of suspension but add to those conclusions that:

108.1 the Respondent having made a number of attempts to find a resolution with the Claimant and the Claimant having insisted only on redundancy (in circumstances where there was no redundancy situation when the Respondent dismissed her without notice and the Respondent having no legal obligation to select the Claimant for redundancy) I consider that it would not be contrary to public policy for the Claimant to be prohibited, by the principle of common law illegality, from relying on her HoP contract of employment in claiming notice pay;

108.2 The Claimant brings this complaint in respect of a contract under which, having not agreed to a variation of the terms relating to hours, she could not have worked her notice in any event because of Reg 6 (1).

108.3 Although they were not referred to by the parties, ERA S. 86, 87, 88 and 93 do not help the Claimant because S.91 (5) ERA provides that "*If an employer fails to give the notice required by section 86, the rights conferred by sections 87 to 90 and this section shall be taken into account in assessing his liability for breach of the contract*", the Claimant cannot enforce the contract because of the common law illegality principle and because S.93 ERA provides no freestanding right to claim for notice pay.

109. Again, I do not consider that this represents "overkill" and consider that it represents application of common law illegality with "a due sense of proportionality".

Unfair dismissal

110. As regard common law illegality and the Claimant's complaint of unfair dismissal, I consider that the threshold for a finding of common law illegality is higher than it is in respect of the complaints relating to pay for the Claimant's period of suspension and notice pay because:

110.1 of the importance of the protection against unfair dismissal; and

110.2 the constraints imposed by Reg 6 (1) WTR do not lead so directly to a decision to dismiss;

110.3 as regards suspension without pay and notice pay the Claimant seeks pay for work that had not been performed and could not lawfully be performed (albeit it was of course the Respondent that took the decisions leading to the Claimant not carrying out the corresponding work (but for good reason

based in Reg 6 (1) and (2) WTR)).

111. I nonetheless, in the circumstances of this claim, conclude that the Claimant is prevented by common law illegality from relying on the contract of employment in pursuit of a claim of unfair dismissal under the ERA. I base this decision on the same reasons as set out in respect of pay during suspension and notice pay but add also that:

111.1 the Claimant was already doing her Deutchche Bank role when she commenced employment for night shifts at the HoP.

111.2 Had she not misrepresented her employment position, on the balance of probabilities, I consider that it is unlikely that she would have been offered night work at the HoP because of the restrictions imposed under Regulation 6 WTR.

111.3 It is therefore unlikely, had she been open about her employment with Deutsche Bank that she would have been offered the HoP role and she would not have come to have the right to claim unfair dismissal.

111.4 Whilst a finding of common law illegality would defeat a complaint in respect of an important employment law protection, I consider that this effect needs to be seen in that context.

112. Again, I do not consider that this represents "overkill" and consider that it represents application of common law illegality with "a due sense of proportionality".

Redundancy pay

113. Had I not found that the Claimant was in any event not entitled to a redundancy payment I would have found that she was barred by common law illegality from complaining of a failure to make such a payment for the reasons set out above in respect of her complaints of pay during suspension, failure to give notice and unfair dismissal.

Statutory illegality

114. The Claimant's complaints all fail for the reasons set out above. However, I go on to make the following brief findings in respect of statutory illegality.

Prohibition on making of the contract

115. I find that the Respondent was right to submit that Reg 6(1) WTR prohibited the making of the contract of employment with respect to the Claimant's work at the HoP and I consider that the circumstances of this case are sufficiently different to those in **Okedina**.

116. In reaching this finding I have taken into account that Reg 6 (1) and (2) do not say that:

116.1 "no person shall be a party to a contract of employment where the employee would become a night worker and in a reference period work more than an average of eight hours for each 24 hours"; or

116.2 *"*such a contract shall be unenforceable by either party*";* and

do no more than:

116.3 Provide that a night worker's normal hours of work in any reference period shall not exceed an average of eight hours for each 24 hours; and

116.4 provide for a penalty in the event of such employment; and

116.5 impose the penalty only on the employer.

117. However, in the circumstances of this case and because:

117.1 of the pre-existence of the Deutsche Bank contract; and

117.2 the hours of work and the time of day or night when those hours of work are performed go to the root of the contract of employment (as I find above),

the wording of Reg 6 (1) does, in my view, create a statutory prohibition on the making of the HoP contract. It could not have been entered into without breaking the law (i.e. Reg 6 (1) WTR).

118. In reaching this finding I further note that:

118.1 for the purposes of Reg 6 (1) it makes no difference whether a worker's hours are with the same or different employers; and

118.2 the dates of continuous employment in respect of each employment in this case were, as recorded in my findings of fact, (i) 5 April 2024 for the Deutsche Bank contract and (ii) 20 November 2008 for the HoP contract) so the HoP contract came later and was illegal from its inception because of the Claimant's pre-existing work under the Deutsche Bank contract

Prohibition on enforcement of the contract

119. I do not need to reach findings on the question of whether the Claimant is prohibited from enforcing the contract of employment by reason of statutory illegality. However, I nonetheless find that the Claimant is so prohibited for the same reasons as she is prohibited under the rules of common law illegality. Here enforcing the contract would risk injury to the class of person that the WTR is designed to protect. This is not a case of an employer pursuing its night worker employee to work excessive and illegal hours. The WTR is designed to stop night workers risking their own and others' H&S by prohibiting excessive working time. If I were to allow the contract to be enforced (whether by refence to unfair

dismissal rights, the right to pay or the right to notice pay) then that would be condoning the conduct of the Claimant in concealing her working arrangements.

Statutory variation

120. Whilst I acknowledge the weight of the Respondent's submissions in this regard, owing to my findings above I do not go on to determine this question.

Contractual right to vary

121. Again, whilst I acknowledge the weight of the Respondent's submissions in this regard, owing to my findings above I do not go on to determine this question.

Unfair dismissal

122. I have set out above my findings in respect of the reason for the Claimant's dismissal, which was a potentially fair reason.

123. I accept the Respondent's submissions in respect of the broader fairness of the Claimant's dismissal what was clearly fair in all the circumstances of the case. Particularly in the face of the Claimant's persistence in seeking redundancy and not engaging with the options that the Respondent sought to discuss with her.

124. The process adopted by the Respondent was clearly fair. The Respondent sought to discuss with the Claimant, on a number of occasions, how her employment in the HoP role could be maintained (principally by the Claimant agreeing to work fewer hours that did not fall foul of the provisions of the WTR).

125. The Respondent also took a reasonable approach, favourable to the Claimant (and arguably less favourable to the Respondent given that it meant losing a prized night worker on the HoP contract), with respect to deciding that it should be the HoP contract of employment that should be in scope for termination or variation. As I have said, the Claimant failed to engage meaningfully in those discussions.

126. The process adopted and the decision taken to dismiss the Claimant on 28 October 2024 was clearly in the band of reasonable responses open to a reasonable employer in these circumstances.

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Employment Judge Woodhead

15 September 2025

Sent to the parties on:

22 September 2025

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For the Tribunals Office

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Appendix 1

AGREED LIST OF ISSUES

1. Employment status

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

2. Unfair dismissal

2.1 Was the claimant dismissed?

2.2 What was the reason or principal reason for dismissal? The respondent says the reason was a substantial reason capable of justifying dismissal, namely a statutory restriction given her hours were in breach of the Working Time Regulations. The claimant says that the real reason was redundancy and that she is entitled to a redundancy payment.

2.3 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

3. Remedy for unfair dismissal

3.1 Does the claimant wish to be reinstated to their previous employment?

3.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.5 What should the terms of the re-engagement order be?

3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

3.6.1 What financial losses has the dismissal caused the claimant?

3.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

3.6.3 If not, for what period of loss should the claimant be compensated?

3.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

3.6.5 If so, should the claimant's compensation be reduced? By how much?

3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.6.7 Did the respondent or the claimant unreasonably fail to comply with it?

3.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

3.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

3.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

3.6.11 Does the statutory cap of fifty-two weeks' pay apply?

3.7 What basic award is payable to the claimant, if any? Should any additional redundancy pay be awarded?

3.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

4 Wrongful dismissal I Notice pay

4.1 What was the claimant's notice period?

4.2 Was the claimant paid for that notice period?

4.3 If not, did the respondent have any reason to justify non-payment? The respondent alleges that the statutory restriction on employment justified non-payment.

5. Unauthorised deductions

5.1 Did the respondent make unauthorised deductions from the claimant's wages in relation to the suspension period from 25 July 2024 and 28 October 2024 and if so how much was deducted?

5.2 Was any deduction required or authorised by statute? The respondent alleges that the statutory restriction on employment justified non-payment.

5.3 Was any deduction required or authorised by a written term of the contract?

5.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

5.5 Did the claimant agree in writing to the deduction before it was made?

5.6 How much is the claimant owed?

Appendix 2

"Email 8":

From: Respondent ER Team
Sent: Tuesday, September 10, 2024 8:59 AM
To: Claimant's Trade Union Representative ("**PE**")
Cc: The Claimamnt and others
Subject: RE: Liaison with GMB representative

Hi [PE],
The teams invites are what I was referring to, which I can see that you have accepted. Both yourself and the hearing managers have received the invites to facilitate your attendance virtually.

If you have any further questions please let me know, thanks

"Email 7":

From: Claimant's Trade Union Representative - **PE**
Sent: Tuesday, September 10, 2024 8:39 AM

To: Respondent Employee Relations
Cc: Claimant and others
Subject: Re: Liaison with GMB representative
[…]
Dear [NAME],
I mean Team invite for the meeting please I am unable to attend in person.
Kind regards
[PE]

"Email 6":

From: Respondent Employee Relations **Sent:** 09 September 2024 16:24
To: PE
Cc: the Claimant and others
Subject: RE: Liaison with GMB representative

Dear [PE],
Can see you have accepted the invites for the meetings this week.
If you have any questions in the meantime or issues accessing the meetings, please let me know.

"Email 5":

From: PE
Sent: Monday, September 9, 2024 2:27 PM
To: Respondent Employee Relations
Cc: the Claimant and others
Subject: Re: Liaison with GMB representative

[…]
Dear [NAME],
Thank you for the following email.
Could you send me an calendar invite for both meetings please.
Kind regards
[PE]

"Email 4":

From: Respondent Employee Relations
Sent: 09 September 2024 13:39
To: PE
Cc: The Claimant and others
Subject: RE: Liaison with GMB representative
Dear [PE],

Thank you for your response, it is probably best that the details of the below are discussed in more depth within the respective meetings.

Please find attached invite letters to a further consultation meeting and a grievance hearing.

Please feel free to confirm attendance by response to this email and I will inform the hearing managers.

If you have any questions in the meantime please let me know.

“Email 3”:

From: PE
Sent: Friday, September 6, 2024 2:44 PM
To: Respondent Employee Relations
Cc: the Claimant and others
Subject: Re: Liaison with GMB representative
[…]

Dear [NAME],
Good to hear all is well.

Our member feels that the job is causing her undue stress and would prefer to receive her redundancy payment so that she can focus on her primary employment. Also to add, you stopped her salary from her second role when you placed her on suspension without following due process and caused her a financial detriment.

Kind regards
PE

“Email 2”:

From: Respondent Employee Relations
Sent: 06 September 2024 14:30
To: PE
Cc: the Claimant and others
Subject: RE: Liaison with GMB representative

Dear [PE],

Thank you for your email, all good here I hope you are too.

We are looking to hold a further consultation meeting with yourself and Mulikat, I'm just waiting on a date and time for next week in line with your leave and will issue an invite once confirmed.

Can I please ask for clarification of why redundancy is being sought?

"Email 1":

From: PE
Sent: Friday, September 6, 2024 9:43 AM
To: Respondent Employee Relations
Cc: the Claimant and others
Subject: Re: Liaison with GMB representative
Importance: High
[…]

Dear [NAME],

I hope my email finds you well.

Mulikat no longer wants to be consider for a 4 hour role in her second job and would like to be given a redundancy package.

Kind regards

PE