EMPLOYMENT TRIBUNALS

Claimant: Mrs M Berticsova
Respondent: Infinite Intermediate Care Ltd

Heard at: Cambridge Employment Tribunal
On: 17 November 2025
Before: Employment Judge Andrew Clarke KC
Members: Ms J Schiebler
Mr S Woodward

Representation
Claimant: In person
Respondent: Mr Wilson (Peninsula representative)

JUDGMENT

1. The claims for direct race discrimination and harassment are dismissed.

2. The claim for unpaid wages in respect of 28 days of holiday taken prior to the termination of the employment succeeds and the respondent must pay to the plaintive the total gross sum of £3,080 in respect thereof.

3. The claim in respect of alleged unlawful deductions from wages arising from the payment of an incorrect hourly/daily rate of remuneration and in respect of days and/or hours in respect of which the claimant was not paid succeeds such that the respondent must pay to the claimant the following gross sums in respect of the following months:

    3.1 January 2024 £345.

    3.2 February 2024 £595.

    3.3 March 2024 £502.

4. The claim for wages in respect of an alleged notice period is dismissed.

REASONS

Preliminary matters

1. The claimant represented herself at today's hearing. An order had been made

for a Hungarian interpreter to be present as the claimant had struggled without one at a preliminary hearing. Unfortunately, the booking for an interpreter was cancelled a few days ago in circumstances which are wholly unclear. In the event, the claimant was able to proceed in English with the tribunal taking care to make sure that she understood what was being said.

2. The respondent was represented by Mr Willisms. His company, Peninsula, provides services to the respondent. However, despite Peninsula's best efforts, the respondent has failed to respond to its communications since February 2025 and the proposed witness from whom we had seen a witness statement, has not attended. A Companies House search revealed that the company itself is still extant with up to date accounts, but that the proposed witness ceased to be a director and a person with effective control of the respondent in October 2025.

3. At the preliminary hearing in May 2025 an order was made for further information to be provided by the respondent in relation to the claimant's claims for unpaid holiday pay and unpaid (or underpaid) wages. That order was not complied with. Whilst some payslips had been disclosed and are in the bundle before the tribunal, no underlying documents such as records of when and where the claimant worked and for how many hours have been disclosed. However, the claimant's contemporaneous calendar with handwritten notes was available and provided support for her contentions as to when she had worked.

The claims

4. The claimant was employed by the respondent on a zero hours contract as a Domiciliary Care Worker. For some time, she had been a carer for a particular client at his home. This involved full-time work but with the work being undertaken in blocks of around 14 continuous days, which would be followed by a substantial non-working period. Such a block would rarely be shorter than 14 days but could be up to 20 days.

5. For this work the claimant was paid £110 per day. She was entitled to 28 days holiday per year. She says that she took her holiday in the year ended 1 April 2024 in the period from Janaury to March of 2024. She says that no payment was made in respect of any of those days of holiday which she had taken.

6. She also alleges that from January to March 2024 she was wrongly paid at the daily rate of £90 and also that she was not paid for all the days (and hours) which she had worked.

7. In addition, the claimant maintains that she was discriminated against because of her race. She says that she was moved from her work for that particular client in April 2024 due to her ethnicity and not offered further work. She claims to have been dismissed and not paid for her notice period, alternatively, that she resigned and was not paid for her notice period. She also says that not offering her work because of her Hungarian ethnicity was an act of racial harassment.

Findings of fact

8. The claimant took 28 days holiday in the period 25 January to 27 March on the days listed in paragraph 3 of her witness statement. The payslips for those three

months do not show any of those days as having been paid. Those days were all the subject of appropriate requests which were not refused. Of course, some of those days would have been days when she was not expecting to be rostered on to care for the particular client. She explained to us, and we accept, that the way in which the respondent's business was conducted was that individual carers would either take their holiday on days when they were not rostered to work or on days that they were rostered, or would have been rostered, but for their holidays.

9. The claimant was not given payslips for January, February or March 2024 until much later. Hence, she did not know how the pay she had received had been calculated, although she was aware that on her calculations she appeared to have been radically underpaid. She kept asking for the payslips, complaining that she could not see how her pay had been calculated without them and believed that she was being underpaid. Exchanges of texts which appear in the bundle show her complaining about these matters and about delays in payment of wages and that, according to a departing manager, the respondent was experiencing financial difficulties. Looking at those texts, it would appear that the claimant was not alone in complaining about lack of payslips and underpayment. Eventually, some time after 20 March 2024, the claimant did receive payslips. These showed that she had not received pay for all of the days she had worked, that she had been paid at £90 per day rather than £110 per day and that she had not been paid for any of her holidays which she had taken.

10. When the claimant returned to being available for work after 27 March 2024 (her last day of holiday) she was not allocated any work and she complains that others were given that work in her place. She alleges that the work was given to persons of a different race. However, her evidence as regards those matters appears to us very confused. She initially told us that she was on holiday until mid-April but corrected that by refenced to her calendar. She accepted that others would have had to have covered her holiday period (insofar as she would otherwise have been rostered on) and would cover the periods when she would inevitably have been rostered off just as if she was not on holiday. It was unclear whether the period from 27 March to mid-April would have been a rostered off or rostered on period and, if it had been a rostered off period, then those who would normally work with that client when the claimant was rostered off would have been allocated as usual.

11. The claimant's apparently confused evidence in this regard appeared to us most likely not to be related to difficulties in language, but to an important event in mid-April which we deal with next.

12. The claimant had transferred to the respondent by operation of TUPE in 2023. It would appear that those running the company that she was previously employed by sold that venture to the respondent. Those individuals then started a new business in the same sector in 2024. In mid-April they contacted the claimant and she agreed to go to work for them. It appears that those individuals running the new business approached the relatives responsible for the client with whom she had been working for some time, suggesting that that client's care package should be transferred from the respondent to their new venture. In that context we should note a further area of confusion. The claimant originally told us that the approach to her by that new company took place at about the time of her

returning to work after her holidays, being simultaneous with that event or a couple of days after it. That indeed placed the event of the approach to her in mid-April. However, her return from holiday was actually on 28 March and so it may be that the approach came somewhat earlier. The limited evidence which we have suggests that the client sadly died on 1 June and that the claimant had been caring for him, acting via the new employer, for some six weeks prior to that. That would suggest that she commenced work for the new employer in about mid-April. Ultimately, we do not find it necessary to make specific findings of fact on these matters. It is sufficient for our purposes that shortly after her return from holiday and before being allocated any other work by the respondent, the claimant commenced work for her new employer.

13. The respondent's staff handbook contains a post-employment restricted covenant. It could possibly be argued that this covenant might prevent the claimant from working with that client. The claimant says that she never received either a contract or handbook from the respondent and the signature sheet in the bundle which should demonstrate that she did so, is blank. There is no evidence to be found in the documents in the bundle to suggest that the claimant did receive either the handbook or a schedule of terms and conditions (such as rate of pay, hours of work, holiday entitlement and so forth) to which schedule that handbook refers. Indeed, no such document is to be found in the bundle. We find that the claimant did not receive either the handbook or any such schedule. In any event, it would be for the respondent to show that the covenant represented a reasonable restraint of trade before it could place any reliance upon it and it does not appear to us that the respondent did place any reliance upon it at the time, for example, to suggest that the claimant was in repudiatory breach of contract which repudiation the respondent accepted. There appears to be a suggestion along those lines in the witness statement of the absent witness, but even there it does not suggest that that argument was deployed at the time. We also note that the claimant had a contract which was transferred by TUPE to the respondent. We have not seen that contract, but there is no suggestion that it contained any restrictive covenant and absent that, the introduction of such a covenant would face legal obstacles.

14. We are satisfied as follows;

    14.1 In January 2024 the claimant worked 15 days and was paid for only 14.5 days. Payment was made at the rate of £90 per day when it should have been at £110 per day, being the rate at which she had been paid prior to January 2024. Her work and hours per day had not changed.

    14.2 In February 2024 the claimant worked 17 days but was paid for only 14.17 days again at £90 per day. There is no explanation anywhere as to what 0.17 of a day amounts to or why that was paid. Indeed (and confusingly) the payslips actually refer to this as being a number of hours worked rather than a number of days.

    14.3 In March 2024 the claimant worked for 15 days and two hours but was only paid for 13 days and, again, at the wring rate of pay.

15. The difference between pay received and what should have been paid is for January £345, for February £595 and for March £502.

16. These are gross figures. We are in no position to calculate the net figures especially given the lack of an interpreter (which would be necessary to conduct such an enquiry) and the claimant's failure to provide the further information ordered together with the absence of contemporaneous records. Hence, we think it appropriate to order gross sums to be paid leaving the claimant to deal with the tax implications of this.

17. We are satisfied that she took 28 days holiday in the period January to March 2024 and should have been paid for those days at the rate of £110 per day, giving a total of £3,080. This is again a gross sum for the same reasons.

18. The respondent relies in its ET3 upon another term in the handbook which it says became a term of her contract. That term says that the employee will forfeit any right to contractual holiday pay in the event that the employee does not give due notice to leave employment. For the reasons set out above, we are satisfied that this was not a term of the claimant's contract of employment. Furthermore, it appears to apply to contractual holiday pay and not to statutory holiday pay and we consider that on a fair reading of the term, it applies to accrued holiday rights (i.e. sums due on the termination of employment in respect of untaken holiday entitlement) and not to payment in respect of holidays already taken.

19. It is clear to us that the claimant never gave notice to the respondent nor did respondent terminate the claimant's employment. It appears to us that on the claimant deciding to move to her new employer and on the respondent learning that the care package was to be transferred to the new employer for whom the claimant was now working, both treated the zero hours contract between them as being at an end from mid-April 2024. Given that it was a zero hours contract the respondent had no obligation to give work to the claimant and only paid for work done. The claimant could work both for the respondent and for another company given that any exclusivity terms in a zero hours contract cannot be relied upon (see section 27A of the Employment Rights Act).

The law

20. The claims for wages and holiday pay are both made under Part II of the Employment Rights Act 1996. "Wages" includes holiday pay (section 27(1)(a)). The deficiency in wages where a lesser sum (or no sum) is paid is a deduction (see section 13(3)).

21. Claims for unlawful deductions from wages have a three-month limitation period (section 23). Where the deductions form part of a series the time is measured from the last deduction (section 23(3)). In any event, time can be extended (see section 23(4)) applying the "not reasonably practicable" test.

22. Section 136(2)) of the Equality Act 2010 provides:

> "(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred."

In that event, section 136(2) places a burden on the respondent to show that it did not contravene whichever discrimination provision is relied upon.

23. Direct race discrimination and harassment are defined by sections 13 and 26 of the Equality Act. For a claim to succeed less favour treatment (for direct discrimination) or treatment which caused a hostile etc. environment for the claimant (harassment) must be made out and the tribunal must find that this treatment was by reason of the claimant's race.

Applying the law to the facts

24. Our findings as regards holiday pay and the shortfalls in pay are as set out above. There were unlawful deductions from the claimant's wages. We consider that these deductions formed part of a sequence of deductions, the last one of which came when payment was made in respect of the month of March 2024. However, were we to be wrong about that, we are satisfied that it was not reasonably practicable for the claimant to make a claim until some time after 20 March 2024 when she had her payslips. Only once she had those payslips and was able to analyse them was it clear to her for what she had been paid and for what she had not been paid. Thereafter, she made her claim within a reasonable period.

25. We do not believe that the claimant has any claim for wages during her notice period. As we have found, neither party gave notice and, in any event, the claimant had no right to receive work or pay in any notice period. That aspect of her claim must fail.

26. We do not consider that we have found facts sufficient to satisfy section 136(2). The evidence as to what happened when the claimant returned from holiday is confused and, arguably, incomplete. That she was not given work immediately upon her return is clear, but the reason or reasons for that are unclear. There is no sufficient evidence to suggest that her treatment had anything to do with her race. Doing the best that we can with the limited facts available to us, we consider it most likely that when the respondent was in a position to consider whether or not to put the claimant back into work for the particular client she had previously worked for, it learnt that she had moved to a different employer and that the contract to supply care to that client was going to move as well.

27. In the circumstances the claims for direct race discrimination and racial harassment are dismissed.

Approved by:

Employment Judge Andrew Clarke KC

4 December 2025

JUDGMENT SENT TO THE PARTIES ON

19 December 2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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