EMPLOYMENT TRIBUNALS

Claimant: Mr J Liang
Respondent: Kury UK Ltd

Heard at: Southampton (by CVP) **On:** 5 and 6 December 2025

Before: Employment Judge K Richardson

REPRESENTATION:

Claimant: In Person

Respondent: Ms J Calleux (Lay Representative)

JUDGMENT

The judgment of the Tribunal is as follows:

1. The Claimants claim for unfair dismissal is not well conceived and is dismissed.

2. The Claimant's claim for unlawful deduction from wages is not well conceived and is dismissed.

3. The Claimant's claim for unpaid holiday is upheld. The Claimant is entitled to payment in respect of 16 days holiday which had accrued at the date of his dismissal. Accordingly, the Respondent is ordered to pay the Claimant a gross figure of £4,169.23.

WRITTEN REASONS

1. For clarity I should state that this judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider in order to decide if a claim succeeds or fails. If I have not mentioned a particular point or piece of evidence it, it does not mean

that I have overlooked it, it is simply because it is not relevant to the issues.

2. Throughout this judgment I shall refer to Mr Liang as the Claimant and Kury UK Ltd as the Respondent.

3. By a claim form submitted on 11 January 2025 the Claimant complains of unfair dismissal, unauthorised deductions from pay and unpaid accrued holiday with an effective date of termination of 31 October 2024.

4. The Claimant was employed by the Respondent from 19 July 2021 to 31 October 2024 as an electrical engineer. No jurisdictional issues arise in this matter.

5. At the beginning of the hearing the Tribunal was presented with a 100 page agreed bundle.

6. The Claimant submitted a witness statement on his own behalf and a further statement from a Mr Huafei Yu. A further statement from a Mr Xiaolei Zhong was also included in the bundle of documents, but he did not attend to give evidence and so his statement was not considered by the Tribunal.

7. The Respondent submitted a witness statement from a Mr Amin Aziz, Business Manager with the Respondent and Mr Mohamed-Menad Belkessa, Project Engineer Equipment Package Lead with the Respondent.

8. These statements were provided in advance of the hearing and I took time to read them. Each witness was then questioned about the evidence contained in their statements.

The Issues

9. At the commencement of the hearing the Tribunal discussed with the Parties the issues relating to liability that it would need to reach a decision upon in this matter. The following were set out by the Tribunal:

Unfair Dismissal

10. Was the Claimant dismissed?

11. What was the reason for the dismissal i.e. was it dismissal within the scope of s.98 of the Employment Rights Act 1996 (ERA) or was it a case of automatically unfair dismissal under s.43 of the ERA relating to making a protected disclosure.

12. If it was not automatically unfair was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

13. Did the Respondent adopt a fair procedure?

14. If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

15. If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct?

Unauthorised deductions from wages

16. Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

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

18. Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

19. How much is the Claimant owed?

Unpaid Holiday Pay

20. Did the Respondent fail to pay the Claimant for annual leave he had accrued but not taken when his employment ended?

21. Was the Claimant entitled to carry over holiday pay accrued but untaken during the leave years 2021/22 and 2022/23.

22. If so, how many days leave were payable and how many days were paid by the Respondent.

23. What rate of pay should be applied to any days leave that accrued but were unpaid.

Findings of Fact

24. The following facts were found to be proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering the factual and legal submissions made by and on behalf of the respective parties.

25. On 19 July 2021 the Claimant, who is a Chinese national, commenced work with the Respondent as an electrical engineer. At that time his business manager was Ms Alexine Bousquier. The Respondent procured a skilled work visa for the Claimant to

enable him to work legally within the United Kingdom which was valid for three years.

26. The contract of employment contained a number of significant provisions which are set out below:

    a. Clause 1: your employment and the period of your employment with the company will begin on 19 July 2021. This contract will last until your visa expiration and may be renewed.

    b. Clause 7: Kury UK Ltd is entitled to provide you with:… Visa process and associated costs for a three-year skilled work visa…Note: failing to commit to the three years of employment covered by your work visa will result in a reimbursement (prorated to the duration of employment) of all the associated costs incurred by Kury UK Ltd.

    c. Clause 11:… No holiday accrued but not taken in any year can be carried forward into the following holiday year, unless otherwise approved by your manager.

    d. Clause 13: the company reserves the right to pay your salary in lieu of notice of termination of your employment. Your right to benefits, bonus and to accrued holiday entitlement will cease immediately on the termination of your employment.

27. In his testimony the Claimant asserted that, during the first two years of his employment with the Respondent, he was subject to a very heavy workload which required him to work long hours. As a consequence of this he asserts that he "rarely had time to take holidays". The Claimant also asserted that situation was exacerbated by the fact that he was undertaking two roles.

28. The Claimant asserted that he raised the issue of the excessive hours that he was working and the impact this was having on his ability to take holiday leave with his manager at the time, Ms Bousquier. It is the Claimant's case that as a result of that discussion, Ms Bousquier orally agreed that the Claimant would be able to carry over any unused holiday allowance which would be paid to him when he finally left the company. The Claimant asserted that this was common practice at the time and that other colleagues had been able to carry over unused holiday allowances in this fashion.

29. In his witness statement and during oral testimony, the Claimant stated that he raised concerns about his excessive workload during his annual review in 2022 which was attended by Ms Bousquier and Mr Aziz. The Claimant stateed that, during that meeting, it was suggested that the Respondent might hire a junior engineer to support him, but this never happened. After Ms Bousquier left the Respondent and Mr Aziz became the Claimant's manager, he asserted that he repeatedly complained about

his workload, including during his second annual review in July 2023.

30. In further support of his position, the Claimant adduced screenshots of a WhatsApp conversation with Mr Cuccia Biagio who was the Claimant's line manager at EDF UK Nuclear New Build who the Claimant had been seconded to by the Respondent. The date when the conversation took place is unclear, but he does state "at the first year, I worked at night, or weekends."

31. The Claimant states that his position is further supported by the testimony of Mr Yu who said that he was permitted to carry over unused holiday allowance and was paid for the same upon the termination of his employment with the Respondent. In his testimony, Mr Yu asserted that this followed a discussion between him and Ms Bousquier. During cross-examination Mr Yu conceded that he could not say that allowing employees to carry over holiday pay was a policy of the Respondent and that he could only speak for what happened to him. He also conceded that he had not witnessed or been a party to the discussions which allegedly had taken place between the Claimant and Ms Bousquier which the Claimant asserted resulted in an oral agreement permitting him to carry over unused holiday pay in the way that he alleges. Mr Yu worked for the Respondent between January 2020 and February 2022. His final payslip includes an itemised payment described as unused holiday pay totalling £6,865.38. The Respondent states that this equates to approximately 25 days of holiday pay.

32. The Respondent refutes that there was any form of oral agreement between the Claimant and Ms Bousquier. In support of their position they cite the fact that the Claimant completed timesheets recording the number of hours that he had worked. In his testimony Mr Aziz stated that he reviewed all of the timesheets submitted by the Claimant over the period of his employment. This confirmed that the Claimant had consistently signed timesheets showing he was working 37.5 hours per week. The Claimant does not dispute what the timesheets say, but asserts that he was instructed to sign incorrect timesheets by Ms Bousquier. Mr Aziz refuted any suggestion that the timesheets had been falsified observing that it was the only way the Respondent could ensure compliance with its contractual and statutory obligations. He also specifically denied that he had ever instructed the Claimant to falsify timesheets.

33. Mr Aziz did state in his testimony that he recalled having discussions with the Claimant about not taking enough holiday and encouraging him to do so. However, he was not able to be specific about exactly when those discussions took place. Although, based on the number of days holiday that the Claimant took during the 2023/24 holiday year (20 days), he believed it must have been around the end of 2022 or the beginning of 2023.

34. As regards the alleged agreement with Ms Bousquier, Mr Aziz says that he was totally unaware of this until the Claimant resigned.

35. Both the Claimant and Mr Aziz were complimentary about the manner in which Ms Bousquier undertook her role. In his witness statement the Claimant noted that "when Ms Bousquier manage the company, reviews were documented and followed by written contract amendments". Mr Aziz commented that he found her to be an experienced professional.

36. Mr Aziz took over Ms Bousquier's role in July 2022. During the handover between these two individuals the Claimant was discussed. However, the only matter that Mr Aziz can recall her telling him about was that she had to resolve an issue between the Claimant and another engineer regarding the scope of the Claimant's role.

37. The Respondent also cites the express terms of the contract which states unequivocally that employees are not permitted to carry over unused holiday year from one year to the next without express permission from their manager.

38. The Respondent agrees that the Claimant had been employed to perform two roles. This is because he was originally recruited as a Trace Heating Technical Lead. However that was not a full-time position. This was problematic because under the Home Office rules regarding the issuing of work visas, roles had to be full-time positions. Accordingly, in order to turn the Claimant's role into a full-time position he was given a second smaller role of Scope Gap and Supplier Feedback.

39. In circumstances where the Claimant is asserting that he was given permission carry over holiday leave the burden of proof rests with him to establish the truth of the same. Unfortunately for the Claimant, he has no written evidence of the alleged agreement and so we are being asked to infer the existence of the same from the surrounding circumstances.

40. First amongst these are the circumstances which the Claimant asserts gave rise to the alleged oral agreement. It is the Claimant's case that his high workload meant that he felt unable to take as much holiday leave as he would have liked. However, the contemporaneous documentary evidence in the form of timesheets which he produced and signed during the course of his employment, does not support his assertion that he was working excessive hours. The Claimant seeks to explain this by asserting that he was instructed to sign off on fraudulent timesheets by Ms Bousquier. However, perhaps unsurprisingly, the Claimant is unable to adduce any evidence to verify that this was the case. Given the importance of timesheets in terms of the Respondent's contractual and statutory obligations, the burden on the Claimant to establish that they were fraudulent cannot be satisfied simply by asserting that this was the case.

41. The only documentary evidence that the Claimant was undergoing periods of sustained high workload is the WhatsApp discussion with Mr Biagio referred to above. I accept that this evidences that there may have been occasions where the Claimant did work longer hours. But I also note that the Claimant's contract of employment states at clause 5:

"You may be required, without additional remuneration, to work such additional hours as are necessary for the proper and effective performance of your duties and to meet the reasonable requirements of the company's business."

I do not accept that this single WhatsApp transcript is enough to establish the existence of a consistently high workload which the Claimant alleges gave rise to the oral agreement with Ms Bousquier.

42. Mr Aziz in his testimony was very clear that although the Claimant was discussed with Ms Bousquier during the handover meeting when Mr Aziz took over a role, no mention was made by her of the alleged agreement with the Claimant permitting him to carry over holiday leave until the end of his employment. Given that both parties have acknowledged the professionalism and thoroughness of Ms Bousquier, it strikes me is unlikely that she would omit any reference to the alleged oral agreement. She would, no doubt, have appreciated that failing to confirm the existence of this arrangement would ultimately put the Claimant in a position where he would have been facing significant financial losses. I believe this casts some doubt as to whether there was any such agreement.

43. The Claimant also cites the fact that although the exact number of days holiday taken during the first two years of his employment are not agreed by the parties, based on the figures produced by the Respondent, he took nine days leave in the 2021 to 2022 holiday year and five days leave in the 2022 to 2023 holiday year. Given that his contractual holiday allowance for those two years was 24 days per year it is evident that he took very little holiday leave during this period.

44. The Claimant contends that this supports his assertion that he was too busy to take holiday leave. However, whilst that may be an explanation for the low amount of leave taken, it is not the only possible explanation. Whilst it is obviously preferable for employees to take their full quota of holiday allowance, there may be many reasons why this does not take place. For some it may be that they enjoy their work and do not feel the need to take their full quota of holiday pay. In other circumstances they may be cultural reasons not to take it. Mr Aziz alluded to this in his statement where he states that, after taking over from Ms Bousquier, he observed that a number of engineers who had worked in China in the past were not taking sufficient holidays. He put that down to the fact that holiday pay in China was much less generous than the UK. I also note that after Mr Aziz raised the issue of the amount of leave that the Claimant was taking, it appears that he elected to take advantage of the facility and took 20 days leave in the 2023 to 2024 holiday year. I accept that there may be other reasons for this increase in the Claimant's uptake of holiday leave which could include a reduction in his workload. However, no evidence was adduced one-way other or the other on that issue.

45. Taking all of the above into consideration I do not find that, on the balance of probabilities, the Claimant has established that there was an oral agreement between

him and Ms Bousquier which permitted him to carry forward unused holiday pay until his contract with the Respondent was terminated.

46. In around May 2024 the Claimant approached Mr Aziz to advise him that his visa would expire in July that year. The Respondent procured a further three-year visa on behalf of the Claimant for which it paid the immigration health surcharge and the UK visa application which totalled £4,932. The Claimant continued to work for the Respondent under the terms of the new three-year visa and was paid by the Respondent for his services during this period. There were no changes to any of the working practices and I am satisfied that there was a seamless continuation of the Claimant's employment.

47. On 10 October 2024 the Claimant submitted his resignation to Mr Aziz giving two months' notice under cover of an email of the same date. In his email he asserted that he had 62 days of annual leave accrued. He also asserted that as he had worked for the Respondent for more than three years and, because his original contract had expired in July 2024, he had no obligation to reimburse the Respondent for the costs of his visa.

48. Mr Aziz did not respond immediately to the Claimant's resignation. His explanation for this was that he was on a business trip and did not return until 18 October. Mr Aziz also explained that he needed time to review the Claimant's records to establish how much holiday leave he had taken. He frankly admitted that the Respondent's system was cumbersome and not straightforward to use, which is why it took him some time to secure the necessary information.

49. It seems that the Claimant was irritated by the speed of Mr Aziz's response as is evidenced by the fact that he sent an email to Mr Aziz copied to Mr Aziz's manager, Mr Kury, and his line manager at EDF Mr Biagio on 17 October complaining about the fact that he not heard from him and stating:

    "I do believe everything could be performed in a polite and professional way. However, if my personal rights are violated, I will take all measures to protect it."

50. By 23 October Mr Aziz had still not responded substantively to the Claimant and so he escalated the situation to Mr Kury by a WhatsApp message on the same day.

51. Later on 23 October Mr Aziz reverted to the Claimant refuting the Claimant's allegation that he did not have a contract of employment and advising him that he was obliged to reimburse the Respondent for 30/36ths of the costs of the work visa. Mr Aziz explained that he would apply for reimbursement of the costs of the visa from the Home Office and that this would be sent to the Claimant in due course. He also advise the Claimant that any accrued, but unused holiday would be paid in accordance with the terms of his contract.

52. The Claimant responded the same day by email refuting that his contract had been renewed and, according to Mr Aziz, for the first time referred to the alleged oral agreement with Ms Bousquier which he asserted entitled him to be paid for accrued, but unused holiday, for the entirety of the time that he worked for the Respondent. In this email, he did agree that it would be appropriate for the Respondent to apply to the Home Office for reimbursement of the costs of the visa.

53. On 30 October Mr Aziz finally managed to collate the information he needed to respond substantively to the Claimant regarding his claim for 62 days of accrued unpaid holiday leave. In an email of this date he explained that he had secured legal advice on this issue and attached a breakdown of the information he had managed to collate regarding the holiday leave taken by the Claimant. He reiterated the terms of the contract of employment and also set out the provisions of regulation 13(17) of the Working Time Regulations 1998 which he asserted meant that the Claimant was entitled to a total of 18 days holiday pay. The emails also confirmed that the Respondent was going to deduct the costs of the visa being £4,352.50 in three equal instalments of £1,450.83 from his next three payslips.

54. Two hours later the Claimant replied to Mr Aziz's email copying 30 individuals who comprised his current colleagues, former colleagues, senior management and officers working for the Respondent, senior members of the Respondent's client and senior members of the Respondent's client group. The email concludes with the following:

    "As I mentioned in my resignation letter email, if my personal rights are violated, I will take all measures to protect it. The measures include but not limited to:
    1. I will be heading to a legal service, and initiating arbitration if necessary.
    2. NNB will be informed about this issue, that they paid Kury UK for my working days which is clearly indicated in the signed timesheet, but Kury UK refused to pay me. The HPC safety message of this week is about the modern slavery, I do believe refusing to pay the untaken holidays is a case of modern slavery.
    3. I will post my story in the social network as LinkedIn
    4. Etc"

55. Mr Aziz described the tone of the email as very antagonistic and threatening. It seems that he was not the only one to take this view as one of the Claimant's colleagues, Mr Belkessa, who had been copied on the email, emailed him back and asked him to stop copying him on the thread as he considered it to be blackmail. In his testimony Mr Belkessa explained that he had never met the Claimant and did not understand why he had been copied with the 30 October email. In his assessment it was extremely aggressive with wording which he considered very threatening and, in his opinion, possibly amounting to blackmail. Mr Belkessa was anxious that the Claimant would somehow tag him with this story on LinkedIn which would reflect badly on him. This was why he wrote to the Claimant requesting that a be taken off the list of copied parties.

56. On 31 October the Claimant sent a further email restricted solely to Mr Aziz and Mr Kury which again was aggressive in tone and setting a deadline for a response from the Respondent of 6 November. The email also contained a reference to a French consulting company which had refused to pay its employees in what he described as the Okiluoto project which had been reported to HPC's HR department. The Claimant referred to the fact that this company had been permanently blocked from the project going forward. Mr Aziz took this as a threat to try to damage the Respondent's relationship with one of its clients.

57. Because of the tone of the email sent on 30 October and the fact that had been copied to third parties namely former employees of the Respondent plus individuals working for clients of the Respondent, Mr Aziz felt it was not possible for the Claimant to continue to attend the client's site or to come into the Respondent's office. Mr Aziz was very clear in his testimony that it was not the fact that the Claimant was disputing his entitlement to unpaid leave or his obligation to reimburse the Respondent for the costs of his visa which led him to reach this conclusion. His concern was the fact that he had embroiled third parties and clients in what was an internal dispute regarding these matters in a manner which was wholly inappropriate and could well amount to gross misconduct.

58. Mr Aziz went on to explain in his testimony that, if it had not been for the fact that the Claimant had already tendered his resignation, he would have instituted disciplinary proceedings against the Claimant in relation to the email that was sent on 30 October. However, he explained that he was mindful of the fact that the Claimant had already resigned and was due to leave the company on 9 November 2024. In the circumstances Mr Aziz reached the conclusion that it would be simpler to pay the Claimant in lieu of his notice period as is provided for under the terms of his contract.

59. A letter was emailed to the Claimant on 31 December 2024 explaining that his employment was being terminated with immediate effect that he was going to be paid in lieu of the notice period that remained outstanding as of that date. The letter explained clearly that the reason for his dismissal was the email that he had sent on 30 October 2024. It went on to set out the payments that were being made in respect of accrued but untaken holiday leave which amounted to 16 days and a final deduction of £1,825.84 representing the balance of the visa fee payable to the Respondent.

60. Respondent received £2,587.50 by way of reimbursement from the Home Office of the immigration health surcharge and UK visa application. The sum was transferred to the Claimant's bank account on 30 January 2025.

The Law

61. *Section 94 of the Employment Rights Act 1996* (ERA 1996) gives employees the right not to be unfairly dismissed. Enforcement of this right is by way of complaint to an Employment Tribunal under *s111 of the ERA 1996*.

62. Guidance on whether a dismissal of an employee is fair or unfair is contained in Section 98 of the ERA1996 which provides that:

(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 … some other substantial
reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(4) Where the employer has fulfilled the requirements 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 … 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.

63. The EAT in **Marshall (Cambridge) v Hamblin, 1994 WL 1062444 (1994)** held that where an employee had given notice of resignation and the employer invoked a clause of the contract which specifically allowed it to cause the employment to end on an earlier date by making a payment in lieu of notice, that combination of factual circumstances meant that the employer's conduct only altered the date on which the prior resignation took effect. It did not amount to dismissal of the employee.

64. In **Fentem v Outform EMEA Limited [2022] EAT 36** the EAT doubted the correctness of **Marshall** (above) but accepted that the proposition of law that it propounded was not manifestly wrong. Therefore, **Marshall** remains good law.

65. Regulation 13(1) of the Working Time Regulations 1998 (WTR) states:

Subject to paragraph (5), a worker is entitled to four week's annual leave in each leave year.

66. Regulation 13(16)(c) of the WTR states:

Paragraph (17) applies where, in any leave year, an employer fails to…..

(c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.

67. Regulation 13(17) of the WTR states:

> Where is paragraph applies and subject to paragraph (18), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which is untaken in that leave year ….

Decision

Unfair dismissal

68. In reaching my decision on this aspect of the Claimant's claim is necessary for me to make a determination as to whether or not the Claimant was dismissed. In this regard I am bound by the Employment Appeal Tribunal decision in **Marshall (Cambridge) v Hamblin**. In that case the EAT stated that where an employee has given notice of resignation and an employer subsequently invokes a clause in the contract which specifically allows it to cause the employment to end at an earlier date by making a payment in lieu of notice, the employers conduct only changes the date on which the prior resignation took effect. It does not constitute dismissal.

69. **Marshall (Cambridge)** was reviewed by the EAT in **Fentem v Outform EMEA Ltd** and, in that judgment, the EAT expressed some doubt as to its correctness. However, the EAT declined to overrule **Marshall (Cambridge)** because it did not find that the decision was manifestly wrong. Consequently, **Marshall (Cambridge)** remains good law and is binding on this Tribunal.

70. The facts of this case fall squarely within the circumstances apprehended in **Marshall (Cambridge)** and, therefore, I must reach a determination that the Claimant was not dismissed by the Respondent in this case.

71. In the absence of a dismissal the Claimant's claim for unfair dismissal and/or automatically unfair dismissal must fail.

Unauthorised deductions from wages

72. The Claimant appears to be asserting that, because there was no written renewal of his contract of employment after the term of his first working visa had expired, the whole contract had effectively lapsed. This assessment is misconceived.

73. After being prompted by the Claimant about the need to renew his work visa before the end of July 2024, the Respondent procured a new one at its own cost for a further three-year period. Thereafter, the Claimant continued to work on exactly the same basis that he had done prior to the expiration of the first working visa and the Respondent continued to pay the Claimant for the work he performed. The terms of the contract itself make provision for it to be renewed, but without stipulating that this

renewal has to be in writing.

74. I also note that the Claimant when tendering his resignation, did so on the basis of two months' notice which accords with the provisions of clause 13 of the contract of employment.

75. Taking all of the above into consideration I am satisfied that the conduct of the parties in the period post July 2024 is entirely consistent with a mutual intention for there to be a continuation of the contract of employment which provisionally could have come to an end in July 2024.

76. In relation to the deductions from salary relating to the unused portion of the costs of his work visa, the Claimant asserts that, because he had already paid the costs of his first work visa, his obligations under the terms of the contract had been fulfilled and he could not be expected or required to reimburse the Respondent in relation to any further visa fees. Once again I cannot accept this analysis.

77. I am satisfied that the Claimant's contract of employment was renewed on the same terms as previously existed prior to July 2024. Insofar as this constitutes a fresh three year fixed term contract, it must include provision for the reimbursement by the Claimant to the Respondent of any proportion of the duration of the visa during which the Claimant does not work for the Respondent. The clear intention behind this clause is to protect employers who cover the costs of work visa charges on behalf of their employees, from finding themselves out-of-pocket because the employee resigns before the expiration of the visa. It makes no commercial sense whatsoever to try to assert that this obligation applies only to the first iteration of visa procurement, but not to any other. The hazard for the employer renews with every new visa procurement process and so the need for this contractual protection renews with it

78. Accordingly, I am satisfied that the contract in place between the Claimant and the Respondent at the time he resigned included provisions permitting the Respondent to recoup the cost of any unused proportion of the visa's duration from the Claimant. I am also satisfied that the Claimant was aware or should have been aware of this provision because he had a copy of the contract containing this provision. Therefore the deductions made by the Respondent in respect of the costs of the visa fee were lawful.

<u>Unpaid holiday</u>

79. I have determined that there was no oral agreement which permitted the Claimant to carry over all accrued, but unused holiday until the termination of his contract.

80. In the circumstances all that remains for me is to determine is whether the Respondent acted in accordance with the law and, in particular the WTR, in determining what accrued, but untaken holiday should have been paid to the Claimant on the

termination of his contract.

81. The Respondents have acknowledged that contrary to the provisions of regulation 13(16)(c) of the Working Time Regulations 1998 (WTR) they did not inform the Claimant that any leave not taken by the end of a leave year, which could not be carried forward, would be lost, at any time during his employment. Consequently, the provisions of Regulation 13(17) will apply to any untaken statutory leave provided for in Regulation 13 i.e. up to four weeks leave per leave year.

82. Regulation 13(17) WTR states that a worker is entitled to carry forward any leave to which he is entitled under this regulation which is untaken in that leave year.

83. In purported compliance with the provisions of the WTR, the Respondent paid 10 days accrued, but untaken holiday leave in respect of holiday leave years 21/22, 22/23 and 23/24 and six days in respect of holiday year July 2024 to 31 October 2024 to the Claimant in his final pay packet. However, this was an underpayment of the sums due to the Claimant.

84. The schedule produced by the Respondent indicates that in the holiday year 21/22 the Claimant took nine days holiday leave. This would leave 11 days of his statutory allowance outstanding. In the holiday year 22/23 the Claimant took five days of a statutory allowance leaving a balance of 15 days. In holiday year 23/24 the Claimant took his full 20 day statutory allowance. Thus the accrued holiday leave over the three year period computes to 26 days. Throughout this period the Respondent remained in breach of the provisions of regulation 13(16)(c) by not providing warnings to the Claimant that, if he did not use his holiday leave he would lose it.

85. Accordingly, the Claimant was entitled to be paid for 26 days accrued but untaken statutory holiday. The Respondent has only paid 10 days and, consequently, 16 days remain outstanding to Claimant.

86. In accordance with the foregoing I find that the Claimant's claim for unpaid holiday is upheld and he is entitled to 16 days pay which computes to £4,169.23 gross based on the figure already paid by the Respondent to the Claimant.

Judgment

87. The Claimant's claim for unfair dismissal is not well conceived and is dismissed.

88. The Claimant's claim for unlawful deduction from wages is not well conceived and is dismissed.

89. The Claimant's claim for unpaid holiday is upheld. The Claimant is entitled to payment in respect of 16 days holiday which had accrued at the date of his dismissal. Accordingly, the Respondent is ordered to pay the Claimant a gross figure of £4,169.23.

Approved by
Employment Judge K Richardson
5 December 2025

Judgment sent to the parties on
05 January 2026