Case No: 6018563/2025

EMPLOYMENT TRIBUNALS

Claimant: Miss Samantha Price

Respondent: R1 Greater Healthcare Services Ltd
R2 Beyond Care Solutions Ltd

HELD AT: Newcastle/ CVP **ON:** 26 September 2025

BEFORE: Employment Judge Booth

REPRESENTATION:

Claimant: Miss Laura Dawson, Counsel
Respondent: R1 not in attendance
R2 not in attendance

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant was employed by the first respondent, Greater Healthcare Services Ltd.

2. The complaint of unfair dismissal is not well-founded and is dismissed.

3. The complaint of unauthorised deductions from wages in respect of unpaid wages is well-founded. The first respondent made an unauthorised deduction from the claimant's wages as follows:
    a. £1,300 for September 2024.
    b. £2,600 for October 2024.
    c. £2,600 for November 2024.
    d. £942 for December 2024.

4. The first respondent shall pay the claimant a total of £7,442 in respect of the unauthorised deductions detailed at paragraph 3 above. This is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

5. The complaint of unauthorised deductions from wages in respect of unpaid accrued but untaken holiday entitlement is well-founded. The first respondent made an unauthorised deduction from the claimant's wages in respect of 23.75 days' holiday in December 2024.

6. The first respondent shall pay the claimant a total of £2,850 in respect of the unauthorised deductions detailed at paragraph 5 above. This is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

7. The complaint of unauthorised deductions from wages in respect of deductions made for employee pension contributions that were not paid into the claimant's pension scheme with NEST is well-founded. The first respondent made an unauthorised deduction from the claimant's wages as follows:
    a. £80 for September 2023
    b. £80 for October 2023
    c. £104 for May 2024
    d. £104 for June 2024
    e. £104 for July 2024
    f. £104 for August 2024
    g. £52 for September 2024

8. The first respondent shall pay the claimant a total of £628 in respect of the unauthorised deductions detailed at paragraph 7 above. This is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

9. The grant total to be paid by the first respondent to the claimant under this judgment is £10,920. Payment should be made within 14 days of the date on which this judgment is sent to the parties.

Employment Judge Booth
26 September 2025

REASONS

Introduction

1. The claimant, Ms Samantha Price, brings a complaint that (i) the respondent unfairly dismissed her by way of constructive dismissal and (ii) the respondent made unauthorised deductions from her pay by failing to pay her wages, failing to pay employee pension contributions over to her pension scheme and failing to pay her in lieu of her accrued holiday entitlement.

2. Neither the first respondent, Greater Healthcare Services Ltd, nor the second respondent, Beyond Care Solutions Limited, submitted a response to the claimant's complaint.

3. The Tribunal was provided with a bundle of documents comprising 276 pages, and a schedule of loss and witness statement for the claimant. The Tribunal heard witness evidence from the claimant. The first and second respondents did not attend the hearing or submit any documentary or witness evidence.

Issues

4. In connection with the complaint of unfair dismissal, the issues to be determined are:
    a. Did the respondent fail to provide work to the claimant work from March 2024 onwards despite the claimant being available to work at all times?
    b. Did the respondent fail to pay the claimant in full for September 2024 and did the respondent fail to pay the claimant at all for October 2024 and November 2024?
    c. Did the respondent issue a lay off letter to the claimant on 10 October 2024?
    d. Did the respondent fail to deal with the claimant's grievance of 11 October 2024?
    e. Did the respondent take employee pension contributions from the claimant's pay and fail to pay those pension contributions into a pension scheme?
    f. Did the respondent fail to hold a conclude the redundancy consultation process?
    g. Was the employer's conduct a fundamental breach of an express term of the employee's contract and/or was the employer's conduct calculated to or likely to destroy or seriously damage the implied term of trust and confidence between the employer and employee?
    h. If yes, did the employee resign in response to the employer's conduct?
    i. Did the employee affirm the contract before they resigned?

5. In connection with the complaint of unauthorised deductions from wages, the issues to be determined are:
    j. Did the respondent fail to pay the claimant in full for September 2024 and did the respondent fail to pay the claimant at all for October 2024, November 2024 and December 2024?

k. Did the respondent take employee pension contributions from the claimant's pay and fail to pay those pension contributions into a pension scheme?
l. Did the respondent fail to pay the claimant in lieu of accrued but untaken holiday entitlement when her employment ended?
m. Did the employer make unauthorised deductions from the claimant's wages?
n. If yes, how much was deducted?

Employer

6. On 26 September 2022, the claimant commenced employment. In evidence, the claimant stated that she was employed by Greater Healthcare Services Limited to work in their sister company Beyond Care Solutions Ltd.

7. The claimant's statement of terms and conditions states that it sets out "the terms and conditions under which Greater Healthcare Services and its subsidiary Beyond Care Solutions Ltd (hereafter referred to as "the Company") is offering you employment" [page 59].

8. The claimant described that she received payments from the second respondent on only 7 occasions, with the last of these being in June 2023. The claimant described that she received payments from the first respondent throughout her employment (including some of the months in which she also received payments from the second respondent).

9. The claimant's payslips for the period from January 2024 to July 2024 name Beyond Care Solutions Ltd [pages 103 to 109]. However, the claimant's banking app indicates that payment during this period was made by Greater Healthcare Services Ltd [pages 95 to 102].

10. Having considered the above information, the Tribunal finds that the claimant was employed by Greater Healthcare Services Ltd to work for Beyond Care Solutions Ltd. The Tribunal will refer to the respondents collectively throughout this judgment, but the first respondent is deemed to be the claimant's employer.

September 2022 to June 2024

11. The statement of terms states that the claimant's hours were 40 hours per week to be worked 8 hours per day Monday to Friday [page 71]. In evidence, the claimant confirmed that she worked 9am to 5pm Monday to Friday for the respondents.

12. The claimant described that, when she commenced employment in September 2022, she worked 5 days per week from the respondents' office. This arrangement was changed and, from December 2022 onwards, she worked 3 days per week from the respondents' office and 2 days per week from home. Her hours of work remained 9am to 5pm Monday to Friday. The Tribunal finds that this arrangement continued until March 2024, when Mrs Manyenga

became the claimant's line manager (the claimant stated that the March 2023 date in her particulars of claim and witness statement was an error).

13. In evidence, the claimant's timeline of events from March 2024 onwards was at times confused and changed throughout the course of questions. The Tribunal finds that the following is the most likely timeline of events.

14. In March 2024, Mrs Manyenga became the claimant's line manager. The claimant described that Mrs Manyenga was initially passionate about the role and asked the claimant to undertake various activities including meeting Mrs Manyenga at care homes, designing days out and designing and delivering a training course from the respondents' offices. During this time, the claimant continued working 9am to 5pm Monday to Friday, 3 days per week from the respondents' office and 2 days per week from home.

15. The claimant described that after the initial interest, communication with Mrs Manyenga "just stopped" and the claimant's work "decreased massively". The claimant described that she was still working 3 days per week from the respondents' office and 2 days per week from home, but she was not always fully occupied. The Tribunal finds that it is likely that this reduction in communication and workload took place in or around April 2024. However, the Tribunal finds that the reduction in work may not have been as substantial as indicated by the claimant in her evidence and notes in particular the claimant's comments to Mrs Manyenga in the redundancy consultation meeting on 11 September 2024 [pages 83-84] (see below).

16. The claimant described that Mrs Manyenga made comments to her that Mrs Manyenga and her husband had had to reduce their own pay in order to pay the claimant. The claimant described that there were also times when her pay was late or paid in instalments, although she was always paid in full. The claimant described that she understood from this that there was a threat that the respondents could not continue to pay her and that her job was not secure.

17. The Tribunal finds that the claimant concluded that there may be a potential risk to her job security with the respondents and began to look for other employment.

18. On 1 June 2024 the claimant attended an interview with Rainton H Group Ltd. On 14 June 2024, the claimant was offered a role with Rainton H Group Ltd [page 143]. The role had a starting salary of £34,000, which was more than the claimant's salary of £31,200 with the respondents. This was a full-time role, 9am to 5pm Monday to Friday. This is the same working pattern that the claimant worked for the respondents.

19. In evidence, the claimant confirmed that she accepted the offer from Rainton H Group Ltd and, from 1 July 2024 onwards, she worked 9am to 5pm Monday to Friday for Rainton H Group Ltd.

20. In evidence, the claimant also described that her work continued to decrease gradually until July 2024. The claimant further confirmed that she stopped going to the respondents' offices with effect from 1 July 2024.

21. Having considered the above information, the Tribunal finds that the claimant felt that there was a risk to her job security and applied for and accepted an offer of employment with Rainton H Group Ltd that offered her a higher salary. The Tribunal finds that the claimant's actions in doing so were not in response to the respondents conduct for the following reasons:
    a. The claimant has not complained of a breach of contract prior to the claimant's acceptance of an offer of employment with Rainton H Group Ltd.
    b. Although there was a reduction to the claimant's work and the claimant's pay was sometimes paid late or in instalments, the claimant does not seek to rely on this as a breach of contract and confirmed in evidence that the first deduction from pay was in connection with her September 2024 pay (see below).
    c. The claimant's particulars of claim and witness statement describe the events giving rise to her claim as starting with a WhatsApp message advising her of a risk of redundancy in July 2024 (paragraph 28).

Suggestion the claimant "go part time"

22. In evidence, the claimant described that Mrs Manyenga suggested to the claimant that she "go part time" with the respondents and look for other part time work to make sure she "had some form of income". However, the claimant stated that Mrs Manyenga did not outline what she meant by "part time" or indicate that the claimant's pay with the respondents would be reduced.

23. The Tribunal finds that the claimant's evidence in connection with this suggestion that she "go part time" was confused:
    a. The conversation is not referred to in the claimant's particulars of claim or witness statement. The Tribunal finds that these documents are substantially similar and prepared with the support of legal advice.
    b. The first related event referred to in the claimant's particulars of claim and witness statement describes that Mrs Manyenga first informed the claimant of a risk of redundancy by WhatsApp message in July 2024 (paragraph 28). The WhatsApp message informing the claimant of the risk of redundancy was dated 2 July 2024 [page 130].
    c. In evidence, the claimant first asserted that the suggestion to "go part time" was raised during a telephone conversation after Mrs Manyenga messaged her about a risk of redundancy in July 2024.
    d. The claimant's witness statement describes that, after the WhatsApp message of 2 July 2024 the claimant had a telephone conversation with Mrs Manyenga on 20 August 2024.
    e. When reminded that she had attended a job interview on 1 June 2024, the claimant corrected herself and stated that the telephone conversation must have taken place before 1 June 2024.

24. The Tribunal considers that after April 2024 communication from Mrs Manyenga was very limited and so telephone calls from Mrs Manyenga were few and far between. In evidence the claimant described that communication from Mrs Manyenga "just stopped", the Tribunal has found that this happened in or around April 2024 (see above). The claimant's witness statement describes that Mrs Manyenga was hard to get hold of and stopped responding to contact (paragraph 6).

25. The Tribunal notes that, on 11 September 2024, the claimant and her union representative attended a redundancy consultation meeting with Mrs Manyenga. Within this meeting Mrs Manyenga described having considered all alternatives to redundancy including a new position and role created as training manager. There is no mention in the notes of there having been a discussion about the claimant reducing her hours or working part time, which would have been a possible alternative to redundancy [page 83-84].

26. Having carefully considered the information set out above, the Tribunal finds that it is unlikely that there was a telephone conversation between the claimant and Mrs Manyenga in which Mrs Manyenga suggested that the claimant "go part time".

The claimant's two employments

27. In evidence, the claimant asserted that the respondents were aware that she had accepted the role with Rainton H Group Ltd and were aware that she was working 9am to 5pm, Monday to Friday for Rainton H Group Ltd – the same hours that the claimant was contracted to work for the respondents.

28. In evidence, the claimant described that she agreed with Mrs Manyenga that she would keep her respondents' phone on to answer calls during her working hours for Rainton H Group Ltd (which were also her working hours for the respondents) and in the evenings.

29. The Tribunal notes the following:

    a. The Tribunal has found that it is unlikely that there was a telephone conversation between the claimant and Mrs Manyenga in which Mrs Manyenga suggested that the claimant "go part time" with the respondents and look for other part time work to make sure she "had some form of income".

    b. On 27 August 2024, when Mrs Manyenga wrote to the claimant to confirm the risk of redundancy to her role, she made no mention of the claimant having another employment [page 82].

    c. On 11 September 2024, the claimant and her union representative attended a redundancy consultation meeting with Mrs Manyenga [pages 83-84]. Within this meeting, the claimant described that she had felt a decline in her role which she put down to difficulties in communication. The claimant went on to describe that she felt "like she had been left to

do a lot of the tasks on her own, which is impossible, and she can only expand herself to so many different tasks. Even with the training she did not feel there was much support and there were no team members helping her with that". The Tribunal finds that the claimant's comments were designed to give the respondents the impression that she was still working diligently during her normal working hours and is not compatible with the claimant's assertion that Mrs Manyenga had agreed that the claimant's duties would be reduced such that she simply answered phone calls during her working hours for Rainton H Group Ltd and in the evenings.

d. On 9 October 2024, when Mrs Manyenga wrote to the claimant to put forward a lay-off arrangement she made no mention of the claimant having another employment [page 86].

e. The claimant's grievance of 11 October 2024 makes no reference to her having another employment or her having agreed to help the respondents by answering the phone for them whilst in her other employment. Further, the claimant's grievance states that she faces being in serious debt although the claimant's evidence is that she received her full salary from both the respondents and Rainton H Group Ltd in July and August 2024 [page 88-89]. The Tribunal finds that the claimant's wording was designed to give the impression that she was still solely reliant on the respondent for employment and income.

f. The claimant's resignation letter of 12 December 2024 makes no reference to her having another employment or her having agreed to help the respondents by answering the phone for them whilst in her other employment. Further, the claimant's resignation letter outlines that she has had to arrange payment plans for council tax and is behind with her rent and utility bills, though no evidence of this was included within the bundle of documents. The Tribunal notes that, although the respondents had failed to pay the claimant from October 2024 onwards (see below), the claimant was in receipt of a full salary from Rainton H Group Ltd at a higher rate than her salary with the respondents. The Tribunal finds that the claimant's wording was designed to give the impression that she was still solely reliant on the respondent for employment and income.

30. The Tribunal considers that, given the respondents were facing financial difficulties (as described in the redundancy documentation [pages 82-84]), if the respondents were aware that the claimant was working 9am to 5pm, Monday to Friday for Rainton H Group Ltd, they would have made reference to this within the above documentation and sought agreement to reduce the claimant's hours and pay in some way.

31. Having carefully considered the information set out above, the Tribunal finds that the claimant did not disclose to the respondents that she was working for Rainton H Group Ltd. Accordingly, the Tribunal finds that at all relevant times, the respondents were unaware that the claimant was working for Rainton H Group Ltd.

32. The Tribunal finds that the claimant was subject to an implied duty of fidelity, which means that the claimant should not take on other employment during the hours for which she was contracted to work for the respondents (namely 9am to 5pm, Monday to Friday) without their agreement. The Tribunal further finds that the claimant's statement of terms and conditions includes the following "if you are involved in any other employment… outside your normal working hours with the [respondents] you must disclose this activity to your manager". Having carefully considered the information set out above, the Tribunal finds that the claimant was in breach of her contract of employment with effect from 1 July 2024 onwards because (i) she was working for another employer during the hours that she was contracted to work for the respondents and (ii) she did not inform Mrs Manyenga of her employment with Rainton H Group Ltd.

July 2024 to resignation

33. The claimant's particulars of claim and witness statement describe the events giving rise to her claim as starting with a WhatsApp message advising her of a risk of redundancy in July 2024.

34. On 1 July 2024, the claimant commenced employment with Rainton H Group Ltd. The claimant's role with Rainton H Group Ltd was subject to a 3 month probationary period that could be extended by up to a further 3 months [page 144]. In evidence, the claimant described that she had agreed to continue working for the respondents by answering phone calls (see above) and stated that she was waiting for her probationary period with Rainton H Group Ltd to end, before she became permanent with them.

35. On 2 July 2024, the claimant and Mrs Manyenga had a WhatsApp exchange in which Mrs Manyenga informed the claimant that she was seeking to make her position redundant [page 130]. The claimant described in evidence that she was quite surprised by the reference to redundancy. The Tribunal finds that this statement is not consistent with the claimant's description of a steep drop off in work in or around April 2024, Mrs Manyenga having suggested she "go part time" and the claimant having secured new full time employment.

36. On 31 July 2024, the claimant was paid a full month's salary by the first respondent. The Tribunal finds that this was for July 2024.

37. On 9 August 2024, the claimant received a payment of a full month's salary from Rainton H Group Ltd [page 146].

38. On 20 August 2024, the claimant took part in a telephone call with Mrs Manyenga and was informed that her role was at risk of redundancy. This was confirmed in writing on 27 August 2024 [page 82].

39. A redundancy consultation meeting was arranged for 30 August 2024 [page 82] and subsequently moved to 11 September 2024 [page 83 to 84].

40. On 4 September 2024, the claimant was paid a full month's salary by the first respondent. The Tribunal finds that this was for August 2024.

41. On 10 September 2024, the claimant received a payment of a full month's salary from Rainton H Group Ltd [page 147].

42. The claimant states that a second consultation meeting was arranged for 20 September 2024 but did not take place [paragraph 33-34 witness statement].

43. On 2 October 2024, the claimant was paid by the respondents for September 2024. This payment had been due on 26 September 2024. The claimant received £1,300 (gross) instead of her full salary of £2,600 (gross).

44. On 7 October 2024, Mrs Manyenga telephoned the claimant and informed her that she would be put on lay off from 10 October 2024. This was confirmed in writing [page 86]. The letter includes a lay off agreement for the claimant to sign, which she did not do [page 89]. There is no lay off clause in the claimant's statement of terms and conditions. The letter states that a final redundancy consultation meeting would take place, but no details of the arrangements were included. The claimant states that this final consultation meeting did not take place [page 89].

45. On 10 October 2024, the claimant received a payment of a full month's salary from Rainton H Group Ltd [page 148].

46. On 11 October 2024, the claimant submitted a grievance to Mrs Manyenga [page 88] which the respondents did not acknowledge or reply to. Save for the submission of this grievance, it is not the claimant's contention and nor is their any evidence to suggest that the claimant informed the respondent that she was working under protest. On the contrary, it is the claimant's evidence that she agreed to continue working for the respondents by answering the phone whilst working full time in her new role with Rainton H Group Ltd.

47. In her witness statement, the claimant described that she was informed by Mrs Manyenga that the respondents would give up their offices in November 2024 (paragraph 20). This is not included in the chronology of events giving rise the claim further on in the claimant's witness statement. The Tribunal has noted that the claimant stopped working from the respondents' offices with effect from 1 July 2024 when she started working for Rainton H Group Ltd. Accordingly, the Tribunal concludes that nothing turns on this.

48. The claimant confirmed in evidence that she passed her probation with Rainton H Group Ltd in November 2024 and that shortly after this she received a promotion with Rainton H Group Ltd in December 2024. The claimant showed the Tribunal a letter from Rainton H Group Ltd that was not in the bundle, that confirmed promotion to Training & Compliance Manager with effect from 5 December 2024. The claimant's payslips from Rainton H Group Ltd for November 2024 and December 2024 show an increase in gross pay [pages 149-150].

49. On 12 December 2024, the claimant resigned from her employment with the first respondent with immediate effect [pages 91-92].

50. In her resignation letter [pages 91-92], the claimant set out the following reasons for resignation:
    a. The claimant was owed half of her September 2024 and her full October 2024 and November 2024 wage.
    b. The respondent had issued a lay off letter on 10 October 2024.
    c. The claimant's grievance of 11 October 2024 had not been acted on.
    d. Pension contributions were being deducted from the claimant's claim and not paid in to the Nest pension scheme.
    e. The claimant was told that she would be made redundant and had been given a figure for redundancy, but the process had not been finalised.
    f. Communication with the claimant and her union representative had ceased. Mrs Manyenga had resigned, given confusing information about who was taking over and left the claimant with no confidence of who was dealing with the redundancy process.

51. In her particulars of claim and witness statement, the claimant described that she resigned due to the following:
    a. A lack of work from the respondents from March 2024 onwards, despite the claimant being available to work at all times.
    b. A failure to pay her wages in full for September 2024 or at all for October and November 2024.
    c. An attempt to impose lay off on 10 October 2024.
    d. A failure to deal with her grievance of 11 October 2024.

52. In evidence, the claimant added that she had been waiting for the final redundancy consultation meeting with the respondents and resigned when it became apparent this would not take place.

53. Finally, and as has been noted by the Tribunal (above), the claimant stated in evidence that she was waiting for her employment with Rainton H Group Ltd to become permanent.

Wages

54. The claimant's payslips from the respondents confirm that she was paid a salary of £2,600 per month (gross) from January 2024 to July 2024 inclusive [pages 103 to 109].

55. The claimant states that she did not receive any payslips from August 2024 onwards but confirmed in evidence that she is not claiming a deduction from wages for August 2024.

56. On 2 October 2024, the claimant was paid by the respondents for September 2024. This payment had been due on 26 September 2024. The claimant received £1,300 (gross) instead of £2,600 gross).

57. The claimant did not receive any pay for October 2024. The claimant should have received £2,600.

58. The claimant did not receive any pay for November 2024. The claimant should have received £2,600.

59. The claimant did not receive any pay for December 2024. The claimant should have received £942 being pro-rata entitlement from 1 to 11 December 2024 inclusive.

60. The statement of terms and conditions includes a contractual right for the respondents to make a deduction from the claimant's wages, but this is limited to any sums owed by the claimant [page 70] and in respect of pension contributions [page 74].

61. The respondent has not asserted any reason for the deduction from wages.

Pension contributions

62. The statement of terms and conditions includes a contractual right for the respondents to make a deduction from the claimant's wages in respect of pension contributions [page 74].

63. The statement of terms and conditions describes that the claimant's salary would be reduced by an amount equivalent to her pension contribution rate and the respondents would pay an additional sum into the claimant's pension of an equivalent amount [page 74].

64. The claimant's payslips confirm that a deduction of £104 was taken from her salary each month for "Nest" from January 2024 to July 2024 inclusive [pages 103 to 109]. The Tribunal finds as fact that this deduction was for employee pension contributions to the NEST pension scheme.

65. The NEST pension scheme wrote to the claimant as follows:
    a. On 11 January 2024 [page 111] to say that the second respondent had not made pension contributions for September 2023. Amount unknown.
    b. On 11 February 2024 [page 113] to say that the second respondent had not made pension contributions for October 2023. Amount: employer contribution £60, employee contribution £80.
    c. On 12 September 2024 [page 116] to say that the second respondent had not made pension contributions for May 2024. Amount unknown.
    d. On 11 October 2024 [page 118] to say that the second respondent had not made pension contributions for June 2024. Amount unknown.
    e. On 13 November 2024 [page 120] to say that the second respondent had not made pension contributions for July 2024. Amount: employer contribution £78, employee contribution £104.
    f. On 12 December 2024 [page 121] to say that the second respondent had not made pension contributions for August 2024. Amount: employer contribution £78, employee contribution £104.

g. On 11 January 2025 [page 122] to say that the second respondent had not made pension contributions for September 2024. Amount: employer contribution £78, employee contribution £104.
h. On 11 February 2025 [page 124] to say that the second respondent had not made pension contributions for October 2024. Amount: unknown.
i. On 13 March 2025 [page 125] to say that the second respondent had not made pension contributions for November 2024. Amount: unknown.
j. On 13 April 2025 [page 127] to say that the second respondent had not made pension contributions for December 2024. Amount: unknown.

Holiday

66. The statement of terms and conditions confirms that the claimant was entitled to 25 days holiday in each holiday year, inclusive of all public holidays. The holiday year was 1st January to 31st December and any holiday not taken within the holiday year was forfeited [page 71].

67. The claimant stated that she did not take any holiday during 2024, other than the 6 bank holidays. The Tribunal accepts the claimant's evidence on this point. The claimant is owed 23.75 days of accrued but unused holiday entitlement. The value of this holiday is £2,850.

Relevant law

Unfair dismissal

68. Section 95(1) of the Employment Rights Act 1996 (ERA) states that an employee is dismissed by his employer if (c) the employee terminates the contract under which his is employed (with or without notice) by reason of the employee's conduct.

69. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 Lord Denning MR stated that, "if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once."

70. A breach of contract consist of one act or omission or a series of acts or omissions amounting cumulatively to a breach of contract. The breach of contract relied on may be a breach of an express term in the contract of employment or of an implied term. In Malik v Bank of Credit and Commercial International SA (in Administration) 1997 ICR 606 HL it was held that there is an implied term in all contracts which says that the an employer "will not, without reasonable and proper cause, conduct his business in a manner likely to

destroy or seriously damage the relationship of trust and confidence between employer and employee".

71. It is well established that a failure to pay wages will be a fundamental breach of contract. In Cantor Fitzgerald International v Callaghan and others 1999 ICR 639 CA, the Court of Appeal held that withholding or reducing an employee's pay, or otherwise reducing the value of the employee's remuneration, is a fundamental breach of the contract of employment.

72. There is authority that a failure to deal with an employee's grievance will be a fundamental breach of contract. In WA Goold (Pearmak) Ltd v McConnell and anor 1995 IRLR 516 EAT, the Employment Appeal Tribunal upheld the Tribunal's decision that an employer is under an implied duty to "reasonably and promptly afford a reasonable opportunity to obtain redress of any grievance they may have.

73. In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 Lord Denning MR stated that the employee "must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

74. In WE Cox Toner (International) Ltd v Crook 1981 ICR 823 EAT it was held that delay of itself may not constitute an affirmation of the contract but if the delay went on for too long it could be very persuasive evidence of an affirmation. In that case, it was held to be arguable that the claimant had worked under protest for six months but a further delay of one month after the respondent refused to withdraw allegations against him was sufficient to affirm the contract.

75. The Tribunal must determine:
    a. Was the employer's conduct a fundamental breach of an express term of the employee's contract and/or was the employer's conduct calculated to or likely to destroy or seriously damage the implied term of trust and confidence between the employer and employee?
    b. If yes, did the employee resign in response to the employer's conduct?
    c. Did the employee affirm the contract before they resigned?

Unauthorised deductions from pay

76. Section 13(1) ERA states that 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) worker has previously signified in writing his agreement or consent to the making of the deduction."

77. Section 13(3) ERA provides that 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.

78. Where there is a series of deductions Bear Scotland Ltd v Fulton and another 2015 ICR 221 there must be a sufficient factual and temporal link between the deductions to mean that each event is factually linked with a sufficient frequency of repetition.

79. The Tribunal must determine:
    a. Did the employer make unauthorised deductions from the claimant's wages?
    b. If yes, how much was deducted?

Discussion

Unfair dismissal

80. Did the respondents fail to provide work to the claimant from March 2024 onwards despite the claimant being available to work at all times?

81. The Tribunal has found that there was a reduction in the claimant's work from around April 2024 onwards. However, the Tribunal has found this reduction of work difficult to quantify because the claimant wished to give the respondents the impression that she was still working her normal hours of 9am to 5pm, Monday to Friday as she continued to answer the phone for them during these hours and in the redundancy consultation meeting on 11 September 2024 she sought to give the impression that she was still diligently working her normal hours. The claimant's description of the conduct complained of is that the respondents failed to provide her with work despite her being available to work at all times. The Tribunal finds that this is disingenuous. From 1 July 2024, the claimant was working 9am to 5pm, Monday to Friday for Rainton H Group Ltd and therefore was not available to work at all times. The Tribunal concludes that this (in isolation) is not a fundamental breach of contract.

82. Did the respondents fail to pay the claimant in full for September 2024 and did the respondents fail to pay the claimant at all for October 2024 and November 2024?

83. The Tribunal has found that the first respondent paid the claimant only half of her wage for September 2024 and did not pay any of her wages for October 2024 and November 2024. This is a fundamental breach of contract. The claimant's December 2024 wages were not due to be paid until after the date of resignation.

84. Did the respondents issue a lay off letter to the claimant on 10 October 2024?

85. The Tribunal has found that Mrs Manyenga, acting for the respondents, issued a lay off letter to the claimant and that there was no lay off clause in the claimant's statement of terms and conditions. This is a fundamental breach of contract.

86. Did the respondents fail to deal with the claimant's grievance of 11 October 2024?

87. There is no evidence to suggest that the respondents acknowledged or responded to the claimant's grievance. This is a fundamental breach of contract.

88. Did the respondents take employee pension contributions from the claimant's pay and fail to pay those pension contributions into a pension scheme?

89. The Tribunal has found that the respondents made deductions from the claimant's pay and failed to pay those into the Nest pension scheme. This is a fundamental breach of contract.

90. Did the respondents fail to hold a conclude the redundancy consultation process?

91. The respondents held a first redundancy consultation meeting on 11 September 2024 and was due to hold a second consultation meeting on 20 September 2024 but did not do so. The respondents did not follow this up with a further consultation meeting or an outcome letter. The Tribunal considers that this (in isolation) is not a fundamental breach of contract.

92. Was the respondents' conduct a fundamental breach of an express term of the claimant's contract and/or was calculated to or likely to destroy or seriously damage the implied term of trust and confidence between the respondent and claimant?

93. The Tribunal has found that some of the respondents' actions may separately constitute a fundamental breach of contract. These are: the failure to pay the claimant, the issuance of a lay off letter, the failure to deal with the claimant's grievance and the failure to pay pension contributions over to the pension scheme.

94. The Tribunal further considers that the first respondent's conduct, when considered cumulatively as a course of conduct, constitutes behaviour that is likely to destroy or seriously damage the implied term of trust and confidence between the respondent and claimant.

95. Did the claimant resign in response to the employer's conduct?

96. The Tribunal has found as follows:
    a. When the claimant perceived a reduction in her work in around April 2024, she began to look for new employment.
    b. On 14 June 2024, the claimant accepted an offer of employment from Rainton H Group Ltd, which was at a higher rate of pay than she received from the respondents.
    c. On 1 July 2024, the claimant began working full time, 9am to 5pm, Monday to Friday, for Rainton H Group Ltd.

d. The claimant's employment with Rainton H Group Ltd was subject to a probationary period.
e. The claimant did not disclose her new employment to the respondents.
f. The claimant wished to give the respondents the impression that she was still working her normal hours of 9am to 5pm, Monday to Friday as she continued to answer the phone for them during these hours and in the redundancy consultation meeting on 11 September 2024 she sought to give the impression that she was still diligently working her normal hours.
g. When discussing that she had continued to work for the respondents after starting with Rainton H Group Ltd, the claimant stated in evidence that she was waiting for her employment with the respondent to become permanent.
h. The claimant passed her probation with Rainton H Group Ltd in November 2024 and, shortly afterwards, received a promotion and pay increase that was confirmed to her in writing on 5 December 2024.
i. The claimant resigned on 12 December 2024.

97. The Tribunal finds as fact that the claimant's decision to look for and accept new employment with Rainton H Group Ltd on 14 June 2024 was not in response to the respondents' conduct for the following reasons:
    a. The Tribunal has found that the reduction in work in or around April 2024 may not have been as substantial as the claimant described and further finds that the reduction from April 2024 onwards is difficult to quantify given that the claimant's evidence on this point contradicts the claimant's actions in wishing to give the respondents the impression that she was still working her normal hours for them by answering the phone and her comments in the redundancy consultation meeting on 11 September 2024 by which the Tribunal has found that the claimant was seeking to give the respondents the impression that she was still working diligently during her normal working hours for them.
    b. The Tribunal has found that the claimant has not sought to rely on a reduction in her work (or any other act or omission of the respondents prior to the claimant's acceptance of employment with Rainton H Group Ltd on 14 June 2024) as a breach of contract either in isolation or as part of a cumulative course of conduct. The Tribunal further notes that it does not form part of the chronology of events giving rise to the claimant's claim as set out in the claimant's particulars of claim and witness statement.
    c. The chronology of events giving rise to the claimant's claim as set out in the claimant's particulars of claim and witness statement commence with a WhatsApp message on 2 July 2024, the day after the claimant commenced employment with Rainton H Group Ltd.
    d. The Tribunal notes that a lack of work from March 2024 onwards was not cited by the claimant as a reason for resignation within her letter of resignation or her particulars of claim or witness statement.

98. The Tribunal finds as fact that, having accepted employment with Rainton H Group Ltd, the claimant formulated the decision to resign her employment with the respondents when she had passed her probationary period with Rainton H

Group Ltd. The Tribunal finds that the claimant made this decision at some time between 14 June 2024 when she accepted the offer of employment with Rainton H Group Ltd and 1 July 2024 when she started commenced employment with Rainton H Group Ltd because in this time the claimant also made the decision not to disclose her new employment to the respondents.

99. The Tribunal finds that claimant's case is that the chronology of events giving rise to the claimant's claim commence with a WhatsApp message on 2 July 2024.

100. The Tribunal finds as fact that the first conduct of the respondents amounting to a fundamental breach (either in isolation or as part or a cumulative course of conduct) was the failure to pay the claimant her full pay for September 2024.

101. Accordingly, the Tribunal finds that, although the respondents' conduct amounted to a fundamental breach of contract, the claimant's decision to resign her employment with the respondents was made before that breach of contract. Therefore, the claimant did not resign in response to the respondents' conduct.

102. If the Tribunal is wrong on the question of whether the claimant resigned in response to the respondent's conduct, the Tribunal has considered whether the claimant affirmed the contract of employment before she resigned.

103. The Tribunal finds that the claimant delayed her resignation after each alleged breach of contract by the respondents. Most notably, by the end of October 2024, the respondents had failed to progress the redundancy consultation process with the second consultation meeting that was due to take place on 20 September 2024, the respondents had paid the claimant late and paid only half her pay for September 2024, the respondents had issued the claimant with a lay off letter, the respondents had failed to acknowledge or respond to the claimant's grievance, and the respondents had failed to pay the claimant at all for October 2024. Despite all of this, the claimant did not resign until 12 December 2024 – some six weeks later.

104. The Tribunal finds that the claimant was able to delay her resignation because she was already working full time for Rainton H Group Ltd and was already in receipt of a full salary from Rainton H Group Ltd. The Tribunal finds that while waiting to pass her probationary period with Rainton H Group Ltd, the claimant affirmed her contract with the respondents by continuing to answer the phone for the respondents and purporting to give the impression to the respondents that she was still diligently working during her normal hours for them, and by not pursuing her grievance or making any further objections.

105. Having carefully considered the above, the Tribunal concludes that the claimant's claim for unfair dismissal is not well-founded and fails.

Unauthorised deductions from wages

106. Did the respondents fail to pay the claimant in full for September 2024 and did the respondents fail to pay the claimant at all for October 2024, November 2024 and December 2024?

107. The Tribunal finds that the first respondent made the following deductions that were not authorised by the claimant's statement of terms or by any other exception or grounds for authorisation in s13 and s14 ERA 1996:
    e. £1,300 gross for September 2024.
    f. £2,600 gross for October 2024.
    g. £2,600 gross for November 2024.
    h. £942 gross for December 2024.

108. Did the respondents take employee pension contributions from the claimant's pay and fail to pay those pension contributions into a pension scheme?

109. The Tribunal has considered whether the deductions form part of a series of deductions. It is satisfied that, as set out in Bear Scotland Ltd v Fulton and another 2015 ICR 221 there is a sufficient factual and temporal link between the deductions to mean that each event is factually linked with a sufficient frequency of repetition.

110. The Tribunal finds that the first respondent was authorised to make deductions from the claimant's wages in respect of pension contributions, but that this was subject to the provision within the claimant's statement of terms that the pension contributions would be paid into the pension scheme. The Tribunal finds that the first respondent failed to make those pension contributions into the pension scheme and therefore acted outside of the scope of the authorised deduction.

111. The Tribunal finds that the first respondent made the following deductions that were not authorised by the claimant's statement of terms or by any other exception or grounds for authorisation:
    a. £80 for September 2023.
    b. £80 for October 2023 [page 113].
    c. £104 for May 2024
    d. £104 for June 2024
    e. £104 for July 2024
    f. £104 for August 2024
    g. £52 for September 2024

112. The Tribunal finds that no further deduction was made from the claimant's wage in respect of pension contributions because no further wage was paid beyond this point.

113. Did the respondents fail to pay the claimant in lieu of accrued but untaken holiday entitlement when her employment ended?

114. The Tribunal accepts that the claimant accrued 23.75 days of holiday and did not take them. The Tribunal finds that the first respondent failed to pay the claimant in respect of this holiday. The value of this holiday is £2,850.

115. Did the respondents make unauthorised deductions from the claimant's wages? If yes, how much was deducted?

116. The first respondent made unauthorised deductions from the claimant's wages as set out above. The total amount deducted was **£10,920** which is made up as follows:

h. £7,442 in respect of unpaid wages.
i. £2,850 in respect of holiday pay.
j. £628 in respect of pension contributions.