



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Tapiwa Tatenda Kelvin Chabuka

**Respondent:** A-Mat Healthcare Ltd

**Heard at:** By video                      **On:** 29, 30, 31 October 2025

**Before:** Employment Judge S Moore

## **Representation**

**Claimant:** In person

**Respondent:** Mr Adamou, Counsel

# RESERVED JUDGMENT

1. The respondent had admitted they were in breach of contract in failing to recompense the claimant for expense of the certificate of sponsorship fee. The respondent is ordered to pay the claimant the sum of £1820.00.
2. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a compliant written statement of employment particulars.
3. The complaint in respect of holiday pay is well-founded. The respondent was in breach of contract in failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended.
4. The respondent was in breach of contract by failing to pay the claimant the correct wages between May 2022 – September 2022.
5. The claimant's claim for unauthorised deductions from wages is well founded in respect of the period October 2023 – November 2024.
6. The claimant's claim for unfair dismissal is well founded. The claimant was unfairly dismissed. There is a zero chance the claimant would have been fairly dismissed in any event.
7. A remedy hearing shall be listed.

# REASONS

## Background and introduction

1. The claimant was presented on 20 March 2025. The claimant brought claims of unfair dismissal, unlawful deduction from wages or in the alternative breach of contract in respect of overtime, sleep ins and wages allowances, unpaid reimbursement of immigration skills charge and unpaid undertaken annual leave. The claimant also brought a complaint of unequal pay which was subject to separate case management and was not intended to form part of the hearing (see below).
2. An order for disclosure was made on 23 April 2025 with disclosure due to take place no later than 18 June 2025.
3. Between June and October 2025, the claimant repeatedly raised with the Tribunal that the respondent was failing to disclose relevant documents. He had requested his P45, P60, pay slips and employment or payroll records. He had also requested his "log my care" entries recorded within the respondent's "Log My Care" system.
4. The hearing was originally due to take place on 11<sup>th</sup> and 12<sup>th</sup> of August 2025 but was postponed due to lack of judicial availability. A preliminary hearing for case management took place on 11 August 2025 before Judge Brace. Judge Brace drafted a list of issues which was agreed at the start of this hearing as the issues requiring determination.
5. A further preliminary hearing was listed before me on 24 October 2025 as considerable dispute had arisen between the parties regarding disclosure and witness evidence. The claimant was given permission to serve a supplementary witness statement in addition to the statement that had already been exchanged prior to the last postponed final hearing. The respondent was given permission to admit a new statement for Mr Motenga.
6. The respondent had prepared a bundle which ran to 464 pages. In addition there was a chronology and excel spreadsheet extracted from the respondent's "Log My Care system" which was a record of some of the claimant's interactions with residents when performing live in care duties. This had been sent to the Tribunal by the respondent's solicitors on the morning of 29 October 2025 referring to it as "claimant's standalone document". The Tribunal heard evidence from the claimant by way of his main statement and supplementary statement and from Ms V Griffiths who is the manager of the local authority care home where the claimant now works. The witnesses for the respondent were Mrs Motenga and Mr Motenga. The decision was reserved.
7. On 21 October 2025 after evidence had concluded and before submissions the respondent informed the Tribunal that there were relevant documents that had not been disclosed to the claimant including pay slips and rotas. Counsel asked for more time to review the documents in anticipation of an application to then admit the documents. This was refused and reasons

were provided orally. In summary the reason was the prejudice this would have caused the claimant meaning a fair trial would not have been possible by admitting the documents at such a late stage and further that it would have led to a postponement of the hearing after the evidence had concluded.

### Findings of fact

8. The claimant applied for a role with the respondent in January 2022 whilst living in Zimbabwe and was offered the role of Health Care Assistant. The respondent was required to obtain a Certificate of Sponsorship ("CoS") in order for the claimant to be able to apply for a visa for the right to work in the United Kingdom. The Home Office rules provide that the employer must pay for the CoS and that their licence could be revoked if they ask the employee to pay for it.
9. The claimant's ET1 included a claim in the sum of £1820.00 asserting that the claimant had been compelled to pay for the CoS on his credit card by Mrs Motenga.
10. Until the 29 October 2025 the respondent denied that the claimant had paid for the CoS asserting in the response that the respondent had paid this charge. At the start of the hearing on the first morning Mr Adamou confirmed that this claim was no longer contested and the respondent accepted the claimant was owed this sum. The claimant's credit card statement confirms he made the payment.

### 2022 contract of employment

11. The claimant's contract of employment was dated 14 March 2022. The relevant terms were:
  - The start date was 1 May 2022;
  - The annual leave entitlement was 6 weeks per year (and was silent on anything else related to holiday);
  - The salary was £20,480 (£393.85 weekly, £1706.66 monthly gross) with overtime available but no mention of the pay for overtime;
  - The hours of work were 37.5 per week, Monday to Friday 09.00-17.00 with a 30 minute break per day;
  - A minimum term of three years.
12. The contract was not compliant with the requirements in s.1 ERA 1996. It did not contain information about:
  - The intervals of pay;
  - Pension;
  - Notice;
  - Disciplinary rules and procedures.
13. The respondent relied upon a document headed "Live In Pay Structure". This was not dated but Mrs Motenga told the Tribunal that it had been given to the claimant at his induction in May 2022. The claimant disputed he had ever had sight of the document until it was disclosed as part of these

proceedings. This was only after considerable efforts by the claimant to obtain disclosure of this document from the respondent, it having been referenced in their response. The document purported to set out pay and other arrangements for where the staff would provide live-in care, staying overnight at the home of the service user. The relevant terms were as follows:

### **Weekly Pay Structure**

*Weekly Pay Rate: £700 flat (this rate is as of 2023/24 financial year.*

*Contact Time: 8 hours per day*

*Support Arrangement: 1:1 or 2:1 depending on the service user's Support Plan*

*Active Support Hours: Daytime hours, as defined by the individual's Support Plan*

*Night Time Expectations: Staff are expected to sleep at the residence overnight, with minimal or no overnight duties unless specified in the Support Plan*

*Where the client is unsettled at night, staff are requested to submit the overtime sheets and care logs to evidence this and this shall be paid for the number of hours where client was unsettled.*

*This pay rate covers the full week (7 consecutive days), including accommodation at the service user's home. The structure is designed to reflect the balance between active daytime support and passive overnight presence.*

### **Shift Pattern Clarification**

*It is important to note that this is not a round-the-clock (24-hour) working arrangement. Live-in carers are not expected to be actively working 24 hours a day. Their schedule and workload are informed by:*

*The Support Plan agreed with the service user and their representatives*

*The funder's requirements (such as Local Authority, NHS, or private arrangements)*

### **Employment Regulation and Compliance**

*This live-in care model is designed in compliance with relevant UK employment laws, including:*

*National Minimum Wage (NMW) and National Living Wage (NLW)*

*According to HMRC guidance, live-in care workers may not be entitled to the NMW for hours spent sleeping at the service user's residence, unless they are required to be awake and working.*

*The flat rate of £700 (2022/23) per week is structured to ensure compliance with NMW/NLW requirements based on 8 hours of contact time per day (56 hours per week). If duties exceed agreed hours, additional pay must be provided to ensure total compensation meets or exceeds NMW/NLW requirements. This is upon sending in an overtime sheet and care logs to show contact time during sleeping hours*

### **Accommodation Offset**

*Live-in care workers are provided accommodation free of charge while on assignment at the service user's residence.*

*This accommodation does not constitute a form of payment or benefit and is not deducted from the worker's pay.*

### **Review and Monitoring**

*This pay structure is reviewed annually or when there are significant changes to:*

*Statutory wage rates*

*Employment law or regulatory guidance  
The service user's support requirements  
Any proposed changes will be communicated in advance and implemented  
only after appropriate consultation and risk assessment."*

14. There were two factors that caused doubt as to the provenance of this document and the claimant put both to Mrs Motenga. I find her replies were either evasive or she was unable to provide a cogent explanation. These were as follows.
15. Firstly, Mrs Motenga was asked how this document could have been given to the claimant in May 2022 when it referred to 2023/24 pay rates. Mrs Motenga was unable to answer this question initially, then stated it was at the induction, then said she could not remember the date it was provided to the claimant.
16. Secondly, Mrs Motenga was asked to explain why, if this was the correct document setting out the pay for live in care, why the claimant had not been paid at those rates (£700 per week for May, June and July 2022). There were very long pauses of silence from Mrs Motenga and she asked for questions to be repeated to the extent it was considered a break was necessary. At one point she stated, "I will get back to you". It was explained to Mrs Motenga that was under oath now to provide the evidence and if she could not remember then she should say so. Mrs Motenga's explanation for why the claimant was not paid the £700 per week as per the document she wished to rely upon was as follows:

Your contracted hours were 37.5 per week, if you did overtime it was £18 per hour for live in wage per week £426 basic rate then difference at overtime to make up before £700 gross per week for live in.
17. The claimant then asked why he had not been paid overtime as all of the extra hours were on the Log My Care records and Mrs Motenga said the claimant should have completed an incident form to receive overtime. This did not make any sense and I find that no such requirement was in place. The respondent's document does not state an incident form would be needed. This would be completely unworkable if every time the claimant worked outside of his contractual hours he had to complete an incident form given the high volume of interactions with the residents as evidenced by the Log My Care entries.
18. For the above reasons I find that the Live In Pay Structure did not form part of the claimant's terms and conditions of employment and I have doubts as to the provenance of the document.
19. On 25 May 2022 the claimant signed a letter opting out of the maximum 48 hour week under Regulation 4 (1) of the Working Time Regulations 1998 ("WTR").

#### Employee Handbook

20. On 22 November 2023 the claimant was sent a copy of the employee handbook. The relevant sections are as follows:

## HOLIDAYS

The holiday year runs from January 1 April to 31 March.

We require at least one month's notice of your intention to take holidays. This will allow us sufficient time to re-arrange staff rotas accordingly. Holiday periods more than 2 weeks at a time will not be authorised under normal circumstances.

To maintain continuity of care to our customers over the festive period, no annual leave will be granted for the period 20 December to 4 January.

Payment in lieu of holidays is also not awarded.

## RESIGNATION

Any employee wishing to resign their employment is required to give written notice of their intention to leave according to the appropriate period of notice contained in their contract of employment. Failure to give adequate notice will result in the deduction from the final salary / wage payment of the number of days not worked at the basic rate. Resignations can be made in writing and via email. These should be directed to the HR department.

## Working hours

21. The claimant's working hours and shifts were allocated by Mrs Motenga who prepared rotas and sent these to the claimant by Whats App. None of the rotas have been disclosed as part of these proceedings although some Whats app messages were available referring to attached rotas (for example February and March 2023). The respondent had also not disclosed the claimant's pay slips for the period May – July 2022. The claimant's bank account statements were in the bundle and it was therefore possible to see what the claimant had been paid net in respect of some payments.
22. As part of the attachment to the ET1 the claimant had prepared detailed schedules of when and where he had worked from May 2022 onwards. The respondent has therefore been on notice since the claim was presented of the claimant's case in respect of the hours he maintains he has worked.
23. I asked the claimant how he had prepared his schedule of hours worked and he told me it was from memory and some of the records were corroborated by the log my care information.

## 2022 working hours and arrangements

### May – June 2022

24. There are no pay slips for May and June 2022. The claimant's bank statements show he was paid £731.14 on 31 May 2022 and £1706.00 on 30 June 2022.
25. The claimant was placed at two live in care homes which I shall refer to as Home L and Home N. The days of work were as follows:  
  
23 May 2025 – 29 May 2022 – Home L  
30 May 2022 – 6 June 2022 – Home N.
26. The claimant worked 15 consecutive days on live in shifts with the 16<sup>th</sup> day being sleep in only. He was then off work between 7 – 12 June 2022 and

commenced further 24 hour live in shifts as follows:

13 – 29 June 2022 – Home L.

27. The claimant's case for unpaid wages was based on 24 hours pay at 11.38 per hour (this was his calculation for the pro rate annual salary). The claimant accepted that for some of the time he would have been asleep. The claimant was supporting 5 residents in one of the properties.

28. I considered the log my care spreadsheet for these periods. I sorted these into date order so that a record of the claimant's contact with residents could be viewed. The logs were detailed and would record every interaction with each resident such as personal care, when they ate and drank, temperature and mood checks, medication and social interactions. It should be noted that the log my care only records resident care and not other general duties such as cleaning.

29. The records show as follows:

Date	First interaction	Last interaction
23/5/22	Not shown	22.44pm
24/5/22	09.11am	21.13pm
25/5/22	08.10am	21.31pm
26/5/22	09.33am	22.50pm
27/5/22	07.54am	22.36pm
28/5/22	09.47am	23.12pm
29/5/22	01.25am	22.08pm
30/5/22	08.54am	Not shown
Between 30/05/22 – 25/06/22 there are no logs and the log for 26/6/22 is not complete		
29/06/2022 The claimant had completed a 24 hour shift at Home N finishing early on 28 June 2022. He was then on a 7 hours sleep in shift for the evening of 29 June 2022. The call logs corroborate the claimant's record attached to his ET1	06.06am 06.44am then none until 21.50pm	30/6/22 05.31am.

July 2022

30. The claimant was asked to work at an emergency placement in Wales for a young person with challenging behaviour and was promised a rate of £1,000 per week for 12 hour night shifts. The claimant says this was in Newport but has listed it as "NCC-Merthyr" in his ET1 and schedule of loss. I have understood this to be the name of the home and that it was geographically in Newport County but this may need clarification at the remedy hearing. He worked at this placement between 30 June 2022 – 7 July 2022 and his bank account shows he was paid £1,000 on 7 July 2022.
31. The claimant then returned to 24 hours care at another home which I shall refer to as Home NY from 7 July 2022 – 15 July 2022 which if accurate mean he worked 16 consecutive days without a daily break. The claimant was a lone worker at Home NY caring for four service users. The log my care records are less corroborative for July 2022.
32. For example between 5 – 7 July 2022 the claimant said he was on night shifts in Newport but the logs show interactions suggesting it was a 24 hour live in arrangement for this period. Further between 16 – 21 July 2022 the claimant says he was off work but the logs show no work between 12 – 18 July 2022 and long days (09.42am – 23.03pm for example) between 19 – 31 July 2022 suggesting a pattern on live in care. The claimant's records say he was back at Home L between 22 – 31 July 2022.
33. There is no pay slip for July 2022. The claimant's bank statement shows he was paid £1000 on 7 July 2022 and £1706.00 on 29 July 2022. I find that the payment of £1,000 on 7 July 2022 corroborates the claimant's case that there was an agreement to pay him £1,000 per week for the emergency placement at NCC Merthyr.

#### August 2022

34. Between 1 – 28 August 2022 the claimant worked 28 consecutive days at Home L without a daily break. The hours reflect the live in care pattern generally starting around 8.30am and ending between 21.30 – 23.32pm with some early hours interactions such as 3am on 11 August 2022. The claimant was off from 29 August - 4 September 2022 which is corroborated by the logs save they show he was at work on the evening of 4 September 2022.
35. The pay slip for 30 August 2022 shows the claimant was paid £1706.67 gross, £1487.80 net. This pay slip is not the same as all of the other pay slips and has a different employee ID number to the other pay slips.

#### September 2022

36. The claimant worked back at Home L on live in duties between 5 – 9 September 2022 and then worked consecutive nights NCC-Merthyr from 9 – 30 September 2022.
37. There is no pay slip for September 2022. The claimant's bank statement show he was paid £1000 on 15 and 22 September 2022 and £1666.00 on 30 September 2022. The claimant says that the £1000 payments were the agreed payments in respect of his undertaking a placement in Newport (see below). I find that this further corroborates the claimant's case that was an

agreement to pay him £1,000 per week for the emergency placement at NCC Merthyr.

38. The claimant does not seek any unpaid wages after September 2022 until October 2023. I am unclear why unless he received extra payments directly into his bank account but I do not have the bank statements for this period.

#### October 2022

39. The claimant's records say he worked 31 consecutive nights in Wales. Apart from no call logs on 4, 12, 14, 28 October 2022 the logs corroborate the claimant was working nights but show less interaction unsurprisingly as the residents were likely to have been asleep for the majority of the shift.
40. The claimant's pay slip dated 31 October 2022 shows a payment of £1706 gross and £1487.42 net.

#### November 2022

41. The claimant's records say he continued nights in NCC-Merthyr between 1 – 7 November 2022. These dates are corroborated by the logs. He then is off work from 8 – 13 November 2022 returning to work nights at NCC-Merthyr from 14 – 30 November 2022. The logs do not assist with how many hours the claimant would have worked on the night shift as there are not many entries. The claimant says the night shifts were for ten hours.
42. The claimant's pay slip dated 30 November 2022 shows gross pay as £1706.00 and net pay of £1495.64.

#### December 2022

43. The claimant's records say that he worked nights at Merthyr between 1 – 31 December 2022. The call logs corroborate these dates apart from there are no entries for 2 December 2022. This could have been because there were no interactions.
44. The claimant's pay slip dated 31 December 2022 shows gross pay of £3000 and net pay of £2375.56.

#### Extra payments for placements in Newport, Carmarthenshire

45. The claimant says in June 2022 he was informed he would receive extra payments of £1,000 per week for Newport and £1500 for the 14 hours shift in Carmarthenshire and £1150 for the ten hour night shift. There is evidence of some of these payments on the claimant's bank statements but they are not recorded separately on pay slips. There was no document setting out these arrangements.
46. Mrs Motenga's witness evidence did not assist me as it was contradictory and unclear. Mrs Motenga insisted that the claimant's rate of pay was £11.08 per hour (in 2022). However this did not reflect the claimant's pay slips for example in December 2022 he received a flat payment of £3,000.

Mrs Motenga then told the Tribunal that this was a mistake as that rate was for people more experienced and paying their own taxes. It was accepted that the claimant was paid some weeks at the flat rates. The payments were made either by bacs transfer or on the pay slip.

### Hours worked 2023

47. There were no logs for 2023. The only records available were the claimant's records. The claimant says he was paid properly between January to September 2023 at the agreed rates set out at paragraph 45 above. The pay slips corroborate that he was paid extra to his annual salary.

### January 2023

48. The claimant began to work in a different location which I shall refer to as Home G. His records say he was on long days (14 hours) from 1 – 15 January 2023. There were days off from 16 – 22 January 2023 and he then returned to nights (at 10 hours) in Merthyr from 23 – 31 January 2023.

49. The claimant's pay slip dated 31 January 2022 shows gross pay of £4572.00 and net pay of £3406.56.

### February 2023

50. The claimant's records say he worked nights at NCC-Newport between 1 – 28 February 2023 with no daily break. The fact he was on nights at this time is corroborated by Whats app messages between the claimant and Mrs Motenga but they did not assist with how many nights were worked or the number of hours. However the claimant's pay slip dated 28 February 2023 shows gross pay of £4000.00 and net pay of £3055.56 which again reflects the agreed rate of pay of £1,000 per week for this location.

### March 2023

51. Nights continued at Merthyr between 1 – 13 March 2023 at ten hours save 6 is claimed for 1 March 2023 and 7 for 13 March 2023. There are 4 days off recorded between 13 – 16 March 2023 then nights back at NCC-Merthyr between 17 – 23 March 2023. The claimant then returned to long days at Home G from 24 – 31 March 2023.

52. A whats app message from Mrs Motenga on 23 March states "7am to 21.00hrs, children's home". There are also messages regarding the claimant travelling to Carmarthen. This corroborates the claimant's record of 14 hours for "long days" at Home G, which is in Carmarthenshire.

53. The claimant's pay slip dated 31 March 2023 shows gross pay of £4429.00 and net pay of £3323.62.

54. The annual gross salary on the 2022-2023 P60 is shown as £19413.00 with tax and employee NIC at 2747.723 and 1520.92.

### April 2023

55. The claimant's records say he continued at Home G on long days from 1 – 9 April 2023. From 10 – 17 April 2023 he worked nights back at NCC-Merthyr then had days off from 18 – 23 April 2023. He then did long days at NCC-Merthyr (recording these as 12 hours) from 24 – 30 April 2023.
56. In a WhatsApp message Mrs Motenga asked the claimant to confirm his days at Home G at the end of March and April 2023 and he advised 24 March – 19 April which corroborates the claimant's records.
57. The claimant's pay slip dated 30 April 2023 shows gross pay of £3926.00 and net pay of £3005.24.

### May 2023

58. The long days at NCC-Merthyr continued between – 7 May 2023 when the claimant switched to nights at NCC-Merthyr from 8 – 22 May 2023. He was off work from 23 – 26 May 2023 and returned to Home G for nights (at ten hours between 27 – 31 May 2023).
59. On 22 May 2023 Mrs Motenga asks the claimant to confirm when he had last taken a break, and she is advised by the claimant the date was 17 – 23 April 2023. The messages confirm that he was due back at Home G from 27 May 2023 – 26 June 2023 on nights.
60. The claimant's pay slip dated 31 May 2023 shows gross pay of £4656.00 and net pay of £3507.81.

### June 2023

61. The claimant's records say he was at Home G on nights from 1 – 27 June 2023. This is corroborated by the WhatsApp message above and a message sent by the claimant on 14 June 2023 to Mrs Motenga requesting his photo which had been requested by the manager of Home G for their communication book. On 25 June 2023 the claimant said in a message he was finishing at Home G tomorrow (26<sup>th</sup>) but was corrected by Mrs Motenga that he was finishing a day later (27<sup>th</sup>).
62. On 28 June 2023 Mrs Motenga asked the claimant to confirm his hours for June 2023; he replied as follows:

*28/06/2023, 15:53 - Tapiwa Tatenda: Dates: 1-27 (10hours\*27days)=270 hours  
Date: 28 (7hours\*day)=7 hours  
Total hours = \*277\**

63. The claimant's pay slip dated 30 June 2023 shows gross pay of £4432.00 and net pay of £3324.95.

### What's App messages between Mrs Motenga and the claimant relevant to annual leave

64. 20 February 2023 – Mrs Motenga told the claimant he “will be off” for 2 week’s from 27 February 2023. She does not say this is holiday. The claimant asks for a “break” from 27 February – 5 March 2023 then to do a further week from the 6 to 12 March 2023 explaining that his family was arriving on 13 March and he would like to take the second break for the week of the 13<sup>th</sup> to 19 March. Mrs Motenga replied the next day that she may need him to work between 2 - 9 March at Home G. These shifts were subsequently cancelled.
65. On 13 March 2023 Mrs Motenga messaged the claimant to ask him to let her know when he wanted to take his annual leave and he replied he has noted the message.
66. The claimant did not address the annual leave issue in his witness statement. In his ET1 he stated that since joining the respondent he did not take any annual leave and since the termination of his employment believes it should be “paid as part of my package”. He does not assert that he was prevented from doing so by the respondent or outline circumstances where he could say he believed he would not be paid if he took holiday.
67. Whats app messages between the claimant and Mr Motenga corroborate that the claimant was working in locations he asserts in his records (for example in July NCC-Merthyr and December 2023 Swansea (submitting milage to Swansea)).

### Findings

68. Based on the above evidence I have accepted the claimant’s records of dates and hours worked save I do not find that the claimant should be compensated for working time over a 24 hour period for live in care for hours when he was asleep. In such cases, the proportionate conclusion is to accept the service log records or where there are none to settle on an average working day at the particular home in question based on the service logs and this shall be assessed at the remedy hearing. The respondent has failed to disclose rotas or any records that could dispute the claimant’s records and his records are corroborated by a number of sources.

### Amendment to salary 30 September 2023

69. On 30 September 2023 the respondent sent the claimant a letter setting out changes to pay effective from 1 October 2023. This stated as follows:

*Currently, you have been receiving a salary that exceeds your contractual rate. However, in our continuous efforts to ensure fairness and alignment with industry standards, we have undertaken a review of our salary structure in line with the industry. As a result of this review, there will be some changes to how compensation is structured, effective 1 October 2023. We appreciate your understanding and cooperation during this transition.*

#### *Details of the Changes:*

*1. Basic Rate: Your basic salary will be as in your signed contract. This amount will be paid for the contractual hours specified in your employment agreement. It represents your regular, expected earnings.*

2. *Overtime: Any hours worked in excess of your contractual hours will be considered overtime. Overtime will be paid at a rate of £13 per hour. This rate applies to all hours worked beyond your contractual commitment.*

3. *Wales Tax Free Allowance: Staff will be paid a tax-free allowance, pro-rated at £550 for each month where/when they will have worked in Wales.”*

70. The response asserted that the Wales Tax Free Allowance (“WTFA”) was payable at the managers discretion.

71. The claimant knew that this amendment to his pay would result in a reduction in pay for the same duties (as he would continue to work at NCC-Merthyr and Home G where he had been paid at £1,000 and £1500 per week).

72. The claimant says the WTFA was paid between October 2023 – February 2024 but then stopped. The pay slips do not record this payment and I do not know how it was paid.

73. The claimant had described his shortfall in wages between October 2023 – January 2024 as unequal pay. Until reaching my decision and writing these reasons it had been understood this was part of his equal pay claim but it now clear what the basis of this claim actually is, which is the withdrawal of the £1,000 and £1,500 weekly payments. The respondent unilaterally amended the salary on 30 September 2023 from those amounts (for the NCC-Merthyr and Home G placements) to the payments set out at paragraph 69, in other words the claimant moved to an overtime payment system with the WTFA on top instead of those flat weekly payments.

74. I accept the claimant’s records for the hours he worked between October 2023 December 2024 at NCC-Merthyr, Home G, Swansea and from May 2024 exclusively at LC respite.<sup>1</sup> The following table shows the hours worked and the gross and net pay on the pay slips.

Date	Hours worked	Payslip Gross	Payslip net
October 2023	248.50	3280.00	2617.76
November 2023	224	74 hours OT @ £13.00= £962 Basic pay £1846 Total gross 2802	2245
December 2023	315	140 hours overtime 1820.00 Holiday pay	3162

<sup>1</sup> I am unclear whether the claimant asserts that Swansea attracted the flat rate pay the claimant bases his claim on. The claimant is claiming the £1500 flat rate of £1500 per week for his placement at LC respite from May 2024 onwards.

		492 (24.6 hours paid @ £20 per hour) Basic pay 1846 Total gross 4158	
January 2024	314	154 hours overtime £2002 Holiday pay 246 (10 hours @24.60 per hour) Basic pay 1846 Gross 4094	3180.20
February 2024	153.50	3.5 hours OT Basic pay 1846 Total gross 1891.50	1638.55
March 2024	255	83.5 hours OT @ 1085 Basic pay 2077 Total gross 3162.50	2528.25
April 2024	165	15 hours OT £195 Basic pay £2077 Total gross pay £2272.00	1929.48
May 2024	415	237 hours OT £3081.00 Holiday pay £581.00 <sup>2</sup> Basic pay £2077 Total gross pay £5739.00	4518.52
June 2024	348	172 hours overtime £2236 Basic pay £2077 Total gross pay £4313.00	3406.24
July 2024	400	276 hours OT £3588 Basic pay	4215.34

<sup>2</sup> This is shown as 20 hours @ £28 per hour

		£2077 Total gross pay £5665.00	
August 2024	382.50	232.50 hours OT £3022.50 Basic pay £2077 Total gross pay £5099.50	3837.54
September 2024	171.50	21 hours OT £279.50 Basic pay £2077 Total gross pay £2356.50	2356.95
October 2024	327.00	177 hours OT £2301.00 Basic pay £2077 Total gross pay £4378	3419.28
November 2024	317 however this includes 37.5 hours recorded as paternity leave	215 hours overtime £2795.00 Basic pay £2077 Total gross pay £4872	£3706.19
December 2024	Unknown	1935.76 holiday pay	1922.07

75. The issue is therefore whether he is entitled to base his wages claim on the shortfall between what he was paid under the new structure set out at paragraph 69 or the flat structure payments he had been paid from July 2022 and consistently from January – September 2023. The added complication is that the claimant also claims for the unpaid WTFFA meaning that the claims are effectively being based on the best of both pay arrangements.

#### Claimant's promotion to Team Leader on 12 February 2024

76. This was confirmed in a letter in the above date which was highly complimentary of the claimant. His salary was increased to £27,000 per annum which should have been £2250.00 per month but the claimant was paid £2077.00 gross per month. There is no explanation before me as to why this was the case.

#### Purported withdrawal of the Wales Tax-Free Allowance

77. The respondent relied upon a memo dated 24 February 2024 from Mrs Motenga to all staff. This stated that the Wales Tax Free allowance was being rescinded as staff had been choosing to work in areas where the allowance was payable leaving other areas uncovered. The memo said it was being discontinued with immediate effect.
78. The claimant disputed that he had ever seen this memo. It had been referenced in the response and as such the claimant requested disclosure of the memo in his applications dated 18, 23, 25 June 2025, 2, 16 July 2025. The claimant requested the documents again directly to the respondent's representative on 8 July 2025 who advised they would collate and forward them (disclosure should have been completed by 18 June 2025).
79. Mrs Motenga was asked how this memo was communicated to the claimant and told the Tribunal it had been passed to a supervisor to distribute to the claimant. There were no supporting emails to corroborate this.
80. On 1 March 2024 the claimant told Mrs Motenga (via What's App) that he had not received the February Wales Tax Free Allowance payment who replied "noted and wasn't aware". The claimant also asked again on 3 April 2024 reporting he had not received the March allowance to which Mrs Motenga replied "noted". She later then advised it would be paid when attending Newport and not Carmarthenshire and said she would talk to Mr Motenga. Mrs Motenga did not tell the claimant it had been withdrawn on 24 February 2024 or mention the memo. The claimant then sent the letter dated 30 September 2023 and advised he had understood the allowance also applied to Carmarthenshire. The response from Mrs Motenga was she would get back to him.
81. I find that the memo dated 24 February 2024 purporting to withdraw the WTFFA was not communicated to the claimant. I have cause to doubt the provenance of the document. There is no evidence corroborating the distribution of this document to a supervisor such as emails. Secondly and more significantly, if there had been such a memo it is wholly implausible that Mrs Motenga would not have referred to it in March and April 2024 when the claimant started to ask about why he was not receiving it.

#### 2024

82. The claimant started a placement at a children's centre in Carmarthenshire on 1 May 2024. In June 2024 he applied for two positions where he would be directly employed by Carmarthenshire County Council. Someone, in a significant breach of confidence, informed Mr Trevor Motenga (nephew of Mr Motenga) of these applications who in turn told Mr and Mrs Motenga. On 30 June 2024 Mr Motenga sent the claimant a message saying he heard he had gone for an interview and asked how it had gone, advising he would need to plan referencing the sponsorship licence. The claimant spoke to Mr Motenga and messaged Mrs Motenga as follows:

*02/07/2024, 21:46 - Tapiwa Tatenda: Good evening Ma'am, Unfortunately someone told Mr Matenga about me going for an interview before I could say anything to you. Like I told Mr Matenga on Sunday, nothing has materialized yet so I'm still very much an employee at A-Mat & MHILD. If anything should change in the near future I will formally inform you, because*

*right now we cannot say I've moved on.*

83. The claimant was offered the position with the local authority on or around 19 June 2024 and informed this would be subject to checks and references. The Tribunal heard evidence from Ms Griffiths, a manager of Carmarthenshire County Council who was involved in the recruitment of the claimant and onboarding process. The claimant asked Ms Griffiths to approach Mr Motenga directly for a reference as he was aware that they were unhappy about finding out from someone the claimant had attended the interviews. A formal job offer was made and accepted on 1 August 2024 and on 2 August 2024 a reference request was sent to Mr Motenga. Two further chasers were sent on 20 and 29 August 2024 as Mr Motenga had not responded. The claimant was then asked to speak to him directly.

#### Paternity leave and annual leave request

84. On 23 August 2024 the claimant sent Mrs Motenga a what's app message requesting paternity leave from 20 November 2024 – 3 December 2024 and annual leave for three weeks from 2 – 24 December 2024 and emailed the same request.

#### Events on 2 September 2024

#### Claimant's evidence

85. The claimant told the Tribunal that he had a difficult conversation with Mr Motenga who was annoyed with the claimant for accepting a provisional and conditional job offer with the local authority and that he would withhold the reference until he had spoken to his lawyers as he believed it was illegal for him to apply for a job with the local authority. Mr Motenga also stated that he would withhold the reference until the local authority agreed to pay him a "finders fee". The claimant says he made it clear that whilst he had accepted a provisional job offer it was conditional on checks and references and at no time did he resign. Mr Motenga instructed him to return to London for a planned week long "break" and his paternity leave was approved. He also warned the claimant not to burn bridges.

86. Mr Motenga's witness statement said as follows:

**We sat in the Unit lounge, and during our conversation, the Claimant then confirmed that he intended to transition to the new employer Carmarthenshire County Council (CCC). In his own words, the Claimant then said: "I am embarrassed that you asked me about the job offer before I could inform you about it myself, I apologise that you heard this from the grapevine, it would have been better if I told you myself. I am embarrassed because you have been so good to me and you supported me a lot.**

**10. He then went on to confirm that indeed, he was offered a job as a Residential Child Care Officer and that he had accepted the job offer but he was too embarrassed to inform me or ask for references given that the Company had been very good to him.**

87. Mr Motenga says that a conversation then followed with the manager and it was agreed the claimant could utilize the 60 days curtailment period and continue working temporarily for the respondent so he could complete some training that was required. The claimant disputed that the conversation with

him, the manager and Mr Motenga had taken place at all but agrees that Mr Motenga spoke to him about attending the Peg training as discussed with the manager.

88. The claimant and Mr Motenga are largely in agreement and certainly as of the end of that conversation the claimant could not have understood he had been dismissed as he was aware that he would be remaining at the home following the Peg training and was then on a week's break, starting back in London on 9 September 2024.

89. Following this it is accepted that Mrs Motenga sent a whats app message to the claimant but quickly deleted it. The claimant says the message said words to the effect that his CoS had been cancelled and his employment contract had been terminated with immediate effect. Mrs Motenga's evidence was as follows:

**I understand from the conversation the Claimant had with Mr Matenga that he was moving on and that he was sorry. I then sent the Claimant a text message via WhatsApp, however, I don't remember everything I wrote in that message, but I remember informing the Claimant that I had been told about him moving on and as a result I would have to inform the Home Office of these changes to his employment and as well as the new sponsor. However, I then chose to delete the message as I thought it would be more appropriate to inform the Claimant about this formally therefore, I send a subsequent WhatsApp message saying I would be sending him a formal email.**

90. The undeleted what's app messages were as follows:

**02/09/2024, 18:35 - MHILD Saru Matenga: This message was deleted  
02/09/2024, 18:39 - MHILD Saru Matenga: I'll send an official email  
02/09/2024, 18:39 - Tapiwa Tatenda: Noted  
02/09/2024, 18:57 - MHILD Saru Matenga: I never thought you could betray us like this. After all the support we gave you.**

91. Ms Griffiths told the Tribunal that the claimant had informed her that Mrs Motenga had sent him a message terminating his CoS and that he was very confused and worried as to how this would affect his right to work and application for indefinite leave.

92. Mrs Motenga cannot remember saying the employment was terminated but the claimant can. I therefore prefer the claimant's account that he was told his contract was being terminated with immediate effect. It is corroborated by the emotional message about betrayal and that Mrs Motenga says she will be sending an official email. This becomes even more plausible as at 17.32pm (on 2 September 2024) Mrs Motenga had informed the home office that the claimant had "moved to another employer". This was not true as on the respondent's own case the claimant was still an employee and Mrs Motenga had retracted text stating the claimant would be dismissed advising that an official email would be sent.

93. The claimant agreed he did a sleep in shift on 3 September 2024.

94. On 4 September 2024 the claimant messaged Mr Motenga as follows:

**4/09/2024, 10:59 - Tapiwa Tatenda: Morning Sir,  
Hope I find you well. Yesterday I received an email from Carmarthenshire County**

Council to check with you if have managed to respond to the email they sent requesting for my reference

04/09/2024, 22:28 - MHILD Fred Matenga: Hi Tapiwa , I have not yet responded as I need seek advice on the circumstances

95. On 05/09/2024 the claimant emailed Mr Motenga:

**10:29 - Tapiwa Tatenda: Morning Sir,**

**I had no problem with waiting whilst consulting your lawyers as you had initially said, but I got a WhatsApp message from Ma'am Saru saying that my Certificate of Sponsorship (COS) has been cancelled that very day I saw you without any reason why.**

**Now I feel like I'm being punished/victimised for applying somewhere for a job and you are purposely trying to hinder me from getting any job within the 60 days I get from home office. I think it is only fair that at least I get a reference whilst you engage your lawyers.**

96. Mr Motenga replied to this message later on 5 September 2024 as follows:

**I am sorry that you feel "punished or victimised", I can categorically state that it's not the case. We are only implementing employment and Home Office regulations. Usually when an employee seeks permanent work at an assigned placement, an agreement has to be in place. I will advise when we reach an agreement with Carmarthenshire County Council. After the agreement we will then send your reference. In the mean time you still have 60 days working for MHILD care.**

97. As such as of the date this email was sent the claimant had been specifically told he was being immediately dismissed then the next message was deleted and an official email was said to follow. He then was told in writing by Mr Motenga on 5 September 2024 he was still an employee for a further 60 days (which would be until 4 November 2024).

98. The claimant was due to have restarted work on 9 September 2024 in London but had not done so.

99. On 9 September 2024 the claimant sought clarification for the reasons his CoS was cancelled and set out his understanding that the cancellation was an automatic termination of an employment contract which meant he was no longer allowed to work in the UK. He referred to having 60 days to look for new sponsorship or leave the UK. Mr Motenga did not reply to this email.

100. On 18 September 2024 the claimant sent a further email as he has been advised by the manager of the home he had been working at since May that Mr Motenga had agreed the claimant could work at the home the following week. He sought clarification and asked if his CoS was still valid as well as accommodation arrangements and transport. Mr Motenga replied:

**We have written to Carmarthenshire Council and we are waiting for their response. Your reference will be done when we receive their response hopefully within the coming week.**

**Like I said last time you are still our employee until end of the 60 days and will work as normal, accommodation is provided and transport paid as before. However, if you are not willing to continue working then you let us know. I informed Tanya that you can work and do training as required.**

101. The claimant checked his right to work status on gov.uk and confirmed it was active and valid. The claimant's witness statements stated that *"this discovery brought me a sense of relief as it directly contradicted the message I had received . I came to the conclusion the message sent and then deleted by Mrs Motenga on 2 September 2024 was a deliberate attempt to intimidate me and pressure me into withdrawing the provision job offer I had accepted. "*
102. The claimant returned to the placement in Carmarthenshire on 20 September 2024 and resumed work at the local authority placement, employed by the respondent.
103. On 25 September 2024 Mr Motenga told the claimant he had sent the reference. This was not true. This was not provided until 29 November 2024 despite multiple requests. See below.
104. By 20 October 2024 the claimant asked for permission to add two additional referees in the absence of a forthcoming reference from the respondent.
105. The claimant commenced paternity leave on 24 November 2024.
106. The respondent's response asserted that the effective date of termination was 30 November 2024. It stated as follows at box 5.3:
- "The claimant's employment was not terminated, he sought and secured employment with the local authority and did not provide us with notice of his intention to terminate his employment. It was based on his prospective employer seeking employment reference from [the respondent] that we became aware of his intentions to leave [the respondent]. As per Home Office requirement we had to cancel his sponsorship licence of which the claimant misinterpreted this being dismissal which clearly was not the case".*
107. The grounds of resistance stated that at a face to face meeting the claimant *"confirmed that he intended to transition to the new employer"* (the local authority). It later says he sought alternative employment and subsequently left employment with the respondent.
108. There was a reference in Judge Brace's order which suggests the respondent were asserting the claimant had resigned with notice on 2 September 2024. This plainly did not happen and there is no evidence to base it upon. The response also asserted that the claimant had booked direct shifts with the local authority in breach of his sponsorship agreements resulting in the cancellation of the CoS. The respondent led no evidence to corroborate that the claimant had booked direct shifts with the local authority and I find this did not happen.
109. On 25 November 2024 the claimant's wife gave birth to their son. The baby required medical attention due to low temperatures.
110. On 26 November 2024 the claimant was told via What's app by Tanaka (surname unknown) from HR that he was working illegally.

111. The claimant contacted the local authority to explain the situation and they submitted an urgent CoS application which was approved on 5 December 2024.
112. On 2 December 2024 the claimant emailed Tanaka referencing a conversation on 26 September which I find was an error and must have been referring to 26 November. He asked the respondent to provide official communication relating to the termination of the CoS and confirmation of the date it had been terminated. He confirmed he had worked only for the respondent at the local authority centre. On 4 December 2024 the claimant chased for a response and further requested a written notice for the termination of the CoS and contract “as per employment guidelines / regulations”. Mr Motenga replied as follows:
- We accepted your resignation when you informed us that you found another job and We cancelled your COS on 2<sup>nd</sup> of September 2024. We have since responded to reference requests from Carmarthenshire county council. We wish you well in your new job. We will send you your P45.**
113. The claimant officially commenced employment with the local authority on 16 December 2024.
114. The impact of the respondent’s actions in cancelling his CoS was significant. He lived in constant fear that he would fail to secure a new CoS within the 60 day grace period at a time of caring for his wife and new born son describing this as a nightmare and fearing arrest and deportation as well as separation from his family. The claimant was not comforted by Mr Motenga’s assurance given on 5 and 18 September 2024 that he was still their employee for 60 days which was unsurprising given he was aware at that time and until 4 December 2024 that the respondent was withholding a reference which would enable him to commence employment with the local authority. The claimant lived with a possibility of forced removal or arrest between 2 September until 5 December 2024 when his new CoS was confirmed.
115. The respondent withheld the claimant’s salary for November 2024 which was due to be paid at the end of the month. The claimant had to chase the respondent multiple times. I was not provided with any evidence as to what date it was paid, but it is agreed he was eventually paid £4872.00 gross and 3706.19 net).
116. On 24 December 2024 £1922.07 was paid directly into the claimant’s bank account. Mr Motenga informed the claimant on 27 December 2024 this was payment for accrued annual leave. The respondent did not issue the claimant with pay slips for November 2024 and December 2024 until June 2025. The gross pay for December 2024 was £1935.76.
117. The claimant was assisted on 18 December 2024 with the early conciliation process by a GMB union official.

118. Unauthorised deduction from wages s.13 ERA 1996 provides as follows:

**(1) An employer shall not make a deduction from wages of a worker employed by him unless—**

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or**
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.**

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

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or**
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.**

**(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.**

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

119. S15 provides that an employer shall not receive a payment from a worker unless it is required by some statutory provision or the worker has previously signified agreement in writing or consent to make the payment.

120. The time limit for bringing claims is in s.23 ERA 1996:

**(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—**

- (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or**
- (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.**

**(3) Where a complaint is brought under this section in respect of—**

- (a) a series of deductions or payments, or**
- (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,**

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

**[(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).]**

**(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.**

**[(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.**

**(4B) Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).]**

121. Wages are defined in s27:

**(1) In this Part 'wages', in relation to a worker, means any sums payable to the worker in connection with his employment, including—**

**(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,**

**(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992,**

**(c) statutory maternity pay under Part XII of that Act,**

**[(ca) [statutory paternity pay] under Part 12ZA of that Act;**

**(cb) statutory adoption pay under Part 12ZB of that Act;]**

**[(cc) statutory shared parental pay under Part 12ZC of that Act;]**

**[(cd) statutory parental bereavement pay under Part 12ZD of that Act;]**

**[(ce) any amount of qualifying tips, gratuities and service charges allocated to the worker under Part 2B of this Act;]**

**[(ce) statutory neonatal care pay under Part 12ZE of that Act,]**

**(d) a guarantee payment (under section 28 of this Act),**

**(e) any payment for time off under Part VI of this Act or section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc),**

**(f) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act,**

**[(fa) remuneration on ending the supply of an agency worker on maternity grounds under section 68C of this Act,]**

**(g) any sum payable in pursuance of an order for reinstatement or re-engagement under section 113 of this Act,**

**(h) any sum payable in pursuance of an order for the continuation of a contract of employment under section 130 of this Act or section 164 of the Trade Union and Labour Relations (Consolidation) Act 1992, and**

**(j) remuneration under a protective award under section 189 of that Act,**

**but excluding any payments within subsection (2).**

**(2) Those payments are—**

- (a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (but without prejudice to the application of section 13 to any deduction made from the worker's wages in respect of any such advance),
  - (b) any payment in respect of expenses incurred by the worker in carrying out his employment,
  - (c) any payment by way of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office,
  - (d) any payment referable to the worker's redundancy, and
  - (e) any payment to the worker otherwise than in his capacity as a worker.
- (3) Where any payment in the nature of a non-contractual bonus is (for any reason) made to a worker by his employer, the amount of the payment shall for the purposes of this Part—
- (a) be treated as wages of the worker, and
  - (b) be treated as payable to him as such on the day on which the payment is made.
- (4) In this Part 'gross amount', in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.
- (5) For the purposes of this Part any monetary value attaching to any payment or benefit in kind furnished to a worker by his employer shall not be treated as wages of the worker except in the case of any voucher, stamp or similar document which is—
- (a) of a fixed value expressed in monetary terms, and
  - (b) capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).

### Unfair Dismissal

122. Sections 95 and 97 Employment Rights Act 1996 set out the circumstances in which an employee is dismissed and the effective date of termination.

#### **95 Circumstances in which an employee is dismissed**

- (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . . , only if)—
- (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
  - (2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—
    - (a) the employer gives notice to the employee to terminate his contract of employment, and
    - (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

#### **97 Effective date of termination**

- (1) Subject to the following provisions of this section, in this Part "the effective date of termination"—
- (a) in relation to an employee whose contract of employment is terminated by

notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

[(c) in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect].

123. Whether the communication amounts to a dismissal is a question of fact for the Tribunal to determine. In cases where the words used are ambiguous, the words may be taken as a dismissal even if not intended to have that effect. It is an objective test; did the listener honestly and reasonably construe the wording in the proper way? (**Kwik Fit (GB) Ltd v Lineham [1992] IRLR 156**).

124. **Chapman v Letheby and Christopher Ltd [1981] IRLR 440** was a case about the effective date of termination. The EAT held that this depended on the construction of the letter in question. The construction should not be a technical one but should reflect what an ordinary reasonable employee would understand by the words used. In **Stapp v The Shaftesbury Society [1982] IRLR 326**, the Court of Appeal held that a letter stating that the employee should “relinquish his duties with effect from today” amounted to a letter of summary dismissal. Further that where there is ambiguity about a notice to terminate it must be construed in favour of the employee.

125. Time limits unfair dismissal

S111 Employment Rights Act 1996 provides:

**111 Complaints to employment tribunal**

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) [Subject to the following provisions of this section], an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

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

126. The burden of proof is on the Claimant to show it was not reasonably practicable to have presented the claim in time. The Tribunal must go on to consider whether the further time in which the complaint was presented was reasonable. These are questions of fact for the Tribunal (**Palmer v Southend-on-Sea Borough Council [1984] IRLR 119**).

127. Ignorance by the Claimant of the right or procedure to bring a will not be grounds for an extension unless the ignorance was reasonable in the circumstances (**Wall's Meat Co Ltd v Khan [1979] ICR 52, C.A.**).

128. The unfair dismissal claim is a test of reasonable practicability so this is a two stage test and the burden of proof is on the Claimant to show that

it was not reasonably practicable to have presented the claim in time and if so, was the claim presented in such further period of time as was reasonable.

#### Breach of contract claims

129. Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“**the 1994 Order**”) provides that proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—
- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
  - (b) the claim is not one to which article 5 applies; and
  - (c) the claim arises or is outstanding on the termination of the employee's employment.
130. The general rule in respect of time limit is that an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim.
131. The maximum amount that can be ordered by the Tribunal must not exceed £25,000.

#### Holiday Pay (Working Time Regulations) 1998

132. For the period of claim in respect of unpaid accrued holiday entitlement prior to 1 January 2024 the WTR did not generally allow for the basic annual leave entitlement of four weeks under Reg 13 to be carried over into the subsequent leave year unless a number of exceptions applied.
133. From 1 January 2024 a worker has the statutory right to carry over any of his Reg 13 or Reg 15B holiday in certain circumstances. The leave cannot be carried forward beyond the end of the first full leave year in which the relevant failure did not occur — Regs 13(18) and 15D(7). The right to carry over the untaken or unpaid leave will last until the end of the first full leave year in which there is no relevant failure by the employer.
134. Regulation 30(1) of the Working Time Regulations provides that a worker may bring a complaint before an employment tribunal that the employer has failed to pay the whole or any part of any amount due by way of payment in lieu of untaken leave upon termination of employment under Reg 14(2) — Reg 30(1)(b). A complaint under Reg 30 (1) (b) must normally be presented to a tribunal before the end of the period of three months. Time runs from the date on which it is alleged that the payment should have been made. Where the tribunal is satisfied that it was not reasonably practicable for a complaint to be presented within the period of three months, the complaint will be admissible provided it was presented within such further period as the tribunal considers reasonable.

135. Reg 30 does not provide for linking a series of non-payments or underpayments. The House of Lords in **Revenue and Customs Commissioners v Stringer 2009 ICR 985, HL**, held that workers can circumvent this problem by bringing claims for unpaid holiday pay under s.13 ERA 1996 which prohibits unauthorised deductions from wages subject to the time limits and restriction on the arrears of pay to a two year period.

#### Conclusions – Unfair Dismissal

136. I first need to consider whether there was a dismissal or resignation and if so what was the effective date of termination. See findings of fact at 82-113 above.

137. In my judgment, there is no basis in fact or law to determine that the claimant resigned from his employment on 2 September 2024. Accepting a job offer with another employer which is provisional/ conditional on references are not circumstances amounting to a resignation. Nothing the claimant said or did during this period amounted to conduct by words or actions that could amount to a resignation.

138. S95 sets out circumstances where an employee will be dismissed. The contract must be terminated by the employer with or without notice. Whether that has happened is a question of fact for this Tribunal. There are a number of possible conclusions that could be reached based on my findings of fact:

- a) The claimant was summarily dismissed on 2 September 2024 by Mrs Motenga via what's app and then re engaged as of 18 September 2024. This is supported by the claimant not working at the London placement from 9 September as had been agreed but undermined by events on 5 September 2024;
- b) The claimant was told he was summarily dismissed by Mrs Motenga but this was immediately retracted by the deletion of the whats app message and a further message saying an official email would be sent;
- c) The contract was terminated with notice by Mr Motenga on 5 September 2024 when he stated:

**I am sorry that you feel "punished or victimised", I can categorically state that it's not the case. We are only implementing employment and Home Office regulations. Usually when an employee seeks permanent work at an assigned placement, an agreement has to be in place. I will advise when we reach an agreement with Carmarthenshire County Council. After the agreement we will then send your reference. In the mean time you still have 60 days working for MHILD care.**

139. The claimant was told on 5 September 2024 (and knowing an official email would follow) that he was still an employee for a further 60 days. In my judgment, in sending this email, Mr Motenga confirmed that the claimant's contract of employment was being terminated with notice (60 days - 4 November 2024). In fact this was not communicated once but twice when Mr Motenga reiterated the employment would end after 60 days in his later email dated 18 September 2024 (see paragraph 100 ). The claimant also corroborates this understanding of the situation in particular that the

dismissal was not effective on 2 September 2024 (see paragraph 101). In reality that contract was then extended by the respondent who continued to place the claimant at the local authority facility beyond 4 November 2024 until the claimant commenced paternity leave on 24 November 2024. The claimant was paid until the end of November 2024, the date the respondent asserted the claimant's employment ended.

140. In the circumstances I find that the claimant was dismissed with notice on 5 September 2024 and the effective date of termination was 30 November 2024. The claimant initiated early conciliation on 5 December 2024 and the certificate was issued on 16 January 2025. This meant having regard for the period where limitation was stopped for the EC process, the claim had to be lodged by 10 April 2025. The claim was presented in time on 20 March 2025.

141. I turn now to the reason for dismissal. The response suggested that of the cancellation of the CoS was deemed as a dismissal then the reason was fair as the respondent were complying with home office regulation

142. I was not taken to any document that corroborated the respondent had to advise the home office if the claimant was seeking employment elsewhere. I can quite understand this might be the case if the claimant had actually resigned but as I have found he did not, this does not assist the claimant. I therefore reject any suggestion that if this was the reason it was potentially a fair one.

143. In my judgement the reason for dismissal is plain. The respondent dismissed the claimant because he had sought employment and accepted a provisional offer elsewhere after they had sponsored him and brought him to work in the United Kingdom. This was not a fair reason for dismissal and was retaliatory in nature. Employees are entitled to look for and secure alternative employment.

144. A determination of s98 (4) is only required where the respondent has shown a fair reason for dismissal under s98 (2). Nonetheless, it is worth setting out that in my judgment the respondent also did not act reasonably. No process whatsoever was followed. The ACAS Code of Practice was not followed. The claimant was simply told his employment would be ending in 60 days time.

145. For these reasons the unfair dismissal claim is well founded.

#### Conclusions – Unauthorised deduction from Wages / Breach of contract claims

146. The respondent's either lack of or failure to disclose proper pay and working time records has made this a challenging decision to reach. I have reached the following conclusions on the basis of the evidence before me in accordance with the overriding objective. In the absence of proper records I have made such findings as are proportionate and reasonable applying a broad brush approach where appropriate.

Payment by the claimant of the CoS in the sum of £1820.00

147. See paragraphs 8 – 11 above. The respondent has admitted this claim. The claim is denoted as a breach of contract claim as the payment by the claimant of the CoS cannot fall under the ERA provisions as it would not fulfil the definition of wages in s27.

#### Wages claim

148. As the claim was presented on 20 January 2025 any claim for wages under s13 ERA 1996 would be limited to go back as far as 20 January 2023 by reason of s23 (4A) ERA 1996. The claimant has brought breach of contract claim in the alternative. The time limit for a breach of contract claim under the 1994 Order is for the claim to be presented within three months beginning with the effective date of termination of the contract giving rise to the claim which I have concluded was 30 November 2024. As such, any wages claim prior to 20 January 2023 is in time if treated as a breach of contract claim.

149. May 2022 - see findings of fact at paragraphs 20 – 25. The claimant worked at Home L from 23 – 29 May 2022 and Home N on 30 and 31 May 2022 undertaking live in care shifts. The records show he worked very long hours. There were periods where there were no interactions with residents after 21.15 – 23.12 pm until the following morning and the claimant accepted he will have been asleep for some of the time. For the times where the records show the claimant was supporting / interacting with the residents, the claimant was working and should have been paid. A broad estimate is that the claimant was working between 12 – 15 hour shifts. Even at the basic wage of £11.38 per hour (and the overtime rate remains opaque having been quoted £13 per hour and £18 per hour by the respondent), over 9 shifts this should have equated to a salary in the region of at least £1330 but the claimant only received £731.14.

150. Whilst there are no call logs for most of June 2022, given the claimant continued to work live in shifts at Home L and the patterns of work can be corroborated by the May 2022 records, the same findings can be made in respect of June 2022. The claimant worked from 1-6 June and then 17 further live in shifts which is a total of 23 live in shifts in June 2022. The claimant was paid £1707 (and we do not know if this was net or gross as no pay slip was available). If we assume applying a broad brush approach that the claimant worked an average of 14 hours per day then in June 2022 he worked a total of 322 hours which @ £11.38 per hour should have given a rate of pay in the region of £3664.

151. In respect of July, August and September 2022, given the number of shifts worked by the claimant provided live in care, I find the claimant was not paid his contractual rate of pay for this period. I have cause to doubt the provenance of the August 2022 payslips and I shall be requiring an affidavit to be filed by the respondent / or their accountants about a number of documents before me and why and how payments were being paid directly into the claimant's bank account with no payslips showing tax and national insurance deductions. A separate order shall be made in this regard.

152. For the above reasons I find that the respondent was in breach of the term of contract to pay the claimant basic pay plus overtime per hour for the

periods May – September 2022. A remedy hearing will be required to establish the damages based on the claimant's hours of work. Whilst it is not a claim before me, the respondent was also in breach of the requirement to pay the national minimum wage during this period.

#### Unequal Pay October 2023 – January 2024

153. As I have explained above at paragraph 73, it has transpired in the hearing that this was not an equal pay claim but a claim for the withdrawal of the agreed wages in the sums of £1000, £1500 weekly payments on 20 September 2023 when the respondent unilaterally withdrew those payments and imposed a different pay structure (which was also subsequently breached by the non payment of the WTFA from February 2024).

154. The issue is whether the claimant can substantiate a claim for unpaid wages for this period either by s13 ERA or as a breach of contract claim.

155. If the claim is treated as a statutory wages claim it is out of time unless it can be treated as a series of deductions under s23 (2) (a).

#### Wages claim – February 2024 – August 2024

156. The claimant seeks wages after he was promoted to Team Leader. He has based this claim on the previous pay structure in place in 2023 (the £1000 and £1500 per week payments) until this was unilaterally varied by the respondent on 30 September 2023.

**157.** The claimant accepted this change in pay. He was being paid the WTFA between October 2023 – February 2024. I shall repeat that I do not know how this payment was being made and it is not reflected in the pay slips. **Further orders will be made for the remedy hearing in respect of evidence of these payments and how they were paid.**

158. I do not consider that the claimant can base a claim for unpaid wages on the pay arrangements in place prior to 30 September 2023 as he accepted the variation to his contract which was set out in the 30 September 2023 memo. He continued to work under these terms accept the amended pay and did not protest at the changes. these are the terms that will be used to calculate the unpaid wages at the remedy hearing.

159. I have concluded that the respondent has made an unauthorised deduction from wages and is in breach of contract in failing to pay the claimant wages in the sum of at least £550 per month for the WTFA. This became a term of the claimant's contract from 30 September 2023. I have no hesitation in rejecting the respondent's submission that payment was at manager's discretion. There is no such discretion set out in the contractual variation document. The respondent paid it for 4 months then unilaterally stopped paying it. I found that the memo purporting to withdraw the allowance was not communicated to the claimant and I have doubt as to the provenance of that document.

160. The respondent has also underpaid the claimant each month by at least £173.00 gross (the difference between the claimant's revised

contractual salary upon promotion to team leader and what he was actually paid).

161. This claim is therefore well founded. Whether there has been a shortfall of overtime and at what rate during this period shall be reserved to the remedy hearing.

#### Holiday Pay - WTR

162. See findings of fact at paragraphs 11, 20, 64-66 and 84. Some of the payslips refer to holiday pay (December 2023, January 2024, May 2024 and December 2024).

163. The claimant has not explained or advanced a case that he was prevented from taking his annual leave either from not being given opportunity or that he would not be paid. As such, I consider that for the period of claim between May 2022 – 31 December 2023 the claim is not well founded as the claimant did not request annual leave and is not entitled to carry it over as none of the exceptions apply. This is because until 1 January 2024 the WTR did not generally allow for basic leave entitlement to be carried into subsequent years and none of the exceptions apply in this case.

164. Notwithstanding this conclusion I wholly reject the respondent's submission that at various points where the claimant was instructed to have a break that this amounted to annual leave. There are two serious issues with such submissions. Firstly, the claimant was not paid for these "breaks". Secondly, these tended to come following very long periods of work with no daily weekly rest breaks. This non working time cannot on any sensible or legal interpretation be categorised as holiday and such a contention is unreasonable and misconceived.

165. In respect of the holiday year, the contract of employment did not specify a holiday year. As such in accordance with Reg 13 (3) (b) WTR 1998 the holiday year will run from the commencement of the employment namely 1 May to 30 April. The contractual entitlement was 6 weeks.

166. The respondent has not produced any records of holidays taken by the claimant.

167. The claimant was informed on 13 March 2023 that he needed to tell Mrs Motenga when he wanted to take his leave. Other than the email referenced above and the request in August 2024, there is no record of the claimant requesting leave and no records of him being refused leave.

168. On 22 November 2023 the claimant was sent a copy of the employee handbook which stated the holiday year ran from January 1 April to 31 March. This does not make any sense grammatically and in any event, the regulations provide in the absence of an agreement the holiday year shall start at the commencement of employment.

169. In respect of the period 1 January 2024 to 30 November 2024. This will encompass two holiday years (1 January 2024 – 30 April 2024 then 1

May 2024 – 30 November 2024). The claimant was paid £1935 gross in December 2024 and £581 in May 2024.

170. Applying a pro rate to the part holiday year 1 January – 30 April this is a period of 17 weeks and 1 day / 52 weeks = 0.32 of the contractual holiday entitlement of 42 days. This means as on 30 April 2024 the claimant had accrued 13.5 days holiday. If the May 2024 payment was for holiday (and this remains unclear) this would equate to a daily rate of holiday pay of £43 per day (£581 / 13.5). It is plain, considering the claimant's average gross and net pay for the preceding months that even if the May 2024 payment was in respect of holiday pay that this has not been paid at the correct amount. For these reasons I find that the respondent has not paid the claimant the correct amount in respect of accrued holiday pay at the termination of his employment.

171. The same conclusions can be drawn in respect of the December 2024 holiday pay payment. Applying a pro rate to the part holiday year 1 May – 30 November, this is a period of 30 weeks and 3 days / 52 weeks = .59 of the contractual holiday entitlement of 42 days. This means as of 30 November 2024 the claimant had accrued 24.3 days holiday. Applying the December 2024 holiday pay of £1935 / 24.3 = £79.63 per day. Whether this was the correct rate of holiday pay will be determined at the remedy hearing.

172. I am reserving this issue to the remedy hearing as I wish to hear submissions on whether the respondent has complied with Reg 13 (16) WTR) and to ensure I have a proper breakdown of the payment made in December 2024.

#### Holiday Pay – Breach of contract

173. Whilst the claim was not expressly advanced as a breach of contract claim, any outstanding holiday pay owed at the time of dismissal is not damages as payment became due when the claimant was still employed. As such I do not consider the claimant can advance a claim for holiday pay as a breach of contract claim.

Approved by:

**Employment Judge S Moore**

**29 December 2025**

JUDGMENT SENT TO THE PARTIES  
ON

6 January 2026

Miriam Drake  
FOR THE TRIBUNAL OFFICE

## Notes

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/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)