



EMPLOYMENT TRIBUNALS

Claimant: Miss G Morrison

Respondent: Clarkes Barks Limited

Heard at: Liverpool by video

On: 9 December 2025

Before: Employment Judge Benson

REPRESENTATION:

Claimant: Miss M Wyatt – claimant’s mother in law

Respondent: Miss L Clarke - director

JUDGMENT having been sent to the parties on 4 February 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

Apology

1. These reasons were originally requested by the respondent by an email of 9 December 2025. That request was not brought to my attention by the Tribunal administration. A second request was made on 7 February 2026 upon receipt of the written judgment. A letter apologising for the delay was sent to the parties, and these reasons have been provided as soon as my workload, including sitting on other cases and other judicial business, and annual leave have allowed. That apology is repeated.

Claim and Issues

2. This was a claim brought by the claimant for:
 - a. arrears of pay, as she says that she should have been paid at the hourly rate of £12.00 per hour from August 2024 and not at the rate of £11.00; She claims £633.37 for hours worked since 2 August 2024 and

- b. holiday pay which she says was accrued but not taken when her employment ended as she had been prevented from taking holidays when requested. She claims for two holiday years. She claims 103.63 hours. Based upon an hourly rate of £11 per hour that totals £ £1139.91.
3. These claims are brought as unauthorised deductions from pay pursuant to section 14 of the Employment Rights Act 1996 and pursuant to the Working Time Regulations 1998
4. The respondent says that the claimant was never prevented from taking annual leave or underpaid, though there was a short period of 7 weeks when holidays were restricted between August and October 2024. It accepts that the claimant did not take the full holiday entitlement due to her, but that she lost that entitlement by not taking the holiday in the relevant holiday year, or in January 2025 when she was permitted to carry her holidays over.
5. In respect of the hourly rate of pay from August 2024, it says that following the claimant's request to reduce her hours, the claimant was issued with a new contract which mistakenly had the rate of pay of £12 per hour. There was an agreed temporary uplift to £12 while the claimant was covering the manager's role for a short period, but that was identified as such on her payslip and reverted to her old rate upon those duties ceasing without any complaint from the claimant. It says it was a clerical error.

Evidence and submissions

6. Evidence was heard from Ms Leigh Clarke, the owner and director of the respondent and from the claimant and I was referred to a bundle of documents produced by the respondent and an evidence pack from the claimant.

Findings of Fact

7. The following facts were agreed.
 - a. The claimant was employed from November 2023 until February 2025 as a Dog Groomer. There is a disagreement as to which dates in those months but that has no bearing on my decision as the amounts of holiday which the claimant had accrued was agreed. She worked 12 hours per week, primarily at the weekend.
 - b. The respondent's holiday year was changed during 2024 such the holiday year 2023/24 ended on 31 March 2024 and from that date the respondent's holiday year was on a calendar year basis, January to December. The claimant had accrued but had not taken 20.77 hours of annual leave in the holiday year to 31 March 2024 and 76.18 hours in the holiday year 1 April to 31 December 2024. The claimant's contract prevented carry over of holiday entitlement from one year to the next other than by agreement.

- c. When Ms Clarke was on maternity leave between August and October 2024, the claimant was not permitted to take leave. The respondent's records reflect that the claimant took 6 hours leave in October, 6 hours leave in November, and 6 hours leave in December 2024.
 - d. Holidays during December were restricted.
 - e. Ms Clarke agreed in December 2024 that the claimant could carry over her holiday entitlement into January 2025.
 - f. On 5 February 2025 the claimant resigned with immediate effect.
 - g. The claimant was paid her holiday entitlement of 9.1 hours which she had accrued from 1 January 2025 with her final pay.
8. I have found the following facts to be proved on the balance of probability having considered the oral and documentary evidence.
- a. The claimant's contractual hourly pay from August 2024 was £11. That was what she agreed and what she understood she was to be paid other than for those periods when she was covering the manager's role. When she did so, it was agreed and she was paid at £12 per hour on a temporary basis and that was reflected in her pay slip as a temporary allowance. The hourly rate of £12 stated in her new contract was a clerical error. She did not raise any complaints about being paid at £11 per hour until after her employment terminated.
 - b. Although the claimant says that Ms Clarke refused or prevented her from taking annual leave during the holiday year to 31 March 2024, the claimant has been unable to provide detail or dates on which she asked for holidays and was refused or not permitted to take her entitlement. Her evidence is very vague, and she cannot give any examples.
 - c. In the year 1 April 2024 to 31 December 2024, the claimant has shown that she was not permitted to take her full entitlement to annual leave. She was able to give some approximate dates and examples of the types of reasons she had given to Ms Clarke for requesting leave, which included time off to spend with her friends at the weekend. She provided the reasons given by Ms Clarke for refusing these which included that weekends were their busy time. It is accepted by the respondent that for 7 weeks during Ms Clarke's maternity leave the claimant was not permitted to take annual leave. By December 2024 the claimant had only taken two days holiday.
 - d. On 6 December 2024, aware that she needed to use her holiday entitlement, she sent a text message to Ms Clarke which was produced to me about holidays and was directed by Ms Clarke to the Sage account which detailed her accrued holidays. Her message asked whether she was OK to start taking some of her holiday entitlement from then to

January 2025. Ms Clarke's response was to confirm that as outlined in the contract, holidays were restricted in December and could be carried over to January. She went on to say that if she was to take holidays, it would be part of her contracted hours and not an additional payment. I do not accept that in that text the claimant was asking to be paid in lieu of her holidays. That might be what Ms Clarke thought, but that it not what the claimant was asking. She wanted time off. Ms Clarke made it clear that holidays were restricted in December but could be carried over.

- e. The claimant was prevented from taking the holidays she had accrued in the year 1 April 2024 to 31 December 2024.
- f. Ms Clarke intended that the accrued holiday should be *taken* in January 2025, whereas the claimant understood that the accrued holidays were to be carried over into the next holiday year which *started* in January. It would in fact have not been possible for the claimant to take all of her accrued holiday in January 2025 as she worked 12 hours per week and had 76.18 hours to take.
- g. In January 2025, the claimant did not ask to take any further holiday. Ms Clark did not raise her holiday entitlement with her, and they did not discuss holidays. The claimant's decision to resign was taken in response to Ms Clarke refusing to allow her to take a day's holiday in February 2025.

The Law

- 9. The relevant statutory provisions and law which are relevant to the issues which I must decide are set out below:
- 10. The relevant parts of the Working Time Regulations 1998 are Regulations 13 and 14.

Working Time Regulations 1998

Regulation 13.— Entitlement to annual leave

[

(A1)

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

]²[...]³

(3) A worker's leave year, for the purposes of this regulation, begins—

(a) on such date during the calendar year as may be provided for in a relevant agreement; or

(b) where there are no provisions of a relevant agreement which apply—

(i) if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or

(ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.

(4)

(5)

[...]⁶[...]⁷

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

(a) [[subject to the exceptions in paragraphs (14), (15) and (17)]⁹,]⁸it may only be taken in the leave year in respect of which it is due, and

(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

[...]¹⁰[

(14)

(15)

(16) Paragraph (17) applies where, in any leave year, an employer fails to—

(a) recognise a worker's right to annual leave under this regulation or to payment for that leave in accordance with regulation 16 ;

(b) give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or

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

(17) Where this paragraph applies and subject to paragraph (18), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which is untaken in that leave year or has been taken but not paid in accordance with regulation 16.

(18) Annual leave that has been carried forward pursuant to paragraph (17) cannot be carried forward beyond the end of the first full leave year in which paragraph (17) does not apply.

Regulation 14 -Compensation related to entitlement to leave

(1) Paragraphs (1) to (4) of this regulation apply where—

- (a) a worker's employment is terminated during the course of his leave year, and
 - (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.
- (2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).
- (3) The payment due under paragraph (2) shall be—
- (a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or
 - (b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$(A \times B) - C$

where—

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

(5) Where a worker's employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under regulation 13(10) and (11), the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave.

11. The relevant section of the Employment Rights Act 1996 is section 13

Employment Rights Act 1996

13 Right not to suffer unauthorised deductions

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

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

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

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

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

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

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

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

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

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

12. The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 SI 2023/1426 codified the principles set out by the ECJ in *King v Sash Window Workshop (C-214/16)* [2018] 2 CMLR 10, [2018] ICR

693. and the Court of Appeal in **Smith v Pimlico Plumbers Limited [2022] EWCA Civ 70**. With effect from 1 January 2024, Regulations 13(16)–(18) and 15D(5)–(7) WTR provide that basic leave under Reg 13, may be carried forward into a subsequent leave year where the employer fails to recognise a worker’s right to leave or to payment for it; fails to give the worker a reasonable opportunity to take leave or to encourage the worker to do so; or fails to inform the worker that any leave not taken by the end of the leave year which cannot be carried forward will be lost. This right of carry-over applies to untaken or unpaid leave, and it lasts until the end of the first full leave year in which there is no relevant failure by the employer. This means that, if the employer continues to be in breach of any of the above obligations, annual leave will carry over and build up indefinitely, potentially until termination of employment, at which point a payment in lieu will be due under Regulation 14.

Conclusions

Unlawful deductions from pay – hourly rate

13. Having found that the claimant’s contractual rate of pay was £11 per hour and it was accepted that she was paid at that rate, this claim does not succeed.

Holiday Pay

14. Regulation 30 of the Working Time Regulations 1998 allows an employee to bring a complaint to the Employment Tribunal where they have not been paid in respect of holidays accrued but untaken on termination. Regulations 13 and 14 deal with the entitlement to annual leave and carry over, and payment of compensation.

Holiday year ending 31 March 2024.

15. The claimant has not shown on the balance of probabilities that the respondent did not give her a reasonable opportunity to take her leave in that year. The burden is on her to provide the detail. She has not done so. As such in accordance with her contract of employment, holidays which have accrued but are untaken are not carried forward. There has been no suggestion that there was any agreement that the holiday entitlement for that holiday year could be carried forward. The holiday entitlement was therefore lost, and the claimant is not entitled to be paid for those holidays on termination of employment.

Holiday Year ending 31 December 2024.

16. The position was different in respect of the following holiday year. By December 2024 the claimant had built up a considerable number of holidays. I have accepted her evidence that she asked to take some weekends as annual leave during that year, but Ms Clarke refused. Further, during the period that Ms Clarke was on maternity leave, the claimant was not permitted to take her leave. On 6 December 2024 she was aware that the end of the holiday year was approaching and asked that she be permitted to take her accrued holidays. She knew that she would otherwise lose them. Ms Clarke refused that request in

respect of all but 6 hours which appear to have been taken the following week. Ms Clarke confirmed that the holidays could be carried over into January.

17. On the claimant's case, she understood that Ms Clarke's response to her text mean that she could take the accrued holidays in the new holiday year which commenced in January. If that was the case, then the claimant would be entitled to payment for the accrued holiday entitlement under Regulation 14(2) when her employment terminated.
18. If, as alleged by Ms Clarke, she meant that by saying she could carry them over to January, she intended that they be taken in the month of January or would be lost, she had an obligation under Regulation 13(16) to let the claimant know that. That was particularly the case where there was a change to the date by which the holidays were to be used. The onus was on her, not the claimant. Further her obligation extended to giving the claimant a reasonable opportunity to take them and encouraging her to do so. Ms Clarke did none of this. Rather, on the claimant resigning in February 2025, she adopted the position that as the claimant had not taken her accrued holidays in January, she had lost them. Quoting LJ Simler in **Smith**, and the principle which was later enacted in Regulation 13(16) WTR it is clear that the employer has:

".....the burden of showing it specifically and transparently gave the worker the opportunity to take paid annual leave, encouraged the worker to take paid annual leave and informed the worker that the right would be lost at the end of the leave year. If the employer cannot meet that burden, the right does not lapse but carries over and accumulates until termination of the contract, at which point the worker is entitled to a payment in respect of the untaken leave"

19. In respect of the claimant's annual leave entitlement for the holiday year ending December 2024, I find that Regulation 13(16) Working Time Regulations 1998 applies. As such, the claimant was permitted to carry over her accrued holiday entitlement into the following holiday year pursuant to Regulation 13(17) and be compensated for those holidays when her employment terminated.
20. Her outstanding entitlement was agreed at 76.18 hours. As such on the termination of her employment she was entitled to be compensated for those holidays pursuant to Regulation 14. At the hourly rate of £11.00 the claimant claims and is awarded £837.98.

Approved by:

Employment Judge Benson

23 April 2026

Judgment sent to the parties on:

1 May 2026

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For the Tribunal:

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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