EMPLOYMENT TRIBUNALS

Claimant: SAGESSE ELIE

Respondent: INSIGHT CARE GROUP LIMITED

Heard at: Birmingham Employment Tribunal

On: 11 & 12 May 2026

Before: Employment Judge McCluggage

Appearances

For the Claimant: in person

For the Respondent: Mr Binay Chocko (HR Officer)

JUDGMENT

1. The Claimant's complaint of automatically unfair dismissal contrary to section 103A of the Employment Rights Act 1996 was withdrawn at the start of the hearing and is dismissed.

2. The Claimant's complaint of ordinary unfair dismissal was withdrawn at the start of the hearing on the basis that the Claimant did not have the qualifying period of service required by section 108 of the Employment Rights Act 1996, and is dismissed.

3. The Claimant's complaint of having been subjected to detriment on the ground of making a protected disclosure, contrary to section 47B of the Employment Rights Act 1996, is not well-founded and is dismissed.

4. The Claimant's complaint of an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996, and her parallel claim for breach

of contract, succeed in part. The Respondent shall pay the Claimant the sum of £225.00 by way of unlawful deduction from her final wages.

REASONS

Introduction

1. This is a final hearing in proceedings brought by Ms Elie against her former employer, Insight Care Group Limited. The Claimant was employed as a Support Worker at the Respondent's children's residential home, Orchid House, from 7 February 2024 until the termination of her employment on 25 June 2024 during her six month probationary period.

2. The claim form raised a number of matters. By the time of the hearing the issues had narrowed considerably, in part by case management and in part by concessions and clarifications recorded at the start of the hearing. I confirmed the following with the Claimant at the outset:

    a. The claim of automatically unfair dismissal under section 103A of the Employment Rights Act 1996 was not pursued. This had been indicated in the Claimant's Further Particulars served following the case management order of Employment Judge Kight, and the Claimant confirmed it.

    b. Although the Further Particulars stated that the Claimant wished to pursue "ordinary" unfair dismissal, on discussion she accepted that, having had less than two years' qualifying service, she was not eligible to bring such a claim. That claim was therefore withdrawn.

    c. The complaint of detriment on the ground of protected disclosure under section 47B of the Employment Rights Act 1996 was maintained.

    d. The unauthorised deduction from wages and breach of contract claims were maintained but had been narrowed. The Respondent had repaid the pension contribution and the training payment which had originally been deducted. The only deduction in issue was the sum of £1,112.50 taken from the Claimant's final payslip on account of what the Respondent considered to be excess holiday pay.

3. I heard oral evidence from the Claimant and from Mr Binoy Chocko, an HR officer employed by the Respondent. I also had a witness statement from Mr Deepak Kabra, one of the Respondent's directors. Mr Kabra did not attend to

give oral evidence and was not cross-examined. I have given his statement less weight than the evidence of those who attended, but its substance was largely substantiated by the contemporaneous documents and I have had regard to it on that footing.

4. I had a bundle of 210 pages. The Claimant also provided a written document she described as a "Case Summary", which I treated as her written closing submission, and a Schedule of Loss.

5. The Claimant has dyslexia. To accommodate this, the hearing was structured with natural breaks of about ten minutes every 45 minutes and . Despite the demands of representing herself in person, the Claimant focussed well, kept to the matters in issue, and gave her evidence clearly and entirely honestly. Her honesty was apparent throughout the hearing and the difficulties in her case are not difficulties about her credibility.

Facts

6. I make the following findings of fact, limited to those necessary for the conclusions I reach.

7. By a letter dated 16 January 2024 the Respondent offered the Claimant employment as a Support Worker at Orchid House at an hourly rate of £11.50. The offer letter expressly stated that the Claimant's annual holiday entitlement was 238 hours, inclusive of bank holidays. The holiday year ran from 6 April to 5 April.

8. The Claimant began work on 7 February 2024. She signed a written contract of employment on 8 February 2024. Clause 19 of that contract addressed holiday entitlement. So far as material it provided that on termination the Claimant would be entitled to holiday pay calculated on a pro rata basis in respect of holiday accrued in the current holiday year but not taken at the termination date; and that if on termination the Claimant had taken more annual holiday than her pro rata entitlement in the current holiday year "an appropriate deduction will be made from your final payment".

9. The Claimant's employment was subject to a six-month probationary period.

10. On 23 May 2024 an allegation was made against the Claimant arising out of an interaction with another member of staff. I do not need to make any findings about it. The Claimant was suspended. The allegation was not pursued, and the Claimant was so informed on 24 June 2024. On 25 June 2024 the Claimant was called to a probationary review meeting, told that she had not passed probation, and her employment was terminated.

11. A dispute then arose about her final pay. Three deductions were made which the Claimant challenged. Two have been resolved. The Respondent has repaid the pension contribution which it had taken from her pay although she had opted out of auto enrolment. It has also repaid the training payment, which had been taken even though the Claimant had not signed the Respondent's training agreement. Both deductions were unfortunate. They are no longer in dispute and I make no monetary award in respect of them.

12. The deduction that remains in issue is £1,112.50 taken from the Claimant's final payslip on account of holiday pay said to have been taken in excess of entitlement.

13. The Claimant's payslips and the Respondent's records show the following pattern of paid holiday during her employment:

    a. In the April 2024 pay month the Claimant took 14.5 hours of holiday paid at the £11.50 rate, and 29 hours of holiday paid at the £12.50 rate which had been introduced on 6 April 2024. It follows that the 14.5 hours paid at £11.50 will relate to holiday taken before 06 April.
    b. In the May 2024 pay month she took 101.5 hours of holiday.
    c. In June 2024 she took no holiday as she was suspended.
    d. The total paid as holiday across those three pay months was 145 hours.

14. By an email of 2 July 2024 (bundle page 93) the Respondent explained the deduction to the Claimant after queries. The Respondent's case, as set out in that email and in evidence, was that the Claimant's annual entitlement was 224 hours, equating to 18.67 hours per month, so that her entitlement for April, May and June was 56 hours. On that basis the Respondent calculated that the Claimant had been paid for 89 hours of holiday beyond her entitlement, and therefore had deducted 89 hours at £12.50, that is £1,112.50.

15. After the Claimant's employment had ended, the Respondent sent her an Addendum to the contract of employment. The Addendum reduced the weekly hours of work to 40 (from 42) and reduced the number of hours of annual holiday entitlement. The Claimant did not sign the Addendum. I understand why this caused her confusion. The Addendum did not vary the existing terms of her contract, because it was never agreed by her, and therefore it does not affect the analysis of her entitlements.

16. The Claimant's annual holiday entitlement was therefore the 238 hours expressly identified in the offer letter, inclusive of bank holidays. Calculated on a monthly basis that is 19.83 hours per month, and over the three months April, May and June 2024 it amounts to 59.5 hours.

17. The four communications relied on as protected disclosures were:

    1. A WhatsApp message of 31 May 2024 in which the Claimant pointed out what she said were mistakes on her pay.
    2. An email of 6 June 2024 raising further queries about her pay.
    3. An email to HR of 1 July 2024 questioning the deductions taken in her June payslip and seeking clarification.
    4. An email to HR of 3 July 2024 complaining about unlawful deductions, the pension deductions, the way deductions had been handled, and her suspension without (as she put it) any evidence.

18. The Claimant also placed before me a number of other emails and WhatsApp messages on the day of the hearing. To the extent these were said to constitute further protected disclosures, I explained to the Claimant that the four communications above were the disclosures on which her case had been put, and that I would address them. If further disclosures were to be added, then there would need to be an application to amend the claim which might have difficulties on the first day of the final hearing, but I would hear such an application if required. The Claimant did not pursue any application. I did read the emails and took them as part of the background evidence.

19. I find that the Respondent did not deal with the Claimant's complaints in a timely or careful way. Some of the deductions made were obviously wrong, as the Respondent in due course recognised. The explanations given to the Claimant about her pay and her contract were not as clear or as sympathetic as they ought to have been. None of this, however, gives rise to a free standing cause of action in this Tribunal.

The Law

Unauthorised deductions from wages

20. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker unless the deduction is required or authorised by statute or by a relevant provision of the worker's contract, or the worker has previously signified in writing his or her agreement or consent to it. By section 13(3), a payment of less than the wages properly payable is treated as a deduction. Section 14(1)(a) excepts a deduction made for the reimbursement of an overpayment of wages from section 13.

21. *The Working Time Regulations 1998*: Regulation 14 deals with the position on termination during the leave year. Where the proportion of leave taken exceeds

the proportion of the leave year which has expired, regulation 14(4) permits the employer to require the worker to compensate the employer (whether by payment, additional work or otherwise) only where there is a "relevant agreement" to that effect. "Relevant agreement" is defined in regulation 2(1) and includes any agreement in writing which is legally enforceable between the worker and the employer. The need for an express agreement was confirmed by the Employment Appeal Tribunal in *Hill v Chappell* [2003] IRLR 19, where in the absence of any such agreement the employer was not entitled to clawback. In that case it was also held that holiday pay properly paid is not an "overpayment of wages" within section 14(1)(a). The clawback question therefore falls to be determined under section 13 by reference to a "relevant provision" of the contract.

Protected disclosures.

22. Section 43B(1) of the Employment Rights Act 1996 defines a "qualifying disclosure" as any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the matters listed in sub paragraphs (a) to (f), including that a person has failed or is failing to comply with a legal obligation to which he or she is subject.

23. The disclosure must therefore satisfy two requirements as to public interest: that the worker genuinely believed the disclosure to be in the public interest, and that the belief was objectively reasonable. The leading authority is *Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979; [2017] IRLR 837. A disclosure which relates to a matter of private or self interest may also have a public interest aspect, and the two are not mutually exclusive, but whether a belief in the public interest was reasonable is a question of fact for the Tribunal having regard to the matters identified by Underhill LJ at paragraph 37, including the numbers in the group whose interests the disclosure served, the nature of the interests affected and the wrongdoing alleged, and the identity of the alleged wrongdoer.

24. *Detriment:* By section 47B(1) of the Employment Rights Act 1996, a worker has the right not to be subjected to any detriment by any act or any deliberate failure to act, by his or her employer, done on the ground that the worker has made a protected disclosure. There is no detriment claim to be considered unless there is first a qualifying disclosure.

Analysis and Conclusions

The withdrawn claims:

25. The claims under sections 103A and 94 (ordinary unfair dismissal) of the Employment Rights Act 1996 were withdrawn at the outset. They are accordingly dismissed.

Protected disclosure detriment.

26. The Claimant's case on public interest was that her communications affected not only her own pay but the position of staff more generally; she pointed to changes to holiday allowance, changes to contracts, errors in the pension arrangements, and the impact she said these had on staff wellbeing and morale.

27. I have considered each of the four communications carefully. The information conveyed in each of them was substantially about the Claimant's own pay and the way she felt she had been treated as an individual. The interests of other staff did not feature in a meaningful way. The driving substance of each communication is a query, and then a complaint, about deductions and decisions affecting the Claimant herself.

28. Applying *Chesterton*, I am willing to accept that the Claimant subjectively believed her concerns had wider relevance. The second question, however, is whether such a belief was reasonably held in the circumstances. That is an objective test. On the contents of these communications and the way she put her case, I am not satisfied that they were reasonably to be considered in the public interest. The disclosures lacked the public character required by section 43B. Therefore, they were not qualifying disclosures.

29. The Claimant could have been treated better. Her concerns deserved fuller and more sympathetic explanation than she received. But the absence of that does not convert what were, in essence, personal pay queries into protected disclosures within the very specific definition Parliament has provided. The detriment claim under section 47B fails at the threshold and I do not need to address the alleged detrimental acts in any further detail.

The £1,112.50 holiday clawback.

30. As said above, this is the only sum of money remaining in dispute.

31. The first question is whether the Respondent was entitled in principle to make any deduction at all. Following *Hill v Chappell*, that requires a relevant agreement within the meaning of regulation 14(4) of the Working Time Regulations 1998 and, for the purposes of the Employment Rights Act 1996, a relevant provision of the contract within section 13.

32. Clause 19 of the Claimant's contract is such a provision. It expressly provides that, on termination, if the employee has taken more annual holiday than her pro rata entitlement in the current holiday year, an appropriate deduction will be made from the final payment. The Claimant signed that contract. The Respondent was therefore entitled in principle to make a deduction in respect of any excess holiday properly so identified.

33. It is worth pausing here. The clause works both ways, and that is its purpose. Had the Claimant taken less than her pro rata accrued holiday by the date of termination, Clause 19 would have entitled her to a payment in lieu of the balance. Because she had taken more, the same clause permitted the Respondent to take an appropriate deduction. That is what the legislation contemplates and what the Claimant agreed to when she signed her contract.

34. The second question is whether the deduction the Respondent actually made was for the right amount. It was not, for two reasons.

35. The first reason concerns the figure for annual entitlement. The Respondent proceeded on the footing that the Claimant's annual entitlement was 224 hours. That figure derived from the Addendum sent to the Claimant after the termination of her employment. The Claimant did not sign the Addendum and was not bound by it. Her annual entitlement remained the 238 hours stated in the offer letter, inclusive of bank holidays. On that basis the Claimant's entitlement was 19.83 hours per month and 59.5 hours over the three months April, May and June 2024.

36. The second reason concerns which leave year the holiday should be set against. The holiday year ran from 6 April to 5 April. The Claimant's employment ended on 25 June 2024, so the current leave year on termination was the year that began on 6 April 2024. Clause 19 limits clawback at termination to excess holiday taken "in the current holiday year". A previous holiday year, once it has ended, is not within the scope of the clause. The Respondent therefore cannot use Clause 19 to recover the value of holiday taken before 6 April 2024, because by the date of termination that holiday belonged to a leave year that had already closed. This affects 14.5 of the 145 hours, namely the hours paid at the £11.50 rate in early April 2024, which had to have been taken before the new rate took effect on 6 April. They sit in the 2023-24 leave year and cannot form any part of the recoverable excess.

37. The holiday taken in the current 2024-25 leave year was therefore 29 hours in April plus 101.5 hours in May, that is 130.5 hours. The Claimant's entitlement for the three months April, May and June 2024, as set out at paragraph 35

above, was 59.5 hours. The excess in the current leave year was therefore 71 hours.

38. Valued at the rate of pay at termination of £12.50 per hour, the sum properly recoverable under Clause 19 was 71 x £12.50, which is £887.50. The sum the Respondent in fact deducted was £1,112.50. The Respondent therefore over deducted by £225.00. That over deduction was an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is also recoverable as a sum due under the contract.

39. The Respondent is ordered to pay the Claimant £225.00.

40. As a closing observation, I would say this to the Claimant. The fact that she has not succeeded on the detriment claim should not be taken as a finding that her concerns were unreasonable, or that her communications were unimportant. They mattered, and the Respondent ought to have engaged with them more carefully and more promptly than it did. The reason the detriment claim has not succeeded is a legal one relating to the scope of the protection Parliament has chosen to give to disclosures made in the public interest. The Claimant gave her evidence with clarity and honesty throughout, and she should leave this hearing knowing that her account of events was accepted by the Tribunal.

Approved by:
Employment Judge McCluggage
12 May 2026