



EMPLOYMENT TRIBUNALS

Claimant Ms Sabbah Berrebha

Respondent The Home Organisation Ltd

Heard at: London South (via videolink – “CVP”) **On:** 22 & 23 June 2026

Before: Employment Judge R S Drake (of the Virtual Region)

Appearances

For Claimant: In Person

For Respondent: Mr H Price (Director)

JUDGMENT

1. The Claimant’s complaint of constructive unfair dismissal as defined by Section 95(1)(c) of the Employment Rights Act 1996 (“ERA”) for the purposes of her claims under Section 94 ERA is not made out, the unfair dismissal claim fails and is therefore dismissed. The tribunal finds her employment terminated by mutual consent.
2. The Claimant’s complaint of unpaid holiday pay under Regulation 30(1)(b) of the Working Time Regulations 1998 (“WTR”) is struck out under Rule 38 of the Employment Tribunals Rules of Procedure 2024 (as amended) (“ET Rules”) on the basis that being out of time and the Claimant not satisfying Regulation 30(2)(b) WTR, the Tribunal finds it lacks jurisdiction to hear such head of claim and thus it has no reasonable prospect of success.

REASONS

Introduction

3. The parties were in effect “litigants in person” neither of whom/which being legally represented. I endeavoured to ensure that neither were disadvantaged thereby. Further, I noted the Claimant is of French extraction and English is not her first language but that she did not seek or appear to need the services of an interpreter. Both sides represented themselves very effectively and with great cordiality and willingness to co-operate in ensuring I had all they felt I needed to see to be able to make an informed and sound Judgment. Each side’s candour and openness is much to be applauded.

4. I have made it clear that following Judgment, the Reasons are expressed as Full Reason despite oral expression of them on the day in summary form. I have treated the parties as having requested Full reasons. Where the reasons below differ in any way from those expressed orally, these written reasons and any further expression of them takes precedence over oral reason.
5. For ease of description, I refer to the parties as “C” and “R”.
6. I noted that when the claims were first presented, C sought clarification of her status, because her contract specifically referred to her as a self-employed person and that the relationship between her and R was not an employment; Nonetheless, she wanted to pursue claims for unfair dismissal and non-payment of holiday pay, both of which claims depended on her status as an employee or worker being determined.
7. C’s status was eventually determined by EJ Beckett after a hearing commencing on 19 December concluding on 26 January 2026.. The learned Judge concluded that C’s status was that of an employee. Furthermore and significantly she granted leave to C to add a claim for unpaid holiday pay which in accordance with case law stands from that latter date and does not relate back for limitation purposes to the date of presentation of the original ET1. C sought to argue that the fact leave to amend was granted amounts in law to adjudication of whether the claim thus added by amendment is well founded; this is a misconception and sometimes understandable misunderstanding as a grant of leave to amend is merely permission to make a claim but that the outcome is not a foregone conclusion as any outcome depends on time based jurisdiction issues and thus the testing of the evidence on whether such claim is added in time..C still has to establish it is not out of time, or if it is, the Tribunal can exercise discretion to extend time to allow the claim to proceed. This is an important jurisdiction issue.

The Claims

1. I heard cross examined testimony from both C and from Mrs Laura Price of R who referred to written statements and associated evidence documents.
2. I heard oral submissions and exercised due judicial care to explain to C that the onus of proof in her claims rested with her.
3. Before me were the following claims:-
 - 3.1 Constructive unfair dismissal;
 - 3.2 Non-payment of holiday pay allegedly due as at the effective date of termination of the Claimant’s employment – it was common ground that this date was 18 November 2024.

I noted and advised both parties that the burden of proof in respect of all claims, other than if and when constructive dismissal were proved, rested on C. R denies fundamental breach of contract or breach of fundamental term and denies the alleged unlawful nature of any provable absence of payments of salary to the Claimant.

The Issues

4. Because there had been no previous Preliminary Hearing for Case Management purposes, there had been no articulation of the issues before day one of this Final Hearing. So, as the case developed, it became in effect common ground between the parties and me that the issues are as follows subject to insufficiency of pleading as I later concluded:-

Unfair Constructive Dismissal –

4.1 Did R do the following things:-

4.1.1 Seek to impose on C unreasonably a duty to work solely for R when no restriction existed in her contract (originally expressed as a “freelancer contract”)?

4.1.2 In a conversation on 29 October 2024 (between C and Mrs Price) did R express an ultimatum (by way of requiring) that C should choose to work solely for R or continue running her own business, but she could not do both?

4.1.3 Fail to contradict C when she wrote on the same day to confirm that she had been “requested” by Mrs Price to make such a choice?

4.2 Did these events (if proved) breach the implied term of trust and confidence? The Tribunal would need to decide:

4.2.1 whether the Respondent behaved in a way that was calculated or likely (*my emphasis*) to destroy or seriously damage the trust and confidence between C and R; (my emphases) - and

4.2.2 whether it had reasonable and proper cause for doing so.

4.3 Was any breach fundamental? Was any breach so serious that C was entitled to treat the contract as being at an end? (*my emphasis*). In the context of this case, I have emphasised this test as set out in the case law below;

4.4 Was there any other cause for C’s resignation? Before resignation, had she already decided to leave?

4.5 Did C affirm the contract before resigning? The Tribunal will need to decide whether her words or actions showed that she chose to keep the contract alive even after the alleged breach?

4.6 Did C resign (as she said she did) in a timely fashion and in response only to the alleged breaches and no other cause?

4.7 Did the employment terminate by mutual consent

Failure to pay or unlawfully deduct holiday pay

4.8 Is this claim in time, and if not, does the Tribunal have discretion to extend time?

The Law

I set out passages from statute and case law relevant to the issues in this case leaving out extracts which are not relevant.

5. **Section 95(1) of the Employment Rights Act 1996** (“ERA”) provides that: -

“For the purposes of this part of this Act, an employee is dismissed by his employer only if

(a) The contract under which he is employed is terminated by the employer (whether with or without notice) ... *(my emphasis – this is not argued in this case)*

(b) ...*(not relevant in this case)*

(c) The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct ... “ *(again, my emphases)*

5. Section 95 (or its predecessor in an identical statutory enactment - the EPCA 1978) is elaborated and explained by the frequently quoted decision of the Court of Appeal, Lord Denning MR presiding, in **Western Excavating (ECC) v Sharp [1978] ICR 221**. In that case Lord Denning held as follows:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself/herself as discharged from any further performance. If he/she does so, then he/she terminates the contract by reason of the employer’s conduct and he/she is constructively dismissed.”

This case is also authority for the proposition that the breach must be the direct cause of the resignation and resignation must be timely. *(again, my emphases)*

6. Further guidance is set out in the Court of Appeal decision of **Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978** at para 55, which advises the posing of the following questions:-

“(1) What was the most recent act or omission on the part of the employer which the employee says caused or triggered her resignation?

(2) Has she affirmed the contract since that act?

(3) If not, was that act or omission by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?

- (5) Did the employee resign in response to that breach?”
7. By reason of my findings below, I am not setting out the full content of **Section 98 ERA** (which provides for what an employer must show if dismissal has occurred) since it is unnecessary to do so unless dismissal were or had been proved.

The Findings of Facts

8. I had before me a number of statements and documents from C. The most important was her final full statement dated 30 August 2025 which ran to 21 pages describing the background to her relationship with R and with Mrs Price in particular and then running to include detail of the events of October 2024 which I find were key to the issues to be determined. I also had a number of documents and statements from R and particularly Mrs Price. The whole Trial File runs to over 400 pages for me to consider (PP1 – 400+). Much was related more particularly to the issue determined by EJ Beckett as to the status of C, but what really mattered in my Judgment was the evidence relating to the dialogue which led to the discussion by phone on 29 October 2024.
9. Much of what I see in the evidence shows there was a very cordial and mutually respectful relationship between C and Mrs Price leading upto 29 October 2024, and nothing denoting any dispute between both or beginnings of any tensions which might give just cause for mutual grievance. However, I do see and find that Mrs Price began to feel concern when C asked for a pay rise 4 October 2024 (P288), that the running of C’s own organising business (“Voila! Professional Home Organising”) might be a distraction from the work she was doing for R and take more of C’s attention.
10. R treated C throughout as a freelancer as that was how the relationship was expressed in the contract between them (PP87-88). This contract does not express any specific term prohibiting C from working outside the relationship, but neither does it include express permission.
11. Mrs Price appears to have known that in September 2023 (her statement para 5) that C had set up Voila! and was running it in tandem with assignments from R. She first knew that in September 2024, C had been approached by the same party who had approached R to quote for an assignment. C had commendably refused the approach, being aware that the party was the same, but the fact of potential competition caused Mrs price concern. She researched C’s business and noted its presence at a Trade Exhibition and on the internet. It is notable that Mrs Price did not seek to discipline C as might be expected of parties in an employment relationship and also it is notable that though free to do so, Mrs price did not end the contractual relationship at this point summarily.
12. I accept Mrs Price’s testimony that she felt “uncomfortable” - (statement para 9), and that she “was conflicted between being upset by how C was marketing herself and the history of the good working relationship” - (statement para 10). Again it is notable that Mrs price did not seek to exercise any form of disciplinary action but concluded on further research that Voila’s target client base was not the same as R’s and did not consider it necessary to take any further action until C asked for a pay rise 4 October 2024.

13. I find that Mrs Price and her husband, who was her de facto business partner, were concerned that potentially increasing C's rate of pay would be uneconomical at a time when C was showing signs of increasing activity with Voila and thus making it apparent C wanted to concentrate more time and attention to Voila. When C chased for a response to the pay increase request, Mrs Price complied and set up the discussion which eventually took place 24 October 2024.
14. I therefore concluded that the key issue in this case was to determine how the phone conversation between Mrs Price and C on 29 October 2024 should be objectively interpreted, not how C subjectively took it to mean, despite her submissions that I should or could do so.
15. There is conflict of evidence as between Mrs Price and C as to what was actually said even down to the words used, but I find that the contemporaneous evidence of C's email of the same date (P292) is particularly compelling as to my conclusion as to what was said. Also, I find compelling what C admitted in cross-examination was said in its particular context. I therefore conclude that though I am not suggesting lack of candour on either side, Mrs Price's account of what was said is to be preferred thus -

15.1 Mrs Price was keen to learn more about Voila in order to assess the economic viability of increasing C's pay rate whilst C was deriving a second income in any event;

15.2 Mrs Price was genuinely supportive and enthusiastic for C about her plans and gained a clear impression that C wanted to strike out on her own and devote all her time and energy to her relatively new and growing business (statement para 25);

15.3 C said that "it was her goal to grow (her business) to a point she could focus on it full time and she (Mrs Price) was supportive and encouraged her to go for it" (statement para 26);

15.4 Mrs Price explained (statement para 28) that "committing to spend more on someone who also runs a competing business was a harder decision for a small business like ours to justify - I told her expressly that **we did not want to stop working with her** - I did **not ask her to choose between** us and her own business and I did not say or imply that continuing with us depended upon her giving up her own business ...". C's reference to this point in the conversation is referred to at the earliest opportunity afterwards and thus virtually contemporaneously in her email of the same date (P292), using the words - "Just wanted to follow up on our conversation today regarding your **request** for me to choose between working with THO and focusing on my own activity ..." By C's own admission what she says was put to her was a request and certainly not the imposing of an ultimatum as she later seeks to argue well after the event. I find I can accept that Mr Price's Final Submission is more likely to be correct and that Mrs Price's version of the conversation is substantially supported by what C said in cross examination.

15.5 The phone conversation then lead quite naturally to the parties discussing a mutually acceptable timeframe for C starting to work solely for her own business

Voila, and this included discussion about a potential for franchise operation and the duration of any runoff working for R. Eventually though C asked for a 3 month runoff, and R offered 6, the actual period ultimately agreed by way of compromise was 3 weeks. The freelance contract, later determined to be an employment ended on or about 18 November 2024.

15.6 C argues strongly that because Mrs Price did not contradict the email of 24 October, or that C asserted she was completely free to work for herself amounts to a legally binding admission. It does not. There is now no principle in English Law that silence on a contract point amounts to acceptance it. That mediaeval principle (“qui tacet, consentire”) was effectively abolished by case law in the 19th century (see **Felthouse v Bindley [1862] 11 CB NS 869**)

15.7 the unpaid holiday pay claim is clearly out of time – It accrued latest at the end of the relationship on 17 November 2024 but the claim does not date until the date leave to amend was granted which was EJ Beckett’s Judgment dated 26 January 2026, well over the three month time limit imposed by Regulation 3092) WTR. There is no evidence before me sufficiently compelling to show that it was not reasonably practicable to commence such a claim when she presented her claim 3 March 2025.. C says she was awaiting confirmation that her relationship with R was an employment, but even though it has been established as such, she has to face the burdens of the obligations she faces at statute law which includes the implied duty of fidelity to R which go hand in hand with the benefits of the protection of being an employee. R could have dismissed her for working outside the relationship but did not do so.

Consideration and Conclusions

16 Though I recognise the passionate, elegance and skill in the making of her own submissions by C, overall, I prefer the cogent and clear submissions on the evidence offered by Mr Price as being correct on a balance of probabilities. Starting with the main issues as identified above I make the following findings applying the law to the facts by addressing the issue identified above:

16.1 R did not seek to impose an ultimatum requiring C to cease working for herself and devote her whole working time to R – if this were an employment, such an imposition would have been lawful, but I find there was no such ultimatum as such in any event;

10.2 R did not impose a choice on C during the conversation of 29 October 2024 requiring her to choose between her own business and that of R – the words used by C herself was “requested” not “required” and there is an important linguistic difference;

10.3 R did not contradict C in what c wrote in a confirmatory email of the same date but then there was nothing to contradict as C acknowledged that R requested her to make a choice and that is all;

10.4 The entire background of this conversation does not bespeak a behaviour by R to breach trust and confidence but rather the complete opposite – what I note here is complete misunderstanding by C but one which I recognise is a

subjective judgement on her part which is not borne out by what I find is the appropriate objective judgement;

10.5 C's subjective conclusion as to what was said and actually meant by Mrs Price is not the appropriate yardstick by which to measure what she meant – I find that what she said and meant was not objectively to be taken as meaning lack of intention to be bound by fundamental terms of employment nor repudiatory breach;

10.6 This was as I find it (if indeed it was an employment as found by EJ Beckett) to be termination by mutual consent, so even if there had been fundamental breach or breach of a fundamental term, it was not then reacted to by an immediate resignation, but the complete opposite. This the further limbs of the **Westen Excavating v Sharp** tests are not well founded by C's case.

10.7 The Holiday claim is well out of time and I am not satisfied that C's case shows compelling reason for me to extend time. If one seeks the benefit of recognition that one's status is an employment, one must accept the burdens.

11. Therefore, I have no alternative but to conclude C's claims have at this point today no reasonable prospect of success and they should therefore be struck out in accordance with rule 38. The same applies to the claim for allegedly withheld holiday pay.

12 Thus I conclude that C's claims must fail as she cannot prove them, and that they should be struck out accordingly.

13 I am satisfied, should I need to say so, that all parties have acted reasonably throughout these proceedings and all parts of the process leading up to their conclusion.

Employment Judge R S Drake
Date: 24 June 2026

Sent to the parties on:
Date: 3 July 2026