EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000213/2026

Held in Dundee on 10 July 2026

Employment Judge A Strain

Ms P Small — **Claimant**
Represented by:
Mr A Crammond - Barrister

Roseangle House Nursery Ltd — **Respondent**
Represented by:
Mr D Hagan - Managing Director

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

1. The respondent was in breach of the contract of employment with the claimant in respect of the respondent's failure to pay the contracted pay increase with effect from 5 February 2025;

2. The claimant is entitled to damages in the sum of the £1,249.98 (Gross) in respect of the respondent's breach of contract. This sum is to be paid net of any tax or national insurance due.

3. The respondent unlawfully deducted the sums of £365.40 (Gross) and £1,875.72 (Gross) in respect of TOIL and pay respectively due at the termination of employment.

4. The respondent is ordered to pay the unlawfully deducted sums of £365.40 (Gross) and £1,875.72 (Gross) to the claimant. This sum is to be paid net of any tax or national insurance due.

5. The respondent unlawfully deducted the sum of £2,115.30 (Gross) in respect of accrued holiday pay.

6. The respondent is ordered to pay the unlawfully deducted sum of £2,115.30 (Gross) to the claimant. This sum is to be paid net of any tax or national insurance due.

7. The respondent was in breach of the contract of employment with the claimant in respect of the respondent's failure to pay the contracted 4 weeks notice pay on termination of her employment.

8. The claimant is entitled to damages in the sum of the £3,846.16 (Gross) in respect of the respondent's breach of contract. This sum is to be paid net of any tax or national insurance due.

REASONS

Background

1. The claimant was represented by Mr A Crammond, Barrister. The respondent was represented by Mr D Hagan, Managing Director.

2. At the outset it was agreed that the designation of the respondent should be changed to Robertson Estates and Properties Limited as the company had changed its name. The tribunal accordingly amended the name of the respondent.

3. The issues for determination by the tribunal were as follows:

    a. Breach of contract – an alleged failure to pay an agreed increase in salary;

    b. Unlawful deduction from wages contrary to section 13 of the Employment Rights Act 1996 (**ERA 1996**) in respect of an alleged failure to pay TOIL and final salary to termination;

    c. Unlawful deduction of wages contrary to section 13 of ERA 1996 – failure to pay holiday pay; and

    d. Breach of contract – failure to pay notice pay.

Bundle of Documents

4. The Parties had lodged a Bundle of Documents with the Tribunal for the purposes of the Hearing which was added to as the hearing progressed.

Preliminary Issues

5. The respondent objected to the admissibility of the recording made of the meeting on 25 August 2025 between the claimant and Mr Hagan which recording had been made without consent. A transcript had been lodged of the recording and formed Pages 63-77.

6. The tribunal determined that it would hear evidence based on the transcript which the witnesses would speak to.

7. The recording was not heard or used in evidence.

Witnesses

8. The Tribunal heard evidence from the claimant and from Mr Hagan on behalf of the respondent.

Findings in fact

9. Having heard the evidence and considered the documentary evidence before it the Tribunal made the following findings in fact.

10. The claimant was employed as the manager of the respondent's nursery (Roseangle House Nursery) with effect from 5 August 2024.

11. The claimant was engaged under a contract of employment dated 5 August 2024. The contract was subsequently amended by agreement in or around November 2024 (Pages 27-46).

12. Clause 4.2 of the contract of employment provided that the claimant was entitled to 4 weeks notice when she had one month to 2 years continuous service.

13. Clause 6.1 of the contract of employment provided that the claimant's salary would increase to £50,000 after 6 months provided that the number of children in attendance at the nursery increased.

14. Clause 6.3 of the contract of employment provided that the claimant's granddaughter would receive free childcare in lieu of additional hours worked.

Salary Increase

15. Over the 6 month period from the date of the claimant's commencement of employment with the respondent the number of children in attendance at the nursery increased. Total children in attendance during the week commencing 5 August 2024 were detailed in the table on Page 78 and the increased numbers were detailed for the weeks commencing 6 January and 3 February 2025 on Pages 82-83.

16. With effect from 5 February 2025 the claimant was entitled to an increased salary of £50,000 (Gross). The claimant was never paid any salary increase.

Unlawful deductions from wages in respect of TOIL and underpayment of final pay

17. The claimant and Mr Hagan agreed verbally in November 2024 that the claimant’s accrued TOIL (as at November 2024) would not be paid or given to her in exchange for her granddaughter’s childcare at the nursery. Thereafter the claimant was to receive TOIL as normal.

18. From December 2024 the claimant received TOIL for hours worked in excess of her normal hours as detailed in the respondent’s breakdown (Page 107).

19. At the point of termination of her employment the claimant was due 15 hours of TOIL at the hourly rate of £24.36 (Gross). This was confirmed in her payslip of 31 August 2025 (Page 60).

20. The claimant never received payment of the 15 hours TOIL referred to in her payslip.

21. The claimant’s employment was terminated with immediate effect on 26 August 2025. The respondent issued a payslip to the claimant of 31 August 2025 (Page 60) which showed a final salary payment of £3,958.33 (Gross) (excluding TOIL) payable to the claimant.

22. The respondent issued an amended payslip of the same date (Page 61). This showed a gross amount of £2,082.61 as the final salary payment.

23. The claimant did not receive full payment of her pay for August 2026. She was underpaid £1,875.72 (gross).

Unlawful deductions from wages in respect of failure to pay Holiday pay

24. The respondent agreed that the claimant was entitled to 82.5 hours holiday pay as at the date of termination of her employment. This is confirmed in the breakdown prepared and lodged by the respondent (Page 107). At the date of termination of employment her hourly rate of pay was £25.64 (Gross).

Breach of contract – Notice Pay

25. The respondent was in the process of selling it’s nursery business to another company (Little Beehives) in August 2025

26. The claimant attended a meeting with Mr Hagan and Sian Craigen (another employee of the respondent). Handwritten notes of that meeting were

produced by Ms Craigen (Pages 47-4) and a transcript of the meeting was produced (Pages 63-77).

27. During the course of that meeting on 25 August 2025 the claimant was told by Mr Hagan that the meeting was not a disciplinary meeting.

28. Mr Hagan also told the claimant that that she was not going to be kept on when the business transferred due to poor performance. He told her that he did not want to discuss any performance issues and presented her with 3 options 1, to resign, 2 to be kept on by the respondent or 3 be dismissed. No decision was reached at the conclusion of the meeting and a further meeting was to take place.

29. No further meeting took place and the claimant's employment was terminated on 26 August 2025.

30. The claimant was summarily dismissed by the respondent by letter of 26 August 2025 (Page 50). Her employment ended that day.

31. The claimant was not paid notice pay nor was she given any reason for the termination of her employment.

Submissions

32. Both Parties made oral submissions.

33. In essence, the respective Parties submissions were as follows:

The Claimant

34. Mr Crammond submitted that the claimant's evidence should be preferred over Mr Hagan's on all disputed matters of fact. Mr Hagan's evidence was neither credible nor reliable. He was evasive, difficult and inconsistent. He had changed his position on the contract of employment and clearly didn't recall matters.

35. The claimant had been candid in the responses she gave.

36. Mr Crammond than submitted that it was clear on the evidence that the claimant was due the salary increase with effect from 5 February 2025. The terms agreed for the increase had been satisfied and the payment had not been made.

37. The respondent's own payslip issued to the claimant detailed the amount of TOIL due on termination.

38. The respondent conceded that the claimant had 82.5 hours of holiday accrued and untaken at the date of termination.

39. The respondent had failed to provide any evidence that the claimant had been in fundamental breach of her contract of employment such that it had entitled the respondent to summarily dismiss her without notice. The onus of proof was on the respondent.

The Respondent

40. Mr Haggan submitted that the claims should be dismissed.

41. The claimant had an agreement (reached verbally with him in November 2024) that all of her TOIL was to be used in respect of her granddaughter's childcare – not just up to November 2024.

42. The number of children attending the nursery had declined in the 6 months after November 2024 and that was the period of 6 months that was relevant for determining any pay increase.

43. The claimant had been paid everything in respect of holiday pay and salary that she was entitled to under reference to the calculation at Page 107.

44. The claimant had been dismissed for gross misconduct. She had destroyed what was a profitable nursery business. She had exhibited preferential treatment towards another staff member and she had failed to attend unspecified disciplinary hearings. No notice pay was due.

Observations on the evidence

45. The tribunal accepted the evidence of the claimant as being both credible and reliable. Her evidence was consistent with the documentary evidence produced by both Parties.

46. The tribunal did not consider Mr Hagan's evidence to be either credible or reliable. Mr Crammond's observations on the clear inconsistencies, evasiveness and lack of recall in Mr Hagan's evidence were well made.

47. Mr Hagan had originally disputed the validity and authenticity of the contract of employment at pages 27-46. He subsequently modified his position to say that he accepted the contract was valid.

48. Mr Hagan did not produce any documentation to support his allegations of taking disciplinary action against the claimant.

49. Mr Hagan's position was that the claimant was well aware why her employment was being terminated following the meeting on 25 August 2025. He considered there could be no doubt in her mind despite what was clearly said during the course of that meeting and recorded in the transcript and the handwritten note produced by Sian Craigen, another employee. This meeting clearly was not a disciplinary meeting nor were matters of performance discussed. The claimant was not told her employment was being terminated or any proposed reason for termination.

50. Given the apparent inconsistencies the tribunal preferred and accepted the evidence of the claimant on any disputed matters of fact.

Decision and Reasons

51. The tribunal considered the issues in turn.

Salary Increase

52. It was agreed that Clause 6.1 of the contract of employment provided that the claimant's salary would increase to £50,000 after 6 months provided that the number of children in attendance at the nursery increased.

53. Mr Hagan submitted that this agreement was made in November 2024 and the 6 month period should run from then. The number of children at the nursery declined in that 6 month period so no increase was due.

54. The claimant considered that the contract reflected the agreement made with Mr Hagan that the salary increase would be paid if the number of children increased over the 6 month period from commencement of her employment. She spoke to the figures which showed an increase in the number of children over that period.

55. For the reasons given above the tribunal preferred and accepted the claimant's evidence.

56. Over the 6 month period from the date of the claimant's commencement of employment with the respondent the number of children in attendance at the nursery increased. Total children in attendance during the week commencing 5 August 2024 were detailed in the table on Page 78 and the increased numbers were detailed for the weeks commencing 6 January and 3 February 2025 on Pages 82-83.

57. With effect from 5 February 2025 the claimant was entitled to an increased salary of £50,000 (Gross). The claimant was never paid any salary increase. Her claim in respect of this is successful.

58. The claimant sought payment for a period of 6 months despite the period from 5 February to date of termination exceeding 6 months. The tribunal limit the amount awarded to the amount clamed.

59. She is entitled to the sum of £1,249.98 (£2,500/12 x 6) (Gross) in this regard.

Unlawful deductions from wages in respect of TOIL and underpayment of final pay

60. For the reasons given above the tribunal preferred and accepted the claimant's evidence on the payment of TOIL.

61. The claimant's position was that the TOIL she had accrued as at November 2024 was written off in return for her granddaughter's childcare. Going forward she was to receive TOIL. On the documents produced by the respondent (Page 107) it was clear that in fact she was being given TOIL through the period from November 2024 until the termination of her employment.

62. Mr Hagan's position that all TOIL was to be written off in return for the claimant's granddaughter's childcare was clearly not what was agreed or indeed what actually happened during her employment as confirmed by the respondent's own calculations (Page 107).

63. The tribunal found that the claimant and Mr Hagan agreed verbally in November 2024 that the claimant's accrued TOIL (as at November 2024) would not be paid or given to her in exchange for her granddaughter's childcare at the nursery. Thereafter the claimant was to receive TOIL as normal.

64. The claimant's schedule of loss (Pages 84-86) sought payment of TOIL on the basis only of the calculation shown in the payslip (Page 60). No application was made for payment at any higher rate (for example, on the basis of the increased salary). The tribunal base its findings on the amount sought by the claimant. Accordingly, at the point of termination of her employment the claimant was due 15 hours of TOIL at the hourly rate of £24.36 (Gross). This was confirmed in her payslip of 31 August 2025 (Page 60).

65. The claimant never received payment of the 15 hours TOIL referred to in her payslip. The payment of TOIL was clearly wages which were properly payable and had not been paid. The tribunal find that the claimant is accordingly entitled to £365.40 (Gross) in respect of TOIL.

66. The claimant's schedule of loss seeks payment of the pay she should have received up until the termination of her employment as was detailed in her payslip (Page 60). Once again, the claimant makes no application to seek

payment on the basis of the higher salary of £50,000 and accordingly the tribunal proceeded on the basis of the figures claimed by the claimant and detailed in Page 60.

67. The claimant's final pay was detailed in the payslip issued by the respondent and dated 31 August 2026 (Page 60). The respondent only paid £2,082.61 (gross) in respect of the claimant's final pay of £3,958.33 (Gross) (excluding TOIL).

68. The pay was clearly wages and properly due. The tribunal find that the claimant is entitled to the underpayment of £1,875.72 (Gross) which has been deducted without any reason or authority.

Unlawful deductions from wages in respect of failure to pay Holiday pay

69. The respondent agreed that the claimant was entitled to 82.5 hours holiday pay as at the date of termination of her employment. This is confirmed in the breakdown prepared and lodged by the respondent (Page 107). The claimant was paid holiday pay at an hourly rate of £24.36 (Gross) according to that document.

70. No explanation was advanced by Mr Hagan for the non-payment beyond the assertion that no payment was due under reference to the calculation at Page 107.

71. Mr Hagan maintained this position despite the tribunal drawing to his attention the flaws in the calculation which appeared to deduct time taken as TOIL from the sums due in respect of holidays as if the claimant had been paid for the TOIL (which she hadn't).

72. What was clear from Page 107 was that the respondent agreed the claimant was due 82.5 hours of holiday pay as at the date of termination.

73. The tribunal find that the claimant is accordingly entitled to payment of holiday pay in the sum of £2,115.30. This is calculated on the claimant's pay of £50,000 (Gross) and her normal working hours of 37.5 per week which gives an hourly rate of pay of £25.64. The calculation being £50,000/52 divided by 37.5 multiplied by 82.5.

Breach of contract – Notice Pay

74. Mr Hagan contended that the claimant was summarily dismissed for gross misconduct and that she was well aware of this from the meeting on 25 August 2025.

75. The contemporaneous evidence in the form of the handwritten note and transcript clearly contradicted Mr Hagan's version of events.

76. Mr Hagan was asked repeatedly for details of the alleged disciplinary process and details of the allegations against the claimant. No credible evidence was produced by him.

77. What was clear was that the respondent was in the process of selling it's nursery business to another company (Little Beehives) in August 2025

78. The claimant attended a meeting with Mr Hagan and Sian Craigen (another employee of the respondent). Handwritten notes of that meeting were produced by Ms Craigen (Pages 47-4) and a transcript of the meeting was produced (Pages 63-77).

79. During the course of that meeting on 25 August 2025 the claimant was told by Mr Hagan that the meeting was not a disciplinary meeting.

80. Mr Hagan also told the claimant that that she was not going to be kept on when the business transferred due to poor performance. He told her that he did not want to discuss any performance issues and presented her with 3 options 1, to resign, 2 to be kept on by the respondent or 3 be dismissed. No decision was reached at the conclusion of the meeting and a further meeting was to take place.

81. No further meeting took place and the claimant's employment was terminated on 26 August 2025.

82. The claimant was summarily dismissed by the respondent by letter of 26 August 2025 (Page 50). Her employment ended that day.

83. The claimant was not paid notice pay nor was she given any reason for the termination of her employment.

84. The tribunal agreed with Mr Crammond that the onus was on the respondent to establish the claimant's fundamental breach that entitled the respondent to terminate without notice. The respondent had failed to establish any breach by the claimant.

85. The tribunal find that the claimant is entitled to 4 weeks notice pay calculated at the salary rate of £50,000 per annum (Gross). This means that the claimant is entitled to the sum of £961.54 (£50,000/52) x 4 = £3,846.16.

Interest

86. Mr Crammond sought interest on the sums found due. No calculations were presented nor were there any submissions as to the amount.

87. Typically, interest is only awarded in discrimination cases. In terms of section 24 (2) of ERA 1996 the tribunal may award such amount as it considers appropriate in addition to the amounts found to have been unlawfully deducted. In respect of breach of contract claims the **Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 (Order)** makes no provision for payment of interest.

88. The tribunal considers that it would not be appropriate to award interest in respect of either the unlawful deductions claims or the breach of contract claims even if it had power to do so.

Date sent to parties 11 August 2026