Case Number: 6011662/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mrs S French**

Respondent: **THE GRANARY@T.V. LIMITED**

HELD AT: Newcastle Employment Tribunal

BY: Cloud Video Platform (CVP) **ON: 10 and 11 February 2025**

BEFORE: **Employment Judge Martin**

REPRESENTATION:
Claimant: **Mr T Langley (Counsel)** **Respondent:** **Ms Wahabi (Litigation Consultant)**

RESERVED JUDGMENT

The Judgment is as follows:

1. The claimant's complaint of unfair dismissal is well founded, and the claimant is awarded the sum of £18,365.93.
2. The claimant's complaint of breach of contract / unlawful deduction from wages is also well founded and the claimant is awarded the total sum of £267.20.
3. The claimant's complaint of breach of the working time regulations (holiday pay) is also well founded and the claimant is awarded the sum of £192.50.

REASONS

Introduction

1. The claimant gave evidence on her own behalf. Mrs J Bell a former colleague also gave evidence on behalf of the claimant. Ms N Hall, director of the respondent company gave evidence on behalf of the respondent. Her partner Mr Neil Gardiner and her employee Ms S Annabelle gave evidence on behalf of the respondent. The Tribunal was provided with a bundle of documents, a supplemental bundle of documents and additional bank statements during the course of the hearing.

The Law

2. The law which the Tribunal considered was as follows: -

Section 95(1) Employment Rights Act 1996 "an employee is dismissed by his employer if:

(c) the employer 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."

Regulation 4(1) of the Transfer of Undertakings Regulations (TUPE) 2006:

"A relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to it under an organised grouping of resources or employees subject… but any such contact shall have effect after the transfer as if originally made between the person so employed and the transferee.

Regulation 4 (2) "… on the completion of a relevant transfer:

(a) the transferors' rights powers duties liabilities of and/or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

(b) any act or omission before the transfer is completed of or in relation to the transferor or in respect of that contract of a person assigned to that organised grouping of resources or employees, shall be deemed to have been act or omission of or in relation to the transferee".

Regulation 4(4) the purported variation of a contract of employment, that is or will be transferred by paragraph 1 is void if the sole or principal reason for the variation is the transfer.

Regulation 4(5) paragraph 4 does not prevent a variation of the contract of employment if (a) the sole or principal reason for the variation is an economic technical or organisational reason entailing changes in the workforce (a) that the employee agreed a variation; or (b) the terms of that contract permit the employer to make such a variation.

Regulation 4(9) where a relevant transfer involves or would involve a substantial change in any working conditions to the material detriment of a person whose contract of employment is, or would be transferred under paragraph 1, such an employee may treat the contract of employment as having terminated, and the employee shall be treated for any purposes having been dismissed by the employer".

Regulation 4(11) Paragraphs 1, 8 and 9 are without prejudice to any right of employer arising apart from these regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.

3. The case of **Western Excavating (ECC) Limited v Sharp [1978] IRLR 27** where the Court of Appeal held that an employee is entitled to treat himself or herself as constructively dismissed 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. It held that the conduct must be sufficiently serious to entitle the employee to leave at once.

4. The case of Industrial **Rubber Products v Gillon [1977] IRLR 2389** where the EAT held that a unilateral reduction in the basic pay even to a relatively small extent is a material breach of a fundamental term in the contract of employment.

5. The case of **Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347** where the EAT held there is implied term in the contract of employment that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether its cumulative effect judged reasonably is such that the employee cannot be expected to put up with it.

6. The case of **Mostyn v S & P Casuals Ltd UK EAT/0158/17** where it was held that no employer can have a reasonable and probable cause for repudiating the contract or for breaching the implied term where that breach consists of a unilateral imposition of a significant pay cut on an employee.

7. The case **Kaur v London Metropolitan Hospitals [2018] IRLR 840** which quotes the case of **Lewis v Motor World Garages** and held that a breach of the implied term of trust and confidence may consist of a series of actions on the part of an employer which cumulatively amount to a breach of the term although an individual incident may not do so. In such a case where the last action of the employer which leads to the employee leaving that act need not in itself be a breach of contract; the question is does the cumulative series of acts taken together amount to a breach of the implied term. The case went on to direct a Tribunal to consider what was the most recent act on the part of the employer which caused or triggered the resignation. Did they affirm the contract since that date and was that act itself a repudiatory breach, applying the approach in the case of **Omilaju** where course of conduct comprising several acts and omissions cumulatively amounted to a repudiatory term. The Tribunal must then consider whether the employee resigned in response or partly in response to that breach.

8. The case of **Lewis v Dow Silicones UK Ltd [2024]** held that an employee is entitled to resign and treat themselves as having been dismissed either by reason of Regulation 4(9) of the TUPE Regulations 2006 or by reason of the ordinary law of constructive unfair dismissal.

9. The case of **Enterprise Managed Service v Dance UK EAT/0200/11** held that if the respondent fails to produce evidence it may have difficulty showing that the reason was not related to the transfer.

The Issues

10. The issues which the Tribunal had to consider were as follow: -

11. In relation to the complaint of unfair dismissal the Tribunal had to consider whether there was a transfer of the business in which the claimant worked which transferred to the respondent under the Transfer of Undertakings Regulations.

12. If so, did the claimant's terms and conditions transfer to the respondent.

13. The Tribunal then had to determine what were the claimant's terms and conditions of employment.

14. The Tribunal then had to consider whether there was a breach by the respondent of any of those terms and conditions of employment and, if so, what. The Tribunal noted that the particular terms relied on whether there was a breach relating to pay either an additional £1 to be paid above the national minimum wage and/or for a bonus payment.

15. In relation to any bonus payment the Tribunal had to consider the terms of any bonus payments, namely was it discretionary and/or what were the terms of any bonus payment.

16. Alternatively, the Tribunal had to also consider whether there was a breach of an express or implied term in the claimant's contract of employment and/or whether there was a final straw in this case which led the claimant to resign.

17. In relation to any breaches the Tribunal had to consider what were the specific breaches of contract relied upon and were they breaches of an express and/or the implied term of trust and confidence.

18. The Tribunal then had to consider whether the claimant resigned in response to one or other of those breaches of contract.

19. The Tribunal then had to consider whether the claimant affirmed the contract in the meantime.

20. If the Tribunal finds that the claimant was dismissed it had then go on and consider whether compensation should be awarded to the claimant and if so for what period. It also had to consider whether the claimant acted reasonably in mitigating her loss.

21. In relation to the claim for unlawful deduction from wages, the Tribunal had to consider what was properly payable to the claimant. In that regard the Tribunal had to consider what sums were due to the claimant in terms of any additional pay, bonus payment and/or pension contributions.

22. In relation to any claim for unlawful deduction from wages, the Tribunal then had to go to consider what, if any, sums were due and owing to the claimant and in what amount.

23. In relation to any breach of contract claim the Tribunal had to consider what were the terms of the claimant's contract, whether there was any breach on the part of the respondent and what, if any, sums were due and owing to the claimant and in what amount.

24. In relation to any complaint under the Working Time Regulations relating to holiday pay the Tribunal had to consider whether any additional monies were due and owing to the claimant in respect of accrued but untaken holiday or annual leave.

Findings of Fact

25. The claimant was employed as a shop assistant. The respondent is a small retail business operating in Gateshead. It employs only a few people.

26. The claimant had worked at the shop since 1999 as did her colleague Mrs Jackie Bell who also worked at the shop for a long term. Both of them had worked for the previous two owners prior to the respondent. Ms Stevie Annabelle also worked at the shop. She worked part time and had only been working at the shop for a few

years. She largely worked at the back, whereas the claimant and Mrs Bell worked in the front of the shop.

27. The respondent purchased the business from Mr Paul Shelly on 25 March 2025. The sale was purchased through solicitors. The director of the respondent, Ms Hall said she had little contact with the seller.

28. The respondent was provided with a schedule of employees from the previous owner. The schedule of employees included the claimant, Mrs Bell and Ms Annabelle. This is at page 225 of the supplemental bundle. This sets out the claimant's hours of work as being 37.5 hours, her date of birth, her hourly rate, which is said to be £11.50, pension scheme. It states that she is not entitled to any other benefits. It also states that the commencement date of her continuous employment was from February 2019. That schedule is inaccurate not least because the claimant's date of continuous employment was from 20 years earlier. Ms Hall it seems was aware that the claimant had worked there for much longer.

29. On 25 March 2024 the business was sold to the respondent. The respondent took over and started working at the shop from 27 March 2024. She took on all of the staff who were working at the premises. The respondent does not dispute that this was a TUPE transfer.

30. The claimant under her previous employment was paid weekly and continued to be paid weekly. Payslips was issued and the money would be paid into her bank account the day before.

31. It should be noted that, prior to the respondent taking over the business, the claimant has produced some bank statements showing BACS payments which do not correlate with the payslips which she was receiving. The payslips were usually for £362 over a period from March – April 2024. The corresponding payments into her bank account over that period usually show approximately an additional £20 but, in some cases, less than £20 over that period.

32. On 5 April 2024 the claimant raised an issue with the respondent about her pay. She says that she told the respondent that she was paid £1 extra over and above the national minimum wage. She also told the respondent that the previous owner, Mr Shelly, also paid a £10 bonus a week.

33. In evidence the claimant said she was paid the additional monies of an extra £1 an hour above the national minimum wage and bonus payments which she says were paid to herself and Mrs Bell because they effectively ran the shop for Mr Shelly. She said that she had been paid the bonus from the previous owners, but Mr Shelley continued it. She said that she received the additional money for various tasks including ordering and dealing with stocking on the premises. The claimant said that Ms Hall was not prepared to discuss the matter and was dismissive of her.

34. Ms Hall said that heated conversations did take place about pay but that she took the view that she was paying the correct rate of pay as per the information provided to her by the previous owner.

35. In evidence Ms Hall said that the information that she was provided with from the previous owner was the schedule of employees. She said that she was not provided with any employment contracts or any other documentation relating to their employment.

36. The claimant says that she then raised the matter again with regard to her pay with Ms Hall and tried to discuss the matter a couple of weeks later on 15 April. 2024. The claimant said that by this stage the national minimum wage (NMW) had gone up. She said that at that stage Ms Hall indicated that she was not obliged to pay it and that she had sought advice from ACAS.

37. Ms Hall said that she had sought legal advice and she had been advised that she was not obliged to pay it. In her evidence Ms Hall said that she had received no other documentation about terms and conditions of employment other than the employee schedule.

38. On 17 April 2024 Ms Hall from the respondent indicated that they were looking at changing the hours of the business by opening half an hour earlier and closing half earlier. The claimant says that there was no discussion about this, whereas Ms Hall says that she did discuss it with the employees and was just trying it out. The claimant received a lift into work did not really have any objections to the change in hours.

39. The claimant said that she then became concerned in about mid-April 2024 that there was no reference in her payslip to tax deductions. She spoke to the respondent, Ms Hall, about this and was told that she may not be liable for tax and that Ms Hall would make enquiries. Ms Hall then provided her with a copy of an email from her accountants suggesting that the claimant might not meet the tax threshold.

40. The claimant then said she subsequently contacted HMRC and was advised that there was no registered business for the respondent. She said her pension contributions were not being paid. The claimant says she raised this matter with Ms Hall who said that she would investigate the matter.

41. Ms Hall said that she told the claimant and other employees that she was having some problems with HMRC when she was trying to set up her business. It is quite clear from the email correspondence that respondent was having difficulties with HMRC around trying to obtain a UTR number in order to then be able to pay PAYE, but the claimant was not privy to that correspondence. Ms Hall did not at any stage notify the claimant or any of the other employees in writing about the difficulties which she was having in trying to set up the business which explained the problems with regard to their payslips. She says that she mentioned it to them, but it was not clear what she said about this matter or when.

42. The claimant says that she was then asked on 20 April 2024 about a new contract to sign which the respondent was looking at her signing. Ms Hall said that this new contract was discussed with the claimant and Mrs Bell and Ms Annabelle. The respondent said that Ms Annabelle signed the contract straightaway. The claimant and Mrs Bell refused to sign it. The claimant said that she refused to sign it because she wanted her wages situation sorted out first.

43. The claimant says that she was given a deadline of 21 days to sign the contract. Ms Hall said that she did not give any deadline for signing the contract and Ms Annabelle said that no deadline was given to her.

44. The claimant received a copy of the new proposed contract of employment on 22 April 2024. The claimant informed Ms Hall said that she was not prepared to sign

the contract until the issue with regard to her pay was sorted out, which was acknowledged by Ms Hall.

45. Around this time, the respondent indicated to the claimant that she would not be paid for any accrued or untaken holiday which had occurred before the business had transferred to the respondent. The claimant said that she had a couple of days outstanding leave.

46. The claimant says that, following that discussion about her not signing the contract on 22 April 2024, Ms Hall suggested that she wished she had brought her own staff in and regretted taking on the staff. Ms Hall denied saying that and said that she took on the staff because she needed staff. Ms Hall said she had looked at another business previously where there were no staff, so she needed to take on the staff.

47. On 23 April 2024, the claimant raised a grievance about her concerns. In that grievance she provided the respondent with details of the agreement which had been signed by the previous owner Mr Shelly confirming the £1 additional pay, above the NMW and the bonus payment. The claimant said that Ms Hall suggested that the claimant was creating an atmosphere and that she was discussing wages in front of customers. Ms Hall said that she simply took the letter to consider further and to take some advice.

48. Ms Hall said she felt that she was constantly being ambushed by both the claimant and Mrs Bell about issues around wages and that they would both approach her often when customers were in the shop.

49. The letter from the previous owner is at page 70 of the bundle. It states that due to the increased workload and responsibility that the claimant has undertaken he has reviewed his accounts and thinks it is only fair to pay the claimant at a higher rate. It says that he was going to increase her rate by a £1 an hour. It also states that she will continue to receive the £10 bonus per week as well. It states that this will take effect from 27 June 2022 and is signed by the previous owner.

50. Ms Hall said that, when she received this document, she sought to contact Mr Shelly. She said that she texted him but received no response. There is no reference to her attempting to contact Mr Shelly about that document in her witness statement. Further, there are no copies of any texts that she apparently sent to Mr Shelly requesting that information.

51. She also said that she contacted her solicitors and was advised that those documents were not provided and that the only documents provided under the transfer agreement were the schedule of employees set out in the supplemental bundle.

52. The claimant said that an incident occurred on 29 April 2024 when she said that she was criticised for the cleanliness of the fridge and then told how it should be cleaned. Ms Hall said that she was simply trying to set out some new rules with regard to cleaning. Ms Hall said that the fridges were in a very poor state of cleanliness, and she was just trying to improve the cleanliness of the business. She did however acknowledge, as the claimant indicated in evidence, that the business had a five-star rating. Both Mrs Hall and her partner indicated that they had to spend a lot of time cleaning out the fridges because of the state they were in.

53. Ms Hall then asked the claimant more details about the bonus and how it was paid. She was given little information other than being told it was paid by BACS. The claimant says that Ms Hall indicated that at that stage that it was not therefore payable.

54. The claimant says that, in early May 2025 she then raised an issue about her holiday pay. She said this was on or about 27 May. She says abruptly told by Mrs Hall that she would sort it out. Around the same time Mr Hall indicated that she understood the position to be at that time that she was not responsible for any previous holidays which had accrued.

55. Ms Hall said that she was in the process of sorting the UTR number and PAYE. She said that she had got it sorted in early May, but she does not appear have conveyed that information to the claimant or kept them up to date with the position with regard to difficulties that she appears to be experiencing with HMRC.

56. Ms Hall said that she constantly felt that she was being ambushed on a regular basis by the claimant and Mrs Bell about their pay.

57. On 7 May 2024 the respondent sent a number of emails. The first one related to CCTV. The claimant said that she did not object as such to the introduction of CCTV in the shop.

58. The next email sent by the respondent was also sent to all of the employees in the business. That email which is at page 180-182 of the bundle states that certain tasks had not been completed at the end of the day. It referred to the floor not being swept, rubbish being on the floor. It went on to indicate that Mrs Hall was looking at creating a list of required tasks setting out the jobs that needed to be completed. The claimant who had been working at the shop for over 20 years considered that the email was criticising her and the work which she was doing. She was also concerned that it had been sent to all of the employees in the business and felt that she was being belittled.

59. On the same day Mrs Hall also replied to the claimant's grievance. That email is at page 176-178 of the bundle. In that email Ms Hall suggested that the claimant was raising her voice with her and not creating a conducive atmosphere. She criticised the claimant's behaviour which she suggested was unacceptable and would not be tolerated. It then went on to state that she had consulted with her solicitor and that the claimant's current salary was in line with the national minimum wage. She also stated that she did not consider that the further documents constituted a contractual agreement, and that the claimant's wage would remain at £11.50. She then went on to suggest that the £10 bonus was paid in cash and there was no documentation and that she also did not consider it a contractual obligation. She confirmed that matters were in effect resolved.

60. On 8 May 2024 the claimant said that when she attended work there was a heated discussion between Mrs Bell and Ms Hall in which Mrs Bell was asking Mrs Hall not to copy people into emails. She then said that Ms Hall then asked Mrs Bell to leave the premises. The claimant says that Ms Hall also suggested that herself and Mrs Bell were just chatting and not doing work and had left the place in a mess the previous day. The claimant said that this was the last straw for her. She said the interaction was humiliating for her. She said it took place in the shop in front of customers. She said that she had effectively reached breaking point and that she then told Ms Hall that she could no longer work there and left the premises. In her

evidence, Ms Hall said that there was an altercation with Mrs Bell, but that there had been no raised voices with the claimant, and she was very surprised when the claimant left the premises.

61. On the same day 8 May 2024, the claimant resigned by email with immediate effect. Her email is at page 186 of the bundle. She states that she feels she has no alternative other than to resign, firstly because of the non-payment of her correct salary under TUPE. She also refers to the non-payment of her tax. She also refers to the way that Ms Hall spoke to her when she had asked for discussions about wages. She also raising concerns about not being enrolled in the pension scheme after repeated requests about it, providing her email to other employees without her permission. She says that she felt degraded about the way she was spoken; implying that the claimant was not carrying out her duties properly. She also indicates that the respondent had stated that wished she had purchased the business without the claimant. She goes on to say that due to that behaviour, she considers that the employment relationship has broken down. That email is at page 186-190 of the bundle.

62. Ms Hall replied to that email on 10 May 2024. In her email in response Ms Hall suggested there was no animosity with the claimant but that the heated conversation was with Mrs Bell. She goes on to state that she does not believe that there was any breach and then deals with the various matters set out in the claimant's email. She also asked the claimant if she would reconsider revoking her notice and asked her to come in for a meeting.

63. Ms Hall tried to chase up with the claimant up but did not receive any reply. The claimant then subsequently issued these proceedings to the Tribunal. She said felt that she felt too upset to respond to Ms Hall.

64. On 8 May Mrs Bell sent a text to Mr Shelly about the pay issue and asked if he could clarify whether Ms Hall had been told about the £1 more than the minimum wage. Mr Shelly replied by text to indicate that he had given her the documents. Those texts are at pages 223-224 of the supplemental bundle.

65. The claimant started to seek new employment in June 2024. She applied for a number of jobs. She successfully obtained new employment from 6 August 2024 and is earning slightly less than she says she should have been earning with the respondent. In her evidence, the claimant having produced some additional payslips, acknowledged that she is now earning £396 which is more than she would have been being paid by the respondent but not more than what she considered she should have been paid by the respondent. She did acknowledge in her evidence that she was working less hours and had not applied for any fulltime roles since 6 August 2024. She indicated that, due to her age, she was not really going to start trying to obtain a full-time job. She was content with the role that she now had.

66. The respondent did not put forward any suggestion as to why there might have been an economic, technical or organisational reason for any change to the claimant's terms and conditions of employment nor at any stage did they rely on any evidence or submissions to that effect. The respondents acknowledged that the claimant had in effect mitigated her loss up to the date when she obtained new employment.

67. Mr Shelly was not called to give evidence before this Tribunal.

68. In her evidence, Ms Hall suggested that she spoke to Mr Shelly some time after these proceedings were instituted. In her witness statement she said that Mr Shelly had suggested that the claimant was looking for redundancy. She did not indicate that she had at any stage during that discussion discussed any matters regarding the claimant's pay or bonus with Mr Shelly or asked him about those matters. The reason she gave for not making those enquiries was that shop became busy. The claimant accepted that, when Mr Shelly first indicated he was looking at selling the business, she had asked about the security of her job and whether she would be made redundant.

69. The respondent said that some time later she was aware that she should have been paying the claimant's accrued holidays and has now paid that holiday pay based on what she considered to be the correct rate of pay (minus the £1 on top pf the NMW).

70. Ms Hall acknowledged that she had not paid the pension contributions from the time that she took over the business until the claimant's employment terminated.

71. In her evidence and in particular in her witness statement, Ms Hall indicated that, although the incident on 8 May started with Mrs Bell, she said that, at the stage when she asked Mrs Bell to leave work for the day, she saw a different side to the claimant and said that she started shouting and saying she was sick of everything and how it was not all sorted and said that she felt vulnerable and alone. She suggested that both the staff had walked in trying to provoke a reaction from her.

72. In her evidence, the claimant came across as an honest, credible and measured witness. Her responses were consistent and measured.

73. Ms Hall's evidence was at times inconsistent. For example, the evidence about the incident on 8 May in her witness statement contrasts with what she wrote in her email when she asked the claimant to consider revoking her notice. Her evidence is also inconsistent with regard to making enquiries about the terms that the claimant was relying upon from the previous owner. She did not produce any evidence about what enquiries she made. She refers to texts but did not produce them in evidence. She refers to a subsequent discussion with Mr Shelly but crucially did not ask him about these matters.

74. In her evidence the claimant said that on several occasions Ms Hall raised her voice with her and belittled her. She felt that Ms Hall was criticising her work in emails. She said that this was while she was raising questions about her pay, holidays and other matters with regards to her employment.

75. In her evidence, Ms Hall said that she felt that both the claimant and Ms Bell were ambushing her and raising issues about pay and raising their voices in front of customers.

76. The claimant produced bank statements of monies paid into her bank account from the previous owner, Mr Shelly. The amounts do not correspond with the amounts set out on the various payslips. They are usually about £20 in excess but at times somewhere between only £6 to £17 more than the payslips. The claimant was unable to explain how the amounts were calculated. She suggested they reflected the bonus payments and the additional £1 payment, but she could not explain what hours he was working and was unable to provide any breakdown whatsoever as to how those sums had been calculated. She said the bonus payment had been

something that had been put in place by the previous owner and Mr Shelly had indicated he would honour it. No timescale or terms were agreed. The claimant could not explain the basis upon which the bonus was paid or calculated or whether it was subject to review.

77. The claimant was actually working an additional hour whilst working for Mr Shelly. When Ms Hall took over the business , she said she added an additional hour to the claimant's wages so that she was paying her for 38.5 hours rather than 37.5 hours, which is what Mr Shelly was paying.

Submissions

78. The claimant's representative filed written submissions and relied on several cases. He made oral submissions based on those written submissions. He relied upon a breach of the express term of the contract of employment and said there was a fundamental breach relating to the payment of wages and bonus. He also submitted that the change in terms related to the transfer and that the claimant was entitled to resign under TUPE and under ordinary provisions for a breach of the contract of employment.

79. The claimant's representative also submitted that the claimant had resigned for various other matters relating to the issues around her tax, the non-payment of her pension and her holiday as well as the way she was being spoken to and the criticism of her work all of which he said amounted to a breach of the implied term of trust and confidence. He said that the last straw was the incident on 8 May.

80. The respondent's representative said that there was not a breach. She accepted there was a transfer of the business to the respondent. The respondent's representative went through the claim form and various breaches relied upon in submissions. She submitted that there was no breach of contract. She submitted that the terms of the contract were as per the schedule of employees which had been part of the transfer of employment. She said that the claimant was not entitled to the additional £1 top of the national minimum wage, nor was she entitled to the £10 bonus. She said that the respondent was simply trying to run the business and that these were not criticisms of the claimant's work but that she was trying to set up a different cleaning regime running the business in a different way. She said that the respondent had not been raising the voice with the claimant.

Conclusions

81. This Tribunal finds that there was a transfer of the business in which the claimant was employed to the respondent on 25 March 2024, which amounted to a transfer under TUPE. That meant that all of the claimant's existing terms and conditions of employment transferred to the respondent.

82. The Tribunal accepts the claimant's evidence that she was entitled to £1 an hour on top of the national minimum wage (NMW). The Tribunal accepts the claimant's oral evidence, which is also supported by documentary evidence in the form of a document that was signed in 2022 by the previous owner. The evidence is also consistent with the payslips which the claimant received over the previous period which show the claimant's pay increasing above the NMW. Further, her bank statements show that she was paid additional monies. The Tribunal accepts Ms Hall's evidence that, on the face of it, she did not appear to know that the claimant was entitled to an additional £1 an hour on top of the NMW. There is no reference

to an additional £1 over the NMW in the schedule of employees, which appears to be the only document which was provided to the respondent at the time of the transfer. The respondent's knowledge is not however relevant as to whether there was a breach.

83. The Tribunal therefore concludes that there was a breach of contract by the respondent by failing to pay the additional wages of £1 on top of the NMW, which were part of her terms and conditions of her employment prior to the transfer of the business and which transferred under TUP to the respondent.

84. The respondent does not rely on any economic technical organisational reason to explain any change to the terms and conditions of employment.

85. Although the Tribunal accepts that the respondent may not have known at the time of the transfer of the additional £1 payment due to the claimant, it also does not consider that the respondent made sufficient attempts to try and properly ascertain what were the terms and conditions of the claimant's employment once she had raised the matter with them. There was little or no attempt and certainly not documented to suggest that the respondent had properly followed this up with the previous owner or made appropriate enquiries with him in that regard.

86. The Tribunal also accept the claimant's evidence that she was entitled to a bonus. That is also supported by documentary evidence referred to above. However, the Tribunal is somewhat concerned as to the terms of that bonus. There is little, if any, documentary evidence dealing with the actual terms of the bonus other than to confirm that it was continued to be paid. The claimant received some additional monies in her payslip. However, the claimant was unable to provide any details about those additional payments or what they were for or how they were calculated. The Tribunal, as indicated above, note that the schedule of employees provided to the respondent on transfer make no reference whatsoever to any additional benefits like a bonus which one would have certainly expected to have been identified.

87. The Tribunal reminded itself that the burden of proof is on the claimant. On balance the Tribunal does not consider that the bonus payment was a specific term of the claimant's contract of employment. Any payment appears to have been paid on some discretionary basis but there are no provisions about the basis upon which it was paid, whether it was subject to review, and the claimant was unable to provide any substantive evidence about this payment. Therefore, on that basis the Tribunal consider it was a discretionary payment. Therefore, on balance, the Tribunal does not consider that it is a term of the claimant's employment and that the respondent is specifically in breach of the claimant's contract for failing to pay that specific payment.

88. Nevertheless, the non-payment of any wages, namely the £1 additional per hour on top of the NMW, is a clear and fundamental breach of contract which would entitle the claimant to resign. Further, it is a term of the claimant's contract of employment which would have transferred under TUPE. Any failure to pay it amounts to a change to the claimant's employment following the Transfer. Therefore, she would be entitled to resign and treat the contract as at an end under TUPE due to that change to her terms and conditions of employment.

89. Furthermore, the Tribunal accepts the claimant's evidence about the way the respondent spoke to her and the criticism of her work. The Tribunal considers that

the way the claimant was criticised in front of other staff would amount to a breach of contract coupled with the respondent at this stage failing to pay tax on her behalf, refusing to pay her outstanding holiday entitlement following the transfer, not paying her pension entitlement; all of which amount cumulatively and potentially separately, together with the incident on 8 May 2024, to be sufficient to amount to a breach of contract on the part of the respondent which would entitle the claimant to treat the contract at an end as it is quite clear that she had lost all trust and confidence in the respondent.

90. The Tribunal accepts that the claimant resigned in response to all of those breaches of contract, but the final straw for her was the incident on 8 May 2025. Indeed, there was little suggestion by the respondent that the claimant's resignation was not because of what she perceived to be breaches of contract. They did not suggest any other reason for the termination of her employment.

91. The Tribunal also accept that the claimant did not affirm the contract in the meantime. She continued to raise concerns about her wages, her holidays, her tax issues and refused to sign the new contract.

92. This Tribunal finds that the claimant's dismissal was as a result of the transfer of the business and the change to her terms and conditions of employment. It is therefore automatically unfair under the Transfer of Undertaking Regulations.

93. The Tribunal also find that there was a breach of the express term to pay the claimant her wages, namely her correct rate of pay, and a breach of the implied term of trust and confidence for the reasons referred to above. Accordingly, the claimant was constrictively unfairly dismissed.

94. For those reasons the claimant's complaint of unfair dismissal is well founded.

95. The parties sought eventually, through their representatives, to agree the net and gross pay. The gross pay was agreed at a weekly pay of £442.75. Net pay was agreed at £410.80 if it was the higher amount, and £386 if the respondent was correct about the rate of pay.

96. The Tribunal does not consider that the claimant made sufficient effort to seek alternative employment after she obtained her new employment on 6 August 2024. Her losses were minimal thereafter. She subsequently produced further payslips which suggest that she is receiving £396 a week. The loss is minimal from then onwards and she herself acknowledged that she had not made any efforts to obtain more hours or employment at a higher rate of pay. No award is being made for future loss.

97. The claimant's complaint of unfair dismissal is therefore well founded, and the claimant is awarded the sum of £18,365.93 calculated as follows:

Basic Award 27.5 weeks x £442.75		£12,175.63
Compensatory Award 12 weeks, 3 days x £410.80	£5,105.65	

Pension Loss 12 weeks x 3 days at £14.94	£185.68	
Loss of Statutory Rights	£500	
Sub Total	£5,791.33	
Ongoing losses to date of Tribunal - 6 August 2024		
to date of hearing. £14.8 a week x 27 weeks	£399.6	
No future loss	.	
Total Compensatory award		£6,190.93
Total Award on compensation for unfair dismissal		_____ £18,365.93.

98. The Employment Tribunal (Recoupment of Benefits) Regulations 1996 apply to this award. The prescribed period is 18 May - to 6 August 2024. The prescribed amount is £5,105.65.

99. The claimant's complaint of unlawful deduction from wages / breach of contract is also well founded. The claimant is not awarded any sum in respect of any bonus payment. The claimant is however awarded 5 weeks pay at the increased amount of £1 an hour which amounts to £192.50 and pension contributions of £74.7 over that period which amount to a total sum of £267.20.

100. The claimant's complaint of the breach of the (Working Time Regulations) holiday pay is also well founded, and the claimant is awarded the further sum in respect of her accrued but untaken holiday on termination in respect of the additional £1 an hour in the sum of £192.50.

Approved by Employment Judge

Date: 7 March 2025

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