

THE INDUSTRIAL TRIBUNALS

CASE REF: 1860/19

CLAIMANT: Caitlyn Johnston

RESPONDENT: Opulence Beauty Spa Limited

DECISION

The decision of the tribunal is that the claimant is entitled to an award of £357.75 in respect of unauthorised deduction of wages and breach of contract.

Constitution of Tribunal:

Employment Judge (Sitting alone): Employment Judge Sheehan

Appearances:

The claimant appeared in person and was not represented.

The respondent was represented by Cheryl Haddock, a director and main shareholder of the respondent company.

REASONS

1. The claim received in the Office of Industrial Tribunal and Fair Employment Tribunal (OITFET) on 12 January 2019, included claims against the respondent, concerning unlawful deduction of wages, holiday pay, failure to provide notice pay and breach of contract. The claimant's employment commenced on 31 August 2018 to its termination in November 2018.
2. The respondent's response filed on 7 February 2019 accepted the claimant was an employee and that all monies due to the claimant had not been furnished in the final salary payment made to the claimant on foot of her resignation on 8 November 2018. The respondent claimed it was entitled under the claimant's contractual terms to deduct from the claimant's wages reimbursement for training in the sum of £313.75 but had deducted the sum of £100.75.
3. The Case Management Record of Proceedings held on 15 March 2019 show agreement between the parties that the disputed wages concerned £221.00 in respect of notice pay, £26.00 for accrued holiday pay and £100.75 in respect of the claimant's first week's pay. The respondent disputed that the claimant was entitled

to notice pay and alleged a contractual right to deduct training costs. The claimant's claim for £10.00 in respect of product owned by the claimant and used in the respondent's salon had been rejected by the respondent. This amounted to a total claim for £357.75.

4. The tribunal was required to determine whether the claimant had resigned with or without notice, whether the respondent was in breach of contract for rejecting reimbursement of £10.00 for product used at the salon and whether the deduction of wages of £100.75 had been made lawfully by the respondent. It was clear if the claimant resigned with notice to the respondent then the sum of £26.00 would be due to the claimant for outstanding holiday entitlement at the end of the claimant's employment. The respondent advised the tribunal that no check had been made with the revenue commissioners regarding the company's entitlement to make the deduction in respect of training costs. In light of the Employment Appeal Tribunal decision in ***Commissioners for Revenue and Customs v Lorne Stewart PLC [2015] IRLR 187*** the lawfulness of the contractual deduction in respect of alleged training costs became an additional issue to be determined by the tribunal, where such deduction could reduce the claimant's hourly wage to below the minimum wage.

SOURCES OF EVIDENCE

5. The tribunal heard oral evidence from the claimant, Cheryl Haddock, a director and shareholder of the respondent company as well as Cody McMillan, an employee of the respondent company. The tribunal received two bundles of relevant documents, identified as C1 (66 pages) and R1 (21 pages) from the claimant and respondent. The evidence of Cheryl Haddock at times was contradictory to the response filed on behalf of the company. It was also in conflict with emails exchanged with the claimant. One example was the response filed which records at section 4-1 that "the claimant left employment on 8 November on the understanding she had no intention of returning". This is contradicted by the email sent to the claimant on 8 November from the witness advising the claimant that the respondent "accepted the claimant's resignation but didn't require her to work her notice." A further example is an email on 12 November 2018, sent by the witness to the claimant, which indicated the respondent had not been aware the claimant wouldn't be in work on Friday and Saturday 9 and 10 November 2018.
6. The tribunal found Cheryl Haddock unconvincing concerning records maintained by the company and in the history of her interactions with the claimant. The tribunal did not find Cody McMillan a credible witness in relation to alleged training provided by the respondent. Her evidence, concerning an alleged "burning" suffered by her while undergoing a waxing treatment by the claimant, was undermined by the lack of a health and safety record or accident at work report by the respondent. Equally Cody McMillan's claim that the claimant was laughing with her at the end of the meeting on 8 November 2018 did not correlate with the evidence of Cheryl Haddock and the claimant as to the level of upset displayed by the claimant. In consequence of the oral and documentary evidence adduced at hearing, the tribunal made the following findings of fact, upon the balance of probabilities:

THE FACTS

7. The claimant was employed as a "fully trained" beauty therapist for 20 hours per week from 31 August 2018. Two practical assessment sessions as well as an

interview with the respondent formed part of the recruitment and selection process. There was a nine months probationary period. A Written Statement of Main Terms and Conditions of Employment was provided to the claimant by the respondent.

8. No contractual rate of pay was inserted on the statement of main terms and conditions but a rate of £6.50 an hour was agreed. No pension provision was mentioned on the written statement. Clause 6 provided that “the first week was not remunerated until such time as the employment finishes”. The claimant worked 15.5 hours in her first week which equated to £100.75.
9. Clause 14 of the written statement provides:

“Any training received through Opulence Beauty Spa or any off-site training provided and paid for by the employer must be repaid as set out below. The said costs will be deducted from your final salary due on termination of your employment. If the employee leaves within a period of 12 months from the date of the provision of the training then the full amount of the costs of the training shall be repaid”.
10. No off-site training was provided by the employer. There was no definition of training. No record of training was maintained by the respondent. The claimant was never asked to agree nor was she notified of any costs being accrued in respect of training received through the respondent.
11. The training record which was produced at hearing was a post resignation record created by the respondent in December 2018. It included dates, details of treatment and staff and product costs of alleged “practice” sessions conducted by the claimant. The respondent produced no original records to support the alleged supervision by staff, costs incurred or appointment records to indicate a client was booked as a “free” treatment. Only three of the alleged sessions were for non-paying clients. Those treatments occurred on the 1, 12 and 15 September 2018 and concerned treatments performed on Cody or Cheryl.
12. The claimant was advised in late October 2018 that she was doing well but practice was required in treatments such as acrylic nails.
13. On 28 October 2018, a non-working day for the claimant, the respondent contacted the claimant to remove work related photographs from the claimant’s Facebook page. The claimant did so without delay. Cheryl Haddock on the same date and message advised the claimant she required her to attend a meeting on Tuesday or Wednesday of the following week. The parties agreed to meet the afternoon of 8 November 2018.
14. Appendix 2 of the statement of main terms and conditions of employment addressed the respondent’s disciplinary rules and procedure. As a general principal it stated “No disciplinary actions shall be taken until there has been a full investigation into any alleged incident. At each stage of the procedure you shall have the right to a fair hearing with the opportunity to state your case and to be accompanied by a fellow employee, if desired”.
15. The procedure indicated that in the event of a breach of the rules an employee would be interviewed at all stages by the employer and given the opportunity to state their case. The disciplinary rules ranged from minor to gross misconduct.

Minor included performance of duties below an acceptable standard or ignoring safety or hygiene rules. Neglect causing damage or loss to client's or the respondent's property or equipment or serious neglect of safety or hygiene rules fell within major misconduct. Gross misconduct required refusal to carry out reasonable work instruction, deliberate ignoring of safety or hygiene rules which endangered others or wilful damage of property or equipment.

16. There were four stages of procedure with minor misconduct being addressed at stage 1 and stage 2 – which for first offence would lead to a verbal warning remaining on employee's record for 6 months. A repeat of the same or similar offence within 6 months would result in a first written warning retained for 12 months. Major misconduct would be dealt with at stage 3 – which could result in a final written warning. A repeat of minor misconduct in the following 12 month period would also move to stage 3. Stage 4 advised a repeat of any offence dealt with at Stage 3 within the 12 month period post a final written warning could result in dismissal.
17. The claimant, subsequent to agreeing to a meeting on 8 November 2018 received at 2.37pm by email, without prior notice, a written warning letter dated 5 November 2018 from the respondent. The letter alleged poor performance at work although no details of dates or clients were provided. The warning letter received by the claimant threatened possible termination of the claimant's employment if performance was not improved within a three week period. There was no indication in this letter of any appeal procedure against this disciplinary action. There is no provision in the disciplinary rules and procedure for such a letter or disciplinary outcome in the absence of earlier warnings or alleged major misconduct. No major misconduct is identified in the letter.
18. The respondent, on Cheryl Haddock's own admission when giving evidence, deliberately decided to ignore the contractual procedure as the respondent company "does not consider or apply the disciplinary procedure to probationary employees". No such exclusion is provided for in the written statement of terms and conditions nor in the disciplinary procedure.
19. The claimant made repeated requests in advance of the post disciplinary hearing for dates of the alleged poor performance. The respondent did not attend the 8 November 2018 meeting with the requested details. There was a total absence of any contemporaneous records in respect of complaints received from clients. No record had been made by the respondent of any of the alleged complaints received in connection with the claimant's work. No entry had been made on the client's customer file. The claimant was pressurised by the respondent to sign for the written warning issued 5 November 2018. The claimant got very upset at the 8 November meeting and felt unable to remain at work.
20. The respondent eventually, post termination of the claimant's employment, provided dates of alleged complaints by clients. The claimant was not at work on some of the dates provided. There was one accepted incident, a waxing, which had been brought to the claimant's attention in advance of the warning letter of the 5 November 2018. It occurred on 21 September 2018 and was addressed at the time without any disciplinary action notified to the claimant.
21. Clause 15 of the statement of main terms and conditions required the claimant to give or receive "at least two weeks' notice". The tribunal placed greater weight on

the text or WhatsApp messages to establish what passed between the parties on this matter. The claim form recorded that the claimant wanted to leave the respondent's employment immediately and the respondent had agreed there was no need for the claimant to work her notice. It is clear from a message at 21.04 from the respondent on 8 November 2018 that the respondent accepted the claimant's resignation and "would not be asking you to work". A further email on 11 November 2018 at 20.11 indicates the respondent changed her mind about requiring the claimant to work a notice period. The claimant at 23.39 on 11 November in an email requested "clarification if you want me to complete my 2 weeks' notice". No clarification was provided by the respondent requiring the claimant to attend and work a notice period.

22. The claimant's email of 11 November 2018 also requested details of her final payment including details of what the claimant considered was outstanding accrued holiday leave. In response the claimant received a letter emailed from Cheryl Haddock on 12 November which refused to confirm what would be included in the final salary payment. The letter ignored the breach of the company's procedures and denied any agreement that the claimant should not work her notice. The letter indicated a final pay slip would issue on 23 November 2018. No mention or indication was given of the respondent intending to make a deduction in respect of training costs.
23. The respondent first raised the matter of withholding wages in an email on 24 November from the husband of Cheryl Haddock, Mark Haddock. Mark Haddock is not employed by the respondent and had no lawful right to sensitive data held in respect of the claimant in connection with her employment with the respondent. Mr Haddock was responding to a grievance letter emailed 23 November 2018 by the claimant regarding the deduction of wages due for her first week at work. In the same letter the claimant sought reimbursement of £10.00 in respect of products used by the claimant in the salon. The respondent had a contractual arrangement with staff that if their own product was used in treatments the respondent would reimburse them for the cost. The respondent accepted that if the claimant had used her own product the amount to be reimbursed would be £10.00. The respondent had no reliable evidence to support her belief that the claimant did not use her own product.
24. Mr Haddock's email was aggressive in tone. It asserted that monies were withheld as part of a counterclaim in respect of "training costs" incurred by the respondent as well as "loss of returning clientele and client refunds for your mistakes". No details were provided in this email to the claimant of the alleged training costs, client's refunds or loss of clientele.
25. The claimant was provided with two wage slips for her final salary payment. The respondent made an error in respect of the calculation of holiday leave accrued. The respondent had to issue a second pay slip in December 2018 and furnished an additional payment. The sums provided represent wages after deduction of income tax and national insurance payments in respect of 21.50 hours holiday pay. No payment was made in respect of the claimant's stock expense of £10.00. The amount of £107.25 was deducted in respect of "the week in Lieu" according to the pay slip dated 23 November 2018. The pay slip for 21 December 2018 reimbursed one hour previously deducted, leaving a deduction of £100.75.

THE LAW

26. Unauthorised Deduction from Wages

Article 45(1) of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order") provides as follows:

"An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction".*

Article 45 (2) defines "relevant provision", in relation to a worker's contract as meaning a provision of the contract comprised:-

- "(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion."*

Article 45(3) of the 1996 Order provides as follows:

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

Article 59 of the 1996 Order provides that "wages", in relation to a worker, means:

"... any sums payable to the worker in connection with his employment, including - (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise ...",

subject to certain statutory exceptions which do not apply to the facts of this case.

27. Breach of Contract

The Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994 confers jurisdiction on industrial tribunals to hear claims for breach of contract and Article 3(c) provides as follows:-

*"Proceedings may be brought before an industrial tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for sum due in respect of personal injuries) if –
...*

- (c) the claim arises or is outstanding on the termination of the employee's employment."*

28. Notice Pay

Article 118 (1) and (2) of the Employment Rights (Northern Ireland) Order 1996 makes provision in relation to notice periods required to be given by an employer or employee when terminating employment and a person has been continuously employed for one month or more. Article 118 (2) addresses the notice required to be given by an employee and provides the notice required *"is not less than one week"*.

29. National Minimum Wage Regulations 2015

Chapter 2 of the 2015 Regulations deals with the reductions that can be made from wages.

The relevant Regulation in Chapter 2 is Regulation 12. It provides as follows:-

"12.(1) Deductions made by the employer in the pay reference period, or payments due from the worker to the employer in the pay reference period, for the employer's own use and benefit are treated as reductions except as specified in paragraph (2) and regulation 14 (deductions or payments as respects living accommodation).

(2) The following deductions and payments are not treated as reductions—

- (a) deductions, or payments, in respect of the worker's conduct, or any other event, where the worker (whether together with another worker or not) is contractually liable;*
- (b) deductions, or payments, on account of an advance under an agreement for a loan or an advance of wages;*
- (c) deductions, or payments, as respects an accidental overpayment of wages made by the employer to the worker;*
- (d) deductions, or payments, as respects the purchase by the worker of shares, other securities or share options, or of a share in a partnership;*
- (e) payments as respects the purchase by the worker of goods or services from the employer, unless the purchase is made in order to comply with a requirement*

imposed by the employer in connection with the worker's employment."

Regulation 17 makes provision in relation to determining whether the national minimum wage has been paid. It provides as follows:

"17. In regulation 7 (calculation to determine whether the national minimum wage has been paid), the hours of work in the pay reference period are the hours worked or treated as worked by the worker in the pay reference period as determined—

(a) for salaried hours work, in accordance with Chapter 2;

(b) for time work, in accordance with Chapter 3;

(c) for output work, in accordance with Chapter 4;

(d) for unmeasured work, in accordance with Chapter 5."

CONCLUSIONS

30. The tribunal highlighted earlier in this decision some reasons underpinning the conclusion of the tribunal the witnesses produced on behalf of the respondent lacked credibility where their evidence differed with the claimant. There were other instances such as assertions made by Cheryl Haddock regarding a note of the meeting held on 8 November being signed and agreed by the claimant. The assertion is unsupported by documentary evidence. The claimant's denial that any such agreement occurred was supported by the absence of any such note in the emails which passed subsequent to the meeting between the claimant and Cheryl Haddock. This led the tribunal to conclude these assertions from Cheryl Haddock were not credible. The absence of contemporaneous documentary evidence to support much of the evidence relevant to the issues to be determined by the tribunal was unhelpful as well as undermining the reliability of the evidence. In all the tribunal found the claimant a more credible witness.

Breach of Contract Claim

31. The claimant brought a breach of contract claim under the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994. This enables employees to recover sums due under contracts of employment which arise or are outstanding upon termination of any employment. The claimant's contractual claims include the claim for £221.00 notice pay, additional holiday pay in the sum of £26.00 and £10.00 in respect of product used on behalf of the respondent's business. This makes a total in respect of the contractual sum alleged owing to the claimant of £257.00. The parties had agreed this was the relevant amount in dispute contractually. The claimant to succeed in this contractual claim needed to demonstrate a contractual entitlement to the disputed pay, that such entitlement had been breached and that the breach has not been accepted by the claimant.

32. The written statement of terms and conditions is not the same thing as a written contract of employment. The written statement declares what has been agreed from the perspective of the employer, so it is capable of being inaccurate. There was no other contractual document setting out the rights and duties of the parties.

Where a document, like the written statement of main terms and conditions, is held to be a written contract it is difficult to persuade a court that the terms are otherwise than stated in that document. A breach of contract claim depends on the specific terms of the contract.

33. The written statement of main terms and conditions made clear that holiday entitlement was the statutory minimum entitlement. The statement of main terms and conditions also made clear at paragraph 15 that the claimant was entitled or required to provide two weeks' notice for termination of her employment. All the documentary evidence supported the contention of the claimant that she had given notice and was willing to work her notice if required. The respondent initially indicated to the claimant on 8 November 2018 it did not require her to work her notice. The respondent muddied the picture on this matter by inviting the claimant to work her notice in a later communication but did not provide the clarification requested by the claimant as to dates or hours to be worked.
34. There are some common implied terms for both employer and employee. The most common relevant implied terms in the circumstances of this case appear to the tribunal to include the duty on an employer to pay the employee where the employee carries out their contractual duties or is ready and willing to do so. Accordingly the tribunal concluded the claimant was entitled to 2 weeks' notice pay.
35. There is also the implied duty of trust and confidence which applies to both employee and employer. That duty essentially requires neither party without reasonable and proper cause to conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust which should exist between employer and employee – see **Malik v Bank of Credit and Commerce International SA (In Liquidation) [1998] A.C.20**. Lastly there is an implied contractual right to fairness in the operation of a disciplinary procedure: **Chhabra v West London Mental Health NHS Trust [2013] UKSC 80**. The 5 November letter was the equivalent of a Stage 3 outcome, a final written warning yet no previous disciplinary action had been taken. There was no investigatory evidence produced to the claimant prior to the meeting on 8 November. It is fair to say that the claimant, a young employee, was treated abysmally by her employer and without any fairness or due process. The tribunal had no difficulty in concluding that these deliberate breaches of the respondent's contractual disciplinary procedure undermined the trust and confidence of the claimant in the respondent's fairness and commitment to her employment and resulted in her furnishing notice of intention to terminate her employment.
36. Paragraph 9 of the statement of written terms and conditions provides that statutory minimum holiday entitlement applies. Regulation 17 of the Working Time Regulations (Northern Ireland) 2016 provides that payment in respect of annual leave can only be made on termination of the employment. Compensation related to leave entitlement accrued is based on a calculation from when employment commenced to the date on which "termination takes effect" (Regulation 17 (1)(b)). The termination of the claimant's employment did not take effect until the two week notice period expired. Accordingly the tribunal concludes that the claimant is entitled to the sum of £26.00 in respect of holiday pay.
37. The respondent had no credible evidence, other than relying on the assertion of Cody McMillan that the claimant did not use her own product, to refuse to reimburse the claimant the sum of £10.00 for product used. There was little, if any, evidence

of any audit or stock control measures conducted by the respondent. It was accepted that during her employment the claimant had used her own supplies. The tribunal was satisfied on a balance of probabilities that the respondent was in breach of contract to refuse payment of £10.00 in respect of product owned and used by the claimant during her employment with the respondent.

Unlawful Deduction of Wages

38. The tribunal then considered the claim of unlawful deduction from the claimant's final salary of the sum of £100.75, which was wages owed to the claimant from her first week of employment with the respondent. The respondent accepts the deduction was made but contended the deduction was made in accordance with a relevant provision of the worker's contract, namely paragraph 14 which addressed entitlement to reclaim training costs.
39. Nowhere in the statement of main terms and conditions was any definition provided of what might be included under training costs. The only clear provision was that "training which was attended off site and paid for by the respondent" could be reclaimed. Training is defined in the Concise Oxford Dictionary as "the act or process of teaching or learning a skill". The total lack of a contemporaneous training record of the alleged training sessions delivered by the respondent or any staff employed by the respondent undermined the credibility of the respondent's claim. The tribunal noted that the claimant attended a tanning training course, paid for by her, on 21 August 2018 at the respondent's premises before she commenced employment. The respondent was made aware that the provider of this tanning training course advised at the end of the course that further practice should be carried out to gain confidence before providing the service to paying clients.
40. The tribunal was not satisfied that the costs deducted by the respondent had been incurred in relation to treatments provided by the claimant during working hours. There was a lack of supporting evidence of non-paying clients. There was no credible evidence that any teaching was provided on the multiple dates put forward by the respondent. The tribunal noted the presence of senior staff at treatments conducted by the claimant, if or when it occurred, was during the claimant's nine-month probationary period. It appeared reasonable to the tribunal that some checks on treatments being conducted by the claimant would have to be conducted during the probationary period by the respondent. However, that oversight could not equate to "training received through the respondent" or be conducted at the expense of the employee.
41. The respondent also failed to consider whether such a deduction was permitted under the National Minimum Wage Regulations 2015 (the 2015 Regulations). Regulation 12 (2) (a) of the 2015 Regulations permits a deduction only where it was "in respect of the worker's conduct, or any other event, where the worker (whether together with another worker or not) is contractually liable".
42. The leading authorities on the current provisions of regulation 12 (2) (a) of the 2015 Regulations are ***Leisure Employment Services Ltd v The Commissioners for HM Revenue and Customs [2007] EWCA Civ 92 (the LES case)*** and ***Commissioners for Revenue and Customs v Lorne Stewart PLC [2015] IRLR 187***. The latter case concerned the recoupment of funding provided by an employer to do an outside course in Leadership Management at a cost of £1,800.00. The employer operated a sliding scale of cost to be reimbursed which

was set out in a specific agreement regarding the funding of the course. The recoupment agreement was made ancillary to the main contractual terms between the parties. The Employment Appeal Tribunal (EAT) considered the construction of the wording of what was then regulation 33 (a) which mirrors the provisions of regulation 12 (2) (a) of the 2015 Regulations. The EAT acknowledged that the **Leisure Employment Services** case had already decided that a purposive approach should be adopted to construing these regulations with a view to carefully circumscribing the exceptions which might apply.

43. Both the EAT and the Court of Appeal in the LES case identified the policy objective of this legislation is:

“to ensure that the statutory minimum wage is properly secured. Permitted deductions should be clearly defined, recognizable, the question whether a deduction is or is not permitted should not be a matter of calculation; it should not be dependent upon the assessment of the value of the benefit.”

44. Both cases clarified that the word “conduct” as used in the regulation is “likely to amount to misconduct because otherwise that conduct would be unlikely to give rise to a contractual liability on the part of the worker” - see paragraph 12 of Shanks J in **Lorne Stewart PLC**. However Shanks J also considered that “any other event” should be interpreted as having *some relationship to the conduct for which the worker is responsible*, (emphasis added) but not necessarily something which amounts to misconduct by the worker. The claimant was aged 18 at the time of her employment with the respondent and was entitled to a minimum wage of £5.90 an hour. The contractual rate agreed by the respondent was £6.50 an hour. The claimant had never been paid in September 2018 for the first 15.5 hours she worked beginning on 31 August 2018. The claimant’s contractual terms indicated those hours would “not be remunerated until employment finishes”. The respondent in withholding that contractual payment from the final salary payment resulted in the claimant not receiving the national minimum wage for the 15.5 hours worked in either the September, October or November 2018 wages payments.
45. While in the **Lorne Stewart** case the worker had voluntarily resigned, Shanks J expressed the view that “a dismissal forced on a worker for redundancy or a request of a referral to Occupational Health, were examples of “other events” for which the worker could not be said to be responsible”. The tribunal concluded that the implication arising from the **Lorne Stewart PLC** decision, for an employer, is that where the employee has not been responsible for the termination of their employment by their conduct or “any other event” then the employer before applying a contractual clause that allows deductions to be made from wages will have to consider the obligation to pay the national minimum wage.
46. The tribunal is of the view that this resignation with notice by the claimant was not an event for which the claimant was responsible. Unlike the **Lorne Stewart** case where the employee chose to resign to move employers, the claimant in this case was faced with an employer who acted totally contrary to their own disciplinary procedure. The tribunal concluded that had the respondent not dealt with the claimant in the manner evidenced in the 5 November 2018 letter and again on 8 November 2018 it was extremely unlikely the claimant would have resigned from the respondent’s employment.

47. The Court of Appeal for England and Wales in the case of ***Delaney v Staples (t/a De Montfort Recruitment) [1991] ICR 331***, held that there was no valid distinction to be drawn between a deduction from a sum due, and non-payment of that sum, as far as the relevant statutory provision was concerned. The principal issue in this case is what was “properly payable” as wages to the claimant and if the “properly payable” wages have not been paid by the respondent, was the respondent authorised to pay the lesser amount by virtue of the provisions set out at Article 45(1) (a) or (b) of the 1996 Order. The tribunal concluded that the “properly payable” wages owed to the claimant in her final salary payment included the sum of £100.75 for the 15.5 hours worked in her first week of employment as the respondent’s deduction for alleged training costs, in light of the established case law, contravened regulation 12 of the National Minimum Wage Regulations 2015.

AWARD

48.	Non Payment of Wages	£100.75
	Expenses	£10.00
	Notice Pay	£221.00
	Holiday Pay (4 days)	£26.00
	Total	£357.75

49. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 13 May 2018, Belfast.

Date decision recorded in register and issued to parties: