EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Miss S A Rees **v** **Hine Meats Ltd t/a Greens of Pangbourne**

Heard at: Reading Employment Tribunal

On: 6 to 8 November 2023

Before: Employment Judge George
Dr C Whitehouse
Ms C Anderson

Appearances:
For the Claimant: In person
For the Respondent: Mr J Munro, senior litigation consultant

RESERVED JUDGMENT

1. The claimant was unfairly dismissed contrary to s.103A of the Employment Rights Act 1996.

2. The claims of unlawful detriment contrary to s.47B of the Employment Rights Act 1996 are not well founded and are dismissed.

3. The claims of unlawful detriment and automatic unfair dismissal on health & safety grounds contrary to s.44 and s.100 of the Employment Rights Act 1996 are not well founded and are dismissed.

4. The respondent shall pay to the claimant 14 days' holiday pay accrued and not taken on termination of employment.

5. Otherwise the claim of unauthorised deductions from wages is not well founded and is dismissed.

6. For the avoidance of doubt this disposes of all claims before the employment tribunal.

7. The remaining issues about the compensation to be awarded will be considered at the remedy hearing on 9 February 2024.

REASONS

1. Following a period of consolidation which lasted between 27 May 2021 and 8 July 2021 the claimant presented a claim form on 8 August 2021. By it she brought claims of automatic unfair dismissal under sections 100 and 103A of the Employment Rights Act 1996 (hereafter referred to as the ERA) and of detriments on grounds of health and safety concerns and/or making protected disclosures under sections 44 and 47B ERA. She also complained of unauthorised deduction from wages including in respect of unpaid holiday pay on termination of employment. The claims arose out of a relatively short period of employment which started on 12 October 2020 and ended on 31 March 2021. The claimant was employed as a general assistant at the respondent which runs a butchers shop.

2. The claim form included two individuals as second respondents but the claim was not accepted as against them because there were no early conciliation certificates. The respondent company entered a response on 17 December 2021 by which they defended the claim. The claim was case managed at a preliminary hearing on 21 October 2022 conducted by Employment Judge S Moore when the claimant was ordered to provide further particulars of her health and safety concerns and protected disclosures. She did so on 4 November 2022. Judge Moore listed the case for final hearing with a time estimate of four days to take place between 6 and 9 November 2023.

3. Lack of judicial resource meant that the case was allocated to a panel which was unavailable to sit on 9 November 2023 and the case was timetabled at the outset to be concluded within three days. In part this was done by agreeing that, if necessary, calculation of any compensation to be paid to the claimant would take place at a separate remedy hearing. A provisional listing for 9 February 2024 before the same panel was made. The parties concluded their submissions at about 11.30 am on day 3 but it did not prove possible for the tribunal to reach a conclusion on all of the issues in time to deliver judgment before the end of the working day and judgment was reserved. In the light of our judgment that the claimant succeeds in part, the hearing on 9 February 2024 will be confirmed and any necessary case management orders will be sent separately.

4. At the final hearing we had the benefit of a joint file of documents relevant to the issues which was comprised of 174 pages. Page numbers in these reasons refer to the pages in that joint file. Following the hearing, on 10 November 2023, the claimant contact the tribunal by email (copied to the respondent) to point out an error in a page number reference in her witness statement. She stated that she had not previously noticed that a particular document had been relocated in the file because the hard copy final version had only been delivered to her 1 full working day before the hearing. She corrected her para.14.11 reference to WhatsApp messages at page 139 to page 143 where they are, in fact, to be found. This email reached Judge George after the panel had finished their deliberations but before the

reserved judgment was completed. The panel had found the messages in any event and this error did not affect our findings or conclusions.

5. The claimant gave evidence and was cross examined on a witness statement the truth of which she had confirmed in evidence. She also wished to rely upon the statement of Christopher Manning dated 8 August 2023 and had written to the tribunal in advance of the hearing to ask whether it was possible for him to give evidence from Kenya. The government of Kenya has not given permission for witnesses located in that country to give evidence by video in tribunals in England and Wales and therefore it was not possible for this to happen. We admitted the written statement of Mr Manning into evidence and give it such weight as we think appropriate given that he has not been cross examined upon it.

6. The respondent called four witnesses: Royston Hine - Director and Master Butcher; Philip Cripps – Director and Head Chef; Christopher Cripps – Director and Barry Frost – Driver. The claimant did not have any questions for Mr Frost whose evidence was accepted and full weight was given to his written statement. The other witness all adopted in evidence written statements which had been sent to the claimant in advance on which she cross examined them.

7. There had been some correspondence between the parties in the run up to the final hearing because of alleged delays on the part of the respondent in complying with case management orders. An email had been sent by the tribunal to the parties warning that consideration was being given to striking out the response on grounds of non-compliance by the respondent. By the time of the start of the hearing the orders had been complied with, albeit late, and the claimant expressed herself prepared and ready to proceed. She stated that her preparation had been unnecessarily stressful and drawn out because of what she described as the last minute nature of the respondent's actions. She is working and fitting in preparation around her job. She asked that her position that be recorded but did not argue that a fair trial was not possible. In those circumstances we made no order on the strike out proposal and record - but do not make any determination about - the claimant's allegations of unreasonable conduct on the part of the respondent.

The issues to be decided

8. It was apparent from Judge Moore's order that a draft list of issues had been before her at that hearing. This list was described as being agreed between the parties but needing to be updated to reflect the anticipated further particulars to be provided by the claimant. No updated list of issues had been provided or agreed between the parties. The further information provided by the claimant (page 56 and follows) was organised with reference to paragraph 5 of her original particulars of claim which set out a number of alleged breaches of health and safety and other regulations in the working practices of the respondent which the claimant stated she had witnessed.

9. We explained to the claimant that the essence of a complaint of protected disclosure detriment or automatic unfair dismissal was based not on whether breaches had been observed by her but on whether she had first communicated information to her employer that tended to show that those breaches had occurred and then was subjected to a detriment on those grounds. Her original particulars of claim at paragraph 8 state that she had made several disclosures in December 2020 and January and February 2021 as well as on 23 February 2021 at a meeting with Mr Hine and Mr Cripps junior. However, the summary of her claim in her statement at para.2.1 to 2.5 focused largely but not exclusively on the 23 February 2021 while referring to "disclosures and issues I raised both before and during 23rd February meeting."

10. It was apparent that further clarification of the issues was needed prior to hearing evidence because the further particulars at page 55 and following did not pinpoint the specific communications relied on by the claimant. While the tribunal was doing its preliminary reading, the claimant drew up a list of protected communications. When she was asked the question when she had regarded herself as a whistleblower or to have raised health and safety concerns in a manner which gave her protection under s.44 or 100 ERA, she stated that it was as from the meeting of 23 February 2021. Before she committed herself to narrowing the issues to focus solely on communications made at that meeting, it was explained to her that incidents that she complained about which predated that meeting, could not have been done by the respondent because of a communication made at that meeting. The claimant confirmed that she understood that. A manuscript note clarifying how the communications she stated she had made on 23 February 2021 caused her to be protected under Part V ERA or amounted to communication of concerns on health and safety grounds (under s.44(1)(c) or s.100(1)(c) ERA) was provided to the tribunal and to Mr Munro.

11. Mr Munro provided to the claimant and the tribunal a copy of the original list of issues which had been drawn up by the respondent's representative and agreed prior to the preliminary hearing before Judge Moore. Amendments to those issues were agreed orally in the hearing and that agreement is reflected in the issues set out in the body of this reserved judgment.

12. The claimant also clarified her unauthorised deduction from wages claim. In part, this was a complaint of failure to pay holiday pay accrued but not taken on termination of employment. In part, it was a complaint that she had been underpaid in respect of overtime worked over the Christmas period in December 2020 and in part, was a complaint that she had been underpaid in relation to a bonus at about Christmas 2020. Her claim for underpayment of overtime had been argued on the basis that she should have been paid time and a half for the hours worked. However, she now accepts that the respondent does not have a policy of paying overtime at time and a half but only pays standard time for the hours worked. She therefore applied to amend her claim to argue that there had been an underpayment of overtime because the wrong hours had been used as the basis for the calculation.

13. We rejected that application to amend her claim for reasons which were given at the time and are not now repeated. If the parties wish to have written reasons for that decision they may request them within 14 days of the date on which this reserved judgment is sent to them.

14. Following that decision the claimant withdrew that part of her unauthorised deduction from wages claim which was based on an allegation of underpayment of overtime but continued to pursue the claim that she had not been paid holiday pay and was due sums in respect of a bonus. The issues to be determined by the tribunal were therefore as follows:

    14.1 Did the claimant make several disclosures concerning breaches of health & safety regulations and coronavirus regulations as well as other legislative breaches to the respondent on 23 February 2021, namely:

        14.1.1 That she had been asked medical questions in interview in breach of s.60 Equality Act 2010 (hereafter the EQA);

        14.1.2 That excessive hours were worked by employees including by child employees and outside permitted hours contrary to the Working Time Regulations 1998 (hereafter the WTR) including reg.5A limits on hours to be worked by young workers.

        14.1.3 That employees had vomited and not been sent home immediately in breach of health & safety regulations and had not been excluded for 48 hours thereafter.

        14.1.4 That a child employee had not been allowed to leave when coughing, visibly ill and had fainted.

        14.1.5 That Mr Chris Cripps had been retching into an open hallway sink during food preparation and bagging.

        14.1.6 That there had been a failure to provide employees with adequate rest facilities.

        14.1.7 That the respondent had penalised employees for genuine illness or symptoms.

    14.2 If so, by her actions, did the claimant amount to an employee at a place where there was no representative on matters of health and safety or, there was such a representative, but it was not reasonably practicable for her to raise the matter to them and did she bring to her employer's attention by reasonable means, circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health or safety.

    14.3 Alternatively, were the matters set out in paragraph 14.1XX above disclosures of information which qualified for protection under s.43B (1)(b) and/or (d) ERA? This will require the tribunal to consider:

14.3.1 Did the claimant disclose information?

14.3.2 Did she believe the disclosure of information was made in the public interest?

14.3.3 Was that belief reasonable?

14.3.4 Did she believe it tended to show that either a person had failed, was failing or was likely to fail to comply with any legal obligation or, that the health or safety of any individual had been, was being or was likely to be endangered?

14.3.5 Was that belief reasonable?

14.3.6 If the claimant made a qualifying disclosure it was protected because it was made to her employer?

14.4 Did the respondent subject the claimant to a detriment because she had raised such concerns or made such disclosures of information? In particular:

14.4.1 Did the respondent extend the claimant's probationary period to 31 March 2021 with a consequential lower hourly rate?

14.4.2 Did the respondent reduce the claimant's bonus?

14.5 Did the respondent dismiss the claimant?

14.6 If so, was the reason or principal reason for dismissal that the claimant had raised health and safety concerns as set out in s.100(1)(c) ERA.

14.7 Alternatively, was the reason or principal reason for dismissal that the claimant had made a protected disclosure?

14.8 Did the respondent made deductions from the claimant's wages by:

14.8.1 Reducing the claimant's bonus;

14.8.2 Failing to pay the claimant holiday pay which was accrued but not taken upon termination of employment.

Findings of fact

15. The claimant was interviewed for the role on 29 September 2020 by Mr Hine and Philip Cripps. She states that in interview she was asked a question about her health which surprised her. She has lived in the United States for a number of years and explained that at the time she was not completely familiar with interview processes in the United Kingdom, but her experience in the United States caused her to be surprised that such a question should be asked. In fact, s.60 EQA states that a person to whom an application for work is made must not ask about the health of the applicant before offering

work to an individual. A contravention of s.60(1) is enforceable only by the Equality and Human Rights Commission. There is a proviso that permits questions that are necessary for establishing whether the applicant will be able to undergo an assessment or whether reasonable adjustments for the interview process are necessary or to discover whether the applicant will be able to carry out a function that is intrinsic to the work concerned among other limited exemptions. On the claimant's account she was asked questions which were general in nature and led to her disclosing that she has endometriosis. See paragraph 3.3 of the claimant's statement.

16. Mr Hine denies that this question was asked but Phillip Cripps accepts that there was a conversation of that kind.

17. In order to resolve this clear conflict of evidence on what was discussed on 29 September 2020 we need to consider the credibility and reliability of Mr Hine as a witness of fact. Our view is that he was mistaken in his recollection of this interview. We consider that he avoided answering questions about what he had asked in interview. Rather he deflected the questions and sought to explain himself with reference to a form (page 88) completed by the claimant. However, both she and Phillip Cripps stated that that form had not been filled in as at 29 September. Mr Hine seemed to us to be so adamant that his recollection was correct that he sought alternative, improbable explanations for what was otherwise logical and clear.

18. Had the section on page 87, the template initial interview form, which is headed "Medical: General Health" been a prompt to complete the form at page 88 that would have been inappropriate at the interview stage because there is no suggestion from the respondent that all of the matters set out in the medical questionnaire were things that would make it impossible for an applicant to carry out an essential function of the role.

19. One question apparently asked on the onboarding is whether the claimant had any skin trouble, or boils, styes or septic fingers. Mr Hine had asked to inspect the claimant's hands at interview and said that he always did so because "A person who has a bad hand problem – If a customer sees you handling food that's a no no" although he accepted that they could wear gloves.

20. Furthermore, Mr Hine, in his own handwriting, appears to have written on the template interview form against the prompt "General Health" the words "GOOD! ENDO? (STOMACH)". Against "Any regular medication" he has written "MEDS FOR ABOVE". In red ink on the document is written:

> "INITIAL ANSWER WAS GOOD BUT DUE TO SLIGHT HESITATION QUESTION REPEATED. SR. THEN SAID SHE HAD ENDOMETRIOSIS BUT CONTROLLED IT WITH MEDICATION AND IT WAS NOT A PROBLEM."

21. Mr Hine's oral evidence was that the questions had been a reminder to check that the form at page 88 was filled in and that, when he had seen

there was a crossing out and change of the answer to question 6 on page 88, he had questioned that. We consider this recollection to be mistaken and it does not in any event explain why the questions were asked. The answers recorded in manuscript bear no relation to question 6 on page 88. The explanation is not logical. On the other hand, so far as they go, they are broadly consistent with the claimant's account of what she was asked.

22. Our findings on this particular incident cause us to draw the following conclusions about Mr Hine's reliability as a witness. First, his emphatic certainty when giving evidence should not be taken as a reliable indicator of accuracy of recall. Secondly, he was defensive about the respondent's practice of asking questions about health in interview which, at the time, they had. Finally, he seemed in this instances to retrofit an explanation to excuse that practice rather than do his best to give accurate evidence.

23. The claimant's evidence about what she had been asked broadly correct and was her genuine recollection. Therefore, she had reasonable grounds to think that the respondent had the practice of asking questions about health in interview. At the time she thought that would probably be unlawful based upon her previous experience but did not know about the exact statutory provision.

24. The medical questionnaire was completed according to both the claimant and Philip Cripps on about 8 October 2020.

25. The claimant's offer letter post-dated the start of her employment and is dated 20 October 2020. It includes a trial period until the end of the year (page 89 and 90). The trial could be terminated by either party giving one week's notice. Page 90 is a statement of the hours to be worked for a general assistant. The claimant was scheduled to work a total of 40 hours and the statement on page 90 also says that the individual will be included in any bonus payments. It provides that "Custom and practice allows for up to 20 minutes unpaid clearing up time if necessary on any day, after that overtime applies."

26. The claimant's evidence is that she initially found that she had a lot to learn and wrote a list of the tasks that she had to do as an aide memoire. She had a six week progress meeting on 21 November 2020. The claimant's evidence (see her paragraph 6.4) was that there was a face to face meeting and that Mr Hine talked through the points that are in a letter at page 101 which was subsequently given to her. Mr Hine agreed that page 101 sets out the guidance that he had given at that stage about the extent to which the claimant was making the expected progress.

27. Among other things, under the heading "Displays stocking/clearing" he stated: "Whilst the standard of work is acceptable the productivity needs significant improvement, we hope further practice will help to ensure you can operate within well proven timescales."

28. Other matters noted were that, in relation to fridge work, stock rotation was essential and "the fridge area needs to have product stored … as per

Chef's directions". "Chef" is how Philip Cripps was addressed by the staff. In the workplace Mr Hine was referred to as "Guv". Mr Hine also noted in the letter of 21 November 2020 that, since drafting the memo, on 20 November Phillip Cripps had been encouraged that the claimant appeared now to have the fridge in reasonable order.

29. Finally, in terms of criticism, Mr Hine stated that it should not be necessary for the claimant to stay after her finishing time to complete her work and noted that there had been an occasion when she had overslept and been late: there is a reference to "2 plus hours over-sleep".

30. In general, the claimant criticises the respondent for a lack of written invitation to meetings such as the six week review, lack of agendas for those meetings, lack of notes or minutes and lack of written policies. She makes a general allegation that there was little by way of paper trail to evidence communications between the individuals who were running the business. Given that this was a relatively small business run by family members, it seems to us to be unrealistic to expect that they would communicate by email rather than verbally and therefore it is less surprising in this organisation than in some others that communications between the directors had not been evidenced by paper trails.

31. Beyond that set out in page 89 and 90, the claimant had not had a written statement of terms and conditions of employment by the time of this progress meeting. She did not complete her probationary period.

32. There is a dispute about exactly when the end of employment was but she was in employment for more than one month, so the obligation to provide statutory terms and conditions under s.1 ERA arose. Mr Hine accepted that it was possible that the respondent had failed to provide the claimant with a statement of terms and conditions that complied with s.1 ERA but said that was because of the business of the Christmas period and the impact of the coronavirus pandemic in particular upon the managers of the respondent business. Nevertheless, an employee should be expected to have the minimum level of paperwork required by law and a s.1 ERA statement would signpost employees to the applicable disciplinary or grievance policy even if only by referencing the standard code of conduct published by ACAS.

33. The respondent is a small employer and, at the relevant time, appears not to have used much in the way of paperwork to record significant exchanges with employees. The absence of paperwork may be explicable by its size but there is a risk to an employer who does not keep paperwork because they do not then have documentary evidence of what they plan to do, what happened at particulars meetings or what the reasons for their decisions were.

34. We do not think it right to draw a general adverse inference of unreliability against the respondent managers because their explanation that they had managed things relatively informally as a small employer seems to us probably to be the genuine reason why the documents are not available.

However, we can only base our decision on the evidence that we have and where there are conflicts of accounts at key meetings and other events, draw inferences from such documentary evidence as is available.

35. Mr Philip Cripps did not recollect giving the claimant advance notice of the meeting on 21 November 2020 but was clear that it had taken place, contrary to his father-in-law's evidence. "Advance notice" is probably overstating it but we accept that the claimant went into a face-to-face meeting knowing when she went into it that it was to be her six week progress meeting. So she had been given notice of some kind that it was to be an important meeting concerning her probation.

36. There are a number of matters that the claimant refers to in her witness statement that she alleges took place in early and mid-December 2020 but about which she did not cross-examine. Since the respondent's witnesses did not have the opportunity to respond to them, we do not make any finding about them and, in any event, they appear no longer to have the relevance they potentially once had given the narrowing of the issues about relevant disclosures.

37. The period of time from about 20 or 21 December 2020 to Christmas Eve that year appears to have been busy in the butchers shop even by the standards of the run up to Christmas in general. The context to the incidents the claimant alleges occurred is that December 2020 was in the height of the Covid-19 pandemic. The second national lockdown either had been or was about to be announced in recognition that the spread of a particular variant meant that coronavirus was on the rise in the population as a whole. Butchers shops, as food shops, were among the businesses which were permitted to be open and last minute changes to the regulations meant that Christmas preparations were in a state of flux which must have meant that it was a particularly hectic time of year for the respondent and all their directors and employee.

38. One allegation is that the respondent had no designated seats on which employees could sit to take their breaks. According to the standard hours employees were allowed a one hour lunch break although there is a dispute about whether employees were able consistently to take those. The claimant's account is that employees either had to stand to eat, go outside the premises for their break and eat sitting on a wall in the village or sit on stairs which can be seen in page 170 & 171.

39. The respondent's account is that seating was available in various different places of the premises. However, this appears to have been upstairs in the office to which, in general, employees did not have access.

40. The claimant's specific complaint is that in the days running up to Christmas there were additional staff on duty working long hours up until 9 or 10 o clock at night. By common consent there was at least one occasion on which Chef cooked a meal for those working late and the claimant states that this led to five people sitting on the stairs together while eating a meal.

This was at a period of time when restrictions were in place on social distancing.

41. The claimant states that in the 23 February 2021 meeting (to which we shall come in due course) what she drew to the respondent's attention was not the absence of chairs as such but the health and safety risk of numbers of people sitting in close proximity to each other during a period where social distancing was required and that this resulted from a lack of chairs or designated seating. She states that this provided information that tended to show that there had been a health and safety risk on these occasions. She further states that, when the shop reopened in January 2021, she had asked to use the upstairs chairs in the office so that she and a colleague could sit separated from each other rather than sit stacked on top of one another, as it were, up the stairs. She states that this request was refused.

42. It is common ground between the claimant and Mr Philip Cripps that she made this request after Christmas for her and Rona to use the office and that this was denied. Although Mr Philip Cripps said chairs were available the claimant was not asked in cross examination about particular locations where they were available. The claimant's evidence was that the only chairs were in the office, which was not available for use as a restroom, and that those included fold up chairs that she had not been permitted to use in the office or elsewhere.

43. Overall it seems to be accepted that staff were sitting on the stairs, the respondent says that the claimant chose this. If we look at pages 170 to 171 it seems to us to be a relatively small space. We accept that the issue before Christmas was that on a limited number of occasions there were many individuals in the shop taking a break at the same time and the claimant was genuinely concerned that this was a health and safety risk given the national circumstances.

44. This led to her making her request after Christmas because she was among the three employees in the business who had not, by that stage, had coronavirus and she believed that they were at an enhanced risk of contracting it as a result.

45. It does appear to us that there were no easily accessible chairs or a designated place for the employees to spend their rest breaks. Had this only been about the claimant and Rona, the risk that the two of them would be unable to practice social distancing if taking a break together and sitting on the stairs, does not seem sufficient to us to lead to a reasonable belief that their health and safety was at risk. It would, nevertheless, be unsatisfactory that there should be no provision of a place to take a break. However, the claimant states that she informed the respondent on 23 February that she, Rona and others had eaten in a close, confined area. Had she communicated to the respondent the situation she described in paragraph 8.4 and 8.5 of her statement then we accept that she had reasonable grounds to believe that that situation led to a health and safety risk for employees because of the inability for them to follow social

distancing requirements. We accept that they had had to eat with approximately five people huddled on the stairs on that occasion as alleged.

46. The claimant also argues and we accept, that as a food producer and food purveyor, a health and safety risk to employees could reasonably be regarded as a health and safety risk to customers because of the risk that disease that could be transmitted between employees could also be transmitted within the shop to customers.

47. We have heard about an apprentice butcher within the business who at the relevant time 16 years old. He therefore counts as a young worker for the purposes of the WTR. He fell ill on evening of 21 to 22 December 2020 when the employees were working late to fulfil Christmas orders.

48. The claimant alleges that she told Philip Cripps that the apprentice was ill and should go home. Mr Philip Cripps was insistent that he had taken appropriate actions as soon as he was aware that the apprentice was ill to call his father and ensure that he went home without the claimant having to be involved. He denies that this was initially refused.

49. We reflect that the period around Christmas 2020 were extraordinary times. It was a very stressful period nationally and, in particular, for food shops which were among the few that remained open. Both staff and customers were suffering stress and anxiety in varying levels. Different people reacted differently to the restrictions imposed by the national government and had different views upon them at the time. The respondent business would have been under considerable pressure at this time. They take justifiable pride in their status as an award winning butcher and no doubt wished to maintain their standards and to ensure their customers had the service that they had come to expect. Nevertheless, there was a serious and novel illness in the community at that time in the form of Covid-19. The respondent had a responsibility to act appropriately and to have a conservative approach to risk in line with the guidelines provided on social distancing and the emergency legislation.

50. When considering which version of events about the apprentice's illness on 21/22 December 2020 we prefer, we consider it alongside the two other instances when he was unwell that the claimant states she also made the subject of disclosures of information in the meeting on 23 February 2021. The total of three occasions were:

    50.1 When he fell ill on the night of 21 to 22 December 2020;

    50.2 In the week beginning 18 January 2021 when he had what the claimant refers to as a whiteout;

    50.3 Approximately two weeks later on about 2 February 2021, as recounted in paragraph 12.8 of the claimant's statement, when the apprentice vomited at work.

51. The evidence of the claimant and of the respondent on the other hand about these three incidents all to a greater or lesser extent involve a conflict about whether the respondent took an appropriate stance in relation to risk and in relation to employee welfare. We therefore consider the conflicting evidence about these three incidents together when forming our view about which version of events we prefer.

52. In relation to the last incident in early February 2021 the claimant's account is that the apprentice told her that "Chef", Philip Cripps, had refused him permission to leave work at a time when the apprentice had vomited on two occasions at work. On the claimant's account this conversation took place when the apprentice was back at his workstation and therefore, self-evidently, if her account is true, he was back at work preparing food despite having vomited. The claimant states that she told the apprentice to go and tell Chef that he had actually vomited.

53. Mr Cripps' account is in his paragraph 20 which he expanded in oral evidence. What he said in cross examination was that the apprentice's first job when arriving was to rinse clothes out that had been soaking in bleach overnight. The apprentice had apparently disappeared and the butchers had come to Mr Philip Cripps and asked if he knew where the apprentice was. Mr Philip Cripps then said the following:

> "I found him in the toilet and he said he had been sick but felt fine. I said wait there I would talk to them in the prep room and I will then phone your father. He while waiting was sick again and was sent straight home."

And

> "He was told to wait in the toilet area while I went to deal with the issues for them … I was going to phone his family to see if other family members were ill."

54. Mr Philip Cripps was asked for an explanation for the absence of that detail from his witness statement. The structure of the respondent witness statements was that allegations of the claimant were put in bold in the statement and then the paragraph numbers set out the response of the relevant witness to the specific allegation. In this instance, the claimant's allegation was that Philip Cripps told the apprentice to stay at work after the apprentice had reported to him that he had vomited but, when the apprentice vomited again an hour later, he was then sent home. After denying that employees are refused permission to leave work when ill or pressure to attend work when unwell, Mr Philip Cripps states in paragraph 20:

> "There was an incident where the apprentice came and told me he'd been sick but felt fine, but shortly after vomited again and was sent straight home."

55. An inference one could draw from that wording is that it was only after the apprentice vomited again, for a second time, that he was sent straight home which is broadly similar to the claimant's version of events. Had Mr Cripps when preparing his witness statement had in mind the account that he gave in oral evidence, then it is hard to understand why he did not proffer it at the

outset. The question is whether he is clarifying something that he thinks is unclear or whether he is significantly changing his account. It was explained to all the witnesses that the opportunity to make clarifications or corrections was prior to confirming the truth of the witness statement when giving evidence in chief and this was not done in this instance.

56. We think that Mr Philip Cripps has changed his account of this incident between written statements and oral evidence. We accept that on this occasion he did not immediately remove from the food preparation area a member of staff who had informed him that he had vomited and did not immediately send that member of staff home. We prefer the claimant's account in relation to the incident of the apprentice vomiting in February 2021.

57. Returning then to the first incident which occurred sometime in the evening of 21 December 2023. On the claimant's account in her paragraph 8.9 this happened very late at night. Mr Philip Cripps' account is very different and he proffers evidence that the apprentice was collected at 8.45pm by his father. Christopher Cripps had also been present on the occasion of this incident. He was not asked in cross-examination about any of the details in the claimant's paragraphs 8.10 and 8.11. By that we mean that he was not asked about his own recollection of this incident although it was put to him and he accepted that the incident had been referred to at the meeting of 23 February 2021. The limited extent to which he recollected this was that he said:

> "It might have been briefly brought up." And "We said that it had been dealt with and handled it as we should have and he was fine. You try to bring it up and Guv said it's all done now."

58. The essence of the conflict between the claimant's account and Mr Philip Cripps' account in relation to this incident is that the claimant says it took place between 11pm and 1am in the morning and that she had to be persistent to get Mr Philip Cripps to send the apprentice home. Mr Philip Cripps states that it happened at about 8.45 pm and that he sent him home immediately (see paragraph 13 PC).

59. We reflect on the length of hours in relation to the apprentice's work pattern on this occasion. His standard working day requires him to start at 8am. So on any view, whether the claimant or Mr Philip Cripps are right about when this occurred, he had worked for more than the eight hour maximum working day which is specified by reg.5A WTR. It does not seem to us to be particularly relevant exactly when this happened in those circumstances.

60. The key difference is whether the claimant reasonably believed that Mr Philip Cripps was initially reluctant to send the apprentice home. She also maintained that the apprentice himself phoned his father. We prefer the claimant's account on this. Having reflected on the February incident, her version of Mr Philip Cripps conduct in the December incident fits the overall pattern; for reasons we have already explained we found Mr Philip Cripps to be unreliable in relation to the February incident; and the pressures that the

business was working under make it plausible in all the circumstances. We therefore prefer the claimant's account about the important difference between the versions of events, namely whether the claimant had to assert herself to get Chef to permit the apprentice to leave work.

61. We attach weight to our findings on the February incident (when the apprentice vomited at work) and to Mr Philip Cripps' inconsistency in oral as opposed to statement evidence in relation to that. We also attach weight to what appears to be a pattern of people pushing themselves to work when they are really not fit to do so and that comes across from the events of Christmas 2020 as a whole. Working when someone is unfit to work is not the same as working excessive hours. It is not the same alleged wrongdoing but the two alleged communications are based on the same incident. A mindset which encourages an individual to think it is acceptable to work more than their regular or designated hours is similar to a mindset that causes that individual to think that they should continue to work when they are unfit to do so. We accept that there was a mindset on the part of the management at this shop that it was acceptable to push oneself to do both these things.

62. We stress that we do not say that an employer should not be able to expect employees to work hard and productively. Employers have the right to expect hard work for pay but expecting employees to work when unfit is not acceptable. In some business at busy times or year the employers does reasonably require employees to commit to overtime, but requiring workers to work in excess of the hours stipulated by law cannot be a reasonable request in ordinary circumstances.

63. We consider that Mr Philip Cripps' comment that the apprentice's father did not complain about the hours that his son was required to work because his son played on his PlayStation until the early hours of the morning misses the point. In our view, the point is that the respondent, as an employer, has a legal duty to ensure that young workers do not exceed the hours that it is stipulated in the WTR that they should work. They also have a legal duty to be able to demonstrate that young workers have not worked in excess of the hours set out in reg.5A.

64. We note that the respondent has told us that they have now outsourced HR advice and we hope that they have received appropriate advice on the record keeping which they are obliged to maintain in order to be able to demonstrate that they have complied with those obligations.

65. The third incident involving the apprentice is the alleged "whiteout" which is said to have occurred in approximately the week beginning 18 January 2021 (the claimant's witness statement paragraph 10.6). Neither Christopher Cripps nor Mr Hine were at work. Mr Philip Cripps was not asked directly about his recollection about whether the claimant told him about her concern about the apprentice on this occasion. But it is common ground that the apprentice was hospitalised the next day and was unfit to work for two weeks. He, like a number of others, had been ill with coronavirus over

the Christmas and New Year period and this appears to have been connected with the earlier illness.

66. We accept that this is another instance of delayed action on the part of the respondent to remove an unwell employee from the workplace. These were all three instances that the claimant experienced and which led to a genuine and reasonable belief that, occasionally, the respondent required young workers to work more than the hours stipulated by the WTR and that staff were not sent home as soon as it was apparent that they were too unwell to continue.

67. Turning back in tmie to that Christmas period on 23 December 2020, the claimant alleges that she heard Chris Cripps retching into the hall sink adjacent to a food preparation area. She covers this in para.8.17 of her statement where she says that he was visibly ill, coughing and sweating. Chris Cripps covers it in paragraph 23 of his. His version of events is that he has a well known problem of a strong gagging reflex and, also, as an asthma sufferer, sometimes gets a build-up of phlegm in his throat and lungs which can make him gag and retch causing him to cough and bring things up. He therefore denies that what the claimant heard was him continuing to work when ill but was the result of him clearing his throat.

68. Whether his actions were because of coronavirus, flu, an asthma related cough or acid reflux, we do not consider that it is good practice to be bringing up the contents of ones lungs or the contents of one's stomach in a sink in a food preparation environment.

69. The claimant did refer to this incident in the meeting on 23 February 2021 and it is accepted both by Chris Cripps and by Mr Hine that she did so. She used it as an example of people being at work when they should not have been. As a matter of fact, Chris Cripps was admitted to hospital with coronavirus a few days later. He states in his paragraph 25 that he was hospitalised around 28 December 2021.

70. In those circumstances, and given that we accept that the claimant was not aware that this was a consequence of the asthma that Christopher Cripps suffers from, we consider that it was reasonable for her to conclude that Christopher Cripps was ill at work and retching into a sink as a consequence. If someone does that it is not unreasonable to think that they are unwell and when that individual is hospitalised four days later it is not unreasonable for the employee to conclude that the two incidents are related. She would need to have a very specific knowledge of Christopher Cripps condition for her to be aware that he was not unwell given the circumstances that she was presented with. Christopher Cripps did not recall telling the claimant that he had a gag reflex. There is no strong evidence to form the basis of a conclusion that the claimant did know and we accept that she did not.

71. The shop closed at 3 P.M. on Christmas Eve and the staff did not return to work until 12 January 2021. As we have already indicated, all bar three of the shop staff were ill with coronavirus over that period including Mr Hine,

Christopher Cripps and also Christopher's brother. All three of those members of the family were hospitalised and Mr Hine was admitted to the Intensive Care Unit on 27 December 2020. Mr Philip Cripps was fortunately not unwell himself but it must have been an extremely worrying period for him with so many members of his close family so ill. The responsibility of keeping in contact with the staff over that period of uncertainly fell on him, and he arranged for a deep clean to be carried out of the shop.

72. This is consistent with what the claimant says about his attention to detail and high standards concerning food hygiene. She was at pains to stress how much she respected Mr Philip Cripps' approach to food standards and food hygiene. Her criticisms of the respondent were in no way related to the standards of the products that they provide or the service they provide to customers but were directed to management of employees and HR practices. It was unchallenged that Philip Cripps also has responsibility for Health & Safety (see para.3 of PC's statement).

73. On 12 January 2021 Philip Cripps requested the claimant to start work on 13 January and participate in the deep clean. The following day (see paragraph 9.6) she requested to Mr Cripps Senior that she be permitted not to attend work because she was concerned about coronavirus and asked about precautions. There is a printout of an exchange of messages between the two of them at pages 102 to 107. At the bottom of 102 there is a text sent at 07.20 AM on 13 January saying that she may need to delay her return until the following day or Friday "on my immunologist's advice yesterday". Mr Cripps replies to say "No problem". And it appears that the claimant wished to have a steroid dose to boost her immune system in case of exposure to coronavirus.

74. She returned to work in the afternoon of 14 January 2021.

75. The shop reopened on 19 January. According to the claimant (see paragraph 10.2) Mr Hine informed her that he needed to make arrangement for her to join the pension and because her understanding was that this was something that would be confirmed only when her probation was finished, she asked about that. The claimant's version of events is that she was then told that her probation was over. This is the same day when the claimant told Philip Cripps that she was concerned that the apprentice was unwell.

76. According to Mr Hine, he had a telephone conversation with her on 20 January 2021 where he mentioned the pension to her and told her that her probation would continue.

77. On 21 January 2021 (see paragraph 10.8) the claimant vomited at home and contacted Philip Cripps the following day to ask him whether she should come in. As appears from the text at page 103, she explained to him that she had no symptoms but was suddenly nauseous. She said it could be a reaction to a steroid and would check with her doctor. She asked him if she should stay at home. Philip Cripps told her to stay to home.

78. The following day the claimant was sent a letter by the respondent about an extension of probation (page 114). In it Mr Hine informed the claimant that he had explained to her by telephone on 20 January that she needed to be included in the pension provision. He then stated in paragraph 2 of the letter that a conversation about her probationary period had followed and stated:

> "I told you that as a number of complex medical issues that have not been made known to us at interview had arisen it would be normal to extend the probationary period to obtain a clearer assessment. I also told you that we were very happy with your work and that you fitted in well and if absent issues were resolved then I would be prepared to confirm your position permanent.
>
> Just 48 hours later you advised by text that you had sickness overnight then asked if you should come in! As a food business nobody is allowed on the premises until any form of sickness is resolved.
>
> Accordingly I am not going to sign off on the probation period before the end of March and between now and then I expect a consistent work attendance."

79. There is therefore a specific reference to the claimant's absence on 21 January 2021 as a reason for the extension. In the final paragraph Mr Hine also emphasises the importance of reliability of attendance. The only other apparent criticism of the claimant is of asking a question to which there was an obvious answer (i.e. regarding working after sickness).

80. The relevant dispute between the competing accounts of the probation extension are whether stock control was mentioned in the telephone call on 20 January 2021, whether the probation was extended in that telephone call or confirmed as concluded as on the claimant's account, and what, if any, concerns did Mr Hine express at this point.

81. In paragraphs 56 and 57 of his witness statement Mr Hine states that he had noted in writing to the claimant a number of matters which include the need to improve productivity and stock rotation. He also refers to the claimant taking notes as a memory aid and states that he "commented that they had not been made aware of any memory problems".

82. These paragraphs in Mr Hine's witness statement are impossible to square with the wording of page 114 in which he expresses that the respondent is very pleased with the claimant's performance. He sought to explain that contradiction as "soft pedalling" but it does not make any sense for him to have done so if he expects and wants the claimant's performance to improve which can be the only sensible purpose of extending a probationary period. The only concerns of substance that are expressed in the letter by which that was communicated at page 114 are about her absences.

83. As the claimant put to Mr Hine, the matters that are set out in paragraph 57 are strongly reminiscent of the negative matters set out in the six week progress report at page 101.

84. Mr Hine's oral explanation of his para.57 list was that he wrote his statement without reference to the documents and put in his recollection. The most favourable thing to say is that he mis-remembered his state of mind as at January 2021 and confused it with his state of mind as at November 2020. However, in oral evidence, Mr Hine positively stated that the matters set out in paragraph 57 had been present in his mind when deciding to extend the probation in January 2021 even when the similarity with the letter at page 101 was drawn to his attention.

85. We think that the Claimant's absence on 21 January 2021 hardened Mr Hine's intention to extend the probation. He expressly stated that he expects a consistent work attendance in the letter the following day.

86. As a comment, the Claimant does appear to us to think that the Respondent should accept a level of absence if they are given notice of that absence and a plausible or *"good"* explanation. She states that short absences were compensated for by working through her lunch hour.

87. Our view is that this business needs people to be in work and working at particular hours to provide cover. The Claimant appears to have had an attitude that an employee was entitled to bear their own responsibility for their working time and that is not commonly acceptable in a junior position such as the one that she occupied. The Respondent is entitled to expect reliable attendance at the start and finish times that are agreed to amount to an employee's working hours. They are entitled to expect that workers would prioritise getting to work for the hours that they are contracted to do.

88. Nevertheless, had Mr Hine's reasons for extending the probationary period included performance, we are quite sure that he would have stated so in the letter and he did not.

89. In oral evidence Mr Cripps said that after the deep clean he had become aware that the Claimant's stock check had been inadequately carried out and a large number out of date products had been discovered. He mentioned there being 21 such products. There is also reference in Mr Hine's statement to concern that the claimant had prepared more of a product than instructed to or needed which lead to waste.

90. We accept that it is of crucial importance to the Respondent that out of date items should not be offered for sale for all of the reasons that they explained. However, there is no evidence that those 21 items were drawn to the Claimant's attention during her employment, and they have not been particularised within this litigation despite the many opportunities the Respondent has had to do so. It is hard to understand why they would have failed to set out these details had there in fact been frequent, or repetitive, evidence of the Claimant failing to remove out of date stock or rotate stock subsequent to the six week probation review.

91. The Claimant accepted the decision to extend her probation, although she was disappointed about it.

92. The Claimant states in her paragraph 12.4 that on 28 January 2021 she contacted Mr Manning in Kenya and made a statement that is consistent with some of the statements she has made in these proceedings. Given our conclusions and reasons for preferring her evidence, we have not needed to rely upon the statement of Mr Manning. In any event, given that he has not attended to be cross examined upon it, we do not think it is appropriate to give it significant weight. The statement of Mr Frost was admitted without question, but amounts to a character reference for the Respondent's witnesses as employers in the experience of Mr Frost. It does not assist us in making a decision about the issues we have to decide.

93. There were two occasions in early February when the Claimant was late for work: 2 February and 10 February 2021. The exact length of time that she was late are disputed. She says that she was merely 15 minutes late on the second occasion and it was a short amount of time late on the first occasion (paragraph 14.2) since it was for a necessary plumbers visit. Regardless of the reason, unreliability is something that an employer could reasonably take into account when deciding whether or not to retain an employee beyond their probationary period.

94. On 13 February 2021, the Claimant states that she had symptoms of Covid-19 and remained at home in order to take a test. She explains in some detail in her paragraphs 14.5 to 14.12 why it took her longer than she originally expected to obtain a test, because she wished to avoid coming into contact with people whilst she did so and had no means of driving to a drive-in test facility and relies on texts to friends to support this (page 143)..

95. She returned to work following a negative test result. The Claimant accepted that a packet of out of date gravy had been found, although her case is that it was located on the top shelf behind some flour where she would be unable to find it and that, to prevent that occurring again she arranged that a taller member of staff should perform the check on that shelf every couple of days.

96. This brings us to the meeting of 23 February 2021 between the Claimant, Mr Hine and Christopher Cripps. The Claimant's evidence, which we accept, is that very shortly after the meeting she went outside, sat down and made some jotted handwritten notes on the envelope she had been given during the meeting which contained information about the Pension Plan (page 137). She then states that she made type written notes (page 138) within a few days of the meeting and produced to the Tribunal a screenshot of the Meta data of the document to demonstrate that she had last amended that file on 26 March 2021. We accept that her notes on page 137 and 138 were made within a relatively short space of time, to set out her recollections of the meeting.

97. She was called into the meeting by Christopher Cripps. In some ways his evidence is consistent with the Claimant's. First, he did recall telephoning her to call her to come into the meeting. He did not disagree with her account that the reason he gave to her at the time was that she needed to come and get her payslip.

98. We accept, therefore, that is all the Claimant knew about the meeting when she went into it. Christopher Cripps' account is that he was asked by Mr Hine, his Grandfather, to attend the meeting and another that was held immediately after it, for experience. He is being trained to take over those aspects of running the business that Mr Hine is presently still responsible for. At the time, Christopher Cripps was still recuperating and he explained credibly that the impacts of his recent recovery from Covid were still being felt by him.

99. We consider whether Christopher Cripps would have been called in for experience when he was still recuperating, had the meeting simply been intended by the Respondent to be for an informal purpose. It is certainly improbable that he was asked to attend the meeting if it was planned by the Respondent to be one only to hand out a payslip, or even to provide in writing details of the Pension Plan. The Claimant stated that she considered that he had been called in for the subsequent meeting with the apprentice.

100. Her evidence is that there were three phases to the meeting. In the first phase she was given the payslip and the Pension Plan pack and was told that in future she would be paid SSP for sickness related absences, not full pay by way of company sick pay. She then states that there was the second phase where she made the multiple disclosures that are set out in the List of Issues, amongst other things. She goes into detail about what she said in paras.16.1 and following and 17.1 and following, of her Witness Statement. Then, according to the Claimant, Mr Hine brought up the out of date gravy towards the end of the meeting.

101. Another matter where Mr Christopher Cripps is broadly consistent in his version of events with that of the Claimant, is that he stated it was about an hour into the meeting that stock control was brought up and that is consistent with the Claimant's version that it was after the meeting had discussed a number of other matters that the out of date gravy was mentioned.

102. By contrast, Mr Hine states that he kept shutting the Claimant down when she attempted to raise various concerns and reiterated that the stock rotation was the important matter that he wished to discuss.

103. There are also contradictions between Mr Christopher Cripps' evidence and Mr Hine's evidence, as follows:

    103.1 The Claimant states that one of the matters she mentioned was being asked questions in interview that led to her revealing that she has Endometriosis. She states that Mr Hine accused her of being a liar and had not mentioned it in interview. Christopher Cripps, in his paragraph 8, says he has no recollection of the Claimant being called a liar, but states,

> "Mr Hine did explain that after the incident he researched the condition to be a more understanding employer".

Although this is not an acceptance by Christopher Cripps that the Claimant raised being asked about health conditions in interview, he does appear to accept by this that there was a discussion about the episode related to Endometriosis that the Claimant had experienced in November. In oral evidence, he appeared to accept that the Claimant referred in the meeting of 23 February to being asked about her health in interview and disclosing Endometriosis at that time. This contrasts with Mr Hine's evidence which was that there was no mention whatever of the condition Endometriosis.

103.2 Another recollection of Mr Christopher Cripps about the meeting of 23 February 2021 is set out in his paragraph 9. He accepts that, in the meeting, the Claimant stated that the company had "contradictory Covid protocols" and also that she had told Mr Hine that employees,

> "…were fearful of admitting when they were ill in case they were mocked or lost their jobs."

However, Chris Cripps stated those allegations had been untrue. He goes on to detail why he says that is the case. This contrasts with paragraph 32 of Mr Hine's statement. The extent to which the latter accepted that the Claimant raised matters that she states to have been of concern to her, is that he says she,

> "…kept interrupting and reverting to the subject of face masks quality / double masking and her distorted account of [Chris Cripps] gagging until I firmly said STOP ! and told her that we were there to discuss her work shortcomings and frequent absences".

103.3 The contradiction is that whereas Mr Hine merely recollects the Claimant referring to face masks and her account of Mr Cripps retching, Mr Christopher Cripps accepts that the Claimant went further and said there were contradictory Covid protocols.

104. That in itself is strikingly similar to the note the Claimant wrote (page 137), which recorded her having said,

> "Too many contradictions re health, safety and symptoms. Cannot risk health → no other option."

105. Her explanation of this and of the circling of the word "contradictions" was that she considered there to be a contradiction between implementing Covid Regulations and not supporting employees to take time off if they were unwell.

106. As a whole, Mr Hine's evidence was that the purpose of the meeting was to discuss performance and attendance (see his paragraph 60 where he also describes the Claimant as "not fulfilling tasks required of her which led to stock waste"). However, we think it is surprising that had the intention been to have such a meeting, it was done without even the limited amount of preparation given for the six week review. On that occasion at least the Claimant had known she was coming to a six week review and the bare bones of the matters to be discussed were set out in advance in a letter that formed the basis of the discussion.

107. As we have explained above, we have found that Mr Hine's recollection is suspect and we look for documentary support for his recollections, rather than taking it at face value as a result. Mr Christopher Cripps' evidence suggests that the overall structure of the meeting was as the Claimant says, rather than as Mr Hine says.

108. For those reasons we consider the Claimant's recollection to be more reliable than that of Mr Hine. There is a specific allegation made by both Mr Hine in his paragraph 33 where he alleges that when he addressed the question of stock control, the Claimant stated,

> "That's correct, but I have a short term memory deficiency!"

109. Mr Hine states that that caused him to say that she was not capable of doing the job. He continued that the Claimant then became emotional and he suspended the meeting and gave her the afternoon off.

110. Mr Christopher Cripps also confirms his Grandfather's account of that statement saying in his paragraph 7 that the same phrase was used by the Claimant. It was first alleged by the respondent in the termination letter dated 1 March 2021 (page 120).

111. The Claimant cross-examined Mr Hine effectively about his account of the extension of the probationary period in paras. 56 and 57. We have referred to that in paragraph 81 - 84XX above. In that, he referred to the Claimant having taken notes as a memory aid which the Claimant states to have been only at the start of her employment. In the Progress Report for the week ending 21 November 2020, at page 101, it was noted that the Claimant appeared,

> "…to need to make a lot of notes as a memory aid. In interview, you did not make us aware of any problems so if there is one please do talk to the Chef or myself in order that we can assist."

112. The Claimant put to Mr Hine that he had re-ordered events by stating that that had been something causing him to extend the probation in order to bring the memory point to the fore and appear to give support to his assertion that she claimed to have a short term memory problem. In other words, she put to him that he had made a false accusation that she stated she had a short term memory deficiency and gave more prominence to the notes being used as a memory aid in his Witness Statement in order to fit

with that. He denied that, stating that had the Claimant not made that statement about a short term memory deficiency he would have proceeded with what he had gone into the meeting intending to do which had been a warning about what she needed to do for the remainder of her probation if she had any chance of being confirmed in full time employment. So he stated in support of the allegation that he had changed his mind from going into the meeting intending to continue with the probation to 31 March 2023 but setting clear expectations, to a decision to dismiss the Claimant immediately.

113. We think it is possible that consciously, or subconsciously, Mr Hine drew on the point about notes as a memory aid and made it appear that that concern had been expressed two months after it had actually had, in order to make it appear more likely that the Claimant had stated that she had a short term memory problem. We think it is far more likely that the Claimant referred to a lapse of concentration in explanation of her failure to spot the gravy behind the flour on the top shelf and the Respondent's witnesses have sought to retro fit an explanation for their decision ultimately to dismiss the Claimant.

114. The Claimant's manuscript notes at page 137 suggest that the following topics were raised by her at the meeting:

    114.1 Her request that she be permitted to choose to wear a double mask;

    114.2 A statement that caused her to think Mr Hine doubted that she had genuinely had Covid symptoms on 13 and 14 February 2021;

    114.3 The number of and reasons given for the Claimant's absences;

    114.4 In particular, the day off because of taking steroid medication and to get an immune boost, seemed to have been mentioned, as was the water leak absence; and

    114.5 Then the Claimant mentioned what she regarded as being contradictions and that the Directors had come in at a risk to their own health.

115. The bulk of the notes concern the Claimant's own absences and the reasons for them rather than her concerns relied on as Health & Safety concerns or disclosure in the present litigation. The typed notes at page 138 do provide a near contemporaneous support for her account that various matters of concern to her were raised. Some of these were corroborated by Mr Hine and Christopher Cripps as we have already said.

116. To go through the Claimant's manuscript list:

116.1 The word "Endo" on page 138 supports her allegation that she raised the question of being asked a medical question at interview which caused her to reveal that she had Endometriosis and this was also recalled by Christopher Cripps. We accept that she did communicate that information;

116.2 The Claimant's allegation that she told the Respondents that they asked employees to work excessive hours, including young workers, is supported by her typed notes at page 138 where she states that the Apprentice, aged 16, had worked 17 hours on one day;

116.3 Her allegation that an employee had vomited and not been sent straight home, or excluded for 48 hours, and that she mentioned that on 23 February 2021 is supported by the bullet point about Mr Cripps on page 138 and his and Mr Hine's acceptance that the incident was mentioned;

116.4 Her allegation that she told the Respondent that a child employee had not been allowed to leave when coughing or visibly ill, in relation to the Apprentice at Christmas is referred to on page 138. It was reflected by Mr Cripps in his oral answers to cross examination when he initially said that he recollected it and then said it might have been briefly brought up;

116.5 Both Mr Cripps and Mr Hine recollected the incident where Christopher Cripps had retched into the sink being mentioned in the 23 February meeting. It is also more likely than not that the claimant made specific reference to the apprentice not immediately being sent home when he vomited at work;

116.6 Mr Hine does recollect the Claimant raising the question of not being permitted to wear a double mask. This is a different social distancing concern than the Claimant's allegation that she raised the lack of suitable seating to enable a place to rest or eat in the pandemic but it does suggest that the Claimant's concerns about her inability to socially distance and take protective measures that she was comfortable with, are recollected by him to have been mentioned which provides some support for her case; and

116.7 The Claimant's account that she stated the Respondent penalised employees for genuine illness or symptoms, is at the heart of her explanation that she considered there to be a contradiction between the social distancing measures in the shop and their attitude towards illness.

117. Overall there is sufficient support in the documentary evidence and in the Respondent's account to cause us to give credence to the Claimant's account. Furthermore, there have been reasons for us to doubt the Respondent's accounts as we have explained already. For those reasons we prefer the account of the Claimant of 23 February 2021. We accept her account that she communicated the information that we have set out above.

118. As we explain in paragraph 112XX above, Mr Hine says that he was the decision maker and that he decided to dismiss having gone into the meeting with the intention to set clear expectations for how the Claimant would succeed in passing her probation. It is clear from Mr Christopher Cripps' evidence that he played no part in the decision and his reflection is that he was an observer at it. He said he could not remember a lot about the meeting, but remembered sitting in the chair with the conversation being a bit of a blur. He said that he was still short of breath at the time and was not doing physical work. Mr Hine said that having made the decision he then spoke to Philip Cripps and informed him of it.

119. We have rejected Mr Hine's and Mr Christopher Cripps' evidence that the Claimant made the statement that she had a "short term memory deficiency". Given that, we need to consider what was it that changed Mr Hine's mind about the Claimant's continued employment. The conclusion we have reached is that Mr Hine thought that the Claimant was making trouble.

120. It was clear from some of his evidence that Mr Philip Cripps considered that the Claimant overstepped her responsibility when dealing with other staff in the shop. Mr Hine criticised her corporate attitude and, using our own words, appears to have thought that she was somewhat self-righteous. The Respondent's Directors had conducted their business in a particular way for a long time and did not see any reason to change.

121. The events of the meeting of 23 February 2021 were clearly a trigger for Mr Hine's decision to dismiss the Claimant at that time. Although he says that capability and attendance were problematic, the most recent probation review did not raise any criticisms whatever about capability or performance. We accept that the Respondent had genuine and objectively justifiable concerns about attendance. But nevertheless, it was something that happened in that meeting that caused the decision to dismiss to be made. We are driven to the conclusion that that was the disclosures made by the Claimant on that day, when she outlined her criticisms of a number of things that had happened over the previous couple of months.

122. It is worth recording that although the statement was made in January that there were no concerns about performance, in terms of the actual tasks that the Claimant was doing, it appears that Mr Philip Cripps felt that she was supposed to be carrying out simple tasks and she just needed to get on with them. He thought she ought to be able to have mastered the preparation that he was demonstrating to her and stated that he could not understand why her productivity level was not to the standard expected. There does appear to have been some dissatisfaction on the part of the Respondent with the Claimant's performance, but not enough to have been expressed

as a reason for extending her probation. Mr Philip Cripps thought that he could work with her and that she would improve. The principal reason for the dismissal happening when it did, was what the Claimant communicated in that meeting. What would have happened had she not been dismissed for that, is a question for the remedy hearing. Questions such as whether the Claimant would have resigned, or whether the Respondent would have dismissed the Claimant in any event and if so when, are not for this stage in the proceedings.

The Law applicable to the claims

Protected disclosure detriment or dismissal claims

123. The structure of the protection against detriment and dismissal by reason of protected disclosures provides that a disclosure is protected if it is a qualifying disclosure within the meaning of s.43B ERA and is made by the employee in one of the circumstances provided for in s.43C ERA.

124. Section 43B(1), as amended with effect from 25 June 2013, reads as follows,

> "In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following —
>
> (a)…,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c)…,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e)…
>
> ."

125. In Kilraine v London Borough of Wandsworth [2018] ICR 1850, Sales LJ rejected the view that there was a rigid dichotomy between communication of information and the making of an allegation, as had sometimes been thought; that was not what had been intended by the legislation. As he put it in paragraphs 35 and 36,

> "35. …In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). …
>
> 36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of

> all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in [Nurmohammed], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."

126. The structure of s.43B(1) therefore means that the tribunal has to ask itself whether the worker subjectively believes that the disclosure of information, if any, is in the public interest and then, separately, whether it is reasonable for the worker to hold that belief. Similarly, we need to ask ourselves whether the worker genuinely believes that the information, if any, tends to show that one of the subsections is engaged and then whether it is reasonable for them to believe that.

127. The reference to Nurmohammed is to Chesterton Global Ltd v Nurmohammed [2017] I.R.L.R. 837 CA, where the Court of Appeal gave guidance to the correct approach to the requirement that the Claimant reasonably believed the disclosure to have been made in the public interest at paragraphs 27 to 31 of the judgment. Those paragraphs can be summarized as follows:

    127.1 The Tribunal has to ask, first, whether the worker believed, at the time that he or she was making it, that the disclosure was in the public interest and secondly whether, if so, that belief was reasonable.

    127.2 The second element in that exercise requires the Tribunal to recognize that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured.

    127.3 The tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking but only that that view is not as such determinative.

    127.4 The necessary belief on the part of the worker is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks to justify it after the event by reference to specific matters.

127.5 While the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it.

127.6 The essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.

128. If the worker has made a protected disclosure then they are protected from detriment and dismissal by s.47B and s.103A of the ERA respectively. So far as material, s.47B provides,

> "47B.— Protected disclosures.
>
> (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
>
> (1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
>
> (a) by another worker of W's employer in the course of that other worker's employment, or
>
> (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.
>
> (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
>
> (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
>
> …
>
> (2) This section does not apply where—
>
> (a) the worker is an employee, and
>
> (b) the detriment in question amounts to dismissal (within the meaning of [Part X])."

129. By s.48(1A) of the ERA, a worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of s.47B.

130. Section 103A, so far as is relevant, provides that:

> "An employee who is dismissed shall be regarded … as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure"

131. This involves a subjective inquiry into the mental processes of the person or persons who took the decision to dismiss. The classic formulation is that of Cairns LJ in Abernethy v Mott Hay and Anderson [1974] ICR 323 at p. 330 B-C:

> "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee."

132. The reason for the dismissal is thus not necessarily the same as something which starts in motion a chain of events which leads to dismissal.

133. Where, as in the present case, the dismissed employee did not have sufficient qualifying service to bring a claim of so-called "ordinary" unfair dismissal, they bear the burden of proving that the reason or principal reason for the dismissal was the protected disclosure or, as the case may be, the fact that they raised health & safety concerns.

134. So far as is relevant, s.44 ERA provides as follows:

> 44.— Health and safety cases.
>
> (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
>
> (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
>
> (b) being a representative of workers on matters of health and safety at work or member of a safety committee— […] the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,
>
> (ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),[.or]
>
> (c) being an employee at a place where—
>
> (i) there was no such representative or safety committee, or
>
> (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.
>
> […]

(4) This section does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X."

135. So far as relevant, s.100 ERA provides as follows:

100.— Health and safety cases.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—[…]the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) …."

136. The claimant relies on s.100(1)(c), which applies if the employee works at a place where there is no official safety representative or there is one and it is not reasonably practicable to raise the relevant health and safety issue through them.

Conclusions

137. We have set out in paragraphs 112-115 XX above our findings about the several disclosures of information made by the Claimant on 23 February 2021. She has satisfied us that she communicated information as alleged in para.14.1XX. Those communications has sufficient specificity to amount to factual information which tended to show that either there was a failure to

comply with a legal obligation or that there was or had been a risk to the Health & Safety of individual(s) for reasons which we explain in more detail below. The Claimant has also persuaded us that she genuinely and reasonably believed that the disclosures were made in the public interest for the following reasons:

137.1 She knew that the questions she was asked in interview, that appear on the template form on page 87, appeared on a pre-printed list of possible interview questions. She therefore knew that, if on no other occasion, the same questions were asked of the individual who was interviewed on the same day as her. She explained to us and we accept, that she believed therefore that it was part of the Respondent's interview process for others certainly on the same day as her, probably before and potentially after, that they asked questions about general health in breach of their obligations under s.60 EQA. We accept that she believed this to be a matter of public interest concerning not merely herself, but a wider section of the public, namely those that were interested in applying for work with the Respondent. Although the Claimant did not know at the time that the prohibition on asking questions of that kind is found in s.60 EQA at the time that she communicated the information she genuinely believed that it was contrary to an obligation of recruitment practice and employment law. Given her previous background, that was a reasonable belief for her to hold.

137.2 Her statement that excessive hours were worked by staff, including by young workers, was based upon her own observation of that. The detail was that she believed that the young worker had worked for 17 hours in one 24 hour period. Even if the Apprentice had, as Mr Philip Cripps asserted, worked 12 hours that was still more than was permitted under reg.5A WTR. The Respondent is clearly a regular employer of young workers and in this instance was training the Apprentice as a Butcher. We accept that not only did the Claimant genuinely and reasonably believe that she was communicating information which tended to show that there was a breach of the Working Time Regulations 1998, but that she genuinely and reasonably believed it to be of public interest because it concerned a section of the public wider than herself, namely young workers and prospective young workers of the Respondent.

137.3 The Claimant has not identified a specific legal requirement that employees who have been sick at work should be excluded for 48 hours. It is common ground that that is good practice and Mr Hine had criticised the Claimant for asking whether she should remain at home if she had been sick. Whether or not there is a specific legal obligation engaged,

we accept that the Claimant reasonably and genuinely believed that when the Apprentice had vomited on more than one occasion and had not immediately been sent home this was contrary to, at the very least, expected normal good practice for infection control and therefore had risked the health and safety of other members of staff and, potentially, customers. This information, therefore, tended to show the wrongdoing set out in s.43B(1)(d) Employment Rights Act 1996. The Claimant also genuinely and reasonably believed that there was at least some risk to public health by an individual not immediately being removed from the workplace, based on what she had observed of his state of health, given that his role was food preparation.

137.4 The communication that the Apprentice had not been allowed to leave when visibly ill, we likewise accept was genuinely and reasonably believed by the Claimant to tend to show that the Respondent had endangered the Health and Safety of that individual and that they were not complying with a legal obligation to protect their employee from harm, or other employees from harm who might come into contact with and contract something from the Apprentice. We also accept that the Claimant genuinely and reasonably believed that when a worker engaged in food preparation was unwell and not removed from the workplace, that was in the public interest because of the risk of communication of disease to members of the public attending the shop and other members of staff.

137.5 By like reasoning, we accept that the communication of information about Christopher Cripps retching into the sink satisfies the statutory test for protected disclosure.

137.6 The Health and Safety Executive documentation, at page 95 of the Bundle, states that there should be a suitable seating area for workers to use during their break, although the Respondent was not asked questions about this. We consider that the Claimant reasonably and genuinely believed that the lack of suitable rest facilities was a breach, as she alleges, of the Work Place (Health, Safety and Welfare) Regulations 1992, but also that the consequence of no proper seating arrangements was that in particular in the run up to Christmas, employees were huddled together on the stairs to eat and were unable to practice social distancing during the time of the pandemic. She genuinely and reasonably believed that not only did this tend to show a breach of a legal obligation to provide these facilities, but also that the employees' health and safety were at risk because of the risk of communication of disease. She genuinely and reasonably believed that this was in the public

interest because of the risk to the members of staff as a whole and not merely to herself.

137.7 When the Claimant communicated on 23 February 2021 to Mr Hine and Christopher Cripps that she considered there to be a contradiction between the obligation on the Respondent to follow legislation & guidelines in relation to coronavirus and their attitude to employee illness, namely that she had observed employees who appear to be disbelieved or penalised for apparently genuine illness, she genuinely believed that this led to people remaining in the workplace when they were unwell and unfit to do so. She gave us a prime example that of Mr Hine himself, whom she had observed as appearing to become unwell immediately before Christmas. At the time she made the disclosure of information on 23 February 2021 she knew that a large number of the members of staff working on 24 December 2020 had been ill with coronavirus over the following two to three weeks. She genuinely and reasonably believed that this behaviour was in breach of the employer's duty of care to employees to take reasonable care that they should have their health and safety protected at work and was also a risk to the health and safety of those employees. She also genuinely and reasonably believed that her communication was in the public interest because it concerned that wider group of employees and, potentially, customers.

138. For those reasons we are satisfied that all the information categorised into seven different categories that was communicated on 23 February 2021, was a qualifying disclosure within the statutory test set out in s.43B(1)(b) and (d) ERA. These were, therefore, protected disclosures because they were made to the Claimant's employer.

139. As set out above, s.44 and s.100 Employment Rights Act 1996, require first that there should be no designated Health and Safety Representative at the place of work, or that if there is one it is not reasonably practicable to bring the matters of concern to that person's attention. We have heard that Mr Philip Cripps was the designated Health and Safety Representative. Although this was not canvassed in argument, it seems to us that the Claimant probably does not fall within those sections because a different route of bringing Health and Safety concerns to her employer was available to her. We are mindful that this particular point was not canvassed with the Claimant, either by the tribunal or by the Respondent in submissions. However, in circumstances where we have accepted that the disclosures were protected disclosures within Part 5 of the Employment Rights Act 1996, it makes no difference to the Claimant's chances of success whether we also find that she was protected under s.44 and s.100 as a result of the same communication and we do not think it necessary to recall the parties to cover this point. We conclude that, because she did not go to the Health

and Safety Representative those sections are inapplicable and we dismiss those claims.

140. The detriments that had been relied on by the Claimant in the original List of Issues all pre-dated the disclosure relied on at the Final Hearing. The extension of the Claimant's probationary period was done on 22 January 2021, before the meeting at which the disclosures were made. They therefore cannot have been done on grounds of the disclosure and the claim of protected disclosure detriment fails.

141. However, insofar as the dismissal is concerned, we accept that it was the communication of information in that meeting of 23 February 2021 that caused Mr Hine to decide to dismiss the Claimant rather than, as he had intended going into the meeting, to set out expectations for her attendance that she would need to meet if she was to be confirmed in post at the end of her probationary period. We accept that the reason, or principal reason for dismissal was therefore the protected disclosures that were made by the Claimant on that occasion and find that she was unfairly dismissed.

Unauthorised deduction of wages: Findings and Conclusions

142. The Claimant claimed underpayment of bonus as a detriment on grounds of protected disclosure, but as such it fails by reason of pre-dating the disclosures relied on. Mr Hine's evidence was that he made the decision about the bonus and stated that the Christmas bonus was a relatively small part of the bonus, more as a thank you with the staff being paid overtime for the hours that they had actually worked at a standard rate. His evidence was that, following his recovery from coronavirus, he started thinking about the amount of the bonus on or around 14 January 2021 and had to send the figures to payroll by 19 January 2021 in order for it to be paid at the end of January. His evidence was that the Claimant had received a quarter of what the Butchers had received and they had been paid £600. In this instance, we accept Mr Hine's evidence about what he did and why. Preparing bonuses is an annual event and the timing he referred to is consistent with the documentary evidence on page 91.

143. The Claimant's evidence from her Schedule of Loss was that she was claiming £1,750.00, the difference between what she was paid and what she stated an unidentified person in the similarly junior position to her was paid, which was £1,900. We consider the Claimant's evidence about that to be anecdotal and not reliable, it is not supported by documentary evidence. Furthermore, it is clear that the decision to pay her £150 was made before she made the protected disclosures.

144. The bonus was a discretionary payment as appears from page 91. Although the Claimant had not seen this statement of the Bonus Scheme during the course of her employment, she did not dispute that it was genuinely the way that the bonus was administered. It states that the first payment is based on nine months from 1 April to 31 December and is pro-rated if someone joined during that time period, as the Claimant did. The second payment is stated to be based on the overall performance or

profitability of the company for the full financial year up to the end of March. It is stated to be usually added to the main monthly salary.

145. Although not expressed in that note to be discretionary, we accept that it was (RH statement para.64). In any event, the Claimant has not shown that she was contractually entitled to more than the £150 that she was paid. It is open to her to argue that had she remained in employment she would have received a bonus in her May month's salary and that that should be added to her compensation.

146. Insofar as annual leave is concerned, we accept that the effective date of termination was 31 March 2021. The Claimant had become unfit to work following the events of the meeting of 23 February 2021 (see page 118 where she sends a Doctor's note to the Respondent). The reason she describes in that letter for taking sick leave, is

> "an intolerable burden re honest and open symptom reporting of Covid prevention measures, employer / employee duty of care and sick leave",

That, and her statement that she had tried to discuss that on Tuesday, also supports her evidence that she made the disclosures relied on.

147. On 1 March 2021, Mr Hine wrote to the Claimant stating that in the meeting the Claimant had,

> "…surprised us by accepting the problem and stating that it was because you had a short term memory deficiency."

He went on to say that this amounted to an admission that she was unable to do the job and had made a decision to terminate her employment with one week's notice. He stated that her trial period had been due to end on 31 March 2021,

> "So we are prepared to pay your full salary for the month (not SSP) without you having to work. We hope this gesture is accepted in the spirit in which it is given."

148. According to the Claimant (her para. 22.2), she received this on 4 March 2021. Her final salary was paid on 31 March 2021 (page 128). That payslip does not include any holiday pay. The Claimant had worked for the Respondent for six months and was a full time employee. Over those six months she therefore had accrued 14 days' leave. The leaving date on the P45 of 31 March 2021 corresponds with that asserted by the Claimant. The Claimant also took the Respondent in cross examination to the payroll records as objective evidence that the Respondent's internal payroll records indicated that she was still owed 14 days. The Respondent agreed that if we conclude that the Claimant was paid until the end of March and that her employment ended on 31 March 2021, then 14 days' annual leave was payable. We accepted that common position.

149. The Respondent's argument was that they knew that they were paying more to the Claimant than they needed to pay by paying her until the end of the

month and considered that that should include whatever holiday was owing. However, the first decision we need to make is what was the effect of the termination letter and when did it cause the employment to end. Although the wording of the letter of 1 March 2021 is not entirely clear, where Mr Hine says,

> "Your trial period was due to end March 31, 2021, so we are prepared to pay your full salary for the month (not SSP) without you having to work",

In the context where the Claimant had been told that she will only be paid SSP for sickness absence and has provided a Doctor's Certificate to last until 11 March 2021, we consider that the only sensible construction of that letter is that it communicated the termination of employment giving more than statutory or contractual notice so that the employment came to an end on 31 March 2021. Not only is that consistent with the P45, but the Respondent in their Grounds of Response and ET3 accepted that the date of termination relied on by the Claimant was the correct date.

150. We therefore find that the effective date of termination was 31 March 2021.

151. The Claimant succeeds on the holiday pay claim, and we order the Respondent to pay her 14 days' pay. Otherwise, the unauthorised deduction from wages claim fails. The overtime claim has been withdrawn and the Claimant was not contractually entitled to a bonus in excess of that which she received at the end of January 2021. It is possible that sums which might have been paid by way of bonus will form part of the claim for compensation.

_____

Employment Judge George

Date: …14 December 2023……..

Sent to the parties on:
22 December 2023.....

…….....
For the Tribunal Office