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## EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Jaguszewska  
**Respondent:** Newway Beauty Concept Limited  
**Heard at:** East London Hearing Centre  
**On:** 23<sup>rd</sup> August 2019  
**Before:** Employment Judge McLaren

### Representation

**Claimant:** In person  
**Respondent:** Did not attend

## REMEDIES JUDGMENT

1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of £1958.91
2. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the gross sum of £3109.96 as payment in lieu of notice.
3. The claimant's claim of unfair dismissal succeeds, and the respondent is ordered to pay the claimant
  - (i) a basic award of £2540; and
  - (ii) a compensatory award in the gross sum of £2,416.66

## REASONS

### Finding of Facts

1. The claimant was employed as head therapist on 1 August 2011 for Smooth Extensions. She tells me that this was part of Strawberry Lollipop

Limited. She provided a copy of a document headed Smooth Extensions Terms and Conditions of Employment at some point the claimant says that Smooth Extensions changed its name to Smooth You Ltd.

2. In January 2018 Newway Holding Ltd purchased Strawberry Lollipop Ltd and she was issued with a new employment contract dated 11 January 2018. This specified that her entire rights and obligations from her start date of employment being 1 August 2011 transferred to Newway Holding (London) Ltd.

3. In December 2018 the claimant was informed again that the name of her employer was changing and that she was now employed by Newway Beauty Concept Ltd. The claimant provided a copy of an employment contract dated 11 December 2018 which confirmed that the contract transferred her entire rights and obligations from the start date of employment 1 August 2011 from Smooth You Ltd to New Way Holding (London) Ltd to New Way Beauty Concept Ltd.

4. The claimant was on annual leave between 22 December 2018 and the 2 January 2019. On 31 December, while on that annual leave, she received a workgroup WhatsApp message, a copy of which was provided to me, from the managing director stating that the beauty centre would be closed until 7 January 2019.

5. On 3 January 2019 there was a further WhatsApp message, a copy of which was also provided by the claimant to me, from the managing director stating that the company is permanently closed and under full administration that solicitors would contact people directly. The claimant did not receive any notice monies and her contract provides that she would be entitled to 7 weeks' notice based on her length of service

6. The claimant was not paid her wages for the period 1 December until 3 January. The effective date of termination (EDT) was 3 January 2019.

7. The claimant received a letter from solicitors on behalf of Newway Holding (London) Ltd in administration dated 17 December 2018 advising her that this company was placed into administration on 7 December 2018. This did not reflect the name of her employer.

8. Based on the information provided to her in this letter the claimant applied to the Insolvency Service and on 5 February 2019 was paid redundancy payment of £1016, calculated on two years continuous service, and £422.61 net pay for arrears of pay due. This money was paid to her in relation to company that she had not worked for and the payment did not reflect her years of service with her actual employer based on several TUPE transfers.

9. The claimant contacted ACAS on 13 March and was issued a conciliation certificate on 29 March the name of her employer Newway Beauty Concept Ltd. She then issued a claim against that respondent which was received by the tribunal on 10 April 2019. The respondent did not present a response to her claim within the 28-day period provided by the rules and on 8 August 2019 the claimant was advised that a judgment could be issued avoiding the need for her to attend the tribunal to give evidence at a hearing. The claimant was asked to provide some information to allow the tribunal to quantify her claim.

10. The claimant responded and provided enough information to put the employment tribunal in a position where it could enter a default judgment relating

to her claim for unauthorised deductions, breach of contract and additional redundancy pay/basic award. The claimant confirmed that she had received all her outstanding holiday pay.

11. The claimant, however, wished also to pursue her claim of unfair dismissal and today's hearing was largely to consider the appropriate remedy for her unfair dismissal claim.

12. The claimant explained that she had worked in the beauty therapy industry for seven years. She had worked for what seemed to her to be the same company, although she accepted that there had been several TUPE transfers. She explained that during that time she often worked very long hours, sometimes 10 hours a day without a lunch break. She had been a loyal and hard-working employee. She was both shocked and surprised to receive notice that employment ended by WhatsApp group message.

13. She did not think that her position was redundant. She explained that she was aware that her employer had two other premises, both of which continue to operate today. She said that many of her colleagues were offered transfers to these other premises, but she was not. Those other premises continue to advertise their services to clients and continue to advertise for vacant positions for therapists.

14. The claimant explained that while working she had also been studying part-time at Birkbeck University, studying in the evenings for a business management degree. Once she lost her job, she did initially make some efforts to find another full-time role as it had not been her intention not to work. She did this by looking online for job opportunities but did not take this much further.

15. The claimant had exams for her course towards the middle of March at that point she decided that she would take a break from permanent employment to pursue her studies and to focus on some personal issues. Her intention now is that, when she obtains a qualification, she will be looking for an entirely different role as she wants a career change.

16. The claimant did not sign on for any benefits after she lost her job. She has checked at Companies House and it appears that there is an active proposal to strike this company off which has been suspended because the claimant has objected.

#### Relevant Law-remedy

17. The claim is both for wrongful and unfair dismissal. The wrongful dismissal claim falls within the tribunal's breach of contract jurisdiction which has a separate £25,000 cap. Damages for wrongful dismissal cannot be awarded for the same loss for which compensation for unfair dismissal is also awarded'.

18. s123 of the ERA 1996 provides that the compensatory award shall be:  
*'...such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer'.*

19. The object of the compensatory award is to compensate the employee for their financial losses as if they had not been unfairly dismissed - it is not designed to punish the employer for their wrongdoing.

20. The calculation of the compensatory award falls under two headings, Immediate loss of earnings, and future loss. Immediate loss of earnings is the loss suffered between the EDT to the date of the remedies hearing. Where a claim for wrongful dismissal has also been made, the number of weeks for the unfair dismissal immediate loss of earnings should be calculated from the date at which the wrongful dismissal damages period ends through to the date of the hearing,

21. The employer's liability will normally cease before the date of the remedies hearing if the employee has (or ought to have) got a new permanent job paying at least as much as the old job as there will no longer be a loss arising from the dismissal. Future loss will be awarded if the claimant has not got a new role despite sufficient efforts to find one by the date of the hearing. The tribunal will then award some period of future loss to cover the period until it is thought reasonable that the claimant would be a new employment. The claimant is under a duty to mitigate her losses.

22. For dismissals occurring on or after 6 April 2018 and before April 2019 the statutory cap (where it applies) is calculated as the lower of £83,682- or 52-weeks' gross pay. As at January 2019 a week's pay was capped at £508.

23. S13 of the Employment Rights Act 1996 provides that an employer can only make a deduction from your pay if the contract specifically allows the deduction it was agreed in writing beforehand, they overpaid by mistake, or it's required by law, for example Income Tax or a court order

#### Conclusion on remedy

24. The respondent has not put in a response and therefore the claimant is awarded her claims for unlawful deduction from wages being the period from 1 December to 3 January which was the EDT. I calculate this as a gross figure of £2528.19. The claimant was, however, paid the gross sum of £569.28 by the Insolvency Service. To avoid double recovery, even though it appears that this money was paid in relation to the wrong company, I am therefore deducting this from the monies owed to the claimant by this respondent and therefore awarding her £1958.91. This is a gross sum as it will be taxable as unpaid wages.

25. The claimant was dismissed in breach of contract in respect of notice and she is entitled to damages in the sum of £3109.96 for the period from 3 December up to 17 February 2019. This is a gross sum as pay in lieu of notice is taxable.

26. I accept that the claimant was unfairly dismissed. While it could appear that her role was redundant, I accept her evidence that other colleagues were employed by other salons and therefore she could still be working today. I find therefore that her dismissal was unfair that she is therefore entitled to a basic award calculated as a week's pay of £508 multiplied by her length of service, that is seven years. This is £3556. Again, I am going to reduce this sum by the redundancy payment paid to her by the Insolvency Service of £1016. This is to avoid any possibility of double recovery. I'm therefore awarding her £2540 as a basic award.

27. I find that the claimant was making appropriate efforts to find another role up to 17 March 2019 when she decided to switch her focus and put her whole attention into her studies with a view to finding an alternative career. I therefore find that the respondent is not responsible for any future loss beyond this hearing. I also find that the respondent's liability ceased on the date she took that decision, namely 17 March. For that reason, I have awarded the claimant one month's compensatory award calculated as £2,416.66.

Employment Judge McLaren

Date: 27 August 2019