



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Creelman

**Respondent:** Mr R Folsom

### FINAL HEARING

**Heard at:** London South by CVP

**On:** 10 August 2021

**Before:** Employment Judge Truscott QC (sitting alone)

### Appearances

For the claimant: In person

For the respondent: In person

### JUDGMENT

1. The Judgment of the Tribunal is that the claimant is entitled to net awards as follows:

Notice pay	£550.00
Accrued holiday pay	£550.00
Total Award:	<b>£1100.00</b>

2. The claim for damages in relation to a reference is dismissed.

3. The employer's counterclaim is dismissed.

### REASONS

1 The claimant joined the hearing by telephone as her video link was not functioning. The claimant claims arrears of pay, notice pay and holiday pay. She also claims damages

caused by a bad reference. The respondent counterclaimed for the cost of photographs of his child.

2 She worked from 14 November 2019 to 9 April 2020 as a nanny. With the onset of the pandemic, the respondent said “I’ll pay you four weeks’ notice”. He paid for only three weeks because of the dispute which arose about the photographs. He accepted that the claimant was entitled to £550 holiday pay. These are the sums awarded. At the hearing, the claimant confirmed that she had no claim for arrears of pay.

3 The Tribunal has no jurisdiction to award damages in relation to a reference even if it had been established that a bad reference had been provided by the respondent. This claim is dismissed. The respondent denied giving such a reference.

4 The respondent counterclaimed for £10,622.70 in respect of the photographs the claimant had taken of his child. The claimant said she had taken the photographs with a camera on a phone which was now broken. On the day she took them, she sent the respondent the photographs by What’s App. The respondent explained that What’s App reduces the resolution of the photograph and he sought the high-resolution photographs from the phone transmitted by a method which did not reduce the resolution. The taking of photographs and the manner of taking and transmitting photographs did not appear to be a term of the contract of employment. The claimant was agreeable in co-operating with the respondent in the transmission of the photographs if possible. The Tribunal finds that there is no enforceable term in the contract of employment relating to the photographs and, if there was, jurisdiction was likely excluded because of Article 5(c) of the Employment Tribunal Extension of Jurisdiction (E&W) Order 1994. This Article excludes from the breach of contract jurisdiction a term relating to intellectual property. The counterclaim is dismissed.

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**I D Truscott QC Employment Judge**

**Date: 10 August 2021**

**SENT TO THE PARTIES ON**

**Date: 11 August 2021**

**AND ENTERED IN THE REGISTER**

