



# EMPLOYMENT TRIBUNALS

**Claimant: MS K TOMLINSON**  
**Respondent: THE SINGHING TREE LIMITED**

**Heard at:** Watford

**On:** 21-23 February 2022

**Before:** Employment Judge Skehan,  
Mr Bhatti and  
Mr English

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Munroe, solicitor

## JUDGMENT

1. The claimant's claim for breach of contract is successful. The respondent must pay the claimant within 14 days from the date of this written judgment, the agreed sum of **£3397.30** relating to unpaid wages.
2. The claimant's claim for direct discrimination or harassment on the grounds of her age contrary to the Equality Act 2010 is unsuccessful and dismissed.
3. The claimant's claim for discrimination on the grounds of pregnancy contrary to the Equality Act 2010 is unsuccessful and is dismissed.

## REASONS

1. Oral reasons were given to the parties with the above Judgment on 23 February 2022 and written reasons were requested by the claimant at the conclusion of the hearing.
2. The claimant commenced the ACAS early conciliation process on 1 July 2020 and the Early Conciliation Certificate was issued on 10 July 2020. By

ET1 received at the Employment Tribunal dated 28 July 2020, the claimant claimed unfair dismissal, direct discrimination on the grounds of age contrary to section 13 of the Equality Act 2010 (EqA), harassment on the grounds of age contrary to section 26 EqA and pregnancy discrimination contrary to section 18 EqA and unauthorised deduction from wages or breach of contract in respect of unpaid wages. The unfair dismissal claim was withdrawn and dismissed on 23 March 2021. The claim was defended. The respondent's notice of appearance submitted on 12 November 2020 was accepted and a further slightly amended notice of appearance was submitted on 22 February 2021 and accepted by the employment tribunal.

3. We note that the tribunal's task in hearing this claim has been made unnecessarily difficult by a failure by the parties to comply with their obligations in respect of disclosure and basic preparation in respect of an employment tribunal bundle. The witness statements from both parties lacked any cross-referenced page numbers contrary to the employment tribunal directions and considerable time was spent by the tribunal seeking to identify documents and clarify matters that could and should have been identified and clarified by the parties prior to the hearing. We were provided with a large volume of additional disclosure from both parties on both day two and day three of the hearing. In light of the parties ongoing duty of disclosure and the claimant acting in person, the late production of this documentation was allowed in accordance with the overriding objective. We consider that the failings in adequate preparation rest mainly with the respondent in this matter. We make no criticism of Mr Munroe personally as he may have had no hand in the preparation of this case however, we reiterate that the respondent's failure to properly prepare for this final hearing has made the tribunal's task more difficult than necessary.

### **The Issues**

4. At the outset of the hearing we revisited the list of issues as compiled by EJ McNeil at the preliminary hearing held on 23 March 2021 and agreed it to be a complete list of the matters to be determined within this litigation.

### **The Law**

5. Section 13 EqA provides the statutory basis for the direct discrimination claim. This provides that where an employer, because of the protected characteristic of age, treats the claimant less favourably than it treated or would treat others. When looking at a relevant comparator section 23 EqA provides that there must be no material difference between the circumstances of each case. The principle was expressed in *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285* as follows:

"...the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class."

Only those characteristics which the employer has taken into account in deciding to treat the claimant in a particular way, with the exception of the alleged discriminatory characteristic, are relevant

6. As regards the burden proof, it is for the Claimant to initially prove facts which could establish that an act of discrimination occurred. It is only once this has been satisfied that the burden shifts to the employer. Once the burden has passed to the Respondent, it is on them to show that a contravention did not occur (s.136 EqA 2010).
7. Section 26 EqA sets out the definition of harassment as conduct related to the protected characteristic which has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether the conduct has this effect, the tribunal will take into account the perception of the claimant the other circumstances of the case and whether it is reasonable for the conduct to have had that effect.
8. Section 18 EqA is applicable in the circumstances to the extent that it provides that a person discriminates against a woman if during her pregnancy she is treated unfavorably because of the pregnancy or because of illness suffered by her as a result of it.
9. In relation to the breach of contract claim, we are looking at the terms of the contract are set out below. Further, we are concerned with the implied duties to provide pay. There is no general obligation on an employer to provide work for the employee so long as their wages are paid. The general position in respect of the obligation to provide pay was put by Asquith J in Collier v Sunday Referee Publishing Co Ltd [1940] 2 KB 647, "provided I pay my cook her wages regularly, she cannot complain if I choose to take any or all of my meals out". There are exceptions to this such as zero hours contracts or a right to lay off etc.

### **The Facts**

10. We heard evidence from the claimant on her own behalf and from Ms Singh and Mr Ellington on behalf of the respondent. All witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief. All witnesses were cross-examined. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which we heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.

11. The respondent operates a small residential unit for young people. The respondent's property was a four-bedroom house, with three bedrooms available for residents and one for staff. The first resident arrived at the respondent's unit on 13 February 2020.
12. The claimant was employed between 6 January 2020 and 29 May 2020 as the registered manager of the unit. We were referred to the claimant's contract of employment. The relevant parts are:
  - 12.1. Clause 3: The commencement date is stated to be 6 January 2020.
  - 12.2. Clause 4: The probationary period is said to be six months.
  - 12.3. Clause 5: The place of work is said to be 46 Elm Grove Road.
  - 12.4. Clause 6: The claimant hours of work were 8 to 5 with normal working hours said to be 40 hours per week.
  - 12.5. Clause 9: Remuneration was £28,000 per annum with payments to be made monthly on the final day of each month.
  - 12.6. Clause 13: The provision in relation to sickness absence said that the claimant was to notify her absence by telephone on the first day of incapacity at the earliest possible opportunity by no later than two hours prior to her start time on first day of absence.
  - 12.7. Clause 14: The claimant was entitled to statutory sick pay if she was absent because of sickness or injury providing she met the statutory qualifying conditions
  - 12.8. Clause 20: Relates to short time working on layoffs. We make reference to this clause for the sake of completeness and note that this is not relied upon by the respondent and no reference has been made to it.
  - 12.9. Clause 21: The notice period during the probationary period was one week.
13. The contract was signed by both the claimant and Mr Ellington on 20 December 2019. Mr Ellington told the tribunal that he met the claimant in person on 20 December 2019 and they went through the contract clause by clause prior to signing it.
14. At the request of the employment tribunal, the parties addressed and agreed the following schedule of relevant dates and facts with the tribunal:
  - 14.1. Both parties say that employment started on 6 January 2020. The claimant claims she is entitled to be paid from this date.
  - 14.2. The claimant says that she physically attended the workplace on 8, 13, 20 and 26 January and 6 and 13 February.
  - 14.3. Both parties agree the claimant worked 'normally' from 14 February as the first resident had arrived at the respondent's unit on 13 February.

- 14.4. The claimant was paid at a rate of £26,500 per annum between 14 February and 19 March 2020, save for:
    - 14.4.1. 24 and 28 February, where both parties agree that the claimant was absent due to sickness.
    - 14.4.2. A half day on 2 March 2020, where both parties agree that the claimant was absent due to a matter relating to her child.
    - 14.4.3. 10 March 2020, where the respondent says that the claimant was sick but the claimant says she was working
  - 14.5. During her employment, the claimant says that her correct salary was £28,000 not £26,500.
  - 14.6. It is common ground that from 19 March 2020 to the termination of the claimant's employment on 29 May 2020 that the claimant did not attend work.
  - 14.7. The claimant submitted a Fit Note covering the period 20 March - 2 April 2020 and a further sicknote covering the period to April 2020 to 9 April 2020.
  - 14.8. The respondent says that, although the claimant failed to comply with its notification requirements under the absence procedure, the claimant was entitled to and paid SSP for the period covered by her sick notes. Both parties agreed at the conclusion of the hearing that the correct amount of statutory sick pay was paid by the respondent covering the period 20 March 2020 to 9 April 2020.
  - 14.9. The respondent says that the claimant was not entitled to any payment from 9 April 2020 as she was absent without leave.
  - 14.10. The claimant says that she was entitled to continuing payment (either full contractual pay or SSP) from 9 April 2020 to the termination of her employment on 29 May 2020.
15. There was very little evidence from the respondent to explain why the claimant was not paid from the commencement of the employment, and the matter was not addressed in the respondent's ET3 or witness statements. During the course of cross-examination Ms Singh told the tribunal that the claimant was paid expenses only during this period and referred to the periods where the claimant attended the unit prior to 14 February 2020 as 'overtime' and said that the claimant would take 'time in lieu' following 14 February 2020.
  16. The claimant worked up to and including 19 March 2020, which was around the time of the first Covid 19 lockdown in the UK. On this day the claimant informed the respondent that she would not be at work on 20 March 2020 due to her child's school closing. It is common ground that the claimant did not return to work following 19 March 2020. The claimant did not contact the respondent on 20 March 2020. The claimant did not comply with the respondent's absence policy are set out within her contract of employment.

The claimant thereafter provided a Fit Note covering the period from 20 March 2022 to 2 April 2020 that stated 'influenza -like symptoms', on 28 March 2020. The claimant provided a further Fit Note covering the period 2 April to 9 April. It was not clear from the evidence when this Fit Note was submitted, however we conclude on the balance of probability that it was sent to the respondent with the claimant's email of 2 April 2020.

17. There is a letter in the bundle from the claimant's GP dated 14 April 2020 that states, 'This is to confirm that the claimant is a registered patient at this practice and known to be currently pregnant and suffer from asthma. As per HMG advice for vulnerable patients, she has been advised to avoid non-essential travel, maintain social distance and work from home if possible otherwise stop at home starting 23 March 2020 for a period of 12 weeks.' The claimant said that she sent this letter by email to the respondent sometime in April 2020. The respondent denies that this letter was submitted or received by them at any time during the claimant's employment. When considering the likelihood of this GP letter having been submitted to the respondent, we note the transcript in the bundle relating to a meeting held over zoom between the claimant and the respondent on or around 6 May 2020. The discussion between the parties relates to the claimant's absence due to reasons relating to sickness and an absence of childcare. During this meeting the claimant refers to 'two sick notes'. The claimant makes no reference to the letter from her GP and it is an odd omission to make. From the context of the discussion, we conclude that as of 6 May 2021, the claimant had not sent the GPs letter to the respondent.
18. There are multiple references to the claimant's sick notes and the claimant's problems with childcare due to the pandemic and the schools closing within the bundle. There is a reference within a text message dated 1 May 2020 from the claimant to Ms Singh saying 'please be advised that I have been signed off from working within a working environment and advised that it would be suitable for me to be furloughed with my current circumstances-please can you advise whether this can be done'. The claimant told the tribunal that at the time in question as a pregnant woman, she would be required to shield and the respondent should have known this. There is no other documentation within the bundle to support the claimant's claim that she forwarded the letter from her GP to the respondent at any time during her employment. The gist of the ongoing dispute between the parties indicates that the GP's letter has not been forwarded to the respondent. On the balance of probability, we conclude that the claimant did not forward the letter from her GP to the respondent at any time during her employment.
19. The claimant's salary within her contract is stated to be £28,000. The respondent produced no information either within the ET3 or their witness statements to address why the claimant was paid at a lesser rate than that stated within her contract. Ms Singh's evidence to the tribunal in respect of the claimant's salary was confused. She said that in January or February she had a discussion with the claimant whereby it was agreed due to the

claimant not having a required NVQ level V qualification that the claimant's salary would be reduced from £28,000 to £26,500. There is no note of this discussion. The claimant denies that there was any agreement on her part to reduce her salary. Mr Ellington referred to a letter dated 19 March 2020 from Ms Singh to the claimant referring to the discussion of 27 February and stating that an agreement had been reached to reduce the claimant's salary to £26,500. On the next page within the bundle there is a page with the claimant's name and Mr Ellington's name including both parties signature and date of 13 March 2020. The respondent states that this is the claimant's agreement to the reduction in her salary as set out in their letter of 19 March. The claimant says that the signature is hers however she made no agreement to reduce her salary. We note that the signature page is odd and does not refer to any particular agreement or document.

20. We refer to the notes of the short conversation of around 6 May 2020 and a reference to the claimant 'saying it wasn't agreed'. These notes are inconsistent with the respondent's assertion that the change to salary was agreed by the claimant. Further we note that the claimant has provided evidence of her BSc degree in sociology that the claimant says is superior to NVQ level V qualification requirement referred to by the respondent and there would be no justification for the respondent to seek to reduce her salary or no reason for the claimant to agree to such a reduction.
21. During the course of the hearing there was further disclosure from the respondent including email correspondence between the parties asserting that there was agreement with the claimant in respect of the salary reduction at the interview stage in November 2019. This was inconsistent with the evidence previously provided by both Ms Singh and Mr Ellington. Any such discussion in November 2019 pre dates the contract that was checked clause by clause by the parties and signed in December 2019. The evidence provided by both Ms Singh and Mr Ellington in relation to the purported agreement on the claimant's part to reduce her pay from £28,000-£26,500 per annum was confused and unreliable. We conclude on the balance of probability that there was no agreement between the claimant and the respondent to reduce the claimant's salary and her salary was £28,000 per annum as stated in her contract.
22. The claimant's contract provides for a six-month probationary period. The evidence relating to the probationary period was confused on both sides. The claimant claims that the respondent sought to increase her probationary period from 3 to 6 months. There is a reference in the incorrectly dated supervision notes of the meeting on 11 March 2020 stating that the claimant's probationary period would be reviewed. We were referred to correspondence in the bundle stating that the claimant's probationary period would be reduced from 6 months to 3 months, however the respondent says that this change did not take effect. Taking the entirety of the evidence into account we conclude that the claimant's probationary period within the

contract is stated to be six months and at no time did the respondent seeks to increase the claimant's probationary period.

23. Mr Ellington told the tribunal the tribunal that he was aware of the claimant's pregnancy on or around 8 March 2020 and informed Ms Singh of her pregnancy on that date. The claimant says that when she told Mr Ellington about her pregnancy she was told that, 'you need to think about how your pregnancy will affect the young people in the unit' and Mr Ellington advised her on a termination. However there is no subsequent reference or complaint by the claimant relating to any comment said to be made by Mr Ellington inferring that her pregnancy would have any negative effect within the workplace. Mr Ellington said that the claimant told him she was pregnant but did not know how she felt about her pregnancy. He says he congratulated the claimant and said it was not his position to comment on any decision she might make and said a termination would have an impact on the claimant. Mr Ellington said that his attention was on matters required to make the claimant safe within the workplace. In considering this matter we conclude that the claimant and Mr Ellington had a discussion following the claimant's announcement of her pregnancy, however the balance of probability we conclude that no comment was made by Mr Ellington that could be reasonably perceived or intended to imply that the claimant's pregnancy would have a negative effect on the workplace or her continued employment.
  
24. The claimant says that she should be paid either her full contractual pay or statutory sick pay from 9 April because:
  - 24.1. she had a contractual entitlement to work from home and should have been permitted to work from home. There is nothing in the contract entitling the claimant to work from home. There was a dispute between the parties as to whether the claimant's role could be reasonably carried out from home. The claimant refers to the job description that includes 'benefits: working from home opportunities'. The claimant points to the admin aspects of the role and argues that the respondent should have allowed her to work from home. The respondent says that a small proportion, less than 20% of the claimant's role as registered manager could be reasonably completed from home, the remainder of the role required the claimant's presence within the residential unit and they required the claimant to attend the unit to carry out her duties. We find that, as the registered manager of a small residential unit, there are duties that the respondent may reasonably stipulate must be undertaken by an employee physically present within the unit. We do not criticise the respondent for stipulating that the claimant's role was unsuitable to be carried out remotely.
  - 24.2. She was pregnant and advised to shield in accordance with the government guidelines at the time and the respondent should have known this, entitling her to SSP. At no time did the claimant provide



any documentation to the respondent (either by way of NHS letter or GP letter) stating that she had been advised to shield. Ms Singh told the tribunal that she was also pregnant during the claimant's employment following March 2020 and she did not consider that there was any general prohibition or shielding requirement for pregnant workers at the relevant time. The tribunal requested that the parties produce and agree the relevant government guidance for the tribunal to consider and the following is agreed:

24.2.1. Some people classed as clinically vulnerable people were requested to shield, meaning staying at home at all times, during the relevant stage of the pandemic. The only reference to pregnancy within the clinically vulnerable group identified by the NHS was, 'women who are pregnant with significant heart disease, congenital or acquired'. The claimant does not have significant heart disease.

24.2.2. The NHS originally wrote to 1.3 million people considered to be at the highest clinical risk from coronavirus to inform them that they should stay at home at all times and avoid face-to-face contact for a period of at least 12 weeks. The claimant did not receive an NHS shielding letter.

We conclude from the above that in the absence of any reasonable evidence from a healthcare provider, as the claimant did not obviously fall within the clinically vulnerable groups was no reason for the respondent to have known that the claimant was advised to shield.

24.3. She was pregnant and advised to shield for 12 weeks by her midwife. It is common ground between the parties that no time did the claimant submit any documentary evidence to the respondent indicating that she had been advised to shield by her midwife.

24.4. She was pregnant and advised to shield for 12 weeks by her GP commencing on 23 March 2020 in accordance with the letter from her GP dated 14 April 2020. We refer to our findings above in note that the claimant did not send this letter from her GP to the respondent prior to the termination of her employment.

24.5. She was unable to attend work due to childcare issues. There is no entitlement to contractual pay or SSP pay in this scenario.

24.6. In light of her circumstances, the respondent should have sought to furlough the claimant. The respondent continued to operate during the general lockdown and considered that the registered manager role continued to be required and therefore the claimant's position was unsuitable for furlough. This is a decision for the respondent based on the requirements of the job and we do not criticise it.

25. We do not seek to set out the detail of the communication between the claimant and the respondent from 9 April until the termination of employment. The claimant's communication with the respondent was poor. The respondent's communication with the claimant was equally poor. While there are two sick notes covering the period from 20 March to 9 April,

following this time the respondent believed that the main reason for the claimant's absence was relating to childcare issues. The respondent believed that the claimant, as a key worker during the pandemic should have had access for her child to a school hub space and there was a dispute between the parties as to whether the school in question operated a hub during the lockdown for children of those designated as key workers.

26. The claimant had been paid by the respondent at the end of February however the claimant's March pay had been delayed and was received by the claimant on 27 April 2020. There is an email within the bundle from the respondent apologising for the late payment and referring to the financial impact of the Covid pandemic.
27. The claimant emailed the respondent on 11 May 2020 informing the respondent that she had decided to stop all forms of communication unless they were done via her solicitor. No solicitor details were provided. The claimant says that the allegations are starting to affect her pregnancy she wishes for the respondent to refrain from emailing her unless it is in regards to furlough payments and the contract she asked for. As the claimant's absence from 9 April to 29 May 2022 was not covered by any reasonable documentary evidence of sickness or any other reason for absence, we conclude that the respondent genuinely believed the claimant to be absent without leave from 9 April 2020.
28. The internal process adopted by the respondent addressing what it considered conduct issues was confused. However, the respondent sought to convene a disciplinary hearing on 15 May 2020. The claimant did not attend and did not return to work. The respondent thereafter wrote to the claimant by letter dated 22 May 2020 terminating the claimants employment by reference to the claimant's conduct. The letter states that the claimant has failed to follow the absence procedure correctly on 20 March 2021 and 2 April 2020 and has failed to report her absence from 9 April to 22 May 2020. The claimant was given the right of appeal. There was no appeal.
29. It is common ground between the parties that the claimant's relationship with Ms Singh deteriorated following the commencement of her employment and before the claimant announced her pregnancy. The respondent was setting up a new small business and expected considerable input from the claimant. The claimant complains that the respondent wished for her to run the entire business on her own without any guidelines and was told she should be grateful for the freedom to do what she wanted. The claimant found this lack of direction from the respondent difficult and felt it conflicted with the respondent's management style including commentating on the claimant's lunch and/or lunch breaks. The claimant has made wide-ranging allegations of less favourable treatment on the grounds of age set out within her email of 22 February 2021, and referred to within the list of issues. The claimant did not expand on these allegations within her witness statement and the

respondent's evidence did not address these allegations. The claimant was 29 years old at the relevant time. The claimant told the tribunal both when considering the list of issues at the commencement of the hearing and during her evidence that she believed that an older or a younger employee would not have been subjected to the treatment as alleged by Ms Singh. The claimant said that anyone else of any age would have been treated better than she had been.

### **Deliberations and Conclusions**

30. The tribunal has discussed this matter at length and all findings have been made on a unanimous basis.
  
31. We have carefully considered the claimant's allegations of age discrimination. The details of the claimant's allegations of less favourable treatment are set out within her email of 22 February 2021 and were not revisited by the claimant within her witness statement, nor were they addressed by way of cross examination. These allegations were not addressed by the respondent within their written evidence nor were they addressed by cross examination. The additional element of the claimant's age discrimination relating to her probationary period has fallen away as at no time did the respondent seek to extend the probationary period.
  
32. During the claimant's cross examination, when asked about her allegations of age discrimination, the claimant told the tribunal that both older and younger people would not have been subjected to the less favourable treatment as she has been and anyone else of any age would have been treated better than she had been. We consider that even taking the claimant's claim at its highest, should the claimant be able to show the treatment complained of, whatever the reason for the treatment, as both older and younger people would be treated differently, the less favourable treatment is most unlikely to be in any way connected to or on the grounds of the claimant's age. The claimant has provided no link between the alleged less favourable treatment and her age. There is no evidence presented to the tribunal that could lead us to make any link between the alleged less favourable treatment and the claimant's protected characteristic of age. In the circumstances, we consider that the claimant cannot make out a prima facie age discrimination claim and the burden of proof does not pass to the respondent.
  
33. The harassment claim relies upon the same factual circumstances as the allegations for direct discrimination. Again, taking the claimant's claim at its highest, even should the claimant be able to show that the alleged conduct set out in her email of 22 February 2021 was unwanted conduct with the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, the claimant's evidence leads us to the conclusion that this conduct is most unlikely to be in any way related to the claimant's protected characteristic of age.

34. We have carefully considered the claimant's claim for pregnancy discrimination. The allegations in respect of pregnancy discrimination are related to non-payment of full wages for March April and May 2020 and the claimant's dismissal. We refer to the findings made above in respect of the background and the findings set out below in relation to the sums that were properly payable to the claimant. Taking the entirety of the evidence into account we conclude that the reason for the non-payment as set out below related to a dispute between the parties in respect of the claimant's contractual entitlement. There is nothing within the evidence to suggest that the non-payment of these wages relate to the claimant's pregnancy in any way.
35. There was limited reference by the parties to pregnancy during the course of the hearing. We have not found any negative comment made to the claimant relating to her pregnancy and draw no influence in respect of the claimant's dismissal from any discussion held between the parties. The claimant has not provided any evidence to allow the tribunal to make any finding that the claimant's dismissal was for any reason connected to her pregnancy. We have carefully examined the reasons for the termination of the claimant's employment. We refer to our findings above and note the respondent genuinely believed that the claimant was absent from work without leave and had failed to comply with its internal process. The claimant has no claim for 'ordinary' unfair dismissal and we do not comment upon the the fairness or procedure followed in relation to the claimant's dismissal. We conclude that the respondent has shown that the reason for the claimant's dismissal was one relating to her conduct, being her absence from work. We conclude that the claimant's pregnancy played no part within the respondent's decision to terminate the claimant's employment.
36. We now turn to the claimant's breach of contract claim. It is common ground between the parties that the claimant attended the respondent's premises for an induction process and thereafter assisted the respondent as requested. The claimant was willing and able to work from the commencement date. While there is no obligation upon the respondent to provide work there is an implied obligation from the commencement of employment for the respondent to pay the claimant. There is a complete absence of any evidence from the respondent as to why the claimant was not paid from the commencement of her employment. Mr Munroe submitted that there was an implied term within the contract of employment not to pay the claimant for the period between 6 January to 13 February 2020. This is not an argument that is contained within the respondent's ET3 nor did the respondent address the matter within its witness statements. We conclude that the claimant is entitled to be paid for her normal working days from 6 January 2020.

37. In light of our findings above, the claimant is entitled to be paid at the rate of £28,000 per annum. The claimant is entitled to be paid her normal salary until 19 March 2020. The claimant is entitled to statutory sick pay from 20 March 2020 until 9 April 2020.
38. There was a dispute between the parties in respect of pay for 10 March 2020. The respondent says that the claimant was absent due to sickness leave, the claimant said that she was at work. There was little other evidence available to the tribunal in respect of this matter. We note that the claimant has agreed other days where she was absent due to sickness and on the balance of probability, we conclude that the claimant was at work on 10 March 2020 and the respondent's position is erroneous.
39. We have carefully examined the claimant's position for the period from the expiry of her GP fit notes to the termination of her employment on 29 May 2020. We refer to our findings above and have concluded that there was no entitlement on the claimant's part or obligation on the respondent's part to allow the claimant to work from home, or place the claimant on furlough leave. We do not consider that the claimant has any contractual entitlement to her normal pay during this period.
40. In the event of sickness, the claimant was entitled under her contract to SSP. We do not set out the statutory background to SSP and did not hear submissions from either party in respect of it. The tribunal's understanding of the general SSP provisions at the relevant time were:
- 40.1. Where sickness absence of was related to Covid 19, SSP was payable from the first day of absence, not the fourth as in normal circumstances.
- 40.2. Those who were shielding and unable to work from home (regulation 2(1)(d) an schedule 2 the Statutory Sick Pay (General) Regulations 1982 (as amended) (SSP Regulations)) were entitled to SSP subject to providing the normal reasonable evidence to the employer. An employer (at the relevant time) could insist on a Fit Note or other reasonable evidence (section 14, Social Security Administration Act 1992 and regulation 2, Statutory Sick Pay (Medical Evidence) Regulations 1985 (SI 1985/1604) (Medical Evidence Regulations 1985)). A letter from a GP informing an individual that they were advised to shield would in our opinion be sufficient evidence to qualify the individual for SSP at the relevant time.
41. We repeat our findings above and note that the claimant was not included within the government list of those likely to be requested to shield nor did the claimant provide any supporting evidence to the respondent to satisfy the requirement to provide reasonable evidence for her absence due to shielding between 9 April and 29 May 2020 and in the circumstances the

claimant does not qualify for statutory sick pay during this period. We conclude that this period is properly treated as unpaid.

42. We record that we provided our judgment on liability to the parties orally and thereafter revisited the issue of remedy with the parties. In light of our findings set out above, we allowed both parties the opportunity to make submissions in respect of the calculation of remedy. It was agreed by both parties that the following figures were correct:
- 42.1. working days are calculated at eight hours per day.
  - 42.2. the outstanding unpaid wages (20 working days) owed to the claimant between 6 January and 31 January 2020 amounted to £2153.60
  - 42.3. the outstanding unpaid wages owed to the claimant between 1 and 13 February 2020 (9 working days) amounted to £969.12.
  - 42.4. the underpayment in wages owed to the claimant between 14 February 2020 and 28 February 2020 (nine working days) is £90.06.
  - 42.5. The underpayment in wages owed to the claimant between 1 March and 19 March 2020 is £184.52.
  - 42.6. It is agreed that the claimant has been paid the correct amount of SSP for her absence from 20 March to 9 April 2020.
  - 42.7. We make no award in respect of any period following 9 April 2020.
43. The total amount owed by the respondent to the claimant in accordance with the contract of employment is £3397.30.

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Employment Judge Skehan

Date: .....09/03/2022.....

Sent to the parties on: .13 March 2022..

.....THY.....

For the Tribunals Office