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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 800024/2022

Held at Dundee on 22 November 2022

Employment Judge W A Meiklejohn

Miss Oliwia Fedczyszyn

**Claimant
In person**

Banntech Limited

**Respondent
No appearance and
no representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is as follows -

- (a) the claim for a statutory redundancy payment succeeds and the respondent is ordered to pay to the claimant the sum of **SIX HUNDRED AND NINETY TWO POUNDS AND THIRTY ONE PENCE (£692.31)**;
- (b) the claim of breach of contract (relating to notice pay) succeeds and the respondent is ordered to pay to the claimant the sum of **EIGHT HUNDRED AND SIXTY FOUR POUNDS AND FIFTY TWO PENCE (£864.52)**;
- (c) the claim of unfair dismissal succeeds and the respondent is ordered to pay to the claimant the sum of **FIVE HUNDRED AND TWENTY POUNDS (£520.00)**;

- (d) the claim of unlawful deduction from wages succeeds and the respondent is ordered to pay to the claimant the sum of **ONE THOUSAND EIGHT HUNDRED AND SEVENTY THREE POUNDS AND TEN PENCE (£1873.10)**;
- 5 (e) the claim for holiday pay succeeds and the respondent is ordered to pay to the claimant the sum of **ONE THOUSAND NINE HUNDRED AND NINETY FOUR POUNDS AND THIRTY TWO PENCE (£1994.32)**;
- (f) the claim of unlawful direct sex discrimination does not succeed and is dismissed; and
- 10 (g) in terms of section 38 (**Failure to give statement of employment particulars etc**) of the Employment Act 2002 the respondent is ordered to pay to the claimant the sum of **FOUR HUNDRED AND THIRTY TWO POUNDS AND TWENTY SIX PENCE (£432.26)**.

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REASONS

1. This case came before me for a final hearing, covering both liability and remedy. The claimant appeared in person. The respondent had not submitted an ET3 response form and did not participate.

Nature of claims

- 20 2. The claimant brought the following complaints against the respondent –
- (a) a claim for a statutory redundancy payment;
- (b) a claim for breach of contract, in respect of notice pay;
- (c) a claim of unfair dismissal;
- (d) a claim of unlawful deduction from wages;
- 25 (e) a claim for holiday pay; and
- (f) a claim of unlawful direct sex discrimination.

Procedural history

3. A preliminary hearing for the purpose of case management took place on 7 October 2022 (before Employment Judge McFatrige). The principal outcomes were that the claims were confirmed to be as listed above and the final hearing date was fixed.

Evidence

4. I heard oral evidence from the claimant. The claimant produced a number of documents to most of which she referred in the course of her evidence. As these were not indexed I will list them here –

Document number	Description
1	Letters from Standard Life to claimant
2	Claimant's terms and conditions of employment
3	Email from Mr Cherry to claimant dated 8 June 2022
4	Messages between claimant and Mr Cherry dated 28-30 June 2022
5	Email from claimant to Mr Cherry dated 4 July 2022
6	Bank account documents
7	Messages between claimant and Mr Watt
8	Claimant's payslip for May 2022

5. I refer to these below by their document number as set out above.

Findings in fact

6. The respondent is a software company which, according to its website, provides end-to-end solutions which encompass enterprise resource

planning, customer relationship management, web, e-commerce and digital marketing as well as infrastructure, telecoms and financial solutions. It operates from office premises in Broughty Ferry.

- 5 7. The claimant commenced employment with the respondent on 22 August 2017. In terms of her statement of terms and conditions of employment (Document 2) the claimant was employed on a full-time basis as an Administrative Assistant under the modern apprenticeship scheme. She assisted Ms S Simmons who was the respondent's Operations Director. In her ET1 claim form, the claimant stated that her employment began on 10 1 August 2017 but it seemed to me more probable that the date in her statement of terms and conditions (22 August 2017) was correct.
- 15 8. While employed by the respondent the claimant undertook a degree course in business management at the University of Dundee, graduating in 2022. At some point during her employment the claimant was promoted to the position of Office Manager. The claimant could not recollect exactly when this occurred. As at March 2021, the claimant's annual salary in that position was £20,000.

Maternity leave

- 20 9. The claimant commenced a period of maternity leave around the beginning of March 2021, some two weeks before she gave birth. The claimant took 12 months of maternity leave. When she returned to work around the beginning of March 2022 the claimant worked part-time, three days per week. Her annual salary was pro-rated to £12,000 from that time. Her statement of terms and conditions of employment was not updated to reflect 25 the changes to her salary and her hours/days of work.

Other staff

10. The claimant detailed the respondent's other staff at the time she returned from maternity leave as follows –
- Mr M Cherry, who the claimant described as the main Director.
 - Ms Simmons, Operations Director.
- 30

- Two female employees who joined while the claimant was on maternity leave. According to the claimant, they were involved in sales and managing customers. She referred to one of these as Gillian.
- Two male employees who worked as programmers. One of these was Mr B Watt. The claimant referred to the other as Andrew.

Non-payment of salary

11. The claimant was paid her normal salary (reflecting the change to part-time working) in March and April 2022. She did not receive payment of her salary at the end of May 2022. She became aware of this on 31 May 2022 when she had expected her salary to be paid into her bank account.

12. When the claimant discovered that her salary had not been paid, she spoke to Gillian and learned that she also had not been paid. The claimant then spoke to Ms Simmons and to ACAS. The claimant understood that Ms Simmons and Gillian were in contact with Mr Cherry but, according to the claimant, he was “*not really responding*”. At some point the claimant was advised by Ms Simmons to write to Mr Cherry in formal terms.

13. Mr Cherry emailed the claimant on 8 June 2022 (Document 3) in these terms –

“*With regret we must notify you all we have been unsuccessful in securing financing for Banntech Limited or receive payments for successful projects or product sales.*

I am unable to continue to personally finance the continuation of Banntech Limited, and the Company can no longer meet its financial obligations and will be declared insolvent.”

14. When the claimant received this, she was unclear as to her employment situation. In particular, she was unclear as to whether she still had a job or had been made redundant. Ms Simmons told the claimant that “*there were issues with finance*”. Because she had not been paid at the end of May 2022, the claimant did not attend at work thereafter, although she said that

she would have been willing to work if she knew that she would be paid for doing so. She applied for Universal Credit and began to look for a new job.

15. For the sake of completeness I should mention that, despite Mr Cherry's reference to the respondent being "*declared insolvent*", at the date of the hearing the Companies House website showed the respondent's status as active, and that the respondent had not entered into administration, receivership or liquidation.

16. The claimant said that Ms Simmons had sent on her May 2022 payslip (Document 8) which disclosed her normal monthly pay of £1000.00 gross and £936.55 net. Notwithstanding receipt of her payslip, the claimant was not actually paid for the month of May 2022. The payslip disclosed monthly pension contributions of £30.00 by the respondent and £40.00 by the claimant.

Further correspondence

17. The claimant exchanged messages with Mr Cherry on 28-30 June 2022 (Document 4). On 28 June 2022 the claimant wrote to Mr Cherry as follows -

"...I'm messaging to find out when the termination of my contract will occur? I'm still technically employed so I'm looking for any kind of information really. I also would like to claim a redundancy payment from the government if Banntech isn't able to provide me with it. I'm unable to do so because I have no information. I'm not in a good financial position right now as I am still looking for work. I would really appreciate it if you could let me know what is happening."

18. Mr Cherry responded on 30 June 2022 in these terms –

"The company unfortunately ran out of cash last October, and I personally was no longer able to fund it by April this year.

The company is insolvent and therefore no roles exist in Banntech. I am sorry and disappointed we are at this situation and disappointed you have not been updated by your Operational lead...."

19. In her ET1 claim form the claimant stated that her employment ended on 22 May 2022. However, this was inconsistent with her reference to being “*still technically employed*” in her message of 28 June 2022. This indicated that the claimant had been unclear as to her employment status until she received Mr Cherry’s message of 30 June 2022. No notice of termination of employment was given by the respondent to the claimant.

20. The claimant sent an email to Mr Cherry on 4 July 2022 (Document 5) which included the following paragraphs –

“I have not received any information on my redundancy or dismissal, or any type of document outlining that I no longer work for Banntech. I have no idea where I stand.”

“I have messaged you on Tuesday, the 28th of June and you replied to me on Thursday, the 30th of June that no roles exist in Banntech. There is still no official document showing that I am no longer employed by Banntech.”

21. Notwithstanding the claimant’s uncertainty as to her position, I found that Mr Cherry’s statement in his message of 30 June 2022 that “*no roles exist in Banntech*” meant that the claimant’s employment had been terminated. This was the first and only communication by the respondent to the claimant from which it could be understood that her employment had ended. The effect of Mr Cherry’s message of 30 June 2022 was to dismiss the claimant without notice on that date.

Pension contributions

22. The letters to the claimant from Standard Life (Document 1) were dated 5 December 2019 and 3 November 2022. Both related to failure by the respondent to make payments in respect of the claimant into the Group Flexible Retirement Plan in which she participated. The letter dated 3 November 2022 stated as follows –

“We’re sorry to tell you that the payment we expected from your employer for June 2022 was not received by the latest date for payment.”

We must tell you if a payment we expect from your employer is not received by the latest date. We continually monitor any other missed or late payments.

5 *The Pensions Regulator has already been notified that we didn't receive this payment."*

23. The claimant said that the letters comprising Document 1 were only two examples of a number of similar letters she had received. I found no reason to doubt this. In her email to Mr Cherry of 4 July 2022, the claimant stated –

"I have not received pension contributions since December 2021"

10 I found that the respondent had failed to make pension contributions in respect of the claimant between December 2021 and June 2022 (both months inclusive).

Holidays

15 24. The claimant's statement of terms and conditions of employment (Document 2) contained the following provisions –

7. Holidays

7.1 You are entitled to 28 days' holiday in each complete calendar year, including bank and public holidays.

20 *7.2 The holiday year commences on 1 May and finishes on 30 April each year.*

7.3 If your employment commences or finishes part way through the holiday year, your holiday entitlement will be prorated accordingly.

7.4 If, on termination of employment:-

25 *7.4.1 You have exceeded your prorated holiday entitlement, the Company will deduct a payment in lieu of days' holiday taken in excess of your prorated holiday entitlement, on the basis of £38.46 per day, and you authorise the Company to make a deduction from the payment of any final salary.*

7.4.2 You have holiday entitlement still owing, the Company may, at its discretion, require you to take your holiday during your notice period or make a payment in lieu of untaken holiday entitlement....”

5 25. The May 2022 payslip which the claimant received (Document 8) contained the following information about holidays –

“Holidays: Taken: 5.0 Remaining: 27.5”

26. The claimant’s evidence about this was that –

10 (a) the 5 days taken related to a week of holiday entitlement used by her either at the start or the end of her maternity leave – she could not recall which, and

(b) the bulk of the remaining days related to holiday entitlement accrued during her period of maternity leave.

15 27. The claimant said that she had not taken any holidays since her return from maternity leave other than public holidays. I found no reason to doubt the claimant’s evidence about this. In her email to Mr Cherry of 4 July 2022, the claimant wrote this –

“....I also have 27.5 days of unused holiday which I believe I should be reimbursed for.”

Alleged discrimination

20 28. The messages between the claimant and Mr Watt (Document 7) were not dated but the claimant thought they had been exchanged in early August 2022, prior to the submission of her ET1 claim form. They included the following from Mr Watt –

25 *“ Hi yes I was payed by Martin on May 2022, however I’m also missing my pension money dating back to December....”*

“Just to note I was paid in May 2022 and June 2022”

29. The claimant’s evidence about Mr Watt’s position as an employee of the respondent was that –

(a) he was employed as a programmer and was a modern apprentice in the same way as the claimant had been at the start of her employment, and

(b) he worked full-time until he left to take up other employment around the end of June 2022.

Claimant seeks new employment

30. The claimant took steps to secure a new job. She updated her CV and applied for jobs on Indeed and other recruitment websites. She secured fresh employment as from 25 July 2022. Her pay in that employment was (and is) higher than she received from the respondent.

Comments on the evidence

31. The claimant gave her evidence in a measured and straightforward way. She was a credible witness.

Submissions

32. I explained to the claimant at the conclusion of her evidence that she could make submissions to me if she wished, but she was not obliged to do so. The claimant elected not to do so.

Applicable law

33. Rather than set out the relevant statutory provisions here I will refer to them in the discussion section which follows.

Discussion

34. I will deal with the various claims brought by the claimant in the order in which they are set out in paragraph 2 above.

Statutory redundancy payment

35. Section 139 (**Redundancy**) of the Employment Rights Act 1996 (“ERA”) provides, so far as relevant, as follows –

(1) *For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*

(a) *the fact that his employer has ceased or intends to cease –*

- 5 (i) *to carry on the business for the purposes of which the employee was employed by him, or*
(ii) *to carry on that business in the place where the employee was so employed, or*

(b) *the fact that the requirements of that business –*

- 10 (i) *for employees to carry out work of a particular kind, or*
(ii) *for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish....*

15 36. Section 163 (**References to employment tribunals**) ERA provides, so far as relevant, as follows –

(1) *Any question arising under this Part as to –*

- (a) *the right of an employee to a redundancy payment, or*
(b) *the amount of a redundancy payment,*

20 *shall be referred to and determined by an employment tribunal.*

(2) *For the purposes of any such reference, an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy....*

25 37. The combined effect of (a) these provisions and (b) the fact that the respondent did not participate in the proceedings was that if I found the claimant had been dismissed by the respondent, that dismissal would be presumed to be by reason of redundancy. The language used by Mr Cherry in his message of 30 June 2022 (see paragraphs 18 and 21 above) was in my view properly to be regarded as telling the claimant that her job no longer
30 existed. That was a dismissal. It followed that the claimant was entitled to a statutory redundancy payment.

Breach of contract (in respect of notice pay)

38. Article 3 (**Extension of jurisdiction**) of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 (the “1994 Order”) provides as follows –

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

10 *(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine;*

(b) the claim is not one to which article 5 applies; and

(c) the claim arises or is outstanding on the termination of the employee’s employment.

15 39. In terms of section 44 of the Employment Tribunals Act 1996 (“ETA”) the 1994 Order has effect as if made under section 3(2) ETA. Section 3(2) ETA allows for claims of the type specified in the 1994 Order to be brought in the Employment Tribunal, and so supersedes the reference to section 131 of the Employment Protection (Consolidation) Act 1978 (being “*the 1978 Act*”
20 referred to).

40. Section 86 (**Rights of employer and employee to minimum notice**) ERA provides, so far as relevant, as follows –

25 *(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more –*

(a)

(b) is not less than one week’s notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years....

(2)

(3) *Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2)*

5 41. The claimant's dismissal, per Mr Cherry's message of 30 June 2022, was without notice and took immediate effect. As at her date of dismissal the claimant had four years of continuous employment. She was accordingly entitled to four weeks' notice (rather than the two weeks' notice provided for in her statement of terms and conditions of employment). The respondent's
10 failure to give the claimant that period of notice was a breach of contract. The claimant was entitled to be compensated for the net pay she would have received during that period of notice.

Unfair dismissal

42. Section 98 (**General**) ERA provides, so far as relevant, as follows –

15 (1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*

(a) *the reason (or, if more than one, the principal reason) for the dismissal*

43. Section 112 ERA provides where that a Tribunal finds a complaint of unfair
20 dismissal to be well-founded, it should explain to the claimant what orders may be made under section 113 ERA (ie an order for reinstatement in accordance with section 114 ERA or an order for re-engagement in accordance with section 115 ERA) and should ask the claimant whether he/she wishes the Tribunal to make such an order. The claimant indicated
25 that her preferred remedy was compensation.

44. Section 118 ERA provides that where a Tribunal makes an award of compensation for unfair dismissal, that award shall consist of (a) a basic award (calculated in accordance with sections 119 to 122 and 126 ERA) and (b) a compensatory award (calculated in accordance with sections 123,
30 124, 124A and 126 ERA). Section 119 ERA provides for calculation of the

basic award in similar terms to the calculation of a statutory redundancy payment. Section 122 ERA provides, so far as relevant, as follows –

....(4) The amount of a basic award shall be reduced or further reduced by the amount of –

5 (a) *any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal....*

45. Section 123 ERA provides, so far as relevant, as follows –

10 (1) *Subject to the provisions of this section and sections 124, 124A and 126, the amount of 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 in so far as that loss is attributable to action taken by the employer....*

46. The combined effect of these provisions in this case is that –

15 (a) the claimant's dismissal was unfair because the respondent had not shown the reason for the dismissal,

 (b) the claimant was not entitled to a basic award because she was awarded a redundancy payment, and

 (c) the claimant was entitled to a compensatory award.

20 *Unlawful deduction from wages*

47. Section 13 (**Right not to suffer unauthorised deductions**) ERA provides, so far as relevant, as follows –

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

25 (a) *the deduction is required to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

 (b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

(2)....

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

48. The claimant should have been paid for the month of May 2022. The payslip she received disclosed that her net pay for that month was £936.55.
10 The respondent's failure to pay that sum on the due date was an unlawful deduction from wages.

49. The claimant remained in the respondent's employment until 30 June 2022. She was willing to work provided she was paid for doing so (see paragraph 14 above). She was in contact with the respondent's Operations Director
15 during June 2022. In these circumstances I considered that the claimant was entitled to be paid for the month of June 2022. The respondent's failure to pay her for that month was a further unlawful deduction of wages, again in the sum of £936.55.

Holiday pay

20 50. Regulation 13(9) of the Working Time Regulations 1998 ("WTR") provides as follows –

Leave to which a worker is entitled under this regulation may be taken in instalments, but –

25 (a) *subject to the exception in paragraphs (10) and (11), it may only be taken in the leave year in respect of which it is due, and*

(b) *it may not be replaced by a payment in lieu except where the worker's employment is terminated.*

51. Regulation 13(10) and (11) come into play when it was not reasonably practicable for a worker to take some or all of the leave to which he/she was

entitled as a result of the effects of coronavirus. I had no evidence that this applied to the claimant.

52. Regulation 9(1) of the Maternity and Parental Leave etc Regulations 1999 provides, so far as relevant, as follows –

5 *An employee who takes ordinary maternity leave or additional maternity leave -*

(a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if she had not been absent....

10 53. This means that the right to accrue holidays continues during maternity leave. The combined effect of this with Regulation 13(9) WTR is that when the claimant's employment was terminated on 30 June 2022, she was entitled to payment in respect of accrued but untaken holidays including those accruing during her maternity leave.

15 54. The claimant did not challenge the accuracy of her May 2022 payslip in relation to accrued holiday entitlement. She asserted her right to be paid for 27.5 days of accrued holidays in her email to Mr Cherry of 4 July 2022. In these circumstances I found that the claimant had an accrued holiday entitlement of 27.5 days up to 31 May 2022.

20 55. The claimant continued to accrue holiday entitlement until her employment ended on 30 June 2022. When she returned from maternity leave in March 2022 on a part-time basis (working 3 days per week instead of 5), her rate of holiday accrual was pro rata to her full-time entitlement of 28 days per year. That equated to a reduced monthly accrual rate of 1.4 days.
25 However, 2 and 3 June 2022 were public holidays. Looking at matters in the round, I decided that the claimant had not accrued any further holiday entitlement for the month of June 2022, and that her accrued entitlement on termination of employment was 27.5 days.

30 56. The total of 27.5 days then required to be apportioned between (a) the period up to the start of March 2022 when the claimant was engaged on a full-time basis and (b) the period from the start of March 2022 when she

was engaged on a part-time basis. Applying the reduced monthly accrual rate of 1.4 days per month from March 2022 produced the result that –

- 4.2 days of the claimant’s accrued holiday entitlement required to be calculated on the basis of her part-time salary of £12,000 per year.
- The remaining 23.3 days required to be calculated on the basis of her previous full-time salary of £20,000 per year.

Sex discrimination

57. Section 13 (**Direct discrimination**) of the Equality Act 2010 (“EqA”) provides, so far as relevant, as follows –

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others....

58. Section 23 (**Comparison by reference to circumstances**) EqA provides, so far as relevant, as follows –

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case....

59. The claimant’s comparator was Mr Watt. He had been paid for the months of May and June 2022 whereas the claimant had not. That was less favourable treatment by the respondent of the claimant. However, at the relevant time (May/June 2022), the claimant was employed as a part-time Office Manager while Mr Watt was a full-time programmer engaged as a modern apprentice. I found that these differences in their respective roles and employment status amounted to a material difference between their cases for the purpose of section 23 EqA. That meant that the claimant’s complaint of unlawful direct sex discrimination could not succeed.

Employment Act 2002

60. Section 38 (**Failure to give statement of employment particulars etc**) of the Employment Act 2002 (“EA”) provides, so far as relevant, as follows –

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

(2)

5 *(3) If in the case of proceedings to which this section applies –*

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

10 *(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996....*

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3) –

15 *(a) references to the minimum amount are to an amount equal to two weeks' pay, and*

(b) references to the higher amount are to an amount equal to four weeks' pay.

20 *(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable....*

61. Section 4 (**Statement of changes**) ERA provides, so far as relevant, as follows –

25 *(1) If, after the material date, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall give to the worker a written statement containing particulars of the change....*

62. Section 1 (**Statement of initial employment particulars**) ERA provides, so far as relevant, as follows –

....(4) *The statement shall also contain particulars, at a specified date....of –*

(a) *the scale or rate of remuneration or the method of calculating remuneration....*

5 (b)

(c) *any terms and conditions relating to hours of work including any terms and conditions relating to –*

(i) *normal working hours,*

(ii) *the days of the week the worker is required to work, and*

10 (iii) *whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined....*

63. When the claimant returned to work following maternity leave, her terms and conditions of employment were changed in relation to her rate of pay and her hours/days of work. She had not been provided by the respondent with a statement of those changes compliant with section 4(1) ERA.

64. The claims brought by the claimant were included in those listed in Schedule 5 EA. As all but one of those claims succeeded and resulted in an award to the claimant, section 38 EA was engaged. That meant that I was required by section 38(3) EA to increase the sums awarded to the claimant by the minimum amount of two weeks' pay and could, if I considered it just and equitable to do so, increase those sums by the higher amount of four weeks' pay, unless there were exceptional circumstances making an award or increase unjust or inequitable.

65. In the absence of the respondent's participation in the proceedings, I had no evidence of any exceptional circumstances. The respondent had provided to the claimant a statement of terms and conditions of employment which appeared to comply with section 1 ERA. The want of compliance related only to the statement of changes which should have been given to the claimant to comply with section 4(1) ERA. In all the circumstances I

decided that it would not be just and equitable to increase the award under section 38 EA to the higher amount.

Awards of compensation

5 66. My calculations of the sums awarded to the claimant are set out in the following paragraphs. For the purpose of these calculations –

(a) The claimant's weekly pay as at 30 June 2022 (based on £12,000 per year gross) was £230.77 gross and £216.13 net.

(b) The claimant's weekly pay when full-time (based on £20,000 per year gross) was £384.22 gross.

10 ***Redundancy payment***

67. The calculation of the amount of a statutory redundancy payment is regulated by section 162 ERA. For the purposes of that section –

(a) The claimant's period of continuous employment as at 30 June 2022 was 4 years.

15 (b) As at that date the claimant was 24 years of age.

(c) She had two years' continuous employment over the age of 22 (meaning a multiplier of 1 applied), and her remaining continuous service was below that age (meaning that a multiplier of 0.5 applied).

20 (d) The appropriate multiplier, in aggregate, was 3 (being 2 times 1 plus 2 times 0.5).

68. The redundancy payment to which the claimant was entitled was £692.31 (3 times her gross weekly pay of £230.77).

Notice pay

25 69. The claimant was entitled to four weeks' net pay. This amounted to £864.52 (4 times her net weekly pay of £216.13).

Unfair dismissal

70. As stated above, the claimant was entitled to a compensatory award. In principle, this would reflect her loss of earnings between 30 June 2022 and 25 July 2022 (the “*period of loss*”) when she commenced better paid employment. However, her notice pay was in respect of the period of four weeks from 30 June 2022. I decided that it would not be appropriate to make any award to the claimant in respect of loss of earnings during the period of loss.

71. The claimant was however entitled to be compensated in respect of the employer pension contributions which the respondent had failed to pay to Standard Life. These related to the months from December 2021 to June 2022 inclusive, a total of seven months at the rate of 3% of gross pay. I calculated this as follows –

(a) For each of the months of December 2021 and January/February 2022, this was £20,000 times 3% (to produce the annual figure) divided by 12 (to produce the monthly figure). This equalled £50 per month, a total of £150.

(b) For each of the months of March/June 2022, this was £12,000 times 3% (to produce the annual figure) divided by 12 (to produce the monthly figure). This equalled £30 per month, a total of £120.

The total sum for lost pension contributions was therefore £270.

72. The claimant was also entitled to an award in respect of her loss of statutory employment protection rights. I assessed that in the sum of £250. The total compensatory award was accordingly £520.

Unlawful deduction from wages

73. The claimant was entitled to her net pay for the months of May and June 2022. This amounted to £1873.10 (2 times her net monthly pay of £936.55).

Holiday pay

74. I refer to paragraph 56 above. I translated the days of accrued holiday entitlement into weeks as follows –

(a) 4.2 days equals 0.84 weeks.

(b) 23.3 days equals 4.66 weeks.

75. As I did not have information as to the claimant's net pay when she was in receipt of gross pay of £20,000, I decided for the sake of consistency to base her award in respect of holiday pay on her gross pay. This may be satisfied by the respondent paying to the claimant the appropriate amount of net pay provided the respondent accounts to HM Revenue and Customs for all income tax and employee's National Insurance contributions deducted from the gross sum awarded to the claimant in respect of holiday pay.

76. The claimant was entitled to holiday pay as follows –

(a) In respect of 0.84 weeks based on gross weekly pay of £230.77, the sum of £193.85.

(b) In respect of 4.66 weeks based on gross weekly pay of £384.22, the sum of £1790.47.

(c) Accordingly, total holiday pay of £1994.32.

Employment Act 2002

77. The claimant was entitled to an award of two weeks' gross pay which totalled £432.26.

20 **Employment Judge: W Meiklejohn**
Date of judgment: 30th November 2022
Date sent to parties: 2nd December 2022