

# EMPLOYMENT TRIBUNALS



**Claimant**

**Respondent**

**Mr. A. Marley**

**v L'Ecole Internationale Franco-Anglaise Ltd**

**Heard at: London Central**

**On: 7 November 2018**

**Before: Employment Judge Mason**

**Representation**

**For the Claimant: In person.**

**For the Respondent: Ms. Murphy, counsel**

## RESERVED JUDGMENT

**The judgment of the Tribunal is that:**

1. The Tribunal declares that the Respondent made unlawful deductions from the Claimant's wages contrary to section 13 of the Employment Rights Act 1996 and breached the Claimant's contract of employment by failing to
  - (i) pay him arrears of salary from 29 March to 12 April; and
  - (ii) pay him monies in lieu of untaken holiday accrued to 12 April 2018.
2. The Respondent's failure to pay these amounts was also a breach of the Claimant's contract of employment.
3. The Tribunal declares that the Respondent's failure to pay the Claimant monies in lieu of accrued holiday was also a breach of Regulation 14 of the Working Time Regulations 1998.
4. Since commencement of these proceedings, the Respondent has paid all monies due to the Claimant and no financial award or order is made.

## REASONS

### Background

1. In this case Mr. Marley (“the Claimant”) claims that the Respondent did not effectively terminate his employment until 4 September 2018 when he received his P45.
2. At the Hearing the Claimant clarified his claims as follows:
  - 2.1 Arrears of wages from 29 March 2018 to 4 September 2018;
  - 2.2 Monies in lieu of holiday accrued between 29 March and 4 September 2018;
  - 2.3 Pension contributions between 29 March and 4 September 2018.
3. The Claimant accepts he has received some monies from the Respondent since starting these proceedings and will give credit for these.
4. The Respondent says the Claimant’s employment was effectively terminated on 29 March 2018 when the Claimant received from the Respondent a letter dated 14 March 2018 giving him two weeks’ notice. In any event, the Respondent says it has paid the Claimant all sums owing up to and including 16 April 2018 and the Claimant is not entitled to any remedy. The Respondent also points out that if the Claimant was in fact still employed when he presented this claim, the Tribunal has no jurisdiction to hear his breach of contract claim as any such claim must be outstanding on termination.

### The issues

5. The issues to be determined by this Tribunal, as identified and agreed with the parties, are as follows:
  - 5.1 When was the Claimant given effective notice of termination of his employment?
  - 5.2 When did his employment come to an end?
  - 5.3 How much is he entitled to including:
    - (i) arrears of salary?
    - (ii) accrued holiday? and
    - (iii) monies in lieu of notice?

### Procedure at the Hearing

6. I was provided with a bundle of documents; any reference in this Judgment to [x] refers to page [x]. Having agreed the issues, I adjourned for 45 minutes to read the bundle and the witness statements. The Claimant had received the bundle by email only the day before; however, he had time to read these documents (most of which were familiar to him) during the break. Prior to the break I briefly explained to the Claimant the decision of the Supreme Court in **Newcastle upon Tyne Hospitals NHS Foundation Trust v Haywood [2018] UKSC 22** and suggested he consider this during the break.
7. I then heard from the Claimant who was cross-examined by Ms. Murphy and on behalf of the Respondent I heard from Ms. Isabelle Faulkner, Executive Head, who was cross-examined by the Claimant. I then heard submissions from Ms. Murphy and the Claimant which I will not rehearse in this decision but which I have paid heed to.

Due to time constraints, I reserved my decision which I now give with written reasons below.

**Findings of fact**

8. Having considered all the evidence I make the following findings of fact having reminded myself that the standard of proof is the balance of probabilities.
9. The Respondent is an international school in London with 66 employees. Ms. Faulkner is Executive Head; Mr. Andy Hill was (at the relevant time) Senior Head Teacher; Ms. Lucy Maunder is bursar; Ms. Mireille Fitch is in HR; Ms. Jeanne Monchevet is (external) marketing consultant.
10. On 8 January 2018, the Claimant commenced employment with the Respondent as Head of Marketing, Development and Communications; his role was to increase the number of pupils in the Senior School. His annual salary was £48,000. He worked 5 days a week – three days at the Respondent’s premises in London and two days from his home in Lancashire. He reported to Mr. Hill who, according to the Claimant’s verbal evidence, gave him instructions.
11. The relevant parts of the Claimant’s Employment Agreement [29-41] state as follows:
  - 11.1 Probationary Period
    - (i) *“All new appointments remain subject to satisfactory performance during the first 3 months ...”* [31]
    - (ii) *“... [the Respondent] may extend your probationary period...”* [31]
  - 11.2 Notice of termination:
    - (i) *“Both parties are required to give to the other the following periods of notice in writing in respect to terminating employment under this Agreement:  
During the 1<sup>st</sup> month: 1 week.  
After 1 month of Employment: 2 weeks  
After Probationary Period: 1 month”* [29].
    - (ii) *“Should you not work any part of your notice period ... [the Respondent] reserves the right not to pay you for the period of notice not worked”* [33].
    - (iii) *“If [the Respondent] does not require you to work all or part of your notice period, [the Respondent] reserves the right to make a payment in lieu of notice, regardless of whether notice was given by you or [the Respondent]. This means that you may be paid for the period of notice that would have been worked. In these circumstances your date of termination will be your last day of work with [the Respondent] and all property belonging to [the Respondent] should be returned on this day. Any entitlement that you have to benefits including the accrual of holidays terminates on your last of work”* [33]
  - 11.3 Holiday entitlement:
    - (i) The holiday year runs from 1 September to 31 August [33].
    - (ii) *“Your annual holiday entitlement is 5.6 working weeks in every full holiday year (28 days if you work a 5-day week”. [30]*
    - (iii) *“In addition to your annual holiday entitlement, you are also entitled to 8 bank and public holidays”. These are then specified and include Good Friday and Easter Monday. [34].  
“In order to qualify for payment you must work on your normal working day preceding and following the bank or public holiday ...”* [34].
    - (iv) *“A payment in lieu will be made to you for any accrued holiday entitlement that is outstanding, should you leave [the Respondent]. This payment will only apply to unused accrued holiday entitlement from the current year”* [34].

- (v) “Should you leave [the Respondent] part way through the holiday year, your entitlement will be calculated as a proportion of your annual entitlement ...” [33]

11.4 Pension:

“[The Respondent] operates a Qualifying Workplace Pension Scheme ... “

12. On 8 March 2018, Ms. Faulkner emailed the Claimant (amongst others) [109] to advise:

“There will be no more marketing campaign and spending until further notice”.

13. On 14 March 2018, Ms. Faulkner advised the Claimant at a one to one meeting that due to closure of the IB (International Baccalaureate) programme and a restructuring his position was going to be made redundant and that he would be given two weeks notice of termination of his employment. Ms. Faulkner says she verbally gave the Claimant two weeks’ notice at this meeting and advised him that his employment would terminate on 28 March 2018; she gave him the option of either working out his notice or remaining at home and he elected to remain at home. The Claimant denies Ms. Faulkner gave him notice and says he was only told that at some unspecified point his employment would be terminated on two weeks’ notice.

14. I place no weight on Ms. Faulkner’s assertion that Ms. Maunder (Bursar) overheard the conversation as Ms. Maunder has not provided a statement or attended the Hearing to give oral evidence. However, on balance I prefer Ms. Faulkner’s account of what was said at that meeting for the following reasons:

- 14.1 Ms. Faulkner has provided copies of emails she exchanged with Ms. Fitch, HR [43-44] on 14 March 2018:

Ms. Faulkner to Ms Fitch at 15.49:

“Please could you draft a letter thanking Alan for his services dated today’s date: I have given him his 2-weeks notice today”

Ms. Fitch to Ms. Faulkner at 16:15:

“Yes of course, I will draft this for you now. What was the reason given regarding serving him notice so that I can state this in the letter. I know there were concerns regarding performance so is that the reason his contract is being terminated in probation or is it maybe more a case of role/requirements changing?”

Ms. Faulkner to Ms Fitch at 16.16:

“Role/requirement changing due to the closing of the IB programme and school restructuring”

Ms. Fitch to Ms Faulkner at 16.37:

“Here is the draft letter for Alan as requested. The last day he will work needs to be added”.

Whilst the Claimant may be suspicious of the provenance or veracity of these emails, he did not challenge Ms. Faulkner about them at the Hearing and I do not accept that they have been falsely created retrospectively.

- 14.2 The “properties” for the word version of the letter created by Ms. Fitch show it was saved on the Respondent’s IT system on 15 March 2018 [45]. The Claimant says the properties of the letter he received show it was created on 29 March [90] and it appears to have been backdated. However the Respondent points out that the letter he received was effectively a different document as it was a pdf rather than a word document and hence the creation date would be different. Again whilst the Claimant is suspicious of the provenance or veracity of this letter, he has not persuaded me

that it was falsely created retrospectively and I therefore accept Ms. Faulkner's evidence that it was created by Ms. Fitch on 14 March and reviewed and saved by Ms. Faulkner on 15 March.

14.3 There was a handover meeting on Tuesday 20 March 2018:

(i) Following the meeting on 14 March, Ms. Faulkner emailed the Claimant at 16.01 [47]

*"Thank you for seeing me earlier today and further to our conversation, I have put Jeanne and Andy in on copy to you could liaise and agree on a mutually convenient date to go through the hand-over, perhaps for next week?"*.

(ii) The Claimant then attended the Respondent's premises for the handover on 20 March and met with Ms. Monchevet [82-83].

14.4 On 21 March 2018, the Claimant attended the premises and left his work laptop and mobile phone on his desk. (The Claimant says he did so because he has a fully equipped home office and he knew that his employment was going to come to an end, he just did not know when).

14.5 On 21 March, Ms. Faulkner emailed the Claimant at 18.00 [49]

*"Sorry I missed you earlier. ...*

*"We didn't have the chance to say goodbye and do a handover IT devices. Everything was on your desk and thank you for that.*

*I'm sure we will speak soon anyhow"*.

14.6 In a letter dated 1 November 2018 [133] Mr. Andy Hill writes in support of the Claimant and states:

*"I informed [the Claimant] of the decision to release him and referred him to Ms. Isabelle Faulkner ... for an explanation of the rationale and to sort out termination arrangements including formal notification of termination and end date of employment"*

I accept Mr. Hill was not privy to what Ms. Faulkner said to the Claimant at the meeting on 14 March but this is an indication that the purpose of that meeting was to do more than advise him of the decision in principle.

14.7 There is evidence the Claimant started looking for new employment by 20 March 2018.

15. Whilst none of these factors individually are conclusive, collectively they are strong indications that both parties understood that the Claimant's employment was to be terminated imminently which is consistent with Ms. Faulkner's position that the Claimant had been given two weeks' (verbal) notice at the meeting on 14 March. However, I also accept the Claimant did not fully appreciate that this meant his employment would in fact terminate two weeks later i.e. on 28 March as demonstrated by his emails on 28 and 29 March [48-49] (paras. 17 and 19 below).

16. The notice of termination letter to the Claimant from Ms. Faulkner dated 14 March 2018 [42] states:

*"I am writing further to our meeting today 14<sup>th</sup> March 2018 regarding your position as Head of Marketing, Development and Communications.*

*As discussed, the IB programme will be closing and a restructure will be taking place within the school. Therefore as this impacts significantly on your role, you were advised that regrettably your position with [the Respondent] would not be confirmed. As a result 2 weeks notice have been issued to you today, as per the terms of your notice in probation.*

*Your last working day will be 28 March 2018 and you will be paid up until that date plus any outstanding holiday monies owed to you. Your P45 will be forwarded to you in due course."*

17. I accept Ms. Faulkner's evidence that she intended to send this letter to the Claimant by email but failed to do so until 29 March because it "sat in her outbox" and she did not notice this until the Claimant emailed her and Mr. Hill on 28 March 2018 [48] as follows:
- "A gentle nudge to remind you that I have yet to receive a letter with details of the termination of my contract. In particular, while I understand that my period of notice is two weeks, I am mindful that neither of you has yet provided me with a final date of employment. As Easter is fast approaching I would appreciate clarification of termination details in writing as soon as possible."*
- Ms. Faulkner responded on 29 March [48-49]:
- "Apology for this. We spoke two weeks ago about your termination and I gave you your last day of work when we met. The letter was prepared but for some reason, it was stuck in my outbox. I don't know why."*
- A copy of the letter of 14 March was attached to this email and the Claimant accepts that he received this on 29 March.
18. The Claimant was asked on cross-examination if it was clear to him, on receipt of this letter, that he was being served with notice of termination of his employment as at 29 April 2018; he confirmed that it was clear but that he was querying the letter as it was backdated.
19. The Claimant replied (29 March) [48]:
- "Thank you for this. For the sake of clarity and accuracy you did not give me my last day of work when we met on 14<sup>th</sup> March, nor have you at any subsequent meeting, nor did you make it clear that you were actually serving notice to me on 14 March. To receive this letter a day after you consider my employment to be terminated is disappointing to say the least".*
20. The Claimant's payslip for month ending 31 March 2018 [63A] shows a gross total of £4,065.75 which breaks down as £3,605.50 monthly pay and £460.25 holiday pay; this is subject to various deductions including "unpaid leave" of £263.00.
21. On 4 April 2018, Ms. Faulkner wrote to the Claimant (by email) [53] stating that at the meeting on 14 March she had given him verbal notice of termination of his employment, an explanation for that decision and the option to either work his notice or remain at home and he had elected the latter. She concludes:
- "It was unfortunate that the confirmation letter, which had been prepared, was delayed (due to IT issues) and that you did not receive this until 29<sup>th</sup> March 2018".*
22. The Claimant replied on 9 April 2018 [54]. He says that their different accounts of their conversations are irrelevant as:
- "[The Respondent] failed to serve notice in writing until the day after you claim my employment had been terminated. This constitutes a breach of contract".*
- "As a remedy I am prepared to accept that the effective date of commencement of the notice period should be the next working day following the date on which I received notice in writing via your backdated letter sent by email on 29<sup>th</sup> March 2018. The final day of my notice period would therefore be close of business on Monday 16<sup>th</sup> April 2018 after taking account of statutory holidays. Salary, pension and accrued holiday pay should therefore be calculated up to and including this date"*
- He raises queries about inaccuracies in his March payslip [63A] in particular calculation of holiday pay and the deduction for "unpaid leave". He concludes by requesting a response by 16 April.

23. On 18 April 2018, Ms. Faulkner responded [55-57]:

23.1 She reiterates that the Claimant was advised at the meeting on 14 March that he was being given two weeks' notice with immediate effect; he had elected to work at home for the second week of his notice; and he left the premises on 21 March 2018. She comments that she is surprised that he did not return to work or query this sooner if he was unclear and that she assumed he had understood that he had been given notice in view of the fact he had remained at home and left all his equipment on his desk. She concludes by denying any breach of contract as he had been given and paid 2 weeks' notice.

23.2 With regard to his pay queries, she explains that:

- (i) £263.00 had been deducted in respect of 2 days sickness (9 and 10 February) as he was not eligible for SSP for the first 3 days of absence; the delay was due to a delay in receipt of the sickness form; and
- (ii) holiday pay had been recalculated to show he had accrued 6 days holiday and he would be paid a further £328.77.

23.3 Ms. Faulkner concludes:

*"... I confirm once again that your last day of employment was 28 March 2018 and therefore your final pay, holidays and pension have been calculated in accordance with this letter".*

24. On 27 April, the Claimant was paid a further £328.77 for the month ending 30 April 2018 [payslip 59 and bank statement 127]; the payslip was sent to him by email on 8 May 2018 [117].

25. On 27 April 2018, the Claimant contacted ACAS; an EC Certificate was issued on 27 May 2018 [89]. The Respondent's solicitors informed ACAS that the correct termination date was 29 March 2018 and that the Claimant was therefore entitled to salary and any accrued holiday pay to that date plus two weeks' salary in lieu of notice, subject to deductions [ET3 grounds para. 7, 23]. This claim was presented on 19 June 2018.

26. Ms. Faulkner says that on receipt of the Tribunal claim, the Respondent realised that the final payment of salary and P45 had not been issued. On 4 September 2018, Ms Maunder contacted Tax Assist [63B and 63C] to request that they action a payment to the Claimant and raise a P45:

*"The calculations for a salary payment of 19 days, this is from 29<sup>th</sup> March to 16<sup>th</sup> April inclusive. A reminder his annual salary is £48k. In addition he should receive accrued holiday pay which I have worked out to be 1.56 days. 30 days holiday over 365 days.*

*My figures calculate as follows:*

*£2,498.62 salary*

*£205.15 Holiday.*

*I need to receive a payslip showing the tax and NI no pension deduction and P45 please. He has earned £328.77 in this financial year from us."*

The Claimant was then paid a further £2,703.77 (gross) [payslip 60] which breaks down as monthly pay £2,498.62 and holiday pay £205.15 and the net sum of £2,463.56 was paid to him the same day [64 and bank statement 119]

27. The Claimant's P45 [61-63] was also issued on 4 September 2018 and shows a leaving date of 4 September 2018. Ms. Faulkner says this is because the payroll

company advised the Respondent it could not be backdated to show 16 April 2018 [w/s para. 9].

28. The Claimant maintains that his employment with the Respondent continued until 4 September 2018, the date shown on his P45, and that he remained exclusively available to work for the Respondent until that date. I accept that there was a freeze on “*uncommitted marketing spend*” [65 and 109] and that this freeze would have had an impact on his role, but there is insufficient evidence to justify a finding that he continued to provide any services to the Respondent after 29 March:
- 28.1 He attended a Senior Management Meeting on 21 March 2018 [111] but this was prior to 29 March 2018. He confirmed in verbal evidence that he was not invited by the Respondent to attend any further meetings.
- 28.2 He has not attended the Respondent’s premises since 21 March 2018.
- 28.3 He reported to and received instructions from Mr. Hill but when I asked him if he had received any communications from Mr. Hill, he replied “*very few work related*”.
- 28.4 Whilst the Claimant was able to send and receive emails from [development@ecole-ifa.com](mailto:development@ecole-ifa.com) email address following 14 March, I accept Ms. Faulkner’s evidence that she asked the Respondent’s external IT consultant to deactivate the Claimant’s work email address on 27 March 2018 but that this was overlooked. In any event, the emails in the bundle all predate 29 March with the exception of the following:
- (i) On 4 April 2018, Mr. Hill forwarded to the Claimant [114 and 116] an email advising that the number of senior pupils had increased and commented “*So actually good for your CV and my references for you ...*”. The purpose of this email was therefore solely to assist the Claimant with his search for new employment and the Claimant said in verbal evidence that he and Mr. Hill are friends.
  - (ii) On 2 May 2018, the Claimant received an email from City Kids Magazine [107-108] chasing up payment of an invoice; the Claimant referred the writer to the Respondent’s finance department.
  - (iii) In an email to the Claimant dated 25 June 2018, Amanda from the Good Schools Guide [85 and 106] stated that she had “*just spoken to the receptionist at [the Respondent] who suggested I email you directly*” with regard to updating the guide; the Claimant replied on 27 June suggesting she contact Ms. Faulkner. This response is not consistent with his claim that he was still in employment.
  - (iv) In an email to the Claimant dated 30 August 2018, Mr. Durden of the Royal College of Physicians [86-87] enquires about the possibility of venue hire. The Claimant simply forwarded this to Ms. Faulkner on 31 August [86]. Again, this response is not consistent with his claim that he was still in employment.

### **The Law**

29. The Claimant’s claims are potentially deductions from wages which, if not authorised, were unlawful deductions from wages; claims for unlawful deductions from wages are permitted by the Employment Rights Act 1996 (“ERA”):
- 29.1 S27(1) defines wages as any sums payable to the worker in connection with his employment and lists specific payments that are to be counted as wages including any fee, bonus, commission, holiday pay or other emolument. Pension and expenses are excluded.
- 29.2 S13(1): An employer must not make a deduction from the wages of a worker unless:



- (i) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract; or
  - (ii) the worker has previously signified in writing his or her agreement to the deduction.
- 29.3 S13(2): a “*relevant provision of the worker’s contract*” is defined as a provision contained:-
- (i) in one or more written contractual terms of which the employer has given the worker a copy before he makes a deduction (s13(2)(a)); or
  - (ii) in one or more contractual terms (whether express or implied and, if express, whether oral or in writing) whose existence and effect (or combined effect) the employer has notified to the worker in writing before he makes a deduction.
- 29.4 S13(3): a deduction occurs when the employer pays less than the amount due on any given occasion and includes a failure to make any payment.
- 29.5 S24: If a complaint is well-founded, the tribunal must make a declaration to that effect and must also order the employer to reimburse the worker for the amount of the unauthorised deduction.
30. The claim for holiday pay also falls within the Working Time Regulations 1998 (WTR):
- 30.1 Regulations 13 and 13A: Workers and employees are entitled to a minimum statutory annual leave entitlement of 5.6 weeks.
- 30.2 During the first year of a workers' employment, the amount of leave that they can take at any time is limited to the amount of leave that they have accrued at that time, calculated monthly in advance.
- 30.3 Leave entitlement under regulations 13 and 13A may not be replaced by a payment in lieu except where the employment is terminated.
31. The Claimant’s claims for arrears of pay, monies in lieu of notice and outstanding holiday pay are claims for breach of contract and are permitted by article 4 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 which gives the Employment Tribunal jurisdiction to hear claims for damages for breach of contract provided the claims arose on termination of the contract of employment and have been brought in time.
32. In determining the effective date of termination:
- 32.1 Unambiguous words of dismissal may be taken at their face value without the need for analysis of the surrounding circumstances.
- 32.2 If there is any ambiguity, all the surrounding circumstances must be considered both preceding and subsequent.
- 32.3 If the ambiguity occurs in correspondence between the employer and the employee the interpretation:  
*“should not be a technical one but should reflect what an ordinary, reasonable employee... would understand by the words used” and “the letter must be construed in the light of the facts known to the employee at the date he receives the letter”* (**Chapman v Letherby and Christopher Ltd [1981] IRLR 440 EAT**).
- 32.4 In **Newcastle upon Tyne Hospitals NHS Foundation Trust v Haywood [2018] UKSC 22**, the Supreme Court recently concluded that notice of termination takes effect when it is actually received by the employee and he or she has read it, or had a reasonable opportunity to read it.

## **Conclusions**

33. Applying the relevant law to my findings of fact to determine the issues, I have concluded as follows.
34. The first issue to determine is when the Claimant was given effective notice of termination of his employment. I have concluded that he was given two weeks' notice on 29 March 2018 for the following reasons:
- 34.1 The Contract requires notice to be given in writing and therefore it was not effective when given verbally on 14 March 2018.
- 34.2 Effective written notice was however given when the Claimant received the letter of termination on 29 March 2018 (**Newcastle upon Tyne Hospitals NHS Foundation Trust v Haywood [2018] UKSC 22**).
- 34.3 The Claimant accepts that it was clear to him, on receipt of this letter, that he was being served with notice of termination of his employment as at 29 April 2018 but that he was unhappy with the letter as it appeared to "backdated". I do not accept it was backdated but I do accept there is some ambiguity as the letter specified a termination date of 28 March which predated receipt by the Claimant on 29 March. However, "*an ordinary, reasonable employee*" [**Chapman**] in the Claimant's shoes, in light of the facts known to him, would understand from that letter that he was being given notice of termination of his employment, as by the time he received this letter:
- (i) he had been told on 14 March that his employment was to be terminated on 2 weeks' notice;
  - (ii) he had cleared his desk;
  - (iii) he had returned the work laptop and mobile phone;
  - (iv) he had attended a handover meeting.
  - (v) he had received Ms. Faulkner's email of 21 March 2018 in which she stated:  
*"We didn't have the chance to say goodbye and do a handover IT devices. Everything was on your desk and thank you for that".*
- 34.4 His subsequent actions were also inconsistent with someone who genuinely believed his employment was still continuing (para. 28 above).
35. The second issue to determine is when the Claimant's employment came to an end and I have concluded that it terminated on 12 April 2018 for the following reasons:
- 35.1 The employment Contract requires the Respondent to give written notice of termination which was not given until 29 March 2018.
- 35.2 The Claimant's employment commenced on 8 January 2018 and therefore notice was given prior to expiry of the three month probationary period and the contractual entitlement to notice was two weeks.
- 35.3 The Respondent reserves the contractual right to make a payment in lieu of notice but did not exercise that right; the Respondent does not argue otherwise [ET3 grounds para. 7 page 23].
- 35.4 Accordingly, the Claimant's employment ended at the end of the contractual notice period of two weeks, i.e. 12 April 2018.

36. Turning to how much the Claimant is entitled to:
- 36.1 Arrears of salary during the 14 days notice period (29 March to 12 April 2018): He has received in excess of this as (eventually) on 4 September 2018 he was paid 19 days pay (£2,498.62).
- 36.2 Monies in lieu of untaken holiday accrued to 12 April 2018: There is no suggestion that the Claimant took any holiday during this time. His annual holiday entitlement was 28 days (which accords with his statutory entitlement under the WTRs) plus Bank Holidays; two Bank Holidays fell prior to termination of his employment (Good Friday on 30 March April and Easter Monday on 2 April). He has received payments in total of £994.17 (£460.25 on 31 March (para. 20 above); £328.77 in April (para. 24 above) and £205.15 in September (para 26 above). Any shortfall is caught by the overpayment of salary (above).
37. The Claimant's claims succeed as he has demonstrated that payments were not properly made at the date he commenced these proceedings. However, I make no financial award as he since been paid all monies due.
38. Finally, as Ms. Murphy acknowledged in her submissions, this was not the Respondent's finest hour:
- 38.1 There was a litany of regrettable errors including:
- (i) delay in sending the letter of 14 March until 29 March;
  - (ii) failure to send the final salary payment until 4 September;
  - (iii) failure to send the P45 until 4 September;
  - (iv) error on the P45 i.e. showing the incorrect leaving date; and
  - (v) failure to promptly deactivate the Claimant's work email account.
- 38.2 The Respondent's failure to attend to administrative matters relating to termination of the Claimant's employment with proper care and attention was unprofessional and disrespectful. This has undoubtedly and understandably added to the Claimant's distress and fuelled these proceedings.

Signed by \_\_\_\_\_ on 9 November 2018  
Employment Judge Mason

Judgment sent to Parties on

9 November 2018