



## EMPLOYMENT TRIBUNALS

**Claimant:** Miss C Marsay

**Respondent:** The Medika Clinic Limited

**HELD AT:** Manchester by CVP

**ON:** 15 August 2023

**BEFORE:** Employment Judge Fearon

### REPRESENTATION:

**Claimant:** Miss Marsay, in person

**Respondent:** Dr Amjed, lay representative

## RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claim for wrongful dismissal (non-payment of notice pay) is well founded and the respondent is ordered to pay the claimant the sum of £625.00.
2. The respondent has made an unlawful deduction from the claimant's wages in respect of holiday pay and is ordered to pay the claimant the gross sum of £750.00 in respect of the amount unlawfully deducted.
3. The respondent has made an unlawful deduction from the claimant's wages in respect of sick pay and is ordered to pay the claimant the gross sum of £547.00 in respect of the amount unlawfully deducted.
4. The respondent has made an unlawful deduction from the claimant's wages in respect of uniform costs and is ordered to pay the claimant the sum of £200.00 in respect of the amount unlawfully deducted.
5. The respondent failed to provide the Claimant with written particulars of employment contrary to Section 38 Employment Act 2002 and the Claimant is awarded 2 weeks' pay in the amount of £1,250.00, which sum the Respondent is ordered to pay to the claimant.
6. The claim for compensation for stress and anxiety is dismissed on withdrawal.
7. The respondent's counterclaim for breach of contract is not well-founded and is dismissed.

## REASONS

### Introduction

1. The claimant was employed by the respondent as a Clinic Manager. She commenced employment with the respondent on 10 October 2022. Her employment ceased on 28 January 2023. The claimant submitted a claim form dated 22 March 2023. The claimant's claim is for unauthorised deductions of wages and compensation as follows:

1.1 £200 for uniform she paid for and returned to the respondent, unworn, on 31 January 2023.

1.2 Six days' holiday pay.

1.3 One week's sick pay for the week of 21 December 2022 and one month's sick pay for the period 28 December 2022 to 28 January 2023.

1.4 Two weeks' notice pay.

1.5 £1,000 compensation for the stress and anxiety of bringing a claim.

1.6 The Claimant says she has never received a contract of employment from the respondent, nor any written statement of terms and conditions and she has never received any wage slips from the respondent.

2. The respondent accepts some monies are due to the claimant for sick pay, notice pay and holiday pay but they dispute the amounts claimed and say the amounts due are as set out in the grounds of response. They say the deduction in respect of the uniform was made further to the terms of the claimant's contract of employment.
3. The respondent made a breach of contract counter claim for the claimant to repay training costs incurred totalling £2,670.00 which they say the claimant is obliged to refund pursuant to her contract of employment. The respondent relies on the following contractual provisions:

*"13.2.2 if you cease employment during the training course or within 12 months of completing the training course, 100% of the costs shall be repaid.*

*13.4 you agree to the Company deducting the sums under this clause from your final salary or any outstanding payments due to you.”*

## **Preliminary matters**

4. The respondent had connection difficulties initially during the first part of the hearing. Once those were resolved all parties were able to fully participate in the hearing.
5. At the beginning of the hearing the Tribunal had to deal with preliminary issues relating to evidence. The respondent objected to the claimant's bundle of documents being relied on during the hearing on the basis that the bundle was provided after the deadline set out in the Tribunal's directions. The Tribunal accepted the bundle of documents in evidence in the interests of justice and further to the overriding objective: the respondent had received the bundle in advance of the hearing date; the documents in the bundle were emails between the parties and documents the respondent had otherwise seen; there was no prejudice to the respondent in that evidence being admitted.
6. The claimant had not provided to the Tribunal or the respondent a witness statement for herself. During discussions the claimant confirmed that she relied on her further and better particulars and her response to the respondent's evidence as her statement and the Tribunal accepted that document as her evidence.

## **The Issues for the Tribunal to decide**

7. At the outset of the hearing the issues were discussed with the parties.
8. The claimant claimed compensation for stress and anxiety caused by bringing the claim. Injury to feelings or damage to mental health is not a remedy the Claimant can seek in an unauthorised deduction from wages claim and the claimant in any event had no evidence in support of such a claim. Following discussions in this regard the claimant confirmed that no claim was being pursued for injury to feelings or damage to her mental health and this aspect of the claim was withdrawn.
9. The claim for holiday pay was discussed. The claimant in her further and better particulars confirmed the amount claimed for holiday pay was £750 gross. During preliminary discussions of the issues Dr Amjed on behalf of the respondent confirmed the amount claimed was agreed in the sum of £750.

10. The claimant claimed sick pay for 5 weeks in total. During discussions Dr Amjed confirmed on behalf of the respondent that the sick pay was agreed for the four week period from 28 December 2022 to 28 January 2023. The total for that period was £437.60. The respondent denied that any sick pay was due for the week from 21 to 27 December 2022 on the basis that the claimant was not sick in that period and no sick note was provided. The claimant says she self-certified for that week.
11. The claimant claims 2 weeks' notice pay. The respondent says the relevant notice period was 1 week.

### **Unauthorised deductions**

- 12.1 Were the wages paid to the claimant less than the wages she should have been paid?
- 12.2 Was any deduction required or authorised by statute?
- 12.3 Was any deduction required or authorised by a written term of the contract?
- 12.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 12.5 Did the claimant agree in writing to the deduction before it was made?
- 12.6 How much is the claimant owed?

### **Respondent's counter claim**

13. Does the Tribunal have jurisdiction to hear the claim? If yes, what terms were agreed and when by the claimant and respondent in relation to the deductions for training fees?

### **Schedule 5 Employment Act 2002**

14. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?
15. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.
16. Would it be just and equitable to award four weeks' pay?

## **Evidence**

17. I considered the bundle of evidence provided by the respondent comprising 63 pages.
18. I considered the bundle of evidence provided by the claimant comprising 48 pages.
19. I considered the statements from the claimant's witnesses Donna Topham, Gemma Rockson and Cheryl Hanrahan.
20. I considered the claimant's further and better particulars and response to the respondent's evidence, which she relied upon as her witness statement.
21. I considered statements on behalf of the respondent from Ms Alison Callaghan, Dr Kamran Amjed and Ms Victoria Corbett.
22. I heard sworn evidence from the claimant, Ms Cheryl Hanrahan, Ms Corbett, Ms Callaghan and Dr Amjed.

## **Findings of Fact**

23. The claimant was employed by the respondent as Clinic Manager at The Medika Clinic on a part time basis from 10 October 2022 until 28 October 2022; from 28 October 2022 she was employed by the respondent on a full-time basis.
24. Dr Amjed in his witness statement dated 20 June 2023, states he is employed by the respondent as Office Manager and processes the payroll for all staff employed at the clinic. This is exactly the same role as Ms Callaghan was employed by the respondent to do. When giving evidence Dr Amjed confirmed his statement was true and nothing within the statement required amending. Emails provided as evidence by the respondent, however, state Dr Amjed is Medical Director and Co-founder of the respondent. None of the documentary evidence confirms Dr Amjed

was Office Manager. I find his role was Medical Director and Co-founder of the respondent.

25. The claimant was interviewed by Dr Amjed for the role of Clinic Manager on 4 October 2022. On 5 October 2022, Dr Amjed emailed the claimant with a formal job offer setting out the position of Clinic Manager, her salary of £32,500 per annum plus commission and bonuses based on monthly KPIs and confirming that training would be provided.
26. Dr Amjed contended in evidence that the recovery of training fees was discussed with the claimant during her interview. The claimant challenged him on this and in response he agreed it was only confirmed to the claimant in her interview that training would be provided to her and paid for by the respondent and that recovery of training fees were not discussed then. I find therefore that terms regarding recovery of training fees were not discussed by the claimant and respondent on 4 October 2022. They were not set out in writing in the follow up email on 5 October 2022. The claimant was not provided with a draft employment contract on 4 or 5 October 2022.
27. Dr Amjed said recovery of training costs was discussed with the whole team during their induction on 24 October 2022. This was not the claimant's induction (as she had commenced her employment earlier on 10 October 2022) although she was present at the induction on 24 October 2022 as she was responsible for the therapists in her role as Clinic Manager.
28. The claimant challenged Dr Amjed on this given her own and Ms Cheryl Hanrahan's evidence that training costs recovery and deduction of uniform costs from wages were not discussed at the induction on 24 October 2022. Ms Hanrahan was employed by the respondent as a beauty therapist from October 2022. I find that the recovery of training costs and deduction from wages of uniform costs were not specifically discussed during the claimant's own induction and were not discussed in relation to the claimant specifically at the therapists' induction on 24 October 2022.
29. Uniform costs of £200 were deducted from the claimant's wages in October 2022.
30. On 20 December 2022 Dr Amjed held a meeting with the claimant to discuss her performance. At the meeting they discussed her performance and agreed to discuss the performance issues further two days later. No minutes of this meeting were provided by the respondent to the claimant and the respondent did not submit any meeting minutes in evidence.
31. Dr Amjed stated in evidence during the hearing that recovery of training costs were discussed at his meeting with the claimant on 20 December 2022. He was challenged about this during evidence and he replied that in the meeting on 20 December 2022, it was confirmed the claimant had been given training and support had been offered to her and that recovery of training costs was not discussed in detail; he said only a hint was made about such recovery. Dr Amjed then admitted he did not say anything specific to the claimant on 20 December 2022 about recovery of training costs.

32. Ms Hanrahan, along with other employees, Vicky, Martina and Alina, attended a meeting on 21 December 2022 about their employment contracts. Ms Hanrahan was given her contract of employment at that meeting. The claimant was not present at that meeting.
33. On 21 December 2022 the claimant contacted the respondent to advise she would be absent from work due to having contracted Covid. The respondent disputes that the claimant was sick with Covid during the week commencing 21 December 2022 and challenged the claimant's evidence on this. I accept the claimant's consistent and clear evidence that on 20 December 2022 she felt ill whilst in work but was unable to leave early. That day on returning home she took a covid test which was positive. She was absent from work for one week as a result, in respect of which she self-certified her absence as from 21 December 2022.
34. On 3 January 2023, the respondent received a sick note from the claimant for the period 28 December 2022 to 28 January 2023. The sick note stated "work related stress" as the reason for the absence.
35. On 11 January 2023, Dr Amjed emailed the claimant and invited her to resign with immediate effect on the basis that if she agreed to do so within one week the respondent would not seek reimbursement from the claimant of training costs in respect of training provided to her in her role as Clinic Manager.
36. The offer email dated 11 January 2023 states "Although your official contract of employment was to follow, the offer we make to you is to resign from your role with immediate effect." The offer was said to be open for acceptance until 4pm on 18 January 2023.
37. Dr Amjed was challenged in evidence about this email of 11 January 2023. He was asked whether, given the contents of the email, he agreed the claimant did not have a contract of employment at the time he sent the email on 11 January 2023. He replied the contract of employment was verbal. Dr Amjed was evasive in answering questions as to when the respondent provided the claimant with a written contract of employment. He ultimately responded to say he was going to give the claimant a written contract of employment on 21 December 2022, but he did not give it to her in person on that day as she was off sick. The respondent has provided no evidence that when unable to give the contract to the claimant in person, they made attempts to provide the claimant with a copy by post or email. Dr Amjed agreed in evidence during the hearing that the claimant never signed a contract of employment.
38. Ms Alison Callaghan was employed by the respondent as Office Manager; she processed the payroll for all staff employed at the respondent's clinic. Ms Callaghan in her statement dated 20 June 2023 says that Dr Amjed supplied the claimant with her employment contract and the claimant took it away to read over and bring back to the clinic. Ms Callaghan when challenged on cross examination confirmed in evidence that she had never met or spoken to the claimant and she was relying on what Dr Amjed had told her when she prepared and signed her statement. I accordingly find that Ms Callaghan cannot give any direct evidence on

whether the claimant had been given a written contract of employment nor as to whether any contractual terms had been agreed between the claimant and the respondent.

39. Ms Victoria Corbett was employed by the respondent as a therapist from 24 October 2022. In her statement dated 8 August 2023, Ms Corbett states that “all staff were given employment contracts when we started working at the Medika Clinic”. She was not employed by the respondent when the claimant commenced employment with the respondent and I do not accept that Ms Corbett knew if, and when, the respondent provided the claimant with a contract of employment.
40. I find that the respondent did not provide the claimant with a written contract of employment nor any written statement of terms and conditions of employment. I do not accept Dr Amjed’s evidence that he supplied the claimant with her employment contract and that she took it away to read over and bring back to the clinic as is set out at paragraph 1 of his witness statement dated 20 June 2023.
41. I find there was no written or oral agreement between the claimant and respondent regarding recovery of training fees nor deduction of uniform costs from her wages.
42. By email dated 18 January 2023 sent at 10:41am, the claimant accepted the respondent’s offer and resigned; she said she required written confirmation she would be paid her 1 weeks' notice pay, her sick pay and be reimbursed the £200 which had been deducted from her pay in respect of uniform costs.
43. On 24 January 2023 the claimant emailed the respondent to chase the outstanding monies owed to her. On 26 January 2023 the claimant emailed Ms Callaghan to chase a response and payment.
44. Ms Callaghan replied by email on 27 January 2023 asking the claimant to arrange a date to drop off her uniform and keys following which the final payment due to the claimant would be processed.
45. Following her resignation, the claimant’s employment with the respondent ceased, as agreed, on 28 January 2023.
46. On 31 January 2023 the claimant’s colleague returned the claimant's uniform and keys. Her shoes were already at the clinic premises. Dr Amjed says the uniform was not in satisfactory state so the respondent did not refund the uniform cost to the claimant. Ms Gemma Rockson says in her statement which is unsigned and undated that she returned the claimant’s uniform to the respondent and it was clean and unworn. She says she took a photo of the uniform on the day she returned it. Ms Rockson did not attend the hearing to give oral evidence. The photographs provided in evidence do not show the uniform in a poor or damaged condition. Final payments due to the claimant remain outstanding.



47. The right not to suffer an unauthorised deduction is contained in section 13(1) of the ERA: “An employer shall not make a deduction from wages of a worker employed by him unless— (a) the deduction is required or authorised 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.”
48. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages.
49. Section 13(3) deems a deduction to have been made on any occasion on which the total amount of wages paid by an employer is less than the amount properly payable by him. That requires consideration of contractual, statutory and common law entitlements. Such a deduction is unlawful unless it is made with authority under section 13(1) or exempt under section 14.
50. An ex-employee is entitled to present a claim to the Employment Tribunal for breach of contract, provided that the sum claimed is outstanding on the termination of employment, further to article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the Order”). An employer is entitled to enter a counterclaim in response in respect of monies owed resulting from an alleged breach of contract by that ex-employee, but article 4(d) of the Order only permits this if the claimant has first presented a claim for breach of contract under article 3.
51. Section 86 Employment Rights Act 1996 sets out the rights of employer and employee to minimum notice as follows:
  - 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) is not less than one week’s notice if his period of continuous employment is less than two years,
    - (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,
  - and
  - (c) is not less than twelve weeks’ notice if his period of continuous employment is twelve years or more.

## Discussions and conclusions

52. The claimant's evidence was consistent and reliable and I prefer her evidence. Dr Amjed was inconsistent in the evidence he gave. His oral evidence differed to his written evidence and his oral evidence was vague and he was evasive at times in his answers to questions on cross-examination. The evidence of the respondent's witness, Ms Callaghan, was largely hearsay evidence based on what Dr Amjed had informed her. Neither Ms Callaghan nor Ms Corbett were able to give direct factual evidence on the matters in issue in this claim relating to the claimant being provided with a contract of employment or discussing terms and conditions about training costs and uniform costs.
53. I find that Dr Amjed did not discuss with the claimant specifically any terms as to deductions from her wages for uniform costs nor as to terms of recovery of training fees on any of the occasions he contended for which were: at the claimant's interview on 4 October 2022; at the therapist induction on 24 October 2022; at the meeting with the claimant on 20 December 2022.
54. I find that Dr Amjed did not provide the claimant with a written contract of employment at any time during her employment with the respondent and I do not accept his evidence in his witness statement that he supplied the claimant with her employment contract and that she took it away to read over and bring back to the clinic.
55. I find that the respondent never provided the claimant with a written statement of terms and conditions of her employment.
56. A deduction of £200 was made from the claimant's wages in October 2022 without her knowledge that this sum was going to be deducted and without her agreement to that deduction. The deduction made from her wages in October 2022 in respect of uniform costs was not required or authorised by statute. That deduction was not required or authorised by a written term of a contract as the claimant was never provided with a written contract by the respondent nor any written statement of terms and conditions. The uniform deduction was not discussed with the claimant and she did not agree in writing to the deduction prior to it being made. I accordingly find that £200 in respect of uniform costs was unlawfully deducted from the claimant's wages.
57. The claimant was not paid the wages she should have been as she was not paid her sick pay, holiday pay or notice pay.
58. I accept the claimant's evidence that she was off sick for 1 week from 21 to 27 December 2022 which was a self-certified absence due to her having Covid. The deductions in respect of sick pay were not required or authorised by statute. The deductions were not required or authorised by any written contract term and were not agreed to by the claimant in writing before the deductions were made. The claimant was not paid her sick pay for the week of 21 to 27 December 2022 and her claim for sick pay for that week succeeds. The respondent owes the claimant £109.40 in sick pay for that week as well as the agreed sum of £437.60 for the period 28 December 2022 to 29 January 2023.

59. The respondent agreed the claimant's claim for holiday pay for six days in the sum of £750. The respondent owes the claimant that sum.
60. Further to Section 86 of the Employment Rights Act 1996, the claimant's notice period was one week. The claimant was not paid her notice pay by the respondent. The deductions in respect of notice pay were not required or authorised by statute. The deductions were not required or authorised by any written contract term and were not agreed to by the claimant in writing before the deductions were made. The claimant is owed £625.00 in respect of notice pay.
61. The Respondent failed to provide the Claimant with written particulars of employment contrary to Section 38 Employment Act 2002 and the Claimant is awarded 2 weeks' pay in the amount of £1,250.00, which sum the Respondent is ordered to pay to the claimant.
62. The respondent made a breach of contract counter claim for recovery of training costs from the claimant. There was no agreement between the claimant and respondent about recovery of training costs. Terms relating to recovery of training costs from the claimant were never discussed by the claimant and respondent and the respondent did not provide the claimant with a written contract of employment containing such terms. The respondent's counter claim is not well founded and is dismissed.

Employment Judge Fearon

Dated 10 September 2023

JUDGMENT SENT TO THE PARTIES ON  
20 September 2023

FOR THE TRIBUNAL OFFICE

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## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2403597/2023**

Name of case: **Miss C Marsay** v **The Medika Clinic  
Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 20 September 2023

**the calculation day** in this case is: 21 September 2023

**the stipulated rate of interest** is: **8% per annum.**

For the Employment Tribunal Office