EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Ms M Lloyd	Jordanna Nichols Ltd

Heard at: **By CVP** **On: 22 March 2021**

Before: **Employment Judge Davies**

Appearances
For the Claimant: **Mr S Lloyd (Unite)**
For the Respondent: **Mr J Searle (counsel)**

RESERVED JUDGMENT

1. The complaint of unauthorised deduction from wages in respect of failure to pay the National Minimum Wage is well-founded and succeeds. By agreement, the Respondent shall pay the Claimant **£283.38**.

2. The complaint of automatically unfair dismissal for asserting the breach of a statutory right is well-founded and succeeds. No basic award is payable. The Respondent shall pay the Claimant a compensatory award of: **£4605.54**.

3. The complaint of unauthorised deduction from wages in respect of failure to pay for holiday is well-founded and succeeds. By agreement, the Respondent shall pay the Claimant: **£554.90**.

4. The complaint of breach of contract in respect of one week's notice pay is well-founded and succeeds. No damages are payable because the compensatory award includes that week.

5. When the proceedings were begun the Respondent was in breach of its duty to give the Claimant a written statement of employment particulars. There are no exceptional circumstances that make it unjust or inequitable to award two weeks' pay. It is not just and equitable to award four weeks' pay. The Respondent shall pay the Claimant **£246.40**.

REASONS

Technology

1. This hearing was conducted by CVP (V - video). The parties did not object. A face to face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

Introduction

2. These were complaints of automatically unfair dismissal for asserting the breach of a statutory right, unauthorised deduction from wages in respect of National Minimum Wage and holiday pay, and breach of contract in respect of notice pay, brought by the Claimant, Ms Lloyd, against her former employer, Jordanna Nicholls Ltd. The Claimant was represented by her father (who is a trade union official), and the Respondent was represented by Mr Searle, counsel.

3. There was an agreed file of documents and everybody had a copy. I admitted a small number of additional documents by agreement during the course of the hearing. The Tribunal heard evidence from the Claimant and from Ms J Nichols-Turley and Ms C Murphy for the Respondent.

The Claims and Issues

4. Following a preliminary hearing in October, EJ Eeley determined that the Claimant was at all material times both an employee and a worker of the Respondent within s 230 Employment Rights Act 1996. She had wrongly been treated by the Respondent as self-employed and therefore was not paid National Minimum Wage or holiday pay and was dismissed without notice or any procedure. The following issues arose:

    4.1 What was the reason or principal reason for the Claimant's dismissal? Has she proved that the reason is that she said she should be paid National Minimum Wage? If so, the Respondent accepts that this was a reason within s 104(1) Employment Rights Act 1996 and that the Claimant was automatically unfairly dismissed.
    4.2 If the Claimant was unfairly dismissed:
        4.2.1 What financial losses has the dismissal caused the Claimant?
        4.2.2 Has the Claimant taken reasonable steps to replace her lost earnings, for example by looking for another job?
        4.2.3 If not, for what period of loss should she be compensated?
        4.2.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
        4.2.5 Did the Respondent unreasonably fail to comply with it?
        4.2.6 If so is it just and equitable to increase any award payable to the Claimant? By what proportion, up to 25%?
    4.3 The parties agree that the Claimant did unmeasured work and that her pay reference period is four weeks. Has the Respondent proved that it paid the Claimant National Minimum Wage for each four-week period of her employment? If not, by how much was she underpaid?

4.4 How much is the Claimant owed in respect of holiday that was accrued but untaken?
4.5 How much is the Claimant owed in respect of notice pay?
4.6 When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars?
4.7 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.
4.8 Would it be just and equitable to award four weeks' pay?

The Facts

5. The Respondent is a hair and beauty studio owned by Ms Nichols-Turley. The Claimant started working for the Respondent two days per week as a beauty therapist on 16 August 2019. She worked 10am to 7pm Fridays and 9am to 4pm Saturdays. When the Claimant was taken on, the Respondent's other beauty therapist, Kate, was on maternity leave, but the Claimant was taken on permanently, not as temporary maternity cover. Ms Nichols-Turley herself went on maternity leave in November 2019 and Ms Murphy was in charge as the salon manager from that point.

6. The Claimant was (wrongly) treated as self-employed throughout her employment and the agreement was that 55% of her earnings would be paid to the Respondent. She was not paid National Minimum Wage. By the conclusion of the hearing, the Claimant and Respondent agreed that the Claimant was underpaid a total of £283.38 over the course of her employment by reference to the National Minimum Wage. They also agreed that she had accrued 9 days' holiday that she had not taken, and that she was owed £554.90 for that.

7. When Ms Nichols-Turley was on maternity leave, Ms Murphy, the salon manager, suggested to the Claimant that she only come into the salon for her first appointment of the day. She suggested the Claimant message her the night before to find out what appointments had been booked for her for the following day. The Claimant started to do so. Given that she was being treated as self-employed, and was not paid if she did not have a client, that is perhaps unsurprising. In her evidence, Ms Murphy agreed that she had suggested this to the Claimant, on the basis that they were self-employed. Ms Murphy agreed that the Claimant would then ask her if it was ok to come in late or not attend the salon at particular times, and Ms Murphy would approve her requests. Ms Murphy never raised any concern with the Claimant about her approach to this after that. She agreed in cross-examination that if the Claimant's approach had been causing a problem, she would have raised it with her.

8. In January 2020, Ms Murphy told the Claimant that Kate was returning from maternity leave in February and that Kate wanted to work Saturdays. The following week Ms Nichols-Turley told the Claimant that Kate was going to work on Saturdays and there was no point the Claimant working Saturdays too as the salon was not busy enough for both of them at this time of year. She might be able to work Saturdays towards the summer. The Claimant was not given any choice and she did not agree to vary her working hours: Ms Nichols-Turley

simply unilaterally instructed her not to work on Saturdays. The last Saturday the Claimant worked was 1 February 2020. No agreement was reached about which day she should work instead but the Claimant's unchallenged evidence was that this was still being discussed at the time of her dismissal (see below).

9. On 31 January 2020 there was a meeting at the salon. The Claimant attended it. There is a dispute about what happened after the meeting. This was raised for the first time in Ms Nichols-Turley's witness statement. The Claimant therefore dealt with it in her oral evidence. She said that the meeting was at 10am and lasted an hour. She then had a client booked in for a treatment that lasted 15 minutes. She explained that she would do the treatment but would then need to leave because her daughter was ill. Kate offered to do the treatment instead. The Claimant told her she was happy to do it, but Kate was keen and they therefore agreed that Kate would do the treatment. In her witness statement, Ms Nichols-Turley said that at the end of the meeting the Claimant said that her daughter was ill and that she had to leave. Consequently, Kate had to fill in on her day off, to do "some of the Claimant's clients" in her absence, otherwise they would have to be rearranged or cancelled. In cross-examination, Ms Nichols-Turley eventually accepted that there was only one client. She was asked why her witness statement referred to multiple clients and she said that it was a "blip". Ms Nichols-Turley also accepted in cross-examination that Kate said, "I don't mind doing it for you." That seemed to me entirely consistent with the Claimant's version of events. Given the inconsistency between Ms Nichols-Turley's witness statement and her oral evidence about this, I prefer the Claimant's account. She had one client booked in. She said that she would do that client and would then leave because her daughter was ill. However, Kate offered to do the treatment and was happy to do so, so Kate did the treatment and the Claimant left to pick up her daughter.

10. This seemed to me to be part of a pattern in Ms Nichols-Turley's evidence, of exaggerating alleged shortcomings on the Claimant's part and seeking to paint her in a bad light. I return to that below when considering the reason for the Claimant's dismissal, which arose a couple of weeks later as follows.

11. On 7 February 2020 the Claimant and Ms Nichols-Turley had another conversation about the Claimant's second working day. Ms Nichols-Turley suggested she do Tuesdays, but the Claimant did not think that would be worth her while, once she had factored in child care costs. The situation remained unresolved.

12. On 14 February 2020 Ms Nichols-Turley came to speak to the Claimant in the salon. There is a dispute about what was said. The Claimant said that Ms Nichols-Turley asked how she felt things were going and that she told her she thought she was doing well, but she had lost a lot of clients since Kate returned to work. Ms Nichols-Turley told her that it was not ok for her to come in to do her clients and go home. She needed to be in the salon from 10am to 7pm on Fridays, whether she had clients in or not. The Claimant explained that she had only begun to shorten her hours because Ms Murphy told her she was allowed. Ms Nichols-Turley said that it did not matter what Ms Murphy had agreed, the Claimant needed to be there. Ms Nichols-Turley told her that she wanted her to carry on working at the salon because she was good at her job. She said that

the Claimant should have a think over the weekend because it was "all or nothing really." She understood her to mean that she had to attend the salon for full salon hours, regardless of whether she had bookings. She felt she had no option but to agree. Ms Nichols-Turley did not mention dismissing her during the meeting and she did not mention any complaints from clients or unhappiness with the Claimant's standard of work. This is consistent with what the Claimant wrote in an email on 20 February 2020.

13. Ms Nichols-Turley said in her witness statement that the Claimant would move clients around to suit her, that she had received complaints about the quality of her work and that she was not happy with the Claimant's commitment to her "job." At the meeting she told the Claimant they needed to address "the problem." She told her that unless she could honour the clients that were booked in, her contract would be terminated. She emphasised that they needed a back-up plan for when client appointments were cancelled without notice. The Claimant did not agree to any plan. She told her that it was "all or nothing." In cross-examination, Ms Nichols-Turley said that she went in for just a general chat with the Claimant. It was suggested to her that she did not anticipate planning to dismiss the Claimant, and she said, "It was to tell her I was unhappy with her not turning up and her days off sick. To make a back-up plan." She accepted that she did not mention any client complaints. She accepted that she had not referred to "dismissal". She said she had referred to "all or nothing" and she said that she meant that if the Claimant was not prepared to attend the salon for the full nine hours, regardless of whether she had clients booked in, there was no point in carrying on.

14. It appeared to me following the oral evidence that there was actually very little dispute about what was said on 14 February 2020. There was no mention of client complaints or issues with the Claimant's work. The focus was on Ms Nichols-Turley's insistence that the Claimant should be present throughout the salon's opening hours and that was the context for her saying it was "all or nothing." There was no mention of "dismissal." Given Ms Nichols-Turley's evidence that she just went in for a general chat, to tell the Claimant that she was unhappy with her not turning up and her days off sick and to make a back-up plan, and given that she thought the Claimant was self-employed at the time, I find that she was not giving her a warning that she must comply or be dismissed, or telling her that she was considering terminating her contract.

15. The Claimant thought about things over the weekend. She was not happy at being required to attend the salon regardless of whether she had clients booked in, when she would not be paid because she was being treated as self-employed. On Monday 17 February 2020 she rang ACAS and HMRC. Their online toolkits suggested the Claimant was an employee and she was advised to ask Ms Nichols-Turley to look into this. On Tuesday 18 February she texted her, "Hey, hope you're okay. Please may I have a copy of my contract sent over please." Ms Nichols-Turley replied to say that the Claimant did not have a contract and asked if there was anything she wanted to know in particular. The Claimant asked for a written agreement of their working arrangements. Ms Nichols-Turley replied that because the Claimant was self-employed it was just all verbal. She asked what the Claimant was querying. At about 6pm the Claimant replied to say that she had been in touch with HMRC, who had

questioned her self-employment status. They believed she was entitled to minimum wage for the hours she worked in the salon. She asked Ms Nichols-Turley to look into it for her. Ms Nichols-Turley replied to say that she would. At lunch time the following day, she replied to say that she had spoken to her accountant, who said that the Claimant was not employed. She explained the reasons, setting out 6 bullet points. Then she added, "I'm really sorry but it hasn't worked out for you at the salon. Your level of clients is decreasing instead of rising and the clients you're losing are not re-booking back in and it's damaging for my business. For that reason I no longer require your services with immediate effect."

16. The Claimant emailed Ms Nichols-Turley on 20 February 2020 with a grievance for unpaid wages and unfair dismissal. She outlined why she had been advised she was not self-employed. She said that following their conversation on Friday 14 February, Ms Nichols-Turley had said that she needed to be in the salon whether or not she had clients and that it was not acceptable to leave early or take the day off if her daughter was unwell. After asking Ms Nichols-Turley to look into the issues raised by ACAS and HMRC, she had been dismissed and she believed this was the reason.

17. Ms Nichols-Turley replied on 26 February 2020. She said that she had taken advice and that the Claimant was self-employed. She did not identify any reason for ending the Claimant's contract.

18. The Claimant says that the reason she was dismissed was because she was asking to be paid National Minimum Wage. The Respondent says that she was dismissed because of shortcomings in her performance. I do not accept the Respondent's evidence about this. I have no hesitation in finding that the reason Ms Nichols-Turley dismissed the Claimant was because she was asking to be paid National Minimum Wage. My reasons for reaching this conclusion are as follows:
    18.1 There was nothing in the meeting on 14 February 2020 to suggest that the termination of the Claimant's contract was imminent, nor that there was some deadline for action to be taken, failing which the Claimant would be dismissed.
    18.2 Ms Nichols-Turley did not contact the Claimant after the meeting on 14 February 2020 raising any issue or suggesting that her contract might be terminated before the Claimant sent her texts.
    18.3 Ms Nichols-Turley dismissed the Claimant in the same message as she responded substantively to the Claimant's suggestion that she should be paid National Minimum Wage. The sequence of events and timings alone suggest that this was the reason for the Claimant's dismissal.
    18.4 Ms Nichols-Turley was asked in cross-examination why she did not dismiss the Claimant on 14 February 2020. She said that she was giving her the benefit of the doubt. She was asked why she did not dismiss her on 15, 16 or 17 February 2020 [none of which was a working day for the Claimant]. She said that it was to give her the benefit of the doubt to see how it went. She was asked why the Claimant was not given the benefit of the doubt on 18 February 2020. She said that it was because she did not want to keep her in employment. She was asked what had changed since 14 February 2020. She said, "Because I wasn't happy with her anyway

and then the text message conversation, yes I wasn't happy with her anyway." Ms Nichols-Turley was not able to identify any other explanation of what had changed between 14 February 2020 and 18 February 2020, which meant that the Claimant could no longer be given the benefit of the doubt and it seemed to me clear from her last answer that the thing that changed *was* the text messages. The thing that stopped the Claimant being given the benefit of the doubt and led to the immediate termination of her contract was a text message suggesting that she was not self-employed and was entitled to National Minimum Wage.

18.5 Ms Nichols-Turley's evidence in her witness statement about the Claimant being unreliable and letting clients down, to the detriment of the business, appeared to be exaggerated and to a significant extent put together after the event to try and justify what had been done. The same is true of her evidence about client complaints about customer service and quality of work. By way of example: (1) she said that the relationship started to deteriorate in August 2019, because the Claimant asked to finish 3 hours early for a doctor's appointment. It was put to her in cross-examination that when she showed her disapproval at this request, the Claimant immediately agreed to try another time and did not finish early that day. She agreed. She then suggested for the first time that the reason the relationship started to deteriorate at that time was that she did not believe the Claimant about the appointment. That had never been said at the time or in the witness statement and was wholly implausible. (2) In her witness statement Ms Nichols-Turley referred to an unhappy customer in September, to whom she had provided a refund "to save the reputation" of her business. In cross-examination she accepted that a lash lift could go two ways and that she did not know if the Claimant was at fault. She did not see what happened. She accepted that at the time she and the Claimant simply had an amicable exchange of texts about it. She eventually accepted that this was not relevant to the Claimant's dismissal. However, she said she had included it in her witness statement "to show proof of the history leading to the dismissal." (3) She accepted that she had not spoken to the Claimant about any of the five clients she suggested were expressing anger to Ms Murphy when she rearranged their appointments. She was on maternity leave at the time. In one case she accepted that the client was "unhappy" not angry. Ms Murphy's evidence was that she did not raise any concern with the Claimant about clients being upset that their appointments were rearranged. She accepted that for her, rearranging appointments for the Claimant was "not a big deal." (4) As noted above, I found Ms Nichols-Turley's evidence about 31 January 2020 was exaggerated and unfair. (5) No concerns about the Claimant's quality of work were ever raised with her, and none were raised with her on 14 February 2020.

19. The Claimant was not provided with a written statement of employment particulars at any stage. At the time of her dismissal, the relevant National Minimum Wage rate was £7.70 per hour. With effect from 1 April 2020 it was £8.20 per hour. She earned about £10 per day in tips. Her contractual hours were 16 hours per week.

20. Turning to events after the Claimant's dismissal, obviously the pandemic emerged and affected the operation of the business shortly afterwards. Ms Nichols-Turley furloughed herself and the salon junior but not the "self-employed" workers. She has not made anybody redundant. The salon re-opened on 7 July 2020. In November the salon moved to larger premises. In terms of the job market generally, salons were closed from 21 March to 4 July 2020, from late October to early December 2020 and from 5 January to 12 April 2021. The pandemic plainly had an impact on the availability of jobs in this sector, and in other sectors for which the Claimant might have applied, e.g. retail.

21. The Claimant applied for about ten jobs in retail and beauty before the first lockdown and she rang round a similar number of salons asking about work. She was not able to look for jobs at all during the first lockdown, because her daughter's nursery closed and she did not have child care. She found it difficult to find a job that fitted with her child care situation. She decided she wanted to try something different and she went back into education full-time in September 2020. She is doing an access course and re-taking her maths and English GCSEs.

22. The Claimant was on Universal Credit when she worked for the Respondent. One component related to child care. She received 85% of child care costs that were needed for work. She lost that when she was dismissed. However, she still had to pay the childcare costs in full because she needed to keep her daughter's nursery place to enable her to accept a new job. There is a waiting list for places, and if she had stopped paying she would have lost the place. She reduced from a full day to half a day on Tuesdays and Fridays. Only the Friday was previously required for work. The cost of a full day on Friday was £209 pcm and the Claimant paid 15% of that: £31.35. The cost of a half day on Friday was £109 pcm and the Claimant paid that in full. The difference was £77.65 pcm.

Legal principles

23. The right not to be unfairly dismissed is provided by s 98 Employment Rights Act 1996. Under s 104, if the reason or principal reason for dismissal is that the employee alleged that the employer infringed a relevant statutory right, the dismissal is automatically unfair. The right to National Minimum Wage is a relevant statutory right. The reason or principal reason for dismissal is a question of fact to be determined by a Tribunal. It consists of a set of facts which operated on the mind of the employer when dismissing the employee. Where the employee has not worked for the employer for two years, the burden of proof is on the employee to show that the reason was an automatically unfair one.

24. As regards the remedy for unfair dismissal, a compensatory award is payable under s 123 Employment Rights Act. The compensatory award is to be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal, insofar as it is attributable to action taken by the employer. That is a broad discretion. In *Toni and Guy (St Pauls) v Georgiou* [2013] ICR 1356 the EAT held that the Tribunal was entitled to compensate the employee on the basis of what her earnings would have been, had the employer not capriciously

taken action to reduce them prior to the dismissal. This formed part of the breach of the implied term of mutual trust and confidence that gave rise to the unfair dismissal and the EAT held that it would not be just and equitable to permit the employer to benefit from behaviour that formed part of the unfairness of the dismissal.

25. Under s 123(4), the principle that employees must take reasonable steps to mitigate their losses applies. Guidance is set out in the case of *Archbold Freightage Ltd v Wilson* [1974] IRLR 10, which holds that the dismissed employee should act as a reasonable person would act if they had no hope of seeking compensation from their previous employer. The Tribunal should ask what steps should reasonably have been taken; and when, if those steps had been taken, the individual have secured an equivalent alternative income: see eg *Savage v Saxena* [1998] ICR 357. The burden of proving that the individual has not taken reasonable steps to mitigate her loss is on the employer. Where an employee chooses to undertake a university course, it is a question of fact for the Tribunal whether that constitutes a failure to mitigate losses. There is no rule or principle that seeking further or higher education following dismissal of itself amounts to a failure to mitigate, nor that an employee can choose to undertake a lengthy course in full at the employer's expense for many years: see *Hibiscus Housing Association Ltd v McIntosh* [2009] UKEAT 0534_08_2107.

26. The ACAS Code of Practice on Disciplinary and Grievance Procedures applies to disciplinary and grievance situations in the workplace. Under s 207A of the Trade Union & Labour Relations (Consolidation) Act 1992, if a Tribunal in relevant proceedings concerning a matter to which the Code applies finds that the employer has failed unreasonably to comply with the Code, it may, if it considers it just and equitable, increase any award payable to the employee by up to 25%.

27. Section 38 of the Employment Act 2002 applies if, when relevant proceedings were begun, the employer was in breach of its duty to give a written statement of employment particulars to the employee under s 1 or 4 of the Employment Rights Act 1996. In such cases, the Tribunal must, unless there are exceptional circumstances that would make it unjust or inequitable to do so, make an award of two weeks' pay to the employee. Further, it may, if it considers it just and equitable to do so, make an award of four weeks' pay. Relevant proceedings include a claim of unfair dismissal: see schedule 5 of the Employment Act 2002.

28. As regards a claim for notice pay (wrongful dismissal), if an employer acts in breach of contract in dismissing an employee summarily, that is a wrongful dismissal and the employee will be able to recover damages in respect of the failure to give notice.

Application of the Law to the Facts

29. Applying those principles to the findings of fact above, my conclusions on the issues were as follows.

30. The reason for dismissal is a question of fact. For the reasons set out in the findings of fact above, I find that the reason for the Claimant's dismissal was that she sent a text on 18 February 2020 asserting that she was an employee and should be paid National Minimum Wage. The Respondent accepted that the Claimant's text message of 18 February 2020 contained an allegation that the Respondent had infringed a relevant statutory right. She was dismissed because of that, so her dismissal was automatically unfair.

31. The Claimant cannot claim a basic award, because she only worked for the Respondent for six months.

32. I find that the Claimant took reasonable steps to mitigate her losses before the first lockdown by applying for around ten jobs in salons and retail, and by contacting a similar number of local salons asking about work. Having been dismissed without warning or notice, those were reasonable steps to take during the five or so weeks before the first lockdown. It was not unreasonable of her not to seek work during the first lockdown. She had no childcare, because her daughter's nursery had shut. The economy was largely shut down and the Respondent has provided no evidence whatsoever of jobs she could or should have applied for during that period. By the time the lockdown ended, she had decided, in her words, that she wanted to try something different, and she returned to full-time education in September. That will no doubt significantly improve her employment prospects and earning potential in the long run and is sensible and reasonable in that sense. However, it seems to me that, perhaps prompted by her experience at the Respondent, fundamentally she reflected on her situation and decided to improve her education and her choices for the future. She was working at National Minimum Wage level in a hair and beauty salon. I do not consider it would be reasonable to expect that business to compensate her for the period she is not earning because she is pursuing further education. That is a commendable life choice she has made, but is not a reasonable approach to mitigate her losses from her time at the salon. I therefore find that, if she had been taking reasonable steps to mitigate her losses, she should have started looking for work again once the first lockdown ended. She should be compensated for the period of time it would have taken her to find work at an equivalent rate of pay. Although the burden of proof is on the Respondent, it did not produce any evidence of work that it said she could or should have applied for at that time. Mr Searle submitted that I should take judicial notice of the job market, but it was of course a highly unusual situation and I am unable to do so. In the absence of evidence from the Respondent, but bearing in mind the Claimant could have applied for work in the essential retail sector and that jobs were becoming available during the summer and autumn, I find that if the Claimant had started applying for work after the first lockdown ended, she would have found 16 hours' work at National Minimum Wage level by October 2020 (three months). She should therefore be compensated for her financial losses up to 1 October 2020.

33. I find that her losses should be calculated on the basis that her contractual hours were 16 per week. She had been instructed not to work Saturdays, but no change had been made to her contract and the question of her second day was still under discussion. This case is similar to the *Toni & Guy* case, on which Mr

Lloyd relied. The Claimant was dismissed because she was asking for the National Minimum Wage to which she was entitled. Had she been paid it, she would have worked the Tuesdays Ms Nichols-Turley suggested, because she would have been paid for them. She was still employed to work 16 hours per week and she would have done so if she had been paid the National Minimum Wage. It is just and equitable to compensate her on that basis. Further, it seems to me that the Claimant would have been put on furlough on 23 March 2020 because she was not self-employed and that was the distinction Ms Nichols-Turley drew. The Claimant would have received 80% of her wages until 7 July 2020. She would not have suffered any loss in relation to Universal Credit while she was furloughed because the nursery was shut. After 7 July 2020, she would have returned to work and her daughter would have returned to nursery. No redundancies were made and the Respondent's clients were able to resume their hair and beauty treatments at that time. The Claimant's financial losses are therefore:

33.1 Wages 20 February 2020 to 23 March 2020: 5 weeks x 16 hours x £7.70 = £616.
33.2 Tips 20 February 2020 to 23 March 2020: 5 weeks x £20 = £100.
33.3 Wages 23 March 2020 to 31 March 2020: 1 week x 16 hours x £7.70 x 80% = £98.56
33.4 Wages 1 April 2020 to 6 July 2020: 13 weeks x 16 hours x £8.20 x 80% = £1364.48.
33.5 Wages 7 July 2020 to 1 October 2020: 14 weeks x 16 hours x £8.20 = £1836.80
33.6 Tips 7 July 2020 to 1 October 2020: 14 x £20 = £280.
33.7 Loss of universal credit: 20 February 2020 to 23 March 2020: £77.65.
33.8 Loss of universal credit: 7 July 2020 to 1 October 2020: 3 months x £77.65 = £232.05.
Total: **£4605.54**.

34. The ACAS Code of Practice on Disciplinary and Grievance procedures did not apply. Mr Lloyd argued that if this was a conduct dismissal, as the Respondent alleged, then the Code was applicable. However, I have found that it was not a conduct dismissal, it was a dismissal for asserting the infringement of a statutory right. The ACAS Code did not apply and no uplift should be made.

35. The parties agreed that the Claimant was underpaid a total of **£283.38** over the course of her employment by reference to the National Minimum Wage.

36. The parties agreed that the Claimant had accrued 9 days' holiday that she had not taken, and that she was owed **£554.90** for that.

37. The parties agreed that the Claimant was entitled to one week's notice. However, this has already been compensated for in the compensatory award for unfair dismissal and no further sum is payable.

38. There is no dispute that when the proceedings were begun, the Respondent was in breach of its duty to give the Claimant a written statement of employment particulars. That appears to be because the Respondent did not think it needed to provide a written contract because it regarded the Claimant as self-employed. There are no exceptional circumstances that make it unjust or inequitable to

award two weeks' pay. In particular, the Claimant had pointed out that she had been advised she was not self-employed and had asked for a written contract. The Respondent had the chance to take advice and to provide a written contract. It took advice but did not provide a written contract and summarily terminated the contract. However, I do not consider it is just and equitable to award four weeks' pay, given that until the last week of her employment, both the Claimant and the Respondent operated on the basis that she was self-employed. The appropriate award is therefore **£246.40**.

Employment Judge Davies
5 May 2021