



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Geike

**Respondent:** Robshaws Total Property Care Group Limited

**HELD AT:** Sheffield Employment Tribunal (by CVP)      **ON:** 5 October 2020

**BEFORE:** Employment Judge Buckley

## REPRESENTATION:

**Claimant:** Mr.Huggins (Citizens Advice Bureau)

**Respondent:** Did not appear

# JUDGMENT

1. The claim for unfair dismissal succeeds.
2. The respondent shall pay the claimant compensation of **£1955.89** including an additional award of 10% of the compensatory award for failure to comply with the ACAS Code of Practice on Discipline and Grievance.
3. The Recoupment Regulations apply to the award of compensation for unfair dismissal. The total monetary award is £1955.89. The prescribed element is £1326.66. The period of the prescribed element is 18 January 2020 to 17 July 2020. The excess of the total award over the prescribed element is £629.23. The annex to this judgment explains the operation of the Recoupment Regulations.
4. The claim for unlawful deductions (holiday pay) succeeds.
5. The respondent shall pay the claimant the sum of **£13.13** for unlawful deductions (holiday pay).
6. The claim for unlawful deductions (wages) succeeds.
7. The respondent shall pay the claimant the sum of **£98.52** for unlawful deductions (wages).

# REASONS

## Written reasons

1. I have provided written reasons because the respondent was not present at the hearing.

## Substitution of respondent

2. For convenience I repeat my reasons for substituting the respondent here. They are also set out in the order.
3. 'Total Property Care Group' is a trading name of Robshaws Total Property Care Group Limited. The claim form was served on 'Total Property Care Group' at an address provided by them. No response has been received, although they communicated with ACAS during early conciliation.
4. As Total Property Care Group is a trading name, the correct respondent should be Robshaws Total Property Care Group Limited. ACAS have had contact from 'Total Property Care Group'. As this is a trading name, this contact must have come from Robshaws Total Property Care Group Limited. Further, Robshaws Total Property Care Group Limited have received notice of the proceedings and have been sent a copy of the notice of hearing and the pleadings. They have not responded.
5. I accept that the ET1 has not been formally served on the new respondent, but it is open to them to apply for a review of this judgment and/or the order substituting them as a party. This avoids any potential injustice which might be caused to the respondent. If a judgment was made against the original respondent it would be unenforceable and therefore the injustice to the claimant would be great.
6. The claimant's complaint has always been that the company which took over the cleaning contract became her employer, and that remains the same. Using the trading name rather than the company name is a genuine mistake and is not misleading, nor does it cause reasonable doubt about the identity of the person intended to be claimed against.
7. For those reasons I determine that there are issues between Robshaws Total Property Care Group Limited person and the claimant falling within the jurisdiction of the tribunal which it is in the interests of justice to have determined in these proceedings. I therefore made an order substituting Robshaws Total Property Care Group Limited as the respondent.

## Findings of fact

8. I heard evidence from the claimant and read a statement from Mark Linley.

9. The claimant started work on 27 June 2016 for Yorkshire Cleaning and Maintenance limited as a cleaner. She worked 6 hours per week in the mornings at Munro House in Leeds. She was paid the minimum wage, which at the relevant time was £8.21 per hour. She was paid by bank transfer every two weeks and received payslips. Her holiday year began on the 1 January.
10. In November 2019 she heard from Mark Linley, the Building Manager/Caretaker that her employment was to be transferred to another company referred to as Robshaws from 25 November 2019.
11. The claimant took holiday from 27 November until 9 December 2019. When she returned she continued to work as normal. At some point in December she was told by Mark Linley that Robshaws were sending another cleaner in to clean the offices at a different time of day. The claimant attempted to contact Robshaws on a number of occasions to raise concerns about this but did not receive any response despite asking the secretary to ask someone to call her back several times.
12. The claimant was paid 4 weeks pay for December on 27 December 2019. The payslip that the claimant produced to the tribunal was labelled 'Totally Clean Cleaning' but I accept her evidence that the pay and payslips came from Robshaws and indeed the claimant gave evidence that ACAS had confirmed that Total Property Care Group (a trading name of the respondent) accepted that they had paid the claimant, although they averred that they had done this by mistake. In the absence of any direct evidence from the respondent I do not accept that the payment was by mistake.
13. The claimant said that in either December 2019 or January 2020 she managed to speak briefly to someone from Total Property Care Group. She said that she was asked 'What are you doing going in?'. Her reply was 'I have a contract'. The man from Total Property Care Group then began to talk about something else and the call was cut off. She tried to ring back but there was no answer.
14. The claimant did not take any holiday over Christmas apart from the bank holidays.
15. The claimant did not receive a payslip dated 10 January, which is two weeks after the 27 December. The claimant gradually realised that she must have been replaced and stopped going into work after 17 January.
16. She received a final payslip from the respondent dated 24 January 2020 in which she was paid one weeks pay. The payslip records the taxable gross pay for the year to date as £246.04, which is the total of the 27 December payslip and the 24 January payslip combined.
17. There was no evidence from the respondent, but the claimant reported that Total Property Care Group had told ACAS that they had never taken over her employment and that they had paid her by mistake. I do not accept this evidence in the absence of any direct evidence from the respondent.

18. The claimant produced no evidence of any efforts to find alternative employment aside from vague references to looking for available jobs in the internet. She held another cleaning role in the evenings and I find that until she was made redundant from this role in March, she made no effort to look for alternative work. Since March she has made some limited efforts to look for alternative employment.

### **Conclusions**

#### **Holiday pay**

19. The claimant has accrued 1.6 hours holiday between 1 and 17 January 2020. She took no holiday before termination and is therefore owed **£13.13**.

#### **Unpaid wages**

20. The claimant was paid for one weeks wages on 24 January but had worked three weeks. She is therefore owed two weeks wages: **£98.52**

#### **Unfair dismissal**

21. Given that the claimant was paid by the respondent for 5 weeks work, and was never told directly that she was no longer required, I find that as a matter of fact the claimant's employment was taken on by the respondent. I have heard very limited evidence of what was taken over by the respondent save for the claimant's employment, however I conclude that TUPE would apply because a relevant transfer took place by way of a service provision change.

22. When the respondent did not pay the claimant on 10 January 2020, combined with the fact that they were sending other employees to carry out her work, I find that this amounted to a fundamental breach which the claimant accepted when she decided to leave on 18 January 2020. She was therefore constructively dismissed.

23. No potentially fair reason has been put forward by the respondent, nor is any apparent on the evidence before me. Further there is no evidence before me which could lead me to conclude that the employer acted reasonably in treating any potentially fair reason as sufficient. I find that the dismissal is unfair.

24. The respondent made no effort to respond to the majority of the claimant's calls or emails. The claimant was therefore not able to raise her concerns about the cleaners who had apparently replaced her. I find that this is a breach of paragraph 4 of the ACAS Code of practice on disciplinary and grievance procedures because an employer should deal with issues promptly. I find that the appropriate uplift is 10% taking into account the nature and gravity of the breach. In particular I have chosen a lower percentage to reflect the fact that there was no formal written grievance to which the employer should have responded.

#### **Compensation for unfair dismissal**

*Basic Award*

25. The claimant was 63 at the date of termination and had 3 years full service. Her weekly pay was £49.26. Her basic award is **£221.57**

*Compensatory award*

26. I find that if the claimant had made reasonable efforts to find alternative employment as soon as she was dismissed, taking into account the background of the pandemic, she could have found alternative employment by 6 months after the termination of her employment. I therefore award 26 weeks compensatory award:

11 weeks x 49.26 = £541.86

15 weeks x 52.32 = £784.80

Total = **£1326.66**

27. I award loss of statutory rights at £250, given the claimant's low wage and limited hours.

28. The total compensatory award is therefore **£1576.66**. Adding the 10% increase for failure to follow the ACAS code of practice makes **£1734.32**.

Employment Judge Buckley

Date: 5 October 2020