

A beautician worked within one of several salons owned by her employer and was employed between 4 April 2014 and 7 October 2016. After her employment ended for reasons that were contradictory by both parties, (employer claimed the employee resigned, the employee claimed she was unfairly dismissed) the employee brought several claims to the employment tribunal; unfair dismissal, unpaid notice pay, unpaid holiday pay, and unpaid travel expenses. Additional consideration was also given by the tribunal to a failure of the employer not having provided a statement of terms and conditions nor any form of written agreement.

An important point surrounding this case leading to a total reward paid to the employee of **£2,727.97** is the lack of supporting documents and inconsistency in the employer's accounts that were given in evidence to defend the claims brought to the tribunal against them.

**Unfair dismissal** – there was much confusion and a lack of supporting evidence as to how the employee's employment came to end. The employer explained that the employee had resigned on 2 October 2016, by telling the employers mother, yet this was unable to be specifically confirmed. In contrast, the employee stated that she did not resign on 2 October 2016 yet resigned on 7<sup>th</sup> October providing 4 weeks' notice further to a heated argument with the employer. After the employer received this verbal resignation however, the employee was suspended with it being alleged that she was working in competition and had given her telephone number to clients. The employer was unable to provide any evidence of any investigation having taken place nor any evidence to support the allegation made resulting in suspension. The only documents supplied in relation to this part of the claim was a letter from the employee requesting an update of the investigation, with the employer having failed to respond to this.

**Unpaid notice pay** – there was no written record on how or when the end of employment took effect, with the employer having failed to confirm the acceptance of resignation they had claimed had taken place on the 2<sup>nd</sup> October. The only correspondents available for the tribunal to consider was a letter sent by the employee questioning her notice further to her resignation on 7<sup>th</sup> October, with no response from the employer on this being available.

**Unpaid holiday pay** – during employment the employee had questioned her holiday entitlement having requested a period of annual leave. The employee failed to advise of the entitlement either via the provision of an employment contract or other agreed terms. Instead the employee was told conflicting information from other employees whose holiday entitlement seemed to differ.

**Unpaid travel expenses** - The employee was required to work some distance from her home. The parties had agreed that because of the cost of travel, the employer would pay for the employees travel card. No written agreement or expense policy was provided by the employer in rejecting this claim. The employer also changed his evidence on this issue; in his witness statement he said the employee was paid for her travel in advance but admitted in oral evidence that he could not be sure if travel expenses had been agreed.

**Contract of employment: no statement of terms** - The employer orally in evidence suggested a copy of a draft contract had been given to the employee in late 2015 yet was unable to provide a copy of the contract with the employee's name assigned to this. The employee was asked to comment on the

provision of the contract where it was advised that the tribunal hearing was the first point of which she had seen any such contract.

## Employment Tribunal – Verdict

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**Unfair dismissal / Unpaid notice pay** - the tribunal wasn't able to support a claim of unfair dismissal yet did conclude that given no investigation into suspension had taken place, that employment had ended further to a resignation on the 7th of October where 4 weeks' notice pay was owed to the employee with this sum having been unlawfully deducted from the employees' wages.

**Unpaid holiday** - given there were no agreed terms provided giving reference to the employees holiday entitlement and pay or when her holiday year started and ended, there was no "relevant agreement" for the purposes of the Working Time Regulations 1998 and as such the tribunal supported this claim concluding the employees holiday year ran from the start of her employment 4th April to 3rd March each year, with her full entitlement being due to be paid.

**Unpaid travel expenses** – the tribunal supported the employee's claim finding she was detailed and honest in explaining the process for claiming this expense, with the employer later confirming expenses had been paid yet was unable to provide direct evidence that this sum had been paid, whilst also having been inconsistent in the oral evidence they did provide.

**Contract of employment: no statement of terms.** The tribunal concluded no such provision had been provided and as such honored financial reward to the employee of £1,162.12 having rejected the employers evidence as unreliable, if not untrue.

## Disclaimer

All our updates are for information purposes only and do not constitute as legal advice. We recommend that professional advice is sought before applying any of the information provided to your organisation.

Sources : <https://www.gov.uk/employment-tribunal-decisions>

## Learnings for employers

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- ⌘ Employers must provide a contract of employment or a statement of terms within 3 months of employment.
- ⌘ Ensure to keep a copy of the signed contract providing a signed copy to the employee also.
- ⌘ Ensure all parts of the contract are complete and relevant to the given employment.
- ⌘ Where a resignation is suggested in the heat of the moment, it is best practice to confirm if this was really the employee's intention once the situation is calmer.
- ⌘ Always require resignation to be made in writing where an acceptance of resignation and the arrangements around this (notice and holidays) should then be confirmed to the employee, in writing.
- ⌘ It is good practice to have a clearly defined expense policy explaining what an employee might claim back and the process for which expenses will be authorised and paid.
- ⌘ Be clear and provide comprehensive detail when explaining an allegation leading to suspension and advise of the process that will follow.
- ⌘ Any communication stating the allegations must explain how this allegation is a breach of conduct and what level of conduct.
- ⌘ Where an employee has been suspended it is important to carry out a detailed and quick investigation providing the employee with an update where more time is needed.
- ⌘ It is important for employers to remember that a paper trail of most people matters, whether it be a contract of employment or confirming of agreed arrangements surrounding employment, such as extra benefits, is crucial and would support in being able to defend a tribunal case ever brought against your organisation.