



## Employment Law Round Up from HR Now

### Claims:

[Lonczak vs Kumpin Dental](#)

- Constructive unfair dismissal
- Wrongful dismissal
- Unlawful deduction from wages
- Accrued but unpaid holiday pay

### Summary:

The Claimant was contracted as a dental nurse 14<sup>th</sup> Jan 2016 and following probation, was enrolled on a dental course. Written evidence by the respondent stated repayment would be in full or part. The respondent claimed stating course fees would be covered but if the employee left within two years of completion, would need to be repaid. The claimant stated repayment schedule was from start of the course. The claimant resigned 10<sup>th</sup> July 2019 specifying last working day as 4<sup>th</sup> September 2019. A letter accepting this relied on the Claimant to suggest repayment terms.

Without warning or agreement, the claimant received no wages for July due to deduction of the course fees (balance left of £540.10 to pay – subject of the counterclaim).

The contract set out the respondent's right to make statutory and authorised deductions including loans, and that professional training and development costs will be subject to a separate agreement.

A refusal email by the Claimant asserted no contractual repayment obligation and denied a separate training agreement. The respondent replied that the parties has agreed repayment if leaving within two year of Course completion, and that the respondent was not willing to negotiate the repayment. 5<sup>th</sup> August 2019 – the respondent notified the Claimant the majority of the course fees had been deducted from wages due to the respondent exercising the right of set-off, the fees were a loan, there was evidence of misconduct re. annual leave, and, there may be a disciplinary hearing.

### Outcome:

- The Training Clause was broad and anticipated the need for a separate agreement for any training, therefore this Clause did not place any contractual obligation to repay Fees.
- It was concluded the parties agreed the Claimant would repay all or some of the Fees if she left employment before completing, and within two years after completing the course.
- The respondent had asked the Claimant for her "proposals" which strongly suggests she did not anticipate full recovery of the Course Fees – she was seeking a negotiated settlement.
- The fees were not a loan and there was no right to deduct from wages without agreement.

Damage for unpaid wages: The submission that the Claimant should fully repay the Fees was rejected and should have been tapered as the Respondent was benefitting from her improved skills. The respondent's counterclaim fails and must repay the sums owed to the Claimant.

Accrued unpaid holiday pay: It is not relevant that the Claimant may have constituted misconduct. The claimant was entitled to accrued holiday pay up to contract termination.

Constructive unfair and wrongful dismissal: The Claimant resigned due to the contract breach and in response was constructively dismissed, with no fair reason for this. The Claimant had 3 years' continuous employment and so is eligible to receive 16 weeks' pay by way of compensation, reduced by 90% due to already resigning, and due to not engaging with the respondent for fee repayment.

**Lesson learnt:** Separate training agreements need to be clearly written and signed by both parties. Changes to pay need to be **clearly written and communicated** in advance to receiving pay.

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