THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs C Foody**

Respondent: **Pinpoint Recruitment Limited**

Heard at: **Newcastle Hearing Centre by CVP**
On: **8th, 9th, 10th & 23rd February 2021**

Before: **Employment Judge Speker OBE DL**

Representation:

Claimant: **Mrs Vicky Edwards**
Respondent: **Mr Richard Stubbs of Counsel**

RESERVED JUDGMENT

The reserved judgment of the tribunal is as follows:

1. The claimant was fairly dismissed and accordingly her claim of unfair dismissal is dismissed.

2. The claim of unpaid annual leave is granted but on the basis of payments already made and the allowance of the respondent's counter claim no further payment is ordered to the claimant.

3. The respondent's counter claim is granted. No order for payment is made as the sum counter claimed has been paid by deduction.

4. The claim for breach of contract is refused.

REASONS

1. This is a claim of unfair dismissal brought by Mrs Carolyn Foody against her former employer Pinpoint Recruitment Limited. She also claims outstanding holiday pay, part of which she has received and part of which has been withheld in respect of a

counter claim made by the respondent as to expenses incurred in relation to a company car. Finally there is a claim for wrongful dismissal in respect of which the claimant seeks her notice.

2. This hearing was conducted by CVP (Cloud Video Platform) due to the Covid 19 pandemic restrictions. The parties representatives and witnesses all participated remotely through computer devices. The claimant is represented by a friend and former work colleague Mrs Vicky Edwards who is a nurse by profession. The respondent was represented by Mr Richard Stubbs of Counsel.

3. The case had been considered at a preliminary hearing before Employment Judge Sweeney on 2nd June 2020 where the issues in respect of the claims and counter claim were set out in the case summary.

4. At this hearing evidence was given over three days. On behalf of the respondent there were four witnesses:

   (i) Louise Thompson – Health and Home Care Director
   (ii) Jacqueline Gardner – Development Manager
   (iii) Andrew Hall – Head of Finance
   (iv) Terence Carney – IT Director

   The claimant gave evidence on her own behalf and called four witnesses:

   (i)Brook Watson – former managing director of the respondent
   (ii)Jodie Foody – the husband of the claimant
   (iii)Charles Hudspith – employee of the claimant and her husband
   (iv)Abbey Stephenson – the claimant's daughter

5. A bundle of documents was provided which following the addition of further items ran to 598 pages.

6. I found the following facts:

   6.1 The respondent is a recruitment company with its head office in Dunston. It is involved in recruitment in various sectors including health and social care and has offices at a number of locations in the UK including Stoke, Bristol, Wallington and Birmingham.

   6.2 The claimant was employed by the respondent from 25th July 2016. Following promotion she held the position of Head of Healthcare Operations – North, a senior role.

   6.3 During her employment the claimant was well regarded with respect to her work and had no disciplinary record.

   6.4 On 31st March 2019 the claimant suffered serious injuries as a result of a horse-riding accident. This included fracture of the pelvis, fracture of the bilateral pubic rami, fracture of the sacrum, fracture of the sternum and of four of more ribs. The injuries were managed conservatively but the claimant

was significantly incapacitated by these and underwent a slow recovery requiring very strong painkillers. She was recouperating on a hospital bed downstairs in her home and slowly improved mobilisation with walking aids.

6.5 Although the claimant was only entitled to receive statutory sick pay under her contract of employment the respondent on a discretionary basis paid her full salary for many months.

6.6 The claimant sent in regular sick notes provided by her doctor. There was contact between the claimant and her employers and in the early days she did undertake some services from home on a remote basis participating in conference calls.

6.7 The claimant then requested that she should not be troubled by telephone calls and e-mails from the company as she felt these were placing pressure on her and interrupted the rest which she needed as part of her recovery.

6.8 On 19th September 2019 an e-mail was sent to the claimant by Louise Thompson who had recently returned to work for the respondent and the e-mail stated that consideration was being given to discontinuing the payment of full salary to the claimant as from 1st September 2019. The claimant challenged this and full payment did in fact continue for a further period.

6.9 There were exchanges of e-mails between the claimant and various people in the company and the claimant communicated some difficulty in gaining access to the respondent's computer server. Mr Carney, Head of IT, dealt with this and enabled the claimant's e-mail connection to be stored.

6.10 Issues arising out of the claimant's sickness absence were being dealt with for a relatively short period of time by Brook Watson, Managing Director, and Rebecca Gilbert in Human Resources. They both left the company in October 2019.

6.11 Late in November 2019 Terence Carney was requested by Alan Finley to manage the claimant's sickness absence. He noted the correspondence which had passed between the claimant and Louise Thompson and that there was discussion as to a meeting being arranged with the claimant about her absence but this had not taken place.

6.12 Mr Carney contacted the claimant to arrange a welfare meeting at her home to be conducted by Jacqueline Gardner who in the event was known to the claimant from previous employment. It was incorrectly stated in correspondence that Jacqueline Gardner was an occupational health professional which was not the case. What was made clear was that the meeting was to be a welfare meeting and it was not to be an occupational health assessment. Jacqueline Gardner attended the claimant's home on 5th December 2019. The claimant asked if her husband could be present but she was told that this was not agreed and accordingly the claimant met Jacqueline Gardner alone. Jacqueline Gardner completed a health questionnaire and in answering the questions the claimant gave information

as to the history of her absence, what she could and could not do and the fact that she was looking at the possibility of a phased return to work at the end of January 2020.

6.13 On 11th December 2019 the claimant submitted a grievance as to the way in which her absence had been managed and how she had been treated and that she felt intimidated and unsupported. She stated that she had been willing to attend for an occupational health referral but that had not occurred.

6.14 On 16th December the claimant was invited to attend a grievance meeting with Andrew Hall, Head of Finance, to occur on 19th December but rearranged to Friday 20th December 2019 to allow the claimant time to arrange a companion or trade union representative to accompany her.

6.15 On 17th December the claimant received an invitation to an investigatory meeting to be held on 19th December in respect of allegations that whilst receiving full sick pay from the company and stating that she was unfit to work she was engaging in various activities which could deem that she was well enough for work. It was stated in the letter which was sent to the claimant by Mr Carney that the claimant's welfare "was paramount" and that the company did not want to exacerbate the claimant's mental health difficulties. It was stated in the invitation letter that matters may lead to a disciplinary hearing.

6.16 On 18th December the claimant requested that the notes which were taken at the welfare meeting should be amended.

6.17 On 20th December it was confirmed that the meeting had been arranged for 23rd December and the respondent agreed to the claimant sending in a written response rather than attending.

6.18 Also on 20th December the claimant's grievance meeting went ahead in her absence, she having agreed this.

6.19 On 23rd December the claimant was invited to attend a disciplinary meeting which was to take place on 27th December, which was the substituted date for the original disciplinary hearing date of 23rd December.

6.20 The claimant was provided with a second investigation report dealing with charges concerning the misuse of company e-mails and breaches of the company's IT policy.

6.21 On 27th December the claimant was invited to a rescheduled disciplinary meeting to take place on 7th January 2020.

6.22 On 6th January 2020 the claimant submitted written representations and requested that the disciplinary meeting be postponed and it was then rescheduled to take place on 10th January.

6.23 On 9th January the claimant was informed that her grievance had not been upheld.

6.24 On 10th January the disciplinary hearing took place and was chaired by Terry Carney. The claimant attended the hearing which was recorded and transcribed. On 13th January a letter was sent to the claimant informing her that she had been found guilty of gross misconduct and was being summarily dismissed. She was informed of her right to appeal within five days but the claimant chose not to exercise her right of appeal.

6.25 On 1st February 2020 the claimant presented her claim to the tribunal.

6.26 The claimant's company car was collected from the claimant's home in February 2020. The respondent considered that it was in poor condition and was damaged and required remedial work and two valets. The respondent deducted the cost of this work from the claimant's outstanding holiday pay.

Submissions

7. On behalf of the claimant, Mrs Edwards provided written submissions which were supplemented orally. It was submitted that the claim had been brought because the respondent company had not followed the ACAS code and that the claimant had been unfairly treated. While she had been off work she received many e-mails which placed pressure upon her. As stated in the written submissions the people who dealt with her in relation to her welfare management, grievance, investigation and discipline were not experienced, the allegations made against her did not amount to gross misconduct. The company had dealt with the matter without following ACAS guidelines and they should have endeavoured to resolve difficulties on an informal basis. However, what the company did was to formulate a case in order to remove the claimant from the company.

8. In particular Mrs Edwards submitted that the claimant was not guilty of gross misconduct and should not have been dismissed. The respondent ought to learn lessons from how they dealt with the claimant and improve their processes in order to treat people better in the future. The company had dealt with the matter fraudulently for example by sending e-mails to the claimant allegedly from Brook Watson even though by that stage he had left the company. It was a very serious matter to misrepresent to employees who was dealing with matters.

9. The claimant had a GP letter confirming that she was unable to work because of her injuries. She had every intention to return. At no stage was she submitted to a referral to occupational health which should have been done in order to properly assess her abilities. She had co-operated with regard to releasing parts of her medical records but did not consider that this should include the totality of all of her medical history. It was submitted that the individuals involved with the claimant were biased against her and that she did not receive fair treatment. The company was not entitled to draw conclusions that she was fit for work on the basis of the activities in which she was engaged which were mainly sending some e-mails with the assistance of her daughter and engaging in some publicity for family businesses. She drew a distinction between continuing to assist with family

businesses where the risk of anything going wrong would fall upon the businesses rather than undertaking activities for the respondent in her employment role where, if anything went wrong for example because of the impact on the claimant due to her powerful painkillers, this could have serious implications for the respondent's business and those receiving services.

10. On behalf of the respondent Mr Stubbs suggested that some aspects of Mrs Edwards' submissions, albeit that he praised these, included matters of opinion and other statements amounted to new evidence. He also submitted that the concerns in relation to management of absence were not strictly relevant with regard to the unfair dismissal claim.

11. He argued that the respondent became aware that the claimant, a senior manager, whilst absent from work due to sickness was setting up and developing new businesses whilst receiving full discretionary sick pay and that this was akin to fraud.

It was not doubted that she suffered serious injury. Despite her suggestiIon that there was no contact from the company during her absence she was in regular contact with Mr Findlay. It was extremely significant that the respondent was paying full pay when the claimant was only entitled to statutory sick pay. It was only when the company indicated that it was considering whether it could continue paying full pay that the tone changed in the e-mails. The respondent could have paid only statutory sick pay from day one and there was therefore nothing wrong with the respondent saying that it was intending to return to the claimant's contractual entitlement. As to Mr Watson's lack of experience in dealing with the grievance he had no involvement in the disciplinary hearing or the dismissal. There were indeed changes in personnel at the respondent company but the respondent could not dictate when people leave and if this occurred then the respondent must involve others to take up responsibility.

12. It was significant to note that the claimant in her statement had said that she had not received relevant company policies in relation to capability, absence, grievance and the ACAS code but the evidence showed that this was untrue and that she had received all of these. When asked by the judge who owned the properties or businesses the claimant had said that her husband did but she had subsequently submitted an addition to her statement dated 14th February 2021 which clarified the situation showing that the claimant herself owned some properties and that the farm at which they lived and which they operated was jointly owned. The claimant had also been vague with regard to ownership of the kennel business but in interviews to a journalist gaining publicity, the claimant was quoted as saying that she had set up the dog grooming and kennel business "whilst still on crutches" and it had opened in July 2019. The claimant was therefore seeking to minimise her role but what was important is the evidence which was before Mr Carney when he made the decision to dismiss.

13. Mr Stubbs referred to the case of Sainsburys Supermarkets Limited v Hitt 2003 IRLR23 CA as to the objective standards of the reasonable employer to be applied to all aspects of the question of whether an employee was fairly and reasonably dismissed. He also referred to London Ambulance Service NHS Trust v Small 2009

EWCA CIV 220 as to the tribunal's role in objectively reviewing the fairness of dismissal and as to the question of contributory fault.

14. Mr Stubbs referred to the admission by the claimant that she was guilty of misconduct and acknowledged that she had been setting up new businesses. This could be taken into account with regard to the question of contributory fault.

15. It was pointed out that Mr Carney had not been the person who made an instant decision to allow full pay or to stop it. He had been clear in his evidence that there was no desire to get rid of the claimant but what had to be taken into account was the report that the claimant had been visiting premises, setting up insurance, applying for a business licence and effectively managing the businesses in various respects. Mr Stubbs went through the detail of the various aspects of the matters which were before Mr Carney and the reasonable inferences which could be drawn. He also emphasised that the test with regard to the decision taken to dismiss must be objective and based upon the test of the band of reasonable responses and that of course the tribunal must not substitute its own decision for that of a reasonable employer.

The Law

Employment Rights Act 1996

Section 98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

Section 13 Right not to suffer unauthorised deductions

(1) 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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised--

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Findings

16. The first issue in an unfair dismissal claim is to determine the reason or if more than one the principal reason for the dismissal. A considerable amount of evidence during the hearing related to the claimant's health and her fitness to work following the accident. This was not of course a case of alleged disability discrimination or based a claim that the reason for dismissal was incapacity. However, it was the respondent's case that this was not a claim for dismissal related to health or incapacity. As Mr Stubbs submitted, the issue of the management of the claimant's absence and her grievances were of limited relevance to the claim and represented a blind alley down which the tribunal must avoid being led.

17. However, this does depend upon the view taken by the tribunal as to the reason or the principal reason for the dismissal and it is important to take into account that the statutory test of fairness in unfair dismissal cases in Section 98 (4) requires the determination of fairness "in the circumstances of the case" and in accordance with "equity and substantial merits of the case". In the detailed chronology presented, there was a great deal about the exchanges between the claimant and the respondent and whether the claimant was unfairly treated in relation to her sickness absence. The tribunal been told about the way in which the welfare meeting took place and the conclusions were drawn from it including inferences on the part of Mr Carney as part of his investigations.

18. The claimant's health and what she did during her absence and her capability to engage in the alleged activities of various kinds were all against the background of her having suffered serious injuries and having presented regular sick notes

from her GP. Accordingly it would be inappropriate to ignore the health issues and how they were managed as these are part of the necessary determination.

19. Addressing this first issue of what was the reason or if more than one the principal reason and did it relate to conduct I have taken into account the guidance from the well-known case of British Home Stores v Burchell 1978 IRLR379 EAT.

The claimant submitted that the respondent had reached a conclusion that it wished to dispense with her services, possibly related to her fitness and her delayed recovery, and that she had effectively been replaced by the recruitment of Louise Thompson and that the claimant herself had not been involved in discussions or planning with regard to a business reorganisation and was not given the opportunity to apply for the role filled by Louise Thompson. This occurred whilst the claimant was off sick and the claimant concluded that these events showed that the respondent had reached a decision to dispense with the claimant's services.

20. On the other hand, the respondent states that the business of the company had to go on and the changes which were made were dependent upon business requirements. Evidence came to the attention of the respondent that while the claimant was unable to work in her job and was receiving full pay, she was engaging in many personal business activities which caused the respondent to infer that she was not unfit for work and should not be receiving full pay without working. I took into account the many examples of activities and the evidence upon which this was based which came to the attention of the respondent including the setting up of new businesses, the claimant's role in publicising these, applying for licenses, arranging insurance and what was said by the claimant during publicity and also the various postings on social media.

21. Following investigation and the full disciplinary hearing, the findings reached by Mr Carney and the allegations upheld against the claimant were as follows:

(a) that whilst you have been receiving full pay and stating you are not fit for work you've been working and undertaking activities that indicate you are well enough to work; breeding and rearing dogs for sale, renting out properties, buying and stating [sic] up a catering van business;

(b) not being fully participating in the absence management process by not meeting with your line manager to enable you to return to work;

(c) been obstructing the organisation from obtaining advice on your medical condition by not providing consent to obtain a GP report and occupational advice upon your medical condition in order to establish your fitness for work and to consider reasonable adjustment to enable you to return to work;

(d) continued to accept the organisation discretionary sick pay, when you could have been well enough to return to work sooner, which could be deemed as fraudulent;

(e) been undertaking social activities that could deem you [SIC] well enough to work;

(f) sent numerous e-mails of confidential nature about the company and our employees to your personal e-mail address then sent e-mail to a previous employee of Pinpoint on work matters relating to the business;

(g) you have used your company e-mail address to conduct your own business relating to your kennels;

(h) allowed your daughter access to your company e-mail address and work phone (it is noted that this particular allegation was not included in those which amounted to the original allegations).

22. I have concluded that these findings amounted to the respondent having a genuine belief in the claimant's misconduct under the first limb in the BHS v Burchell test. The question is whether the respondent through Mr Carney entertained a reasonable suspension amounting to a belief in the guilt of the employee at the time of the decision to dismiss. I find that Mr Carney did have that genuine belief. I take note of the lengthy transcript of evidence during the disciplinary hearing as well as the detailed investigation which was carried out by Mr Carney himself. I note that this was multi-faceted and that some allegations are more serious than others. However, there was clear evidence of the claimant being involved in setting up businesses, obtaining a licence for the kennels, involvement in arranging insurance, participating in publicity of the business and holding herself out as playing a significant role.

23. The second limb in Burchell is whether Mr Carney's belief was founded upon reasonable grounds and I find that on the material was based upon the investigation and the matters being put to the claimant at the disciplinary hearing that there was material upon which Mr Carney on behalf of the respondent could form a view that the claimant was guilty of the misconduct alleged against her. Added to this was the claimant's own acceptance that she had acted inappropriately in a number of respects and it was said on her behalf that a warning or a final written warning would have been appropriate.

24. As to the third limb in British Home Stores and Burchell it is necessary to consider whether the investigation carried out was sufficient in all the circumstances and whether it was reasonable and I conclude that it was. This is based upon the details of the investigation, the material which was amassed and the documentary evidence which supported it.

25. There were some troubling aspects with regard to the investigation. Whilst it is not an absolute requirement that the investigation and the disciplinary functions should be separated, it is preferable that this should occur. The respondent's contention was that because of changes in personnel and the fact that certain individuals were conflicted, it fell to Mr Carney, as the only senior person in the company to undertake both the investigation and the disciplinary hearing notwithstanding his admitted lack of experience in such matters. It was also noted that because of the departure of Rebecca Gilbert the company did not have a

significant HR function which was of course regrettable. However, I do not find that these aspects in themselves were sufficient to render the investigation inadequate.

26. Another concern was the apparent urgency with which the respondent appeared to want to conclude matters particularly bearing in mind that this was around the Christmas period. Sending a notice of hearing on 23rd December expecting the claimant to prepare for a hearing by 27th December (taking into account the Christmas Day and Boxing Day were intervening) was certainly an unusual way of dealing with the matter and if the claimant had been pressed to participate on 27th December this may have rendered the dismissal unfair. Account should have been taken of the fact that the claimant was undergoing recovery from a very serious accident and was being asked to engage in investigatory and then disciplinary processes at very short notice when the focus of many people would be on trying to enjoy the Christmas holidays with their family. It was known that the claimant was still requiring powerful medication. However in the event further time was allowed so that the disciplinary hearing did not actually take place until 10th January 2020 so that the claimant did have adequate time to prepare.

27. I have also taken into account that the claimant was given a right to appeal and could have done so but did not exercise this right. It was pointed out that Mr Findlay was available to deal with the appeal and therefore the claimant's reasons for not taking advantage of the opportunity to appeal were not convincing.

28. From the above it is clear that my finding is that the reason for dismissal was conduct which is a potentially fair reason that the respondent had a genuine belief that the claimant was guilty of misconduct in relation to her activities as stated whilst of sick and this was based upon reasonable grounds and followed a reasonable investigation.

29. I then moved to the statutory test of unfair dismissal under Section 98 (4). In addition to the cases referred to by Mr Stubbs I also take into account the case of Iceland Frozen Foods Limited v Jones 1982 IRLR 439 EAT. The authorities establish that in law the correct approach for an employment tribunal to adopt in answering the question posed by Section 98 (4) is as follows:

    (i) the starting point should always be the words of Section 98 for themselves;

    (ii) in applying the Section an employment tribunal must consider the reasonableness of the employer's conduct not simply whether the tribunal considers the dismissal to be fair;

    (iii) in judging the reasonableness of the employer's conduct an employment tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer;

    (iv) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(v) the function of the employment tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

30. I also take into account the acceptance of this approach in the case of HSBC Bank PLC (formerly Midland Bank PLC) v Madden 2000 IRLR 827 CA.

31. The accumulation of the allegations found against the claimant, many of which she accepted to be the case, and the inferences which were reasonably drawn by Mr Carney as to this conduct, were such that he felt that there could be no trust and confidence in the claimant who held a senior role.

32. Whilst the claimant must have been aware that many of the activities described were public and would be seen by her employer, there seemed to be no awareness by her of the conflict between receiving full pay for many months (to which she was not contractually entitled) and her contractual obligation to devote her full time and faithful service to her role with the company as against her undertaking all of the activities as described. There was no suggestion at any time that she could not have approached the respondent to say that she could again engage in her role or part or parts of it.

33. If she was capable of undertaking e-mails, making calls, engaging in publicity and marketing then there were clearly activities which she could have taken as part of her contractual obligation to the respondent. Indeed, what she said during her welfare meeting was that she was looking at a phased return to work but by that stage she had been absent from work and receiving full pay for over eight months.

34. The band of reasonable responses involves a determination under Section 98 (4) not whether I would have dismissed but whether dismissal was within the band of reasonable responses open to a reasonable employer and to ask the question of whether the respondent acted fairly in dismissing for this reason adopting that approach.

35. Whilst it may be that some employers may have decided not to dismiss the claimant in these circumstances, applying the law which is clear on these issues I must determine whether to dismiss in these circumstances is fair under the statutory definition and in accordance with the band of reasonable responses test.

36. I do not find that the decision to dismiss the claimant was outside the band of reasonable responses. I find that it can be categorised as a reasonable decision in all the circumstances of the case and this includes the size and administrative resources of the respondent. Some employers may have decided that in view of the claimant's past good service and taking into account her unfortunate serious injuries a different approach could have been adopted. However, I find that the decision taken to adopt was within the range of reasonable responses as described. For these reasons I find that the claim for unfair dismissal is not successful and therefore the claim fails.

37. As to gross misconduct I must ask the question of whether I find on the evidence presented that the claimant was so guilty of this. I do find that the claimant's actions in the many of the respects described was in breach of her clear obligations under her contract to deliver faithful service to the respondent. To continue with the variety of activities and responsibilities which she undertook but at a time when she was receiving full pay and representing regularly that she was not fit for work amounted effectively to a repudiation of her contract and of the duties upon her. This does not apply to each aspect found against her and set out in the dismissal letter but the essence of receipt of the full pay as against the weight of evidence of the activities being undertaken does amount to conduct which in some respects could be described as fraudulent. I find that it did amount to gross misconduct and accordingly the claimant could be summarily dismissed without notice and her claim for notice pay is refused.

38. Finally, I deal with the outstanding holiday pay and the respondent's counter claim. The element of holiday pay which has been withheld a equates to the amount of the counter claim submitted by the respondent in relation to repairs to and cleaning of the company car. I take into account that the claimant did not use the car during her absence but it stood on her farm which is not a clean environment. However, the evidence presented persuades me that the car was in a poor condition when collected and had suffered damage and needed more than a simple cleaning process to bring it back to the condition which it should have been in on being returned to the respondent and in accordance with the claimant's duties. Therefore, I find that the sum counter claimed is due and should be deducted from the outstanding holiday pay. Accordingly, nothing further is to be paid to the claimant for holiday pay and nothing further is to be paid to the respondent as their outlay has been covered by deduction. Insofar as it is necessary, I dismiss any claim that there has been unauthorised deduction from the claimant's pay.

Authorised by EMPLOYMENT JUDGE SPEKER OBE DL

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 11 March 2021