

RM



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Carryl  
**Respondent:** Mallards Wood Group Limited

**Heard at:** East London Hearing Centre

**On:** 26 April 2017

**Before:** Employment Judge Brown

## Representation

**Claimant:** In person

**Respondent:** Ms V Webb (Counsel)

# JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent did not make unlawful deductions from the Claimant's wages. The Claimant was not entitled to be paid after 7 July 2016, because she resigned by consent on that day, without serving her notice.
2. The Claimant's claims for holiday pay and notice pay are dismissed because the Claimant did not pursue them.

# REASONS

1 The Claimant worked for the Respondent at the Respondent's private nursery. She had obtained another job and was working her notice in summer 2016.

2 On 7 July 2016 the Claimant notified the Respondent that she was feeling ill and was unable to work. The Respondent told the Claimant that it was inviting her to a

meeting the following week. It told the Claimant that a disciplinary warning could arise out of that meeting.

3 On 7 July 2016 the Claimant sent an email from her iphone to Ms Felsted of the Respondent, saying the following:

“I am not prepared to accept a warning because I was unwell... I suggest that I make today my final day therefore I would like to collect my belongings tomorrow during brain box. I hope that this is ok... may I take this opportunity to thank you for your investment in me I wish you and the Mallards Group all the best in the future.”

4 The Claimant did not contact the Respondent again that day and on the same day, 7 July 2016, at 18.41, Ms Felsted wrote to the Claimant saying:

“Thank you for your email. Mallards Wood accept your suggested resignation as today as your last date with Mallards... it leaves me only to say thank you please read your contract and employee handbook enclosed with respect of costs and implication of leaving us without serving your notice period...”

5 The following day the Claimant contacted the Respondent again and there was a chain of email correspondence. At 07.56 the Claimant wrote:

“I would prefer if you do not state that I left without notice because I am leaving as I felt that you have given me no other choice... my career is very important to me and I do not take warning slightly. I have never had one in 20 years and do not intend to take one now especially when they are unmerited.”

6 The Claimant told me that she did feel that she was being invited to a disciplinary hearing unfairly. She said that she was angry and that, in a fit of temper, she did resign. However, she made clear to the Employment Tribunal that she was a dedicated teacher; she also told me that she sent work plans and her farewell to the Respondent that day.

7 I accepted the Claimant's evidence that she is a dedicated teacher and that she was angry when she resigned and that she wished to avoid a warning which she considered to be unfair. However, I think it is clear from the letters that she sent at the time that the Claimant did intend to resign on 7 July 2016; for that day to be her last day of work and that she did so partly because she wanted to avoid any warning, whether or not such a warning would be unfair, the following week.

8 It was clear from the wording of the Claimant's contemporaneous email correspondence and from her evidence to the Tribunal that the Claimant intended to leave the Respondent's employment on 7 July and that she did not intend to be employed by the Respondent thereafter.

9 Accordingly, when the Respondent accepted her resignation on 7 July, I conclude that the parties agreed that the Claimant's last day would be 7 July and that she would not be employed after that date.

10 The Claimant's claim is for unlawful deductions from wages. Her claim relates only to the period after 7 July 2016. Given that the Claimant was not employed after that date, she would not be entitled to receive payment.

11 The Claimant confirmed that her holiday pay claim and notice pay claim that related to the same period, after 7 July 2016, and to the same amounts of money. She said that was not pursuing any separate claim for holiday and notice pay.

12 Accordingly, the Claimant did not suffer any unlawful deductions from wages after the 7 July 2016, because she was not employed by the Respondent after that date. Her unlawful deduction from wages claim fails.

Employment Judge J Brown

10 May 2017