



## Employer pays just 33 pence per hour! (and winds up in tribunal)

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### 'Treated like a slave'

Following a lengthy fight through the Courts an employee has won her case of constructive unfair dismissal after what she described as years of being 'treated like a slave' by her employer. This case is a reminder to all employers of the importance of complying with their legal obligations and the requirement to treat all employees appropriately.

Ms Mruke was born in Tanzania and had no education. She was illiterate and only spoke Swahili. In 2006, her employer arranged for her to come to the UK to work for them. It was understood by Ms Mruke that she would, in the main, be undertaking cleaning and child care duties. The terms of her pay were agreed by the parties in Tanzania and may well have been generous when compared to Tanzanian salaries but equated to only 33 pence per hour.

Ms Mruke worked for her employer for four years before resigning when an interpreter, representatives of an anti-trafficking charity and the police came to her address (contacted by an interpreter present at a GP appointment) and she decided to go with them. After her resignation, allegations were made that she had been forced to work 18-hour days, was not allowed to leave the premises, had her passport withheld and was shockingly underpaid.

### Complaints to the Employment Tribunal

Ms Mruke brought several employment law claims including unlawful deduction from wages, holiday pay and failure to allow proper rest. These three claims succeeded. She also brought claims of race discrimination and constructive unfair dismissal.

Her claim of race discrimination failed as the tribunal found that whilst she had undoubtedly been treated unfairly by her employer, this was not due to her race but was instead due to her socio-economic status.

However, the claim for constructive unfair dismissal caused more problems.

## Legal Background to the Case

In brief, constructive unfair dismissal can be claimed by an individual if they can prove that there was a repudiatory breach of their contract by their employer. Whilst this is at times a breach of a clear, written, clause of the contract, more often the breach complained of is that of the implied term of mutual trust and confidence. Whilst this term may not be written down in the contract of employment, it is implied by the courts as without it, the employment relationship cannot function.

When an employer breaches this term, an employee can sometimes claim that their employer's conduct is so bad, they are entitled to treat it as a dismissal, resign with immediate effect within a reasonable time and bring a claim of constructive unfair dismissal.

## What Happened in this Case

Ms Mruke argued that she resigned because she was not paid the National Minimum Wage. The National Minimum Wage Act 1998 states that if a worker receives less than the National Minimum Wage, they are taken to be contractually entitled to the National Minimum Wage. So far, so good: Ms Mruke was clearly not receiving the National Minimum Wage and therefore there was a breach of her contract. However, the situation was complicated by the fact that she was not aware at the time of her resignation that she was entitled to the National Minimum Wage. The question for the tribunal to consider was whether she could resign over an entitlement that she was not aware she had.

The employment tribunal initially found that since Ms Mruke did not know she was entitled to the National Minimum Wage and did not cite this as the reason for her resignation, her constructive unfair dismissal claim should fail. Ms Mruke appealed to the Employment Appeal Tribunal (EAT). The EAT decided that it was possible for her to resign as a result of not receiving National Minimum Wage without knowing about the legislation itself. However, she did need to show that she was resigning because she felt she should be paid more and the EAT felt she had not demonstrated this. She had explained that one of the reasons she did not leave earlier was because she had no money and nowhere to go but this was not the same as saying she was resigning because she felt she should be paid more.

## Employer's Checklist:

Take advice if:

- You are thinking of implementing changes to terms and conditions
- You want to change practices
- You receive a grievance from an employee
- An employee complains about their terms and conditions
- An employee resigns whilst raising accusations against the company

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We believe the best way to help our clients achieve their goals is to get to know them and their organisation. That's why all our employment law clients have a named Employment Law Specialist who will work with them, providing consistent, high quality, practical support.

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- **Additional Consultancy Services**

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- **Contact LELC to find out how we can help you.**

Ms Mruke appealed to the Court of Appeal. The Court of Appeal found that despite the lack of clarity over the reasons for the resignation, the breach by the employer was an 'egregious' breach of minimum wage and that Ms Mruke must have been resigning because of such a breach. Her claim therefore ultimately succeeded.

## Learning points

This is a slightly unusual case as it is rare that an employee tries to claim constructive unfair dismissal without citing a specific reason for their resignation. However, it does still remind us that many things can lead to constructive unfair dismissal cases. It could be a fairly straight forward incident of changing terms and conditions without an employee's consent or failing to meet the terms you have in place (e.g. failing to pay a bonus or commission). However, constructive unfair dismissal claims can also arise from more complex matters such as bullying and harassment or ignoring grievances (even if you believe the grievance is entirely unfounded).

Therefore, we would recommend that if you are considering any changes to the terms and conditions of an employee, receive a grievance or someone resigns in tricky circumstances, you take legal advice on managing the situation, in order to minimise the risk of a tribunal claim.

For advice on this and other issues, call 01476 583279 or email [employmentlaw@lelc.co.uk](mailto:employmentlaw@lelc.co.uk)

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