

**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Ms. Susan Cotterill (representing herself)

**Respondent:** SNG Jaygrace Limited (represented by Mr. Colin Waterton)

**Tribunal Members:** Mr. Patrick Hardy (Chair)  
Mr. Darren Etasse  
Ms. Christine Le Lievre

**Hearing date:** 11 January 2023

**Decision of the Tribunal**

The Applicant made a complaint of unfair dismissal arising from her assertion that she was not paid the legal minimum wage. Having considered the evidence presented, whether referred to in this judgment or not, the representations of both parties and with due regard to all the circumstances, the Tribunal finds that:

- (1) the Respondent failed to pay the minimum wage to the Applicant in breach of the Minimum Wage Law (as defined below) for which the Tribunal makes an award to the Applicant of £16.47 (sixteen pounds and forty-seven pence). The calculation of this award is based on the Applicant's gross wages of £101 in her third week of employment for which she worked 13.5 hours. The Applicant was paid an hourly rate of £7.48 which is an underpayment per hour of £1.22 of the then applicable minimum hourly wage rate of £8.70; and
- (2) the Applicant was not unfairly dismissed in accordance with the Law (as defined below) and the Tribunal thereby dismisses the complaint of unfair dismissal.

The Tribunal makes no order as to costs.

.....  
Signature of the Chair

.....  
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

**The legislation referred to in this document is as follows:**

The Employment Protection (Guernsey) Law, 1998, as amended (the "Law")  
The Minimum Wage (Guernsey) Law, 2009, as amended (the "Minimum Wage Law")  
The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010  
Guernsey Statutory Instrument 2020/No. 104 (The Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations 2020)

**The authorities referred to in this document are as follows:**

Cotterill v States of Guernsey (Guernsey Royal Court, Judgment 58/2017)  
Reynard v Fox [2018] EWHC 443 (Ch)

**Extended reasons for the decision**

**1. Introduction**

- 1.1 Throughout these extended reasons, documents within the hearing bundle shall be referred to by the number of that document (the "Document") as listed in the hearing bundle index.
- 1.2 The Applicant, Ms. Susan Cotterill, was employed as a delivery driver by the Respondent, SNG Jaygrace Limited, and complains that she was unfairly dismissed after she asserted her right to be paid the legal minimum wage.
- 1.3 The Respondent denies that the Applicant was unfairly dismissed and argues that the Applicant was dismissed because she breached the terms of her employment contract by failing to provide her own roadworthy vehicle in which to undertake deliveries. The Respondent had the burden of proving that, on the balance of probabilities, the dismissal was fair.
- 1.4 The Applicant worked for the Respondent during a continuous period of seventeen days (two days of which were taken as holiday). Ordinarily, the Applicant would fail to meet the qualifying period to make an unfair dismissal complaint since she had not been employed continuously for twelve months. However, the Applicant relies on her unfair dismissal having arisen from the assertion of a statutory right to which the qualifying period does not apply.
- 1.5 The Tribunal, consisting of three members, met on 11 January 2023 to hear and determine the Applicant's complaint. All of the material submitted by the parties has been taken into account by the Tribunal, whether specifically referred to in this decision or not.

- 1.6 The Applicant represented herself and the Respondent was represented by Mr. Colin Waterton. Neither party called any witnesses but relied on oral testimony and written statements provided by third parties.
- 1.7 The Tribunal was conscious that both the Applicant and the Respondent were not legally represented and was anxious to make sure that all necessary steps were taken to ensure that they both had a fair hearing. The Tribunal took account of the Deputy Bailiff's general comments in *Cotterill v States of Guernsey* (Guernsey Royal Court, Judgment 58/2017), a case previously brought by the Applicant, and, in particular, those at paragraph 45 concerning the need to give appropriate help to unrepresented parties regarding procedure and possibly also with the case that they wish to present. Accordingly, the Tribunal took care to explain the Tribunal's procedure carefully to the parties throughout the proceedings and to explore potential arguments and lines of questioning that they could have advanced. The Tribunal was also mindful of the commentary in paragraph 44 of *Reynard v Fox* [2018] EWHC 443 (Ch) that the fact that a litigant was acting in person was not in itself a reason to disapply procedural rules, orders or directions or excuse non-compliance with them. The exception to that principle being that a special indulgence to a litigant in person might be justified where a rule was hard to find, difficult to understand or it was ambiguous.
- 1.8 Preliminary issue - The Applicant raised as a preliminary issue whether her employer was correctly identified, stating that she believed her employer to be an entity known as "The New Manor" and not SNG Jaygrace Limited. She referred the Tribunal to Document 15 which evidenced the dissolution, prior to her employment, of a company named SNG Jaygrace Limited (Registration number 11534521) on 10 September 2019. The Tribunal determined that her employer was correctly identified based on the following: (1) Document 15 refers to a company, albeit with an identical name, incorporated in England with no known Guernsey presence, (2) Document 18 (being the ET2 Form submitted by the Respondent to the Employment & Discrimination Tribunal (the "Secretariat")) identifies the employer as SNG Jaygrace Limited, as does each payment slip issued by the Respondent to the Applicant in respect of her employment with the Respondent (Documents 3, 5, 6, 9 and 10), (3) SNG Jaygrace Limited is a company registered with the Guernsey Registry (Registration number 63002) and (4) the use of "The New Manor" name by the Respondent was as a trading name.

## **2. Evidence Summary**

- 2.1 The Applicant was employed by the Respondent on 27 December 2020 and was dismissed by the Respondent on 14 January 2021. In the Applicant's ET1 Form to the Secretariat (Document 17), the Applicant states that she began working as a "full-time delivery driver" and was informed she would be delivering food and driving cleaners to their place of work, together with

“some office work”. The Applicant informed the Tribunal that she believed her work might lead to a management position.

2.2 No written contract of employment was signed by the Respondent and the Applicant. The only written evidence of a contract made available to the Tribunal is Document 16.4 which was signed by the Respondent, but not signed by the Applicant. Document 16.4 contains four terms of particular relevance to the Applicant’s claim:

(1) The Applicant was employed as a delivery driver (numbered paragraph 5);

(2) The Applicant’s remuneration comprised the payment of £4 per delivery with an additional £3 per hour over the “lunchtime shift” (a term which is not defined) (numbered paragraph 6);

(3) The Applicant was required to provide her own transport and fuel (numbered paragraph 6); and

(4) The Applicant had to ensure that her vehicle was roadworthy and insured (numbered paragraph 6).

2.3 In oral evidence to the Tribunal, the Applicant accepted that she was employed on the terms (1), (2) and (3) set out in paragraph 2.2 above but with the following exceptions: the Applicant stated that (a) she believed the additional payment of £3 per hour over the lunchtime shift extended to all hours worked by her and (b) she was not aware of the requirement to provide fuel for her own vehicle. The Applicant stated that she had assumed she would receive an allowance for her car and petrol.

The Applicant did not explicitly acknowledge her acceptance of term (4) set out in paragraph 2.2 above.

2.4 On 28 December 2020, the Applicant commenced deliveries for the Respondent using her own vehicle for which she provided fuel.

2.5 The Applicant stated in oral evidence that on 28 December 2020 she informed the Respondent’s Food and Beverage manager, an individual referred to as Ravi, that she was not being paid the legal minimum wage. According to the Applicant, Ravi referred her to a company employee who was responsible for the payment of wages to the Respondent’s employees (the “Wages Clerk”). The Applicant stated that she repeated to the Wages Clerk that she was not being paid the minimum wage to which, the Applicant claims, the Wages Clerk replied, “I know”. This conversation is denied by the Wages Clerk and is referred to more specifically in paragraph 3.2.4 below.

2.6 During the first week of her employment (28 December 2020 to 3 January 2021 inclusive), the Applicant recorded on an employee time sheet submitted

by her to the Respondent that she undertook 129 deliveries and worked a total of 44.5 hours (Document 1). On 4 January 2021, the Respondent issued a payment slip to the Applicant recording a gross payment to her of £516 in respect of this period (Document 3). The Tribunal noted various discrepancies between the information provided by the Applicant in her ET1 Form and this employee time sheet and the corresponding payment slip. These discrepancies are noted in paragraph 2.17 below.

- 2.7 At some point during the second week of her employment (4 January to 10 January 2021 inclusive), the precise date of which was not established, the Applicant informed the Respondent that she was unable to undertake deliveries with her own vehicle as it was no longer roadworthy. In oral evidence, the Applicant stated that this was due to her vehicle having “slow punctures” which caused a gradual deflation of tyres. However, in an email to the Wages Clerk dated 13 January 2021 (Document 11), the Applicant had written that “there is a problem with the brakes on my own car, and I certainly can’t afford to get them fixed at the moment”. In the letter sent to the Secretariat by Mr. Anthony Gover of the Respondent (Document 16.3) which was attached to the Respondent’s ET2 Form, the Respondent states that the Applicant “arrived for her shift claiming that her car is not roadworthy, the breaks (sic) are faulty and that she has no funds to repair it. She demanded that the company provide her a company car and fuel.....On the night in question, the company had no choice [but] to borrow a car from CIRS”. CIRS refers to Channel Island Rainbow Services.
- 2.8 According to the written statement from Mr. Coenraad Geysler, a driver employed by the Respondent, it was unprecedented for the Respondent to provide a vehicle to one of its delivery drivers and he states that in his “4 years with the company, not one of the delivery drivers has used any vehicle from the company or the sister company CIRS.” (Document 16.2).
- 2.9 Mr. Gover states in his letter to the Secretariat (Document 16.3) that “On inspection of the vehicle by CIRS, they found considerable damage to the left rear door of the car. The company (SNG) now has to pay for the repairs to the vehicle.” The Applicant does not admit responsibility for the alleged damage.
- 2.10 During the second week of her employment (4 January to 10 January 2021 inclusive), the Applicant recorded on her employee time sheet that she undertook 99 deliveries and worked a total of 41.25 hours (Document 2). On 11 January 2021, the Respondent issued a payment slip to the Applicant recording a gross payment of £417.76 in respect of this period (Document 5 and repeated, with annotations, as Document 6). Again, the Tribunal noted various discrepancies between the information provided by the Applicant in her ET1 Form and this employee time sheet and the corresponding payment slip. These discrepancies are noted in paragraph 2.17 below.

- 2.11 Shortly after midnight on 13 January 2021, the Applicant sent an email to the Wages Clerk (Document 11), referred to in paragraph 2.7 above, concerning the deduction from her wages of an amount relating to money previously advanced to her to purchase petrol. The Applicant also states in this email that she was not being paid the legal minimum wage: "So Sunday [10 January 2021] worked out at £5 per hour, and this evening [Tuesday, 12 January 2021] roughly £7 per hour, I understand from a previous conversation with you that the minimum wage is £8.70 per hour, clearly this is not being met".
- 2.12 Later that day on 13 January 2021, the Applicant had a meeting with Mr. Anthony Gover. In her email to the Secretariat dated 27 October 2021 (referred to more specifically in paragraph 3.2.4 below), the Applicant claims that the meeting discussed the failure of the Respondent to pay her the legal minimum wage. This meeting included Ms. Kathleen Powell who worked for the Respondent as a secretary. Ms. Powell's recollection of the meeting which forms the basis of her written witness statement (Document 16.1) makes no reference to any discussion of the minimum wage. Ms Powell's witness statement is considered in paragraph 3.2.4 below.
- 2.13 On 14 January 2021, the Applicant's employment was terminated by an email from Mr Gover to the Applicant.
- 2.14 The Applicant worked only two days of the week in which she was dismissed (12 and 13 January 2021) and recorded on her employee time sheet for that week that she undertook 23 deliveries and worked a total of 13.5 hours (Document 4 and repeated, with annotations, as Document 7).
- 2.15 On 16 January 2021, the Applicant filed an ET1 Form with the Secretariat.
- 2.16 On 21 January 2021, the Respondent issued a payment slip to the Applicant recording a gross payment of £101 in respect of the Applicant's third and final working week (Document 9 and repeated, with annotations, as Document 10).
- 2.17 Certain discrepancies are noted by the Tribunal between the Applicant's ET1 Form, the Applicant's first and second time sheets (Documents 1 and 2 ) and the Applicant's first and second payment slips (Documents 3, 5 and 6):
- (1) In the Applicant's ET1 Form, the Applicant records her gross pay as being £1,140.76. However, the Applicant's three payment slips record that she received a gross payment of £516 for the first week, £417.76 for the second week and £101 in the third and final week, representing a total of £1,034.76. This represents an overstatement of £106 in the ET1 Form of the Applicant's gross pay as evidenced by the payment slips.
  - (2) In the Applicant's ET1 Form, the Applicant states that she worked 46 hours in her first week. However, according to the relevant time sheet, the Applicant recorded a total of 44.5 hours worked for that week. When

the Tribunal examined this time sheet and added up the individual time entries by the Applicant, the number of hours actually worked by the Applicant amounted to 43.5 hours.

- (3) In the Applicant's ET1 Form, the Applicant states that she worked 42.5 hours in her second week. However, according to the relevant time sheet, the Applicant recorded a total of 41.25 hours.
- (4) When the Tribunal asked the Applicant to explain these discrepancies, the Applicant stated that she completed the ET1 Form before she had received all of the corresponding payment slips and before she had access to the corresponding time sheets. When the Tribunal asked the Applicant why she chose to file her ET1 Form within two days of her termination date and before she was able to verify important information material to her claim, she responded that she was not certain she would receive this information before the deadline for submitting the ET1 Form. The Tribunal considered this improbable since the submission deadline for the ET1 Form was three months from the Applicant's termination date.

### **3. Legal Framework**

In considering the Applicant's complaint, the Tribunal considered two issues, namely: (1) whether the Respondent failed to pay the Applicant the legal minimum wage and (2) whether the Respondent unfairly dismissed the Applicant because she asserted that her right to the legal minimum wage had been infringed. Each of these issues is considered separately below.

#### **3.1 Did the Respondent fail to pay the Applicant the legal minimum wage?**

##### **3.1.1 The Minimum Wage Law states:**

- A) Section 1(1) "A worker who qualifies in any pay reference period shall be remunerated by his employer in respect of his work at a rate which is not less than the minimum wage".
- B) Section 1(2) "A person qualifies for the minimum wage if he (a) is a worker, (b) is working, or ordinarily works, in Guernsey under his contract, and (c) has ceased to be of compulsory school age".
- C) Section 1(3) "The minimum wage shall be such hourly rate as the [States for Employment & Social Security] Committee may from time to time prescribe by regulations".

- D) Section 1(4) “a pay reference period” is such period as the [States for Employment & Social Security] Committee may prescribe by regulations for the purpose”.
- E) Section 10(1) “If a worker who qualifies for the minimum wage is remunerated by his employer at a rate which is less than the minimum wage, the worker shall be taken to be entitled under his contract to be paid, as an additional remuneration in respect of that period, the amount described in subsection (2)”.
- F) Section 10(2) “That amount is the difference between (a) the relevant remuneration received by the worker for the pay reference period, and (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the rate of minimum wage which was payable in respect of the worker during that period.”
- 3.1.2 Regulation 1 of The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010 states that where a worker is paid by reference to a period shorter than one calendar month, the pay reference period for determining the hourly rate of remuneration of that worker is that shorter period.
- 3.1.3 Regulation 3 of The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010 states that the total remuneration of a worker in a pay reference period is calculated by adding the total payments made to a worker in, or attributable, to that pay reference period which includes any amounts which form part of the worker’s remuneration under the applicable Minimum Wage (Accommodation and Food Offsets) Guernsey Regulations.
- 3.1.4 Regulation 6 of The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010 states, inter alia, that, in calculating a worker’s total remuneration in a pay reference period, (a) any deduction made in respect of the worker’s expenditure in connection with his or her employment shall be subtracted but (b) any deduction in respect of an event for which that worker is contractually liable shall not be subtracted.
- 3.1.5 For the period of the Applicant’s employment, the adult minimum hourly rate was £8.50 until and including 31 December 2020 and was increased to £8.70 with effect from 1 January 2021 pursuant to Guernsey Statutory Instrument 2020/No. 104 (The Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations 2020).
- 3.1.6 Decision
1. The Applicant is a qualifying worker under Section 1(2) of the Minimum Wage Law, being an adult worker who worked for the Respondent in Guernsey.

2. The Applicant was paid weekly and, pursuant to The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010, the applicable pay reference period is one week. This means that, although the Applicant worked only a total of fifteen days during a three-week period, each one-week period is, for the purpose of determining whether the Applicant received the legal minimum wage, a distinct pay reference period under Section 1(4) of the Minimum Wage Law.
3. The Applicant was paid each week in respect of the seven days of the preceding week. Therefore, the Applicant's first payment slip (Document 3) relates to the period Monday, 28 December 2020 to Sunday, 3 January 2021 inclusive ("Week 1"). The Applicant's second payment slip (Document 5 and repeated, with annotations, as Document 6) refers to the period Monday, 4 January 2021 to Sunday, 10 January inclusive ("Week 2"). The Applicant's third payment slip (Document 9 and repeated, with annotations, as Document 10) refers to the period Monday, 11 January 2021 to Thursday, 14 January inclusive (14 January 2021 being the date on which the Applicant was dismissed) ("Week 3").
4. For Week 1 and based upon the correct calculation of the Applicant's time recordings, the Applicant worked 43.5 hours for which she was paid a gross amount of £516, representing an hourly rate of £11.86. During this period the legal minimum hourly wage was £8.50 until and including 31 December 2020 and £8.70 from 1 January 2021. Accordingly, the Applicant was paid in excess of the legal minimum hourly rate for Week 1.
5. For Week 2 and based upon the Applicant's applicable time sheet, the Applicant worked 41.25 hours for which she was paid a gross amount of £417.76 representing an hourly rate of £10.13. During this period the legal minimum hourly wage was £8.70. Accordingly, the Applicant was paid in excess of the legal minimum hourly rate for Week 2.
6. For Week 3, the Applicant worked 13.5 hours for which she was paid a gross amount of £101, representing an hourly rate of £7.48. During this period the legal minimum hourly wage was £8.70. Accordingly, the Applicant was paid below the legal minimum hourly rate for Week 3.
7. The Tribunal notes that in the Applicant's email to the Wages Clerk dated 13 January 2021 (Document 11), the Applicant states, in respect of her first week of employment, being Week 1, that she "spent £70/£80 on petrol, 4 times more than I would spend in a month". The Applicant also refers to an amount of £45 which was deducted for petrol from her wages in respect of Week 2.

Whether or not the obligation to incur the cost of fuel was accepted by the Applicant, the expenditure by the Applicant for petrol and the

deduction from the Applicant's wages for petrol do not affect the Tribunal's decision as to whether the Respondent paid the Applicant the legal minimum wage: if all of the expenditure by the Applicant for petrol in Week 1 (being up to £80) was deducted from the Applicant's gross pay for Week 1 (being £516), the Applicant's resulting gross pay (£516-£80) of £436 would, when divided by the hours worked in Week 1 (43.5 hours) produce an hourly rate of £10.02, still being above the legal minimum hourly rate.

Similarly, in respect of Week 2, if the Applicant's gross pay is reduced by the amount of £45 which was deducted for petrol, the Applicant's resulting gross pay (£417.76-£45) of £372.76 would, when divided by the hours worked in Week 2 (41.25 hours) produce an hourly rate of £9.04, still being above the legal minimum hourly rate.

8. In written and oral evidence, the Applicant variously referred to the £3 per hour rate payable during the lunchtime period (which she believed should have applied to each hour worked) as being evidence that the Respondent was not compliant with the Minimum Wage Law. The Tribunal considered that the Applicant failed to understand that, in determining whether the Respondent had paid the Applicant the legal minimum hourly rate, the Applicant's total remuneration was to be determined in accordance with The Minimum Wage (Administrative Provisions) (Guernsey) Regulations, 2010 and divided by the number of hours worked in respect of the applicable pay reference period. The fact that the Respondent included within the Applicant's remuneration a component (representing an hourly rate below the legal minimum hourly rate) was of itself irrelevant in determining the Applicant's complaint if that component, when combined with other amounts paid to the Applicant, resulted in her receiving an overall amount which exceeded the minimum wage.
9. In written and oral evidence, the Respondent stated that it was compliant with the Minimum Wage Law. This was based on the Respondent's calculation of the total amount paid by the Respondent to the Applicant during the entirety of her employment divided by the total number of hours worked by the Applicant. This produced an average rate above the minimum wage. The Tribunal considered this calculation to be incorrect since each week of the Applicant's employment is to be treated as a distinct pay reference period.
10. The Tribunal accordingly makes an award to the Applicant of £16.47 (sixteen pounds and forty-seven pence). The calculation of this award is based on the Applicant's gross wages of £101 in Week 3 during which she worked 13.5 hours. This represents an hourly rate of £7.48 which is an underpayment per hour of £1.22 of the then applicable minimum wage rate of £8.70.

**3.2 Did the Respondent unfairly dismiss the Applicant because she asserted that her right to the legal minimum wage had been infringed?**

3.2.1 The Law states:

- A) Section 12(1) “The dismissal of an employee by an employer shall be regarded for the purpose of this Part of the Law” [this Part of the Law concerning unfair dismissal] “as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –
  - b) alleged that the employer had infringed a right of his which is a relevant statutory right”.
- B) Section 12(2) “It is immaterial for the purposes of subsection (1) whether the employee has the right or whether it has been infringed or not, but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.”
- C) Section 12(4) “For the purposes of this section a “relevant statutory right” is any right conferred by or under –
  - (e) the Minimum Wage (Guernsey) Law, 2009.”

3.2.2 In order to qualify to make a claim of unfair dismissal, Section 15(1) of the Law ordinarily requires that an employee was continuously employed for a period of not less than one year ending with the effective date of termination. However, Section 15(2)(a) of the Law excludes the one-year qualifying requirement in respect of a claim of unfair dismissal made under Section 12(1).

3.2.3 Although the Applicant was continuously employed for a period of less than one year, the Applicant is qualified to make a claim for unfair dismissal under Section 12(1)(b) of the Law as a consequence of Section 15(2)(a) of the Law.

3.2.4 Decision

1. In making its decision, the Tribunal considered (1) whether the Applicant asserted that the Respondent had infringed her right to receive the legal minimum wage and (2) whether the reason or, if more than one reason, the principal reason for the Applicant’s dismissal was this assertion.
2. The Applicant argues that she informed the Respondent that she was not being paid the legal minimum wage on at least three occasions:
  - 2.1 The first occasion was on 28 December 2020, the Applicant’s first working day, when the Applicant claims that she raised the issue that she was not being paid the legal minimum wage to the Respondent’s

Food and Beverage Manager who referred her to the Wages Clerk with whom she claims she discussed this issue. The Wages Clerk denies the existence of this discussion in his written statement dated 29 November 2021 (Document 16.1). The Wages Clerk attaches an email (the "First Email") allegedly sent by the Applicant to him dated 11 October 2021 in which the Applicant states that when she queried the amount she was to be paid by the Respondent as not being compliant with the legal minimum wage, the Wages Clerk informed the Applicant that "everyone gets £3 per hour." The Wages Clerk also attaches to his witness statement (Document 16.1) an email dated 27 October 2021 (the "Second Email") sent by the Applicant to the Secretariat which states that (1) the Wages Clerk informed the Applicant that the Respondent "pays everyone £3 per hour" and (2) in response to the Applicant stating to the Wages Clerk that this amount did not meet the legal minimum wage, the Wages Clerk responded, "I know".

In his witness statement (Document 16.1), the Wages Clerk states that the First Email uses a non-existent email address for him and it was never sent to him. He also states that the statements attributed to him by the Applicant in both the First Email and the Second Email were not true. The Applicant claims in the Second Email that the relevant conversation occurred on the day on which she started work, 28 December 2020. In the Wages Clerk's witness statement dated 29 November 2021 (Document 16.1), the Wages Clerk states that he was on holiday between 23 December 2020 and 5 January 2021.

- 2.2 The second occasion was when, in the Applicant's email to the Wages Clerk dated 13 January 2021 (Document 11), the Applicant states that she was not being paid the legal minimum wage: "So Sunday [10 January 2021] worked out at £5 per hour, and this evening [Tuesday, 12 January 2021] roughly £7 per hour, I understand from a previous conversation with you that the minimum wage is £8.70 per hour, clearly this is not being met".
- 2.3 The third occasion was in the Applicant's meeting with Mr. Gover on 13 January 2021. The Applicant states in her email to the Secretariat dated 27 October 2021, being the Second Email referred to in paragraph 2.1 immediately above, that in respect of her meeting with Mr. Gover "Kathy Powell who is the secretary.....can confirm...it was about not meeting the minimum wage requirement".

However, Ms. Powell's recollection of that meeting as described in her written witness statement (Document 16.1) makes no reference to a discussion about the minimum wage. Ms. Powell refers only to a discussion about the Applicant's "vehicle having faulty brakes and her insurance regarding the use of one of our sister company vehicles,

and I made a copy of the document she had previously emailed for Mr. Gover to see. At this point I heard him saying this is not correct [,] you don't have full insurance to drive a third-party car for business therefore you cannot work unless you repair your vehicle as it is not possible for you to be a hazard to other road users". In oral evidence, the Applicant stated that Ms. Powell had correctly recalled the discussion between Mr. Gover and the Applicant.

3. Although the Respondent disputes the first and third occasions on which the Applicant claims to have asserted that her right to the legal minimum wage had been infringed, the second occasion is evidenced by an email sent by the Applicant to the Respondent. Accordingly, the Tribunal considers that the Applicant did assert to the Respondent that the Respondent had infringed her right to receive the legal minimum wage.
4. In oral evidence, Mr. Waterton on behalf of the Respondent stated that the reason for the Applicant's dismissal was her inability to provide her own roadworthy vehicle and that she was not insured to drive a vehicle owned by a third party. It followed, the Respondent argued, that the Applicant was therefore unable to perform her employment contract.
  - 4.1 It was an agreed term of the Applicant's contract of employment that she provided her own vehicle for deliveries. Although the Applicant did not expressly accept that her vehicle had to be roadworthy and insured, the Tribunal considers that in agreeing to provide her own vehicle to undertake deliveries, the Applicant impliedly accepted that her vehicle had to be roadworthy and insured. The Tribunal considered it improbable that the Applicant believed she could undertake deliveries in a vehicle which was not roadworthy or that she could drive an uninsured vehicle which would be in contravention of the law.
  - 4.2 In Mr. Gover's letter to the Secretariat (Document 16.3), he states that the Applicant "arrived for her shift claiming that her car is not roadworthy, the breaks (sic) are faulty and that she has no funds to repair it." In the Applicant's email to the Wages Clerk dated 13 January 2021 (Document 11), the Applicant had written that "there is a problem with the brakes on my own car, and I certainly can't afford to get them fixed at the moment". It was evident to the Tribunal that not only did the Applicant fail to make her vehicle available for deliveries, she had indicated that she would continue to be unable to make her vehicle available.
  - 4.3 As noted in paragraph 2.3 immediately above, Ms. Powell recalled the discussion on 13 January 2021 between Mr. Gover and the Applicant as being about the condition of the Applicant's vehicle not being roadworthy and the Applicant not being insured to drive a third party

vehicle to make deliveries. Ms. Powell stated “they were talking about her vehicle having faulty brakes and her insurance regarding the use of one of our sister company vehicles, and I made a copy of the document she had previously emailed for Mr. Gover to see. At this point I heard him saying this is not correct [,] you don’t have full insurance to drive a third-party car for business therefore you cannot work unless you repair your vehicle as it is not possible for you to be a hazard to other road users”. As previously noted above by the Tribunal, the Applicant stated in oral evidence that Ms. Powell had correctly recalled the discussion between Mr. Gover and the Applicant.

5. Based on a balance of probabilities of the evidence provided to the Tribunal, the Tribunal does not consider that the sole or principal reason why the Respondent dismissed the Applicant was the Applicant’s assertion that the Respondent had infringed the Applicant’s right to be paid the legal minimum wage, an obligation which the Respondent incorrectly believed it had fulfilled. Based on a balance of probabilities of the evidence provided to the Tribunal, the Tribunal considers the sole or principal reason for dismissing the Applicant to be the inability of the Applicant to perform her employment contract in accordance with a fundamental term agreed by the Applicant and the Respondent – namely, the failure of the Applicant to provide her own delivery vehicle in a roadworthy condition.
6. Since the Applicant admitted in writing that she was not able to repair her vehicle, the Tribunal considers that any formal warning to the Applicant prior to her dismissal would not reasonably have affected the reason for her dismissal; the Applicant would have continued to be unable to provide her own delivery vehicle, regardless of whether a warning letter had been issued to her before her dismissal. In these circumstances, the Tribunal does not consider the absence of a warning letter prior to dismissal to render the dismissal unfair.
7. The Tribunal accordingly dismisses the Applicant’s complaint of unfair dismissal.

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Signature of the Chair

.....  
Date

(Initially signed 31 January 2023 but amended on 23 February 2023)