

JB1



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Y I Zamora Morales

**Respondent:** Sprinkle Bright Cleaning Services Limited

**Heard at:** London Central

**On:** 6 June 2017

**Before:** Employment Judge Goodman

## Representation

**Claimant:** Mr A Durango, trade union representative

**Respondent:** Mrs J Cardona Cruz, manager

**JUDGMENT** having been sent to the parties on 7 June 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. This is a claim for unlawful deductions from wages, £586.27 having been deducted from the Claimant's final salary payment.
2. There was also a claim for holiday pay, which has now been withdrawn.
3. Today the Claimant was represented by her Trade Union Representative, Mr Durango and the Company by Mrs Cardona Cruz, the Manager, her daughter is a director of the company.

4. The claim was presented on ET1 on 11 March 2017. The employer's response was due by the 18 May. The employer sought and was granted an extension to 24 May. However, a response was not filed until 1 June, and so today I heard an application for extension of time.
5. The Respondent's manager was not really able to explain why having got the extension she did not file a response until a week later, save to say that she went to see her solicitor and he or she was away, but the Claimant has confirmed through her representative that she has no objection. As both parties are here today with most of papers, I have granted that extension.
6. I was provided with documents: of the Claimant's payslips from April to November 2016; a P60 for the year ending April 2016; form P45 to the termination of employment (5 November 2016), the P45 being issued in January 2017. I also saw the Claimant's bank statements for October and November 2016, and the Respondent's bank statements for 13 months from 2015 to 2016. The Respondent also produced an accountant's summary of tax and national insurance due on the Claimant's wages, and the amounts deducted during the Claimant's employment.
7. I reviewed the documents and heard submissions from the parties' representatives, but did not hear formal witness evidence, not least because the Claimant herself does not speak English and as this was not made known to the Tribunal no interpreter had been booked for the hearing. Neither side had prepared a witness statement. I was satisfied, however, that Mr Durango was able to translate into Spanish questions for the claimant, and had taken full instructions from her, and most of the evidence is in documentary form in any event.

### **Factual Findings**

8. On the facts of this case, the Claimant started work as a cleaner, working part-time, from 1 May 2015. Her employment ended with effect from 5 November 2016.

9. She says that she received monthly payslips from June 2015 onwards, but the payments made to her were always gross, and not the sums shown on the payslip as net of tax and national insurance until the last two months she worked, that is, October and November 2016.
10. On the evidence of the P60, for year ending 5 April 2016, which on the Claimant's evidence she received in July 2016, the Respondent paid tax of £167.00 and employee national insurance contributions of £263.17 in that tax year. According to the Claimant evidence, neither of those amounts were deducted from her pay. So it appears that £430.79 the Claimant was overpaid in that year by £430.79.
11. In the next tax year, starting 6 April 2016, which ended in April 2017, the accountant's schedule and the payslips show that no tax was due until October 2016, when the amount due was £170.00. In November 2016 the amount due was £211.00. Both sums were deducted from the Claimant's pay before she received it, as confirmed by the Claimant and evidenced by her bank statement. So the £381.00 due, and shown on her P45, has in fact been both deducted and paid.
12. It is another story with the national insurance contributions. The payslips show that the following sums were due down to September 2016:

	£
April	9.96
May	30.97
June	40.22
July	30.97
August	21.38
September	22.58.
October	21.38
November	45.98
Total	£ 223.44

These figures come from the accountant's schedule, which matches the Claimant's payslips except that the Claimant was not able to find her September payslip. The amounts are shown on the payslip, but for all but the last two months had not been deducted from the amount actually paid

as wages. Thus for the tax year April 2016/17, the Claimant's tax due has been properly deducted from her pay and paid to HMRC, but all but the last two months national insurance (£67.36) has not been deducted.

13. The question then arises as to whether the Respondent has in fact made payments to HMRC for tax and national insurance, as well as making deductions from the employee's wages. The Respondent's bank statements show payment of £4,793.08 - in the course of the 12 months HMRC has been paid by bank transfer £1,500 in December 2015, another payment in September 2016 of £1,200, and a final card payment on 4 November 2016 of £2,093.08. This appears to be in respect of two, possibly three employees. This is in the order of an amount to cover the tax and national insurance for all, but precise evidence is lacking, as the P45 issued only shows tax deducted, and not national insurance. The sum of the national insurance due for the Claimant comes from the final payslip.

#### **Relevant Law**

14. The relevant law is in the Employment Rights Act 1996; section 13 says that an employer shall not make a deduction from the wages of the worker employed by him "unless (a) the deduction is required or authorised to be made by virtue of a statutory provision". I pause to note that under the PAYE (pay as you earn) system, an employer has to make deductions for the tax and national insurance due on an employees wages and pay them to HMRC, and if too much or too little is paid, it is for the employee to file a tax return and receive a refund, though sometimes refunds are made through the payroll system. It is a statutory deduction for the purpose of Section 13.
15. Section 14 then provides that Section 13, (the prohibition of deductions), does not apply to "a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of (a) an overpayment of wages made for any reason by the employer to the worker".

#### **Discussion and Conclusion**

16. In this case, the Respondent contends that there has been an overpayment to the extent that the statutory deductions were not made, for some reason,

but the employer has paid the money to HMRC to discharge the employee's obligation to pay tax and national insurance. So the Claimant has benefited to the tune of the amounts paid to HMRC but were not deducted from wages, and it is these sums that they sought to recover from the final wages payment.

17. I am satisfied on the evidence of the P60 that deductions of £167.00 and £263.79 for tax and national insurance respectively were made from wages for the year ending April 2016. These sums had not been deducted from the pay received by the claimant.
18. The question arises as to whether the employer has in fact paid over the £222.84 due for national insurance for the year ending April 2017. The only documentary evidence is the payslips, and the bank statements, which show that reasonably substantial sums were paid to HMRC. While there is nothing specifically demonstrating that the Claimant's deductions have been paid, on the basis of the bank statements it is apparent that the Respondent has continued to make payments to HMRC for the sums due, they are for a precise total, not round figures, and so likely to represent a calculation prepared by HMRC or the accountant, and that there is no real reason to doubt that the national insurance due in respect of the Claimant's wages has in fact been paid.
19. Taking those sums together, the sums for tax and national insurance of £167.00 and £263.79 (tax and national insurance for 2015/16) and £222.84 (national insurance 2016/17) total £653.63. Deducting from that £67.36 (the national insurance contributions actually deducted from the Claimant's wages for October and November 2016), the balance is £586.27, which in fact equals the deduction made from the Claimant's final wages payment.
20. It appears reasonably clear that the deductions made from the final payment are excepted deductions by virtue of Section 14, that is, they were an overpayment of wages, to the extent that the tax and national insurance owed by the Claimant to HMRC were paid by the respondent employer but not deducted from the Claimant's wages.

21. Therefore this claim does not succeed.

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Employment Judge Goodman  
18 July 2017