EMPLOYMENT TRIBUNALS

Claimant: **Mr A Hussain**

Respondent: **Jaguar Land Rover Limited**

Heard at: **Birmingham**

On: **12 November 2018**

Before: **Employment Judge Flood (sitting alone)**

Representation

Claimant: Mr A Hussain

Respondent: Jaguar Land Rover Limited

JUDGMENT ON RECONSIDERATION

The decision of the Tribunal is that:

1. The judgment that the respondent had made an unauthorised deduction from the claimant's wages handed down on 12 November 2018 is varied to the extent that the respondent is ordered to pay the claimant the reduced sum of **£4,812.84 gross**.
2. The above sum is subject to the deduction of income tax and National Insurance Contributions thereon which deductions will be made by the respondent before payment to the claimant.

REASONS

1. The claimant brought a complaint of unlawful deduction of wages under **section 23 of the Employment Rights Act 1996 ("ERA)** by presentation of a complaint on 16 December 2017 having entered into a period of early conciliation with ACAS between 3 November 2017 and 3 December 2017. His complaint relates to a series of deductions made between August 2016

and October 2017. The claimant was on sick leave at the relevant time and in receipt of company sick pay ("CSP") at a rate of 50% of basic pay. It made a number of deductions to the sick pay it was paying to the claimant over the period representing the Employment and Support Allowance ("ESA") the respondent contended that the claimant was entitled to and should have claimed.

2. The respondent in its response contended that it was entitled to make the deductions from the claimant's wages because of a clause in the Employee Handbook (shown at page 33 of the Bundle) which stated:

   "Employees eligible for ESA will have their CSP adjusted to equate to base pay [at the relevant rate] minus the pre tax value of any state benefits received by the employee or to which the employee is entitled"

3. The case had previously been listed for hearing on 19 July 2018. Upon the parties attending and agreeing that the only relevant issue is whether the claimant was entitled, during the period if the relevant deductions made by the respondent to claim ESA, the parties were ordered to submit this question with any supporting documents to the Benefits Agency/DWP to determine it; and to agree the value of the deductions.

4. It was not possible for the parties to agree the value of the deductions or to receive any further clarification from the Benefits Agency/DWP.

5. However as the correspondence provided already by the DWP confirmed that the claimant was not entitled to ESA at the relevant time (pages 72-74 of the Bundle), the respondent has now conceded that the deductions in respect of ESA should not have been made. Therefore liability is no longer in dispute.

6. The only question remaining was therefore the amount of the sums due to the claimant. In other words, how much was deducted from the claimant's pay in respect of sums the respondent alleged the claimant could have claimed as ESA, but which the claimant turned out not to have been entitled?

7. A bundle of documents ("**the Bundle**") had been prepared and a witness statement prepared and signed by Mr Deeley the Time Keeping and Sick Pay Manager at the respondent together with a witness statement prepared and signed by the claimant.

8. The case was relisted for 12 November 2018 and came before me.

9. At the end of the hearing, the parties had been able to narrow the issues considerably. The claimant had provided a schedule of deductions he said were made which were discussed and questions asked upon (which I have numbered page 78 in the Bundle). It was agreed that the sum of deductions that the claimant was at this point alleging had been made by the respondent was £8887.31 (the £8302.67 that the claimant had listed in his schedule of deductions together with two further deductions that the respondent conceded were made namely £41.76 on 3 March 2017 and £542.88 on 1 September 2017 which were identified in the respondent's schedule of deductions shown at pages 76 and 77).

10. However it had also been agreed during the hearing between the parties that two sums initially listed on the claimant's schedule at page 78 should not have been included at all as these amounts were not deducted from the claimant's wages at all but were actually sums paid to him i.e the sum of £1873.72 paid on 25 November 2016 and £93.96 paid on 13 October 2017. The evidence from Mr Deeley confirmed that the two sums in question related to a refund of amounts deducted over and above the correct amount of ESA that the respondent at the time was of the view that it was entitled to deduct. This was generally caused because a deduction was made at a higher default rate e.g £161 per week rather than the correct sum of £73.08 per week. The claimant was able to confirm that he received these two payments into his bank account at the relevant point in time.

11. There was also another discrepancy on the figures provided by the claimant, he had alleged that the sum of £212.19 had been deducted when this was in fact the amount paid to him on that date. The amount deducted here by the respondent was agreed to be in £73.08. This meant the further amount of £139.11 had been included in the claimant's schedule of deductions that should not have been done. This was accepted by both parties.

12. If these figures were taken away from the claimant's schedule of deductions, it now came to the sum of £6780.52. This was agreed by all to be the amount that had been taken out of the claimant's pay by the respondent.

13. At this point in the calculation, the parties' respective positions diverged. The claimant submitted that this sum i.e £6,780.52 was the amount he should be entitled to reimbursement of as this was the total amount that the respondent deducted from his pay. That he said should be the end of the matter. However the respondent submitted that the sums of £1873.72 and £93.96 referred to above should in fact be deducted twice. They say this because not only were these sums **not** deducted from the claimant's wages as had been mistakenly claimed (which was agreed), but they were in fact actually **paid to** him to make up for earlier deductions. Therefore he was not entitled to receive these sums again and they needed to come off the total amount claimed.

14. At the hearing of the claim, I did not accept this submission. I agreed with the claimant's submission that the two amounts should not be deducted "twice" and awarded the gross sum of £6780.52. I concluded that this was a refund of sums already due to the claimant because the respondent had taken more than the ESA it said was due and the claimant remained entitled to the amounts. The respondent requested written reasons for the decision at the conclusion of the hearing

15. However whilst preparing the decision and reasons to be sent to the parties, I became concerned that reflecting on the calculations made during my deliberations, that the method submitted by the respondent in respect of these two sums which was not accepted, may indeed be correct.

16. I wrote to the parties on 15 November setting out why I had these concerns and notifying the parties that I believed it was in the interests of justice that

the judgment be reconsidered. I asked the parties to notify me if they disagreed with my intention to reconsider, giving reasons, by no later than 23 November 2018 and to set out their views on whether the reconsideration could proceed without a hearing. Unsurprisingly the claimant disagreed and the respondent agreed with this proposal setting out in each case their reasons for holding such an opinion. I decided that it was in the interests of justice for the reconsideration to be carried out without holding a further hearing (as I had a very clear understanding of each parties view on the position from the hearing itself) but asked the parties on 15 November 2018 for any further written representations to be made by no later than 12 December 2018.

17. I am now in a position to reconsider the decision.

The Law

18. **Section 13 ERA** provides that a worker has the right not to suffer unauthorised deductions from their wages. The relevant sections are set out in full below:

> ***"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.*

19. **Section 23 ERA** provides a right for a worker to present a complaint to Employment Tribunal that their employer has made an unlawful deduction from their wages, contrary to **section 13**.

Conclusion

20. The two sums of £1873.52 and £92.96 are acknowledged by all parties to be a refund made by the respondent to the claimant of amounts previously deducted from the claimant's wages. It had been in dispute at the outset of the hearing that such amounts were refunds at all, and had been claimed as deductions, so had been added by the claimant to his list of

sums owing. It became apparent and was conceded by the claimant that these sums were refunds and had been paid to and received by him. He was able to verify the receipt of these sums of money by checking his bank account. Accordingly it was absolutely appropriate for such sums to be taken off the claimant's list of sums he had said were owing, thereby reducing the total amount claimed. This was agreed by the claimant and is patently correct.

21. However it is important to look further at what these two figures actually were. These sums were **refunds** of money to the claimant of amounts previously deducted by the respondent. The unadjusted higher figures, which included these amounts, still appeared on the claimant's schedule of sums owing. However this should not be the case, as the money was no longer owed to the claimant – he had already received it. Therefore it is appropriate to further deduct these amounts from the adjusted total sum claimed. If this was not done, then the claimant would be receiving these sums of money twice – once when the refunds were actually (correctly) made to him (on 25 November 2016 and 13 October 2017) and then again as part of an award for unlawful deductions if it were to include these amounts. This cannot be correct. The respondent should not have deducted these sums and everyone agrees that this is the case. However it corrected this particular mistake at an earlier stage by refunding the amounts, thereby reducing its liability to pay any further money to the claimant by these amounts. The total amount claimed by the claimant accordingly had to take account of this payment.

22. I have decided that the respondent has indeed made deductions from the claimant's wages, but that this is less than the amount awarded during the hearing. Accordingly, upon reconsideration, I conclude the claimant should be awarded the sum of **£4,812.84** (instead of the sum of £6780.52). This will be subject to the deduction of the applicable tax and National Insurance Contributions, which the respondent will need to deduct at source before making payment to the claimant.

Employment Judge Flood
Date: 25 January 2019