

# EMPLOYMENT TRIBUNALS



**Claimants**

**Miss T. Redshaw**

**v**

**Respondent**

**Solocamden Ltd**

**Heard at: London Central**

**On: 20 March 2019**

**Before: Employment Judge Mason**

**Representation**

**Claimant: In person.**

**Respondent: No attendance or representation.**

## RESERVED JUDGMENT

**The Respondent having failed to attend the hearing, and having heard from the Claimant, the judgment of the Tribunal is that:**

1. The Tribunal declares that the Respondent made unlawful deductions from the Claimant's wages contrary to section 13 of the Employment Rights Act 1996.
2. The Respondent is ordered to pay the Claimant the sum of £723.50; this is a net figure and the Respondent is therefore obliged to also pay to HMRC any National Insurance contributions (employee and employer) due. Interest on the sum awarded accrues from the day after this Judgment at the rate of 8% per annum unless the full amount is paid within 14 days.
3. The Tribunal declares that, contrary to section 8 of the Employment Rights Act 1996, the Respondent has failed to provide the Claimant with written itemised pay statements for the weeks ending 8 July 2018, 15 July 2018, 22 July 2018, 29 July 2018 and 5 August 2018. The particulars that should have been included or referred to in these missing payslips are the Claimant's gross weekly salary of £423.08, net weekly salary of £396.37 and deductions for employee's National Insurance contributions. No order is made in respect of these amounts as this is included within para. 1 above.

## REASONS

### **Background and issues**

1. In this case Miss Redshaw (“the Claimant”) claims unlawful deductions have been made from her wages. She claims a total sum of £723.50 representing unpaid net salary. She also claims: she has not received all her pay slips; the payslips she has received are incorrect; her P45 is incorrect; the Respondent has failed to make pension contributions; and the Respondent has failed to pay National Insurance contributions on her behalf to HMRC.
2. The Claimant was employed by the Respondent as Event Manager from 22 May 2018 to 3 August 2018, a period of 10 weeks. She contacted ACAS on 29 September 2018 and an Early Conciliation Certificate was issued the same day. She presented this claim against the Respondent on 10 November 2018.
3. The Respondent has not submitted a Response. A Companies House search shows that it is still active; an application to strike the company off the register was made on 5 October 2018, suspended on 10 November 2018.
4. The issues to be determined by the Tribunal are as follows:
  - 4.1 Did the Respondent make unlawful deductions from the Claimant’s wages by failing to pay her in full?
  - 4.2 Did the Respondent fail to issue the Claimant with all her payslips?

### **Procedure at the Hearing**

5. The Claimant attended in person and was not represented. The Respondent did not attend and was not represented; prior to the start of the hearing, the Tribunal clerk telephoned the Respondent and spoke to Mr. C. Singam who advised the Clerk that the Respondent was no longer trading. The Clerk asked which address the Tribunal should send any future correspondence to; Mr. Singam replied that correspondence should be sent to the registered office 107, Stirling Road, London and also the (former) registered office 22 Inverness Street London NW1 7HJ. The claim and Notice of Hearing having been sent to the Respondent at 107, Stirling Road, I concluded that on the balance of probabilities it had been received by the Respondent. Therefore, on my instructions, the Clerk advised Mr. Singam that the hearing today would proceed.
6. At the start of the Hearing, I explained to the Claimant that the Respondent was not attending.
7. The Claimant provided me with copies of a number of documents including her contract of employment, pay slips, P45 and bank statements.

8. The Claimant then gave me her account of events and clarified the amount she is claiming. I explained to her that the Tribunal does not have jurisdiction to consider her claims in respect of the Respondent's alleged failure to pay to HMRC national insurance contributions and this is something she should take up with HMRC together with any inaccuracies in her P45. I also explained that the Tribunal does not have jurisdiction to consider any claims for loss of pension contributions.
9. At the end of the hearing, I gave the Claimant oral judgment with reasons; in view of the Respondent's absence, I have chosen to give these reasons in writing.

### **Findings of fact**

10. Having considered all the evidence I make the following findings of fact having reminded myself that the standard of proof is the balance of probabilities.
11. The Claimant was employed by the Respondent as Events Manager from 22 May 2018 to 3 August 2018, a period of 10 weeks. The Claimant's salary was £22,000 gross per annum as evidenced by her Contract of Employment.
12. During the 10 week period of her employment, she was entitled to be paid the total sum of £3,963.70 net. However, as evidenced by her payslips and her bank statement, she was only paid a total sum of £3,240.20 net and is therefore owed £723.50 net.
13. I accept the Claimant's evidence that she has not received itemised pay statements for the weeks ending 8 July 2018, 15 July 2018, 22 July 2018, 29 July 2018 and 5 August 2018. The particulars that should have been included or referred to in these payslips are the Claimant's gross weekly salary of £423.08, her net weekly salary of £396.37 and her National Insurance contributions.
14. I also accept that the payslips she has received (weeks ending 3 June 2018, 10 June 2018, 17 June 2018, 24 June 2018 and 1 July 2018) are incorrect in the following respects:
  - 14.1 Her National Insurance number is incorrect.
  - 14.2 The payments are incorrect.
  - 14.3 Her P45 shows an incorrect leaving date.
15. I also accept that her P45 is incorrect in the following respects:
  - 15.1 Her National Insurance number is incorrect.
  - 15.2 The salary received figure is incorrect.
  - 15.3 The leaving date is incorrect.

## The Law

### 16. Unlawful Deduction from Wages

#### 16.1 Section 13 ERA 1996 gives workers the right not to suffer unauthorised deductions from their wages:

- “13 (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.*
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”*

#### 16.2. Sections 23-26 ERA 1996 sets out provisions relating to complaints to employment tribunal the relevant parts of which are as follows:

- “23(1) A worker may present a complaint to an employment tribunal —*
- (a) that his employer has made a deduction from his wages in contravention of section 13 ...”*
- “24(1) Where a tribunal finds such a complaint under section 23 well-founded, it shall make a declaration to that effect and order the employer –*
- (a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of the deduction made in contravention of section 13.”*

### 17. Itemised Pay Statements

#### 17.1 Employees' rights in respect of itemised pay statements are set out in sections 8 to 12 of ERA.

#### 17.2 Section 8(1) states, an employee has the right to be given by his employer at or before the time at which any payment of wages or salary is made to them, to be given a written itemised pay statement.

#### 17.3 Section 8(2) outlines what the statement must contain:

1. The gross amount of the wages or salary;
2. The amounts of any variable, and any fixed, deductions from that gross amount and the purposes for which they are made;
3. The net amount of wages or salary payable; and
4. Where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

#### 17.4 Section 11 ERA states that an employee can bring a tribunal claim for determination of exactly what particulars should have been included or referred to in their payslip. If the tribunal finds that their payslip does not contain adequate particulars then it may issue:

1. A declaration to that effect (section 12(3)(b) ERA); and
2. An order to pay the employee a sum "not exceeding the aggregate of the unnotified

*deductions so made*" where an employer has made "*unnotified deductions*" in the 13-week period preceding the application to the tribunal (section 12(4) ERA).

17.5 An "*unnotified deduction*" is a deduction which has been made without explanation on an itemised payslip (section 12(5) ERA).

### **Conclusions**

18. Applying the relevant law to my findings of fact to determine the issues, I have concluded as follows.
19. It is clear that the Respondent made unlawful deductions from the Claimant's wages by failing to pay her salary in full and she is owed the sum of £723.50 net.
20. The Respondent also failed to issue itemised pay statements for the weeks ending 8 July 2018, 15 July 2018, 22 July 2018, 29 July 2018 and 5 August 2018. The particulars that should have been included or referred to in these payslips are the Claimant's gross weekly salary of £423.08, the net weekly salary of £396.37 and deductions in respect of employee's National Insurance contributions.
21. The Respondent may have ceased trading but this is not a defence.
22. The Claimant's claim therefore succeeds.

Signed by \_\_\_\_\_ on 20 March 2019

Employment Judge Mason

Judgment sent to Parties on

21 Mar. 19