



EMPLOYMENT TRIBUNALS

Claimant: Ms C Aneke

Respondent: Ducas Limited

Heard at: Croydon **On:** 8 March 2019

Before: Employment Judge Cheetham QC

Representation

Claimant: in person

Respondent: Mr S Bailey (director)

REASONS

1. By a Judgment dated 15 March 2019, I dismissed the claim for unauthorised deduction of wages. I gave my reasons orally, but the Claimant has now requested those reasons in writing, as I understand she wishes to appeal that judgment.
2. By a claim form dated 26.11.17, the Claimant brought a claim for unauthorised deduction of wages for the period 9.4.17 to 30.7.17.
3. In the particulars of claim, she said that her gross earnings had been £9004.72, but that she had received net pay of only £4914.73. She said that HMRC had confirmed receipt of £2047.01 from the Respondent for tax and National Insurance contributions. Her claim was therefore for the balance of £2047.01, which she said was a sum that was also deducted on account of tax and NI from her pay, but not paid to HMRC.
4. It may be helpful to set out the Respondent's corresponding figures from its response form, which were that the Claimant had received net pay of £5106.46. The Respondent then itemised various deductions, including income tax of £1509.59 and NI of £537.40 (these 2 last sums, when added together, are very close to the Claimant's figure for tax and NI deductions). The balance of deductions was as follows:

- Administration charge: £233.95
 - Employment costs: £744.57
 - Student loan repayments: £216.00
 - Pension (one week): £9.20
5. The Respondent's gross figure for earnings was therefore £8357.23 and its case was that the Claimant was not owed anything.
 6. At the hearing, the Claimant amended her figures as follows. The new figure for gross earnings was £9224.72 and for net pay was £5087.60, which meant that, after the tax and NI deductions, the alleged wrongful deduction of wages now totalled £2090.11 (as set out in the Claimant's table at page A of her hearing bundle). That table then gave credit for an administration charge of £233.95, student loan repayment of £216.00 and pension payment of £9.20, which were the same as three of the deductions listed in the response form, as set out above. This therefore reduced the amount that the Claimant was claiming at this hearing as an unauthorised deduction was reduced to £1631.75.
 7. However, the Claimant had then added in a further claim for holiday pay of £868.47, which gave a new figure for total deductions of £2500.22, to which she had added interest of £225.23. The Claimant told me that all of these figures were drawn from her wage slips, which were at pages F1 to F30 of the hearing bundle.
 8. Having clarified what exactly was being claimed, I then heard evidence from the Claimant and from Mr Bailey and made the following findings of fact. Unfortunately, neither party had prepared a witness statement, nor had the information in the wage slips been collated.
 9. The Claimant worked as an agency staff nurse. The Respondent describes itself an umbrella company that employs staff (such as the Claimant) who are undertaking work for the NHS through recruitment agencies. The NHS pays an hourly rate for agency staff nurses. It sets the pay rates and these are described as "all inclusive". This means that they include elements described as "employment costs". Importantly, one of the employment costs is the cost of employers' NI. Mr Bailey explained that this was the figure of £744.57 in the response form.
 10. What this means is that agencies supplying staff to the NHS are paid this all-inclusive rate. Most of that payment will then be passed on to the employee, subject to deduction of tax and NI and to other deductions (in this case: administration charge, student loan repayment, pension), but part of that payment is an element that the employee will not receive, namely that part reflecting the cost of employers' NI, which is included in "employment costs" and which is also described as a "deduction".
 11. I accepted Mr Bailey's evidence on this issue, which was supported by the documentation. It means that the Claimant was not entitled to receive that element of the inclusive rate described as "employment costs" that related to employers' NI and which came to a total of £744.57.

12. As to holiday pay, when we studied the payslips, it appeared to me that Mr Bailey was correct in suggesting that this had all been paid. I was therefore not persuaded that the Claimant was owed any payment in respect of holidays.
13. Doing the best I could as we worked our way through the pay slips, it did not seem to me that there were any other payments owing to the Claimant, nor was she able to identify any.
14. I can well understand the Claimant's confusion and it is fair to say she did not accept either what Mr Bailey said in evidence, nor what I said before giving my judgment, which is that I considered that these employment costs were a part of the all-inclusive payment, which an agency staff nurse would not be entitled to receive.
15. That understandable confusion perhaps arises from two sources. First, the employers' NI is described as a "deduction" and listed alongside other deductions, such as student loan repayments. That is unhelpful, because although it is a deduction from the all-inclusive rate, it is not referable to any benefit to the Claimant. It is described and included in this way out of expediency only.
16. Secondly, the Claimant was previously paid in a different way via a limited company, where there was no equivalent of the employment costs as described here. It seems likely to me that no one had properly explained this to her when her contract with the Respondent began.
17. However, whatever the Claimant's understanding of the payment system, in my judgement she was not entitled to the sum of £744.57, nor £1631.75, nor any other sum in respect of her claim for an unauthorised deduction in wages and her claim is dismissed.
18. Finally may I apologise for the delay in forwarding these reasons. Through an administrative oversight, the request was not forwarded to me as quickly as it should have been.

Employment Judge Cheetham QC

Date: 23 May 2019