



EMPLOYMENT TRIBUNALS

Claimant: Miss J Boakye

Respondent: Creative Support Limited

HELD AT: Manchester

ON: 29 March 2019

BEFORE: Employment Judge Rice-Birchall

REPRESENTATION:

Claimant: In person

Respondent: Mr R Anderson, Consultant

JUDGMENT

The judgment of the Tribunal is that the respondent has not made any unlawful deduction from the claimant's wages. The claimant's claim fails and is dismissed.

REASONS

Background

1. The claimant brings a claim pursuant to section 13 of the Employment Rights Act 1996 which sets out the right for workers not to suffer unauthorised deductions from their wages. Her claim form was submitted on 28 March 2018. In it, the claimant alleged that the respondent had "regularly underpaid" her and had "caused her great inconvenience for this", that she "often got paid late", or had to call them to ask for payment. She said she had experienced great losses, which had exacerbated her "medical condition and mental health".

2. The claimant's early conciliation certificate listed Day A as 20 February 2018 and Day B as 7 March 2018. Accordingly, for her complaints to be in time they must arise on or after 20 November 2017 or form part of a series of deductions.
3. The claim was case managed at a preliminary hearing by Employment Judge Franey on 23 July 2018.
4. Employment Judge Franey wrote, in paragraph 7 of his Case Management Order "finally the claimant says that there has been unlawful deduction made from her pay, resulting in late payments. She can provide written details of the dates and amounts. I pointed out that she would only receive compensation for this if she could show that she suffered financial loss as a consequence of any unlawful deductions".
5. The following issues were identified:
 - 5.1 Can the claimant establish that the respondent made unlawful deductions from her pay?
 - 5.2 Insofar as any deduction occurred on or before 20 November 2017, was that deduction part of a series of deductions ending after that date?
6. On a document which appears to have been sent to the Tribunal on 17 September 2018, the Claimant complied with an order of Judge Franey to particularise her claim and set out the alleged deductions and losses for the first time.
7. In summary, the alleged deductions were as follows:
 - 7.1 21 August 2017: time sheet late and emergency payment needed; 22 August 2017: not paid at 6pm; 23 August 2017: received payment but £76.17 rather than £84.70 and told deductions were necessary as an emergency payment had been made. The claimant alleges she was owed £22.28;
 - 7.2 29 August 2017: £76.17 deducted as advancement of pay. The claimant says it was money she was owed not an advancement;
 - 7.3 1 March 2018: paid £86.10 instead of £89.35 (the claimant didn't mention this again and the allegation wasn't mentioned at all in her witness statement or in the later document she submitted to the Tribunal); and
 - 7.4 suspension pay from 10 October 2017 and 15 February 2018 at rate of £336.96 (which the claimant alleges was the average pay of the last twelve weeks worked).
8. The alleged losses were as follows (as a result of alleged late and/or under payments):
 - 8.1 24 August 2017: new flight ticket for £235.18 and transportation of £24.68 (Berlin to Hamburg);
 - 8.2 6 September 2017: the claimant missed three flights in the US which had been paid for at a total cost of £405.57 and a friend paid for new

flights at a cost of £880.46 as a result of not being paid sick pay after her holiday pay as agreed;

- 8.3 10 October 2017: flight missed (Rabat) due to alleged underpayment (the claimant alleges she was underpaid by £298.66);
- 8.4 15 November 2017: flight to Ghana missed £459.58.

9. The respondent submitted an amended response on 22 October 2018 which denied any unlawful deductions, as alleged or at all.

10. At a preliminary hearing held on 25 February 2019, the claimant was ordered to provide to the respondent with a complete set of each date on which she was not paid in full or at all, and set out the amount she says she is owed for each of those dates. In addition, she was ordered to set out her claim for any loss she contends she incurred as a result of the respondent's failure to pay her the proper amount due, stating the dates on which the loss occurred and documentary evidence to support her claim.

11. As a result, the Claimant sent in a one page document on 15 March 2019 which focussed on the claimant's unpaid suspension from work and the claimant's alleged losses of £16,740.09 which relates to a 79 week unpaid suspension, which the claimant says should have been paid. The claimant refers to average weekly pay of £269.41 in respect of this calculation. In addition, the claimant alleged losses of:

- 11.1 unspecified flight cost of £665.43;
- 11.2 the Rabat flight of £49.58; and
- 11.3 the Ghana flight of £410.00.

12. At the outset, and during, the hearing, the Tribunal found it difficult to follow the claimant's evidence and to understand the basis of the claimant's claims. The Tribunal therefore relies primarily on the two documents referred to above which were submitted by the claimant in response to orders made for her to clarify her claims, despite those two documents themselves being inconsistent to a certain extent. The claimant also added that she claims £82.10 in respect of an alleged unlawful deduction made in early 2018. However, as this did not appear in either of the documents, the Tribunal considers that it did not form part of the claimant's claims.

Evidence

13. The Tribunal heard evidence from the claimant in person and from Mrs Cook, the respondent's Service Director. The claimant's evidence was, at times, confused and confusing such that it was difficult to establish what the relevant issues were and which of the relevant issues her evidence related to. There was a significant bundle of documents before the Tribunal. The Tribunal made it clear at the outset of the hearing that it would only read documents to which it was referred in the statements or in evidence.

Findings of fact

14. The respondent provides services to individuals with care and support needs

15. The claimant was employed by the respondent as a bank support worker. As such she had no set hours. Her employment began on 11 March 2014. At the time of the hearing, she remained in employment with the respondent.

16. The claimant was paid weekly in arrears. At the hearing, the claimant appeared confused and appeared not to have understood that, although she is paid weekly, the payments are made in arrears. This has always been the respondent's pay system and explains many of the discrepancies the claimant was complaining about throughout her employment.

21-3 August 2017 alleged deduction and Germany flights

17. The claimant alleges that an unlawful deduction from her wages occurred in August 2017 when, due to a late time sheet being submitted through no fault of her own, an emergency payment was needed as her time sheet was not submitted in time for the payment cut off date. This meant she was paid late and further that unlawful deductions were made so that she was underpaid by £22.28.

18. This allegation does not appear in the schedule provided by the claimant following the second preliminary hearing.

19. In relation to this allegation, the claimant's witness statement simply states that "Cath Cudworth sent over her time sheet late, just before I was leaving to go to Germany. I was owed £97.90 for a waking night, but was told I would be paid £76.17 on Tuesday. This was not the case, and I was paid past 23.30 on the 23.08.2017."

20. The Claimant was paid in full for all hours worked. The Claimant was entitled to a gross sum of £97.90 for an 11 hour waking night shift that she had worked (not £98.45) as the Claimant was entitled to waking night supplement of £1.20 per hour (not £1.25 per hour as alleged). After tax and NI deductions, the Claimant was paid an advance payment of £76.17. However, due to the Respondent receiving the Claimant's time sheet after their payroll cut-off date, an emergency advance payment was made which meant that the payment was made two days after the usual pay date.

21. According to the claimant, this late payment had the effect that she missed her transfer to take her back to Hamburg as she didn't have enough money to return and had to pay for a new return flight back to Manchester. The flight she missed had cost £24.98 but her new flight was £235.18 plus £24.68 transportation from Berlin back to Hamburg. The claimant says that she was only able to return because she managed to borrow £260 to pay for the new flight.

29 August 2017

22. The claimant alleges that £76.17 was deducted which was money she was owed and not an advancement.

23. However, as the money had been paid as an emergency payment, it was added to the claimant's pay for 29 August 2017 (as the time sheet had missed the deadline for the previous pay period), and then deducted from that pay as the claimant had already received the sum by way of the advance payment.

24. The claimant commenced a period of sickness absence on 31 August 2017.

US Flights: September 2017

25. The claimant alleges, in the document set to the Tribunal on 17 September 2018, that she had agreed with the respondent that she would be paid sick pay after her holiday pay, but noticed, whilst preparing to travel, that her pay was £57.75, which did not correspond with having been paid holiday pay as agreed with the respondent.

26. Because she was worried about being stranded with no money, the claimant chose not to travel (the difference in pay she alleged should have been £57) and so did not use three flights which had been booked and paid for at a total cost of £405.57. The claimant said she did not travel as, had she been paid correctly, she would have been in America with approximately £120 rather than £57.

27. A friend paid for new flights to the States at a cost of £880.46, but this expense is no longer claimed.

28. Although the claimant had booked annual leave for her trip to the US, she came in to work on 31st August with a sick note. The respondent therefore paid the claimant sick pay. That is the explanation for any discrepancy in pay to the extent that the claimant expected to be paid differently, namely holiday pay rather than sick pay.

The claimant's suspension

29. On 12 September 2017, Mrs Michaela Bateson, Head of People and Performance, telephoned the claimant to advise her that she was suspended from her duties pending an investigation into her conduct. The claimant's suspension was confirmed by letter which stated: "...once you have completed your period of sick leave, you will be transferred as being suspended from duty. Suspension from duty, on full pay, is not regarded as disciplinary action but merely a holding measure pending further investigations. The duration of the suspension will only be for as long as it takes to complete the investigation into the above allegations. During this period I must remind you that you remain an employee of the company and it may be necessary for us to contact you during normal working hours and should this be the case then you are required to make yourself available."

10 October 2017: Rabat flight

30. On 10 October 2017, the claimant was paid a gross sum of £38.30 representing three days of SSP. The claimant alleges she was underpaid as she was expecting £89.35 (or full suspension pay). However, this was as a result of the claimant not providing an up to date fit note. Once the claimant had provided an up to date fit note, the claimant was paid the SSP outstanding.

31. The claimant had booked a single flight to Rabat and was waiting on receiving her money to get a flight back. When she was only paid £38, she claims that she

didn't have the money to get book a return flight and therefore wasted the outbound, pre-booked flight.

November 2017: flight to Ghana missed (£459.58)

32. As regards the claimant's proposed trip to Ghana, again the flights were booked in advance. However, the claimant didn't fly out on 15 November as planned because, she says, she had no income. However, at that stage the claimant was on sick leave and was being paid SSP. Her argument appears to be that she should have been being paid full pay whilst as she was on suspension. She said in oral evidence that she would have prepared for the investigation meeting in Ghana.

33. The claimant did eventually leave the country in January 2018 to be in Ghana for four weeks.

The sick pay period: September 2017- 17 January 2018

34. The claimant continued to be off sick and paid SSP. On 21 December 2017, the claimant confirmed that she intended to return to work on 17 January 2018. On 27 December 2017, the respondent advised the claimant that upon her return to work she would be invited to an investigation meeting to discuss the disciplinary matter.

Bereavement/suspension pay period

35. On 13 January 2018 the claimant advised the respondent that her father had passed away and that she must spend six weeks mourning with her family. On 15 January 2018 the claimant stated that she would be free from 19th February 2018 (presumably because of her trip to Ghana) and this was confirmed in a number of letters.

36. When the claimant's fit note expired on 17 January 2018 she was paid five days' discretionary pay due to her recent bereavement and then five days' suspension pay. Accordingly, the claimant was paid 3 days' SSP and two days' discretionary pay on 30 January 2018 and 3 days discretionary pay and 2 days' suspension pay on 6 February 2018, then three days' suspension pay in the following week. The claimant complained that she had been paid incorrectly.

37. As regards the suspension, the claimant was informed by email that "the duration of the suspension will only be for as long as it takes to complete the investigation into the allegations. The terms of your suspension is that you remain an employee of the Company and we should be able to contact you during your normal working hours and should this be the case you are required to make yourself available. If you are not available during any specific time you will not be entitled to suspension pay....If you do not request any leave you will be on suspension and required to be readily available to attend any requested meetings."

38. On 24 January 2018, the claimant was invited to attend an investigatory meeting on 1 February 2018. The respondent informed the claimant that if she was too unwell to attend then she would need a sick note and her suspension would be changed to sick leave, otherwise she would be expected to attend. The respondent

confirmed that if the claimant did not attend, and was not covered by a medical certificate, then her suspension pay would be withdrawn.

39. The claimant responded to say that she needed five weeks to prepare for the investigation meeting.

40. On 29 January 2018, the respondent restated that if the claimant was too unwell to attend meetings her absence must be covered by a sick note,. If her absence was not covered by a certificate and if she was not engaging in the process the suspension pay would be stopped.

41. The claimant failed to attend the investigation meeting on 1 February 2018. Accordingly, the respondent wrote to the claimant to inform her that the investigation meeting would be rescheduled to 7 February 2018. Again it was confirmed that if she failed to engage there would be no suspension pay unless she engaged with the investigation process.

42. On 5 February 2018, the claimant wrote to the respondent as follows: "I am appealing, and will need time to complete my investigation. Say whatever you want, but I require my suspension pay until then. ...I am very well, I am just on suspension and am conducting my investigation for my grievance appeal...I am now on suspension and will let you know when I complete my investigation.... I can't reply to emails now until two weeks, I am dealing with funeral arrangements." This was contradictory as the claimant on the one hand was saying that she was preparing for the investigation meeting but on the other said that she was unavailable due to the need to make funeral arrangements.

43. The claimant submitted sick notes for the period from 12 February 2018 to 12 March 2018; 12 March 2018 to 7 May 2018; 10 May 2018 to 10 July 2018; 10 July 2018 to 4 September 2018; and 5 September 2018 to 13 November 2018.

44. Following the expiry of her fit notes, the respondent wrote to the claimant to invite her to attend the investigatory interview on 12 December 2018. The respondent confirmed that suspension money would only be reinstated if she engaged with the process and attended the investigation meeting.

45. The claimant continued to refuse to engage with the process. In February 2019, she informed the respondent that she would not be available as a result of outstanding matters with the police.

46. In summary, the suspension period comprised of the following periods of time:

- 46.1 commenced on 12th September 2017;
- 46.2 12 - 28 September 2017: the claimant was not under a sick note;
- 46.3 28 September 2017 - 17 January 2018: sick note.
- 46.4 18 January 2018- around 27 January 2018: the claimant was paid for five days compassionate leave and five days suspension;
- 46.5 around 27 January 2018 to 12 February 2018: unclear;
- 46.6 12 February 2018 until 13 November 2018: sick note; and
- 46.7 13 November 2018 to date of Tribunal hearing: unpaid and no sick note.

The Law

47. The starting point is section 13 of the Employment Rights Act 1996 (the 1996 Act) which reads as follows:

“Section 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 workers 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 the 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”.

48. Section 23 of the 1996 states that:

1. A worker may present a complaint to an Employment Tribunal: that his employer has made a deduction from his wages in contravention of section 13, ..
2. Subject to subsection (4) an Employment Tribunal shall not consider a complaint under this section unless it is presented before the end of a period of three months beginning with:
 - (a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

- (b) In the case of a complaint relating to a payment received by the employer, the date when the payment was received.
3. Where a complaint is brought under this section in respect of
- (a) a series of deductions or payments....
- the references in sub-section (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received
4. Where the Employment Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the Tribunal may consider the complaint if it is presented within such further period as the Tribunal considers reasonable.

49. Accordingly, where a claim is made in respect of a series of deductions, the three-month time limit starts to run from the date the last deduction in the series was made. Whether there is a series of deductions is a question of fact and requires a sufficient factual and temporal link between the under payments. There must be a sufficient similarity of subject matter so that each event is factually linked, and a sufficient frequency of repetition. The gap of more than three months between any two deductions will break the series of deductions (**Bear Scotland Limited and Others -v- Fulton and Other cases 2015 ICR 221**).

50. A complaint under section 23 is brought in respect of deductions and not in respect of loss therefore a complaint may be made even if the loss suffered as a result of some or all of the deductions has been made good before the complaint is presented. This view is supported by section 25(3) which provides that the amount of a Tribunal's order must be reduced by the amount that the employer has already repaid to the worker in respect of the deduction of payment. In such a case a Tribunal is entitled to hold that a claim has been brought within the time limit by reference to the date of the last deduction, not the date of the last deduction in respect of which the employer has failed to make repayment.

51. As regards whether wages are properly payable during suspension the general rule is that in the absence of any contractual right to suspend without pay, an employee's wages are properly payable while he or she is suspended from work so long as he or she is ready and able to work as required. It is clear from case law that the fact that an employee who is suspended has been investigated and even charged does not remove him from any legal right to pay which otherwise he would have had so long as he was able and willing to work. Of itself, the fact that an employee has been suspended by his employer because of suspected misconduct, even if that suspected misconduct is misconduct which goes to the heart of the employer's operations, is not inconsistent with that employee's willingness to work. It is therefore significant to ascertain whether or not the claimant was unready or unwilling to do her job. (**Kent County Council -v- Mr Knowle UKEAT – 0547/11/MAA**).

52. The Tribunal was also referred by the respondent to **Abbiw -v- Vue Entertainment Limited ET Case 2702189/11** in which the Tribunal held that whilst a person who is on suspension fails to attend a disciplinary hearing is clear not behaving wisely or appropriately, it was difficult to see that he or she is in some way absent without leave, such that he or she should not be paid. The Tribunal notes that this case is not authority and is persuasive only. Whether or not the employee is ready and willing to work during his or her suspension involves the Tribunal examining the employee's situation and intentions.

Compensation and Remedies

53. When the Tribunal finds the complaint to be well founded it must make a declaration to that effect. It must also order the employer to reimburse the worker for the amount of any unauthorised deduction made or payment received (Section 24 ERA) (save that account must be taken of any payments made to rectify the unlawful deduction).

54. Section 24(2) provides that a Tribunal may order the employer to compensate the worker for any financial loss sustained by her as a result of the unlawful deduction or payment. This includes bank charges or interest incurred, it does not however include non-financial loss such as injury to feelings and upset.

Conclusions

Time points

55. The Tribunal first considered whether or not the claims were brought in time.

56. As regards the claimant's claims in relation to deductions made in August 2017 and September 2017 (relating to the alleged losses in relation to the German and US flights) , the Tribunal concludes that these are out of time.

57. The complaints were not presented before the end of three months beginning with the date of the payment of wages from which the deduction was made. The claimant first contacted ACAS on 20 February 2018 which means the claim needed to have been in relation to payments made on or before 20 November 2017.

58. There was no evidence before the Tribunal to demonstrate that it was not reasonably practicable for the claimant to bring her complaints in time, before the end of the three month period. There was no evidence to suggest that the claims were brought within a further reasonable period.

59. The Tribunal considered whether these alleged deductions formed a series of deductions so that the last payment would be the date in relation to which the time limit was calculated. However, although the Tribunal considered that the two allegations relating to August 2017 were linked together, there was no evidence to link these two allegations and/or the alleged deduction from 6 September 2017 together or the other alleged unlawful deductions from wages.

60. In relation to the payments which relate to the period from 17 September 2017 when the claimant was suspended, the Tribunal finds that there is a factual and

temporal link between the alleged deductions from wages. All the alleged deductions from this time relate to, and are connected by, the claimant's suspension from work pending the disciplinary investigation and the claimant's payment (or lack of it) during that period.

61. Therefore, in relation to any alleged deductions which relate to the period following the date of the claimant's suspension pending disciplinary investigation, the Tribunal concludes that there is sufficient similarity and that each allegation is factually linked. Accordingly, any alleged deductions which relate to the claimant's suspension are presented in time, as the alleged deductions were ongoing up to and including the date on which the claimant submitted her claim.

62. For the avoidance of doubt, the Tribunal finds that there was an unlawful deduction from the claimant's wages on 21 August 2017 as a result of the time sheet being submitted late through no fault of the claimant. However, this was rectified on 23 August 2017. There was no unlawful deduction from wages on 29 August 2017 as the deduction was of the advance payment made on the 23 August 2017. There was an unlawful deduction from wages on 6 September 2017 as the claimant had requested to take holiday. However, the respondent had been confused by the claimant submitting a sick note.

63. However, in relation to the financial losses which the claimant alleges flow from the unlawful deductions from wages, the Tribunal finds that there is insufficient evidence that the claimant not being able to get back to Hamburg for her flight and incurring the cost of an additional flight to get home flowed from the unlawful deduction from the claimant's wages. The underpayment was of approximately £71 and the payment was delayed by a maximum of 48 hours. That the claimant was impecunious to such an extent that she could not afford to get the bus back to Hamburg for a flight which had already been booked (at a cost of under £25) was not the fault of the respondent and it cannot be said that the cost of the additional flight flows from the slightly delayed payment, as alleged or at all. Similar considerations apply to the US flights. The claimant had booked three flights which she decided not to take due to a mistake in her pay. It simply cannot be said that this is a loss which flows from the unlawful deduction from the claimant's wages, but in fact flows from the claimant's highly impecunious state. The Tribunal cannot accept that the unlawful deductions complained of caused the claimant to miss and/or cancel flights which had been booked in advance.

64. Accordingly, had the claims been in time, the claimant's claims for the financial losses stemming from the alleged deductions would not have succeeded in any event.

Suspension

65. There are two periods in respect of which the claimant alleges that the respondent unlawfully deducted monies from her wages which caused further losses:

- 65.1 the claimant received pay of £38.30 on 10 October 2017. The claimant was expecting suspension pay of £89.35 (her evidence appeared contradictory on this point as between the documents and her oral evidence) on 10 October 2017 and says that she could not take her

flight to Rabat as a result of this alleged underpayment, as she could not afford to book a return flight ; and

65.2 November 2017, in relation to which time the claimant alleges that the loss of her flight to Ghana stemmed from the unlawful deduction from her wages of her suspension pay.

66. More generally, the claimant alleges that she was entitled to suspension pay for the whole of the period between her suspension in September 2017 and the date of her claim.

67. However, for a significant period of time, the claimant was absent from work because she was ill, and her absence was covered by a fit note. Accordingly, there was no entitlement to suspension pay during these periods and, in fact, the claimant was paid all the SSP which she was due. It is not possible to be absent from work for two different reasons. Either the claimant was absent because she was sick, in which case she would only be entitled to sick pay, or she was suspended from work and was ready and able to work and be at her employer's disposal, or she was AWOL.

68. In relation to the periods when the claimant was not on sick leave, the Tribunal finds that the claimant was not entitled to pay and that, accordingly, the respondent has not unlawfully deducted monies from her wages as alleged or at all by not paying her full pay. The claimant was absent without leave (AWOL) whilst not on sick leave and was not ready and able to work as required, and was therefore not entitled to be paid full pay. To the contrary, the claimant was unavailable without cause or reason and gave numerous, sometimes contradictory excuses, to try to obtain payment for a lengthy period of suspension which was not justified in all the circumstances of the case.

69. By way of example, the claimant wrote to the respondent on 13th January to advise that on expiry of her sick note she would be unavailable for the next six weeks as she would be mourning the loss of her recently deceased father. The claimant was not ready and able to work in that period.

70. Further, despite being informed by the respondent that she would be expected to be available for meetings during the suspension, whilst not on sickness absence, the claimant informed the respondent she would not be available for a meeting until 19th February because of the need for several weeks preparatory time. That request was unreasonable both in terms of the length of time requested for preparation and the manner in which it was made. Again, the claimant was not ready and able to work and/or be at the disposal of her employer.

71. Further, the claimant went to Ghana for a period of time despite not taking annual leave or being on sick leave. Again, the claimant was not ready and able to work during that period.

72. The claimant was again on sickness absence between 12th February 2018 and 14th November 2018. However, her SSP ran out on 25th September 2018 as she had long since exceeded the maximum 28-week eligibility (which had been missed by the respondent due to a change in their payroll system). Therefore, from 25th September to 14th November 2018 the claimant was still on sickness absence but

receiving no pay having exceeded her SSP entitlement. There was no entitlement to pay, and therefore no unlawful deduction from the claimant's wages, during this period as the claimant was on sick leave.

73. The claimant refused a further disciplinary hearing on 7th February with the excuse that she was engaged on a Police matter and was unavailable. In those circumstances the claimant was AWOL and was not able and willing to work. She refused to give any details of the Police matter which was the excuse for not being available.

74. There was no unlawful deduction from the claimant's wages in respect of the whole period of her suspension from September 2017 right through to the date on which her claim was brought. The claimant was AWOL and was not entitled to pay other than SSP as and when it was appropriate because she was certified sick for work and had remaining entitlement.

75. For the sake of completeness, the Tribunal considered the alleged unlawful deduction of £82.10 (which does not appear in the claim). The Tribunal is satisfied that, on 13th February 2018, the claimant she was paid £162.60 which took account of the £82.10 the claimant alleged was underpaid and that there was no unlawful deduction in that regard.

76. In any event, in relation to the financial losses which the claimant alleges flow from the alleged unlawful deductions, the Tribunal finds that there is insufficient evidence that the claimant deciding not to use flights already booked was as a result of the alleged deductions.

77. Accordingly, even if there had been unlawful deductions from the claimant's wages during the period of her "suspension", the claimant's claims for the financial losses stemming from those alleged deductions would not have succeeded. As regards Rabat, the claimant alleges that on 10th October 2017 she was only paid £38.00, which meant that although she was planning to meet some friends having booked the flight in July 2017, as a result of the underpayment she didn't have the money to book a return flight. Given that she would not have known for definite how much the flights would have been, and therefore how much she would have needed to book that flight, the Tribunal finds this explanation implausible.

78. The claimant was not able to satisfy the Tribunal that any alleged underpayment was the reason for "losing" the flights and that this was a loss which flowed from an alleged unlawful deduction from wages.

Employment Judge Rice-Birchall

Date 22 May 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

10 June 2019

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FOR THE TRIBUNAL OFFICE

[JE]