



## **EMPLOYMENT TRIBUNALS**

**Claimants:**

**MR J KIERZEK  
MR M KIERZEK  
MR R KAKOL  
MR R DEBOWSKI  
MR M ZDUNCZYK**

**Respondent:**

**AYK CONSULTING LIMITED**

**Heard at: Hull On: 24<sup>th</sup> and 25<sup>th</sup> June 2019**

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

**Representation**

Claimants: In person via interpreter Malgorzata Samus  
Respondent: Did not attend and no representative.

## **JUDGMENT**

1. Mr J Kierzek's claim for unlawful deductions in respect of holiday pay succeeds and the Respondent is ordered to pay the sum of £2688 gross of tax and National Insurance.
2. Mr J Kierzek's claim for breach of contract in respect of unaccounted for tax and National Insurance succeeds. The Respondent is ordered to pay £14,014.40 gross in respect of unaccounted for income tax and £8794.44 gross in respect of unaccounted for National Insurance.

3. Mr M Kierzek's claim for unlawful deductions in respect of holiday pay succeeds and the Respondent is ordered to pay the sum of £119.44 gross of tax and National Insurance.
4. Mr M Kierzek's claim for breach of contract in respect of unaccounted for tax and National Insurance succeeds. The Respondent is ordered to pay £8421.45 gross in respect of unaccounted for income tax and £4397.65 gross in respect of unaccounted for National Insurance.
5. Mr R Kakol's claim for unlawful deductions in respect of holiday pay succeeds and the Respondent is ordered to pay the sum of £3519.49 gross of tax and National Insurance.
6. Mr R Kakol's claim for breach of contract in respect of unaccounted for tax and National Insurance succeeds. The Respondent is ordered to pay £4704.20 gross in respect of unaccounted for income tax and £2860.57 gross in respect of unaccounted for National Insurance.
7. Mr R Dubowski's claim for unlawful deductions in respect of holiday pay succeeds and the Respondent is ordered to pay the sum of £707.65 gross of tax and National Insurance.
8. Mr R Dubowski's claim for breach of contract in respect of unaccounted for tax and National Insurance succeeds. The Respondent is ordered to pay £2502 gross in respect of unaccounted for income tax and £1517.50 gross in respect of unaccounted for National Insurance.
9. Mr M Zdunczyk's claim for unlawful deductions in respect of holiday pay succeeds and the Respondent is ordered to pay the sum of £135.48 gross of tax and National Insurance.

10. Mr Zdunczyk's claim for breach of contract in respect of unaccounted for tax and National Insurance succeeds. The Respondent is ordered to pay £1414.00 gross in respect of unaccounted for income tax and £1377.91 gross in respect of unaccounted for National Insurance.

Note: The separate calculations for the sums awarded are set out at appendices 1 and 2 to this judgment. For the avoidance of doubt the sums awarded in respect of unpaid holiday pay are paid gross of (i.e. without deduction of) tax and National Insurance. This is on the basis that, given the Respondent's failure to account properly to HMRC for tax and National Insurance, it is not possible to accurately calculate the sums net of tax and NI. Furthermore, the breach of contract sums of tax and National Insurance have been claimed by the Claimants on the basis that each of them has already received the correct net pay for the periods in question. The sums awarded to the Claimants are intended to reflect the sums deducted from pay at source by the Respondent which should have been paid across to HMRC for tax and NI. The Respondent's failure to do this means that the Claimants wish to correct HMRC's records in respect of their employment and to pay any necessary tax and NI to HMRC out of the Tribunal award.

Employment Judge Eeley

Date 25 June 2019

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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**Claim Nos: 1800080/2019; 1800081/2019;**  
**1800083/2019; 1800082/2019;**  
**1800084/2019; 1800085/2019**

**Claim Nos: 1800080/2019; 1800081/2019;**  
**1800083/2019; 1800082/2019;**  
**1800084/2019; 1800085/2019**

**IN THE HULL EMPLOYMENT TRIBUNAL**

**BETWEEN:**

**MR J KIERZEK  
MR M KIERZEK  
MR R KAKOL  
MR R DEBOWSKI  
MR M ZDUNCZYK**

**Claimants**

**AND**

**AYK CONSULTING LIMITED**

**Respondent**

**APPENDIX 1: BREACH OF CONTRACT CALCULATION**

**JAROSLAW KIERZEK**

**Tax year 2014/15**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£1535	£0	£1535
<b>National insurance</b>	£1073.82	£0	£1073.82

**Tax year 2015/16**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£3860.40	£0	£3860.40
<b>National insurance</b>	£2619.07	£0	£2619.07

**Tax year 2016/17**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	3797.40	£403.20	£3394.20
<b>National insurance</b>	2651.08	£571.44	£2079.64

**Tax year 2017/18**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£4071.40	£232.40	£3839
<b>National insurance</b>	£2844.41	£578.28	£2266.13

**Tax year 2018/19**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£1877.80	£492	£1385.80
<b>National insurance</b>	£1276.65	£520.87	£755.78

**Grand total:**            **Income tax:**            **£14,014.40**  
                                 **National Insurance:**       **£8794.44**

**MATEUSZ KIERZEK**

**Tax year 2014/15**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£558.60	£0	£558.60
<b>National insurance</b>	£472.63	£0	£472.63

**Tax year 2015/16**

**Claim Nos: 1800080/2019; 1800081/2019;**  
**1800083/2019; 1800082/2019;**  
**1800084/2019; 1800085/2019**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£2786.60	£0	£2786.60
<b>National insurance</b>	£1977.95	£0	£1977.95

**Tax year 2016/17**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£3623.40	£416.80	£3206.60
<b>National insurance</b>	£2528.11	£581.04	£1947.07

**Tax year 2017/18**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	no P60 and insufficient data from payslips (slips missing) to make calculation	£180.60	£insufficient data to calculate (payslips missing)
<b>National insurance</b>	no P60 and insufficient data from payslips (slips missing) to make calculation	£416.76	£insufficient data to calculate (payslips missing)

**Tax year 2018/19**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£2108.25	£238.60	£1869.65
<b>National insurance</b>	£insufficient data to calculate (payslips missing)	£126.63	£insufficient data to calculate (payslips missing)

**Grand total:**                      **Income tax:**                      **£8421.45**  
   **National Insurance:**                      **£4397.65**

**RAFAL KAKOL**

**Tax year 2017/18**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£3691	£171.40	£3519.60
<b>National insurance</b>	£2616.38	£466.63	£2149.75

**Tax year 2018/19**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£1846.20	£661.60	£1184.60
<b>National insurance</b>	£1313.93	£603.11	£710.82

**Grand total:**            **Income tax:**                    **£4704.20**  
                                 **National Insurance:**            **£2860.57**

**ROBERT DEBOWSKI**

**Tax year 2017/18**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£1200.20	£36	£1164.20
<b>National insurance</b>	£908.73	£99.60	£809.13

**Tax year 2018/19**

	<b>Actual amount deducted from Claimant's pay</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
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**Claim Nos: 1800080/2019; 1800081/2019;**  
**1800083/2019; 1800082/2019;**  
**1800084/2019; 1800085/2019**

	<b>(from P60 etc)</b>		
<b>Income tax</b>	£1599	£261.20	£1337.80
<b>National insurance</b>	£1071.26	£362.89	£708.37

**Grand total:**            **Income tax:**                    **£2502**  
                                 **National Insurance:**            **£1517.50**

**MIECZYSLAW ZDUNCZYK**

**Tax year 2018/19**

	<b>Actual amount deducted from Claimant's pay (from P60 etc)</b>	<b>Amount declared by Respondent to HMRC</b>	<b>Amount due which remains outstanding</b>
<b>Income tax</b>	£1654.00	£240.00	£1414.00
<b>National insurance</b>	£1585.95	£208.04	£1377.91

**Grand total:**            **Income tax:**                    **£1414.00**  
                                 **National Insurance:**            **£1377.91**



**Claim Nos: 180080/2019; 180081/2019;**  
**180083/2019; 180082/2019;**  
**180084/2019; 180085/2019**

**APPENDIX 2: HOLIDAY PAY CALCULATION**

**JAROSLAW KIERZEK**

Gross holiday pay owed during relevant period: £4964.89  
Gross holiday pay actually received during relevant period: £2276.89

Outstanding holiday pay owed: **£2688 gross**

**MATEUSZ KIERZEK**

Gross holiday pay owed during relevant period: £281.44  
Gross holiday pay actually received during relevant period: £162

Outstanding holiday pay owed: **£119.44**

**RAFAL KAKOL**

Gross holiday pay owed during relevant period: £5537.89  
Gross holiday pay actually received during relevant period: £2018.40

Outstanding holiday pay owed: **£3519.49**

**ROBERT DEBOWSKI**

Gross holiday pay owed during relevant period: £2001.97  
Gross holiday pay actually received during relevant period: 1294.32

Outstanding holiday pay owed: **£707.65**

**MIECZYSLAW ZDUNCZYK**

Gross holiday pay owed during relevant period: £323.40  
Gross holiday pay actually received during relevant period: £187.92

Outstanding holiday pay owed: **£135.48**