



EMPLOYMENT TRIBUNALS

Claimant: Mr R. Sutton

Respondent: Formel D. UK Limited

Before: Regional Employment Judge Monk in Chambers

JUDGMENT

The Judgment of the Tribunal is that: -

The Claimant is entitled to the aggregate of any unnotified deductions for the period 18 October 2018 to 17 January 2019 in the sum of £360.74.

REASONS

1. Following a hearing on 29 April 2019 I gave judgment in the claimant's favour and declared that, amongst other awards, he was entitled to the aggregate of any unnotified deductions for the period 18 October 2018 to 17 January 2019. I could not calculate the amount of that award and directed that the parties should agree it but if they were unable to do so they could return to the Tribunal for a determination on the papers.
2. Regrettably, Mr. Sutton and the respondent have not been able to agree the sum and there has been considerable delay on the part of the respondent in providing the information necessary to undertake the calculation such that I had to issue an unless order on 16th August.
3. In calculating the amount of the award in accordance with section 12(4) of the Employment Rights Act 1996 I have taken account of the original pay statements contained in the hearing bundle at pages 246 to 249; the amended pay statements provided on 23 August by the respondent (I noted that the amended October 18 pay slip is actually the one in the bundle and the original is the one sent on 23 August) and their calculation of the aggregate amount; the email and calculation sent by the respondent's new representative (bbs law) on the same date and the various emails from the claimant commenting on the calculations.

4. I need to make it clear that the only award which I am now making is for the total of the **unnotified** deductions made in the period in question – that is the difference between the deductions which were notified and the deductions which were actually made – it is not an order for the whole of the deductions in that period to be repaid and it is for a time limited period because the remedy is only the unnotified deductions made in the 13 week period immediately preceding the claim to the tribunal.

5. I set out my calculations below so that it is, hopefully, clear to both parties how I have reached the figure of £360.74. I have calculated the difference between the notified deduction for Tax, NI and Pension on each of the original pay statements compared with the deduction actually made and notified not at the relevant time but some time subsequently by the amended pay statements. I have largely accepted the respondent’s own calculations set out in their spreadsheet attached to the email of 23 August 2019 apart from for January 2019 where I have taken the figures for the original payslip from the copy in the bundle at p249 and also where there is an obvious error for the tax deduction in Nov 2018 which was £1009 not £100.90. I have aggregated all the unnotified deductions even where some are actual, in effect, credits as I take that to be the intention behind section 12(4).

6. It is quite clear that the considerable distress and anxiety caused to the claimant by the respondent’s inability to make proper payment of his wages has been exacerbated by their delay in resolving this outstanding part of the award. I hope that final payment will now be made swiftly and that the respondent will use its best endeavours to resolve any outstanding issues with the claimant’s tax codes as soon as possible.

| Month | Original deduction | Amended deduction | difference |
|--------------|--------------------|-------------------|-----------------|
| Oct 18 | | | |
| Tax | £526.80 | £585.20 | £ 58.40 |
| NI | £235.49 | £ 271.61 | £36.12 |
| Pension | £ 64.85 | £ 73.88 | £ 9.03 |
| Nov 18 | | | |
| Tax | £404.60 | £1009.00 | £604.40 |
| NI | £234.14 | £ 234.12 | £ 0.02 |
| Pension | £ 64.51 | £ 64.51 | nil |
| Dec 18 | | | |
| Tax | £226.40 | £-366.20 | £-592.60 |
| NI | £266.76 | £ 263.88 | £ -2.88 |
| Pension | £ 72.62 | £ 71.94 | £ -0.68 |
| Jan 19 | | | |
| Tax | £ 247.80 | £388.20 | £140.40 |
| NI | £ 193.32 | £280.20 | £ 86.88 |
| Pension | £ 54.31 | £ 76.00 | £ 21.69 |
| TOTAL | | | £ 360.74 |

Regional Employment Judge Monk

10 October 2019