



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Marren

**Respondent:** Craven District Council

**HELD AT:** Leeds **ON:** 7 October 2019

**BEFORE:** Employment Judge Davies

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Grove, Solicitor

# JUDGMENT

The Claimant's claim of unauthorised deduction from wages is not well-founded and is dismissed.

# REASONS

## Introduction and issues

1. This was a claim of unauthorised deduction from wages brought by the Claimant, Mr Marren, against Craven District Council, for whom he works at the town hall in Skipton. This matter came before Employment Judge Bright on 18 September 2019. Employment Judge Bright made case management orders and clearly identified the issues to be decided today. Those were essentially:
  - 1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
  - 1.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
  - 1.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
  - 1.4 If not, was it made within a reasonable period after that?
  - 1.5 Were deductions made from the Claimant's wages without authorisation?

2. The Claimant did not comply with Employment Judge Bright's clear order to provide a list of the dates he said deductions were made and the amounts that were deducted. However, because he is not legally represented I gave him one further opportunity to do so and allowed him to give some evidence explaining what deductions he says were made.
3. I was provided with the hearing file that had been prepared for the hearing in front of Employment Judge Bright, a supplementary hearing file, two witness statements for Ms Daglan on behalf of the Respondent and an overview and statement from the Claimant, along with a letter he had written to the Tribunal. I heard evidence from the Claimant and Ms Daglan.

### **Facts**

4. The relevant facts are as follows. The Claimant started working for the Respondent in about August 2017. Not long afterwards, he realised that his former manager, Mr Stoney, was deducting half an hour from his hours every time he worked more than 7.5 hours, because Mr Stoney was assuming the Claimant was taking a half hour break. The Claimant was not in fact taking such a break and he raised his concerns about this. There is no dispute that by April 2018 the issue had been resolved and the Claimant had been reimbursed for the hours that Mr Stoney had deducted from his pay. Mr Stoney left in about February 2018 and Ms Daglan took over his role.
5. The claim before me relates to a separate issue. The Claimant fills in a time sheet every month, setting out the hours he has worked and the number of hours for which he is claiming pay from the Respondent. He took me through his time sheets in his oral evidence. He identified a number of dates between November 2017 and February 2019 when he had recorded his start and finish times on the time sheets but had put in a claim for 30 minutes' less pay than the actual time between the start and finish time. He had been paid for the hours he had actually claimed. His evidence to me was that he was reducing the hours he had actually worked by 30 minutes, because his line manager Kara had told him he had to deduct 30 minutes for a break even if he had not taken one, so he did so. He said that he had been forced to reduce his claimed hours by 30 minutes on each of those occasions between November 2017 and February 2019. That is what he claims is a series of deductions from his wages.
6. Ms Daglan's evidence was that when the issue relating to the deductions made by Mr Stoney was addressed in April 2018, which was when she took over as line manager, an agreement was reached about what would happen going forward. She said that the agreement was that if the Claimant was lone working and was unable to leave the premises, he would not have 30 minutes deducted for a break if he worked more than 7.5 hours. That did not mean that he could not take a break. He could have a sandwich or a cup of coffee in a room on the premises. But in recognition of the fact that he was unable to leave the site, no deduction would be made in respect of such a break. However, if he was not lone working and was able to take a break off the premises, or if there was a break between bookings when he could take a break, he would not be paid for such a break. This was in accordance with the way the Council's employees are treated. Generally, they are entitled to a break, are assumed to have taken it and are not paid for it. Ms Daglan said it was agreed that two asterisks would be put on the Claimant's time sheet to show the occasions when he had been lone working and unable to leave the premises and therefore would be paid for his total time on the site. Otherwise, he would put in his start and finish times for the morning and the afternoon, to show the time he had taken a break, and he would not be paid for the time when he was having his break. The Claimant disagreed. In his evidence he said no such agreement was reached.

7. I preferred Ms Daglan's evidence. It was supported by the time sheets that the Claimant himself prepared. For the time sheets relating to work done from April 2018 onwards there were two types of entries. One type had two asterisks next to it and the Claimant claimed in full for the hours he was on the premises. The other type showed time for a break and the Claimant did not claim for that time. Indeed, on the first time sheet for April 2018, in the right hand column the Claimant entered "30 minutes taken." He was not able to explain to me in any coherent way in his evidence why he was making two different types of entries if he had not reached the agreement with Ms Daglan that she described. Not only were all these time sheets signed by the Claimant, they were also signed by either Ms Daglan or Kara and by somebody in payroll. There was no comment or indication by the Claimant on any of these time sheets that he was being forced to reduce the hours he was claiming under protest by 30 minutes. I find that the Claimant is somebody who would have made a protest if he disagreed with the way this was being done. He did precisely that when he identified what Mr Stoney was doing.
8. I found the Claimant's oral evidence generally unconvincing. He kept referring back to the issues relating to Mr Stoney's deductions and to what Mr Stoney had said or done. That issue was resolved by April 2018 at the latest and it simply cannot explain what was being done after that.
9. Further, the Claimant made no mention in his ET1 claim form, or in his overview and statement, of being forced by Kara to reduce his claims by 30 minutes nor that this was the basis for his claim of unauthorised deductions. Indeed, in the overview and statement he said that if Mr Stoney had been taking off lunch breaks, he must have done it from the day the Claimant started. Then he said, "Once the problem had been identified I was told to make wages aware when I worked without lunch breaks. To do this I would need to have my times identified with a double star like so \*\*." That seems to me to be entirely consistent with what Ms Daglan said in her evidence.
10. Therefore, I find that the position was as follows. Prior to April 2018 the time sheets do show that on occasion the Claimant was making a claim for 30 minutes' less pay than the time he was actually on the premises. The Claimant only identified those occasions in his oral evidence today. The Respondent did not have the chance to investigate them. I am not able to make a finding about whether the Claimant was claiming for 30 minutes less than he was on the premises because somebody had instructed him to do so or because he in fact took a 30 minute break. That was before the agreement with Ms Daglan. After that, from April 2018 onwards, I have no hesitation whatsoever in finding that if the Claimant was lone working and unable to leave the premises he put two asterisks on his time sheet and claimed in full for the time spent on site. However, if he was able to take a break he gave the times of the break and was not paid for that period. Nor was he entitled to be paid for that period.

### **Legal principles**

11. This is a straightforward complaint of unauthorised deduction from wages under the Employment Rights Act 1996.
12. Under section 23 of that Act, a complaint of unauthorised deduction from wages must be presented to the Tribunal within three months (plus any early conciliation extension) of the date of payment of the wages in question. If there was a series of payments, the time limit runs from the last payment in the series. That time limit can be extended if it was not reasonably practicable for the claim to be presented in time and if it was presented in a reasonable period after the time limit expired.
13. It is for the claimant to satisfy the Tribunal that it was not reasonably practicable to bring his complaint within the time limit. Reasonably practicable means something between

“reasonable” and “physically possible”: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] ICR 372, CA.

14. Section 13 of the Employment Rights Act 1996 deals with the right not to suffer an unauthorised deduction from wages. A deduction is not unauthorised if it is required or authorised by a written term of the worker’s contract or a written agreement.

**Application of law to the facts**

15. As my findings make clear, the Claimant did on occasions up to April 2018 claim for 30 minutes less than the number of hours he was on the premises. I was not able to make a finding about whether he took a 30 minute break or not on those occasions. However, even if there was an unauthorised deduction on any of those occasions, the last possible relevant pay date would have been in April 2018. The Claimant went to ACAS to start early conciliation on 12 June 2019, so any claim about deductions from his wages prior to April 2018 is very substantially out of time. Nothing was said to me to suggest that it would not have been reasonably practicable for the Claimant to bring a Tribunal claim relating to those payments prior to 12 June 2019. He was aware of issues with his payments at that time and he raised concerns that were resolved. There was nothing to suggest that he could not bring a Tribunal claim. Indeed, the evidence before me shows that he carried out research, for example into issues relating to compensatory rest. It seems to me that the Claimant was well able to find out about Tribunals and bring a claim if he needed to. It was therefore reasonably practicable for him to bring these complaints within the time limit. In any event, it is not reasonable to wait almost another 12 months after the time limit expired before complaining about these earlier issues. Any claim relating to payments prior to April 2018 is therefore out of time and the Tribunal does not have jurisdiction to deal with it.
16. As for the period after April 2018 I am quite satisfied that no deduction was made from the Claimant’s wages at all. He put the time sheet in. He claimed the number of hours he wanted to be paid and he was paid for those hours. He knew that if he was lone working and unable to leave the site Ms Daglan had agreed that he should be paid for the whole time he was on the site. Otherwise, he was not entitled to be paid for his break. His claims reflected the agreement with Ms Daglan. If there were no deductions then his complaint relating to the period from April 2018 onwards cannot succeed.

**Employment Judge Davies**

**25 October 2019**