



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss F Anderson

v

Churchill Contract Services Limited

Heard at: Cambridge

On: 20 January 2020

Before: Employment Judge Tynan

Appearances

For the Claimant: Mr Anderson-Smith, Representative

For the Respondent: Mr R Kerr, Consultant

JUDGMENT

The Tribunal Orders the Respondent to pay to the Claimant, the sum of **£906.49** in respect of the unlawful deduction from her wages.

REASONS

1. This case came back before me on 20 January 2020 to determine remedy after I had given a Reserved Judgment on liability following a hearing on 5 July 2019. As on 5 July 2019, the Claimant was ably represented by her son.
2. The Respondent had prepared a remedy bundle comprising 12 documents running to 240 pages (though there were no documents at page numbers 30 – 177 of the bundle).
3. The Respondent's calculation of the sums due to the Claimant is at pages 11 and 12 of the remedy bundle. The Claimant's response to that calculation is at pages 13 – 23 of the remedy bundle. In summary, the Respondent calculates that the sum of £906.49 is owing to the Claimant, whereas the Claimant claims that she is owed the sum of £8,652.08. However, the Claimant effectively seeks to go beyond the declaration as to

the unlawful deductions that were made from her wages. I refer to paragraph 16 of the Reserved Reasons. The Tribunal is concerned with the monthly amounts the Claimant would have been paid on or after 10 April 2016 had she been paid in accordance with her established contractual rights on transferring to the Respondent's employment.

4. The Respondent calculates that the Claimant's base pay at the date she transferred to the Respondent's employment was £1,645.16 per month. In addition, the annualised enhancement to her pay as a result of working Saturdays, Sundays and Public Holidays equated to £263.57 per month, so that, excluding overtime, the Claimant should have been paid £1,908.73 per month at the date of transfer. The sums she was actually paid (inclusive of overtime) are set out in the penultimate right-hand column of the table at pages 11 and 12 of the remedy bundle. Whether or not it was legally required to do so, in its calculations the Respondent has disregarded payments made to the Claimant for overtime worked by her, amounting to £660.13 in total in 2016 and 2017. Disregarding overtime, the Respondent's calculations evidence that the underpayment/unlawful deduction of wages in 2016 was £1,317.33. They further evidence that the Claimant was overpaid £410.84 in 2017. Under Section 25(3) of the Employment Rights Act 1996, the Respondent is entitled to credit for any overpayment. Accordingly, the Respondent calculates that the net unlawful deduction from wages was £906.49.

5. Mr Anderson-Smith says that the monthly enhancement to the Claimant's base pay should be £386.80, this being the amount of the enhancement that was paid to the Claimant during her last two complete months' employment with Cambridge City Council. However, at paragraph 13 of my Reserved Judgment, I noted that the Claimant's pay in the months immediately preceding the transfer from the Council to the Respondent was artificially inflated. I accepted Mr Scott's evidence on behalf of the Respondent in its entirety, including the evidence at paragraph 14 of his witness statement that the enhancement in the period April to December 2014 was £249.53 per month, increasing to £254.41 in the period January to March 2015. Mr Anderson-Smith could not explain why the monthly enhancement might have increased by over 50% by 2016 given that the Claimant continued to work broadly the same number of Saturdays, Sundays and Public Holidays. Other than rely upon the amount paid by Cambridge City Council in April and May 2015, Mr Anderson-Smith was unable to put forward any other calculation in respect of the enhancement. I preferred Mr Kerr's calculation which was both clear and logical. He had applied a 3.6% increase to the March 2015 enhancement of £254.41 to reflect a 3.6% pay rise awarded to the Claimant in April 2015 when she went up an increment point on the Council's pay scale. That increase took the monthly enhancement to the Claimant's pay to £263.57 per month with effect from April 2015. A further 1% increase was applied to the enhancement with effect from 1 August 2016 to reflect a 1% increase in

the Claimant's base salary on that date. The result is that between April and July 2016, the Claimant's monthly salary, inclusive of the enhancement, should have been £1,908.73, increasing to £1,927.54 with effect from 1 August 2016.

6. The other potential area of dispute is overtime worked. However, this is outside the ambit of the Judgment. In any event, the Respondent had not sought credit in respect of overtime payments made to the Claimant which might otherwise have served to take her earnings in some months up to or above the level at which she would have been paid under Cambridge City Council's pay arrangements. In so far as Mr Anderson-Smith contends (albeit he has not put forward any specific calculations in this regard) that the Claimant worked more overtime hours than the Respondent's records show, it makes no difference in terms of the remedy to which the Claimant is entitled, since all it would serve to do is to increase the sum which the Respondent has effectively waived the right to have taken into account in calculating the unlawful deduction from the Claimant's wages.

7. On behalf of the Claimant, Mr Smith also sought an Order that the Respondent pay the Claimant's legal costs of £1,250 for taking advice in this matter. Having regard to Section 24(2) of the Employment Rights Act 1996, I am not persuaded that legal costs can properly be regarded as a financial loss sustained by an employee which are attributable to the unlawful deduction from wages. In the circumstances, I approach the matter in accordance with Rule 76 of the Employment Tribunals Rules of Procedure 2013. In my judgment this case does not pass the threshold under Rule 76(1), specifically I do not consider that the Respondent acted unreasonably in defending the proceedings or in the way the proceedings were conducted by it. The correspondence available to me at the hearing on 5 July 2019 evidenced that the Respondent had endeavoured to address the Claimant's concerns when they arose and to find a resolution. As I noted in my Reserved Reasons, a significant obstacle to resolution in this case was the Claimant's difficulty reading and writing and therefore comprehending. Moreover, she did not succeed in a number of her complaints, and to the extent she succeeded this was largely on a legal technicality rather than because she had suffered any actual financial loss. In the circumstances the application for a Costs Order is refused.

Employment Judge Tynan

Date: 6 February 2020

Sent to the parties on: 12/02/2020

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For the Tribunal Office